RULES COMMITTEE: 5/30/07
ITEM: I.2.1

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Dan McFadden
Deputy City Manager

SUBJECT: **SEE BELOW**

DATE: May 23, 2007

Approved Deanna Santana 5/23/07

COUNCIL DISTRICT: City-Wide

SUBJECT: STAFF'S PRELIMINARY COMMENTS ON SUNSHINE REFORM TASK FORCE'S PHASE 1 REPORT AND RECOMMENDATIONS

RECOMMENDATION

1. Accept staff's preliminary response to the Sunshine Reform Task Force's (SRTF) Phase 1 Report and Recommendations.

2. Direct staff to conduct outreach and solicit feedback on the SRTF's Phase 1 recommendations and report back to the City Council in September 2007, regarding their adoption and implementation.

BACKGROUND

Since June 2006, the Sunshine Reform Task Force has been meeting regularly to review a variety of initiatives related to open government with the goal of drafting a comprehensive Sunshine Ordinance.

Although the SRTF considered a variety of proposals from the City Council and the public, its Phase 1 recommendations include only those proposals which a majority of the Task Force recommended that the Council consider. The SRTF's Phase 1 report includes recommendations for: (1) public meetings; (2) closed session; and (3) public information. Staff attended all of the SRTF's meetings as it developed the Phase 1 recommendations to provide background information, legal analysis, and staff's perspective on the potential financial and administrative challenges of the proposed reforms.

An internal team comprised of staff from key departments, the City Manager's Office the City Attorney's Office, and City Clerk's Office began meeting in April 2007 to review the SRTF's preliminary Phase 1 recommendations issued March 19, 2006. The following are staff's primary concerns about the proposed Sunshine Ordinance; staff believes these particular items merit further discussion and consideration before implementation.

ANALYSIS

This report provides staff's preliminary analysis on the SRTF's recommendations for public meetings, closed session, and public information, and proposes an outreach strategy to solicit additional input from a larger group of stakeholders to better understand the impact to their work and to identify areas of potential concern.

I. Public Meetings

The recommendations on public meetings relate primarily to three types of bodies: policy, ancillary, and non-governmental. The SRTF's proposals relating to the work of these bodies extends beyond what the Brown Act requires and differs significantly from current City practice. A matrix detailing the requirements to be imposed on policy bodies and ancillary bodies is included as Attachment 1.

1. Policy Bodies (Ref: SRTF Phase I Report, pg. 6)

The SRTF recommends extending the requirements for policy bodies to the City Council, Redevelopment Agency Board, the City's boards, commissions, and committees; any body that exists primarily to exercise authority delegated to it; any body that receives City funds and has appointed to its governing board a member of the policy body or his or her designee with voting rights; and bodies that advise on significant amounts of grant funding. In all, staff estimates the SRTF's proposal for policy bodies captures approximately 80 entities.

Staff Concerns
Staff notes that many of these bodies do not make policy, but rather provide advice to department heads and City Council. In essence, these bodies would be required to conduct their meetings as the City Council conducts its meetings. Staff is concerned about extending longer notice, posting, and minute-taking requirements to bodies that are actually advisory, and do not make policy decisions. Staff estimates that of the 80 bodies currently captured by the policy body definition, 16 of these actually make policy decisions (See Attachment 2).

Moreover, staff has concerns about the SRTF's recommendations about supplemental memorandums, public testimony, and minutes for policy bodies.

a. Agenda Requirements (Ref: SRTF Phase I Report, pg. 9) - The Task Force recommends that when a policy body reports to another policy body, the item should go through at least 2 ten-day noticing periods (i.e. 10 days notice for Council Committee, Commission or Board and 10 days for City Council) not to exceed 45 days total.

Staff notes that this recommendation conflicts with the Council Committee procedures approved by Rules and Open Government Committee on January 31, 2007, requiring: 1) agendas and reports to be posted 5 days in advance of the Rules and Open Government Committee, and 2) agenda and staff reports for all other Council Committees to be posted 7 days in advance. In addition, the proposed agenda requirements will significantly impact the cycle time needed for staff to support the work of these bodies.

b. Supplemental Memorandums (Ref: SRTF Phase I Report, pg. 11) - The SRTF recommends that supplemental staff reports be issued no later than 5 calendar days before a meeting. At times, however, staff acquires last minute information that is important to the decision-making process, but does not change the staff recommendations. Council may wish to retain the ability to obtain supplemental information if the recommendations remain unchanged.

c. Public Testimony (Ref: SRTF Phase I Report, pg. 16) – One of the original 22 Sunshine reform referrals is to expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group or Community Association Designees." The SRTF recommends that up to 4 minutes be extended to any representative of an organization to provide public testimony if: (1) two or more members are in attendance; and (2) one representative is willing to yield his or her time.

The Council Rules of Conduct Resolution provides the Mayor the discretion to set the time limits for City Council meetings. While staff believes additional time would be appropriate for speakers representing Council-appointed advisory bodies, the City Attorney is concerned about the constitutional implications of extending additional time to certain groups. In any event, the City generally strives to permit all persons equal time to speak, with the exception of applicants or appellants in land use matters, who are permitted a total of 5 minutes.

d. Minutes (Ref: SRTF Phase I Report, pg. 16) - The SRTF recommends that all policy bodies provide written minutes within 10 days after a meeting. The administrative challenges associated with completing minutes and posting them within this time frame for all 80 of the proposed policy bodies identified by the Task Force would be a significant staffing impact.

In addition, the City Clerk notes that a ten-day turnaround time for Council Meeting minutes is impractical. Although improvements have been made by going to an "action" minutes format, since the City Council meets weekly and considers numerous agenda items, the accurate preparation of meeting minutes (which, unlike other cities, contain important information relating to documents filed with each agenda item) takes time and skill. Moreover, staff notes the findings from a recent report released by the Santa Clara County Civil Grand Jury on May 3, 2007, titled "State of Minutes: An Inquiry into the Availability, Timeliness and Retention of the Minutes of the San Jose City Council." The Grand Jury concluded the procedures the

City has developed for the retention of video recordings, printed transcripts, and synopses give the public the ability to access information detailing the decisions of the City Council in a timely manner.

2. Ancillary Bodies (Ref: SRTF Phase I Report, pg. 3)

The SRTF recommends that committees that serve as an advisor to a member of a policy body, the Mayor, a City Councilmember, the Mayor's Chief of Staff, the Mayor's Budget and Policy Director, Council Appointees or a Department Head be considered ancillary bodies.

Staff Concerns
Extending the requirements for ancillary bodies to informal and ad hoc advisory committees created by department heads may impair staff's ability to work effectively. Department heads frequently seek input in forming recommendations by meeting with non-City staff members. The requirement to notice, agendize, and provide for public participation in such meetings will be burdensome.

Staff is also concerned about permitting public participation in certain committees due to the sensitive nature of their topics, e.g. the Independent Police Auditor's Advisory Committee, hiring committees, and committees reviewing competitive solicitations. In addition, staff is concerned about the practicality of extending the requirements for ancillary bodies to ad hoc committees that meet only a few times, or sporadically.

Staff further notes the position of the "Mayor's Budget and Policy Director" is no longer utilized.

3. Non-governmental Bodies (Ref: SRTF Phase I Report, pg. 9)

The SRTF recommends applying certain requirements to "non-governmental bodies" (NGBs) – essentially any private or non-profit entity that operates and maintains a community center, a city facility or provides a direct service for a fee through contracts with the City. NGBs would be assigned to a policy body and required to provide written reports indicating compliance with contract requirements annually. Supplemental reports would also be required whenever a contractor made a significant policy or program change, as defined by the SRTF.

Staff Concerns
Staff agrees with the minority opinion submitted by Task Force member Margie Mathews for NGBs (see minority opinion provided in Attachment 3). Staff is very concerned that transferring oversight of contracts from staff to policy bodies would be duplicative, costly and counterproductive to the professional administration of contracts. Staff believes the SRTF definition will apply to a number of our non-profit partners and may be a disincentive to future partnerships and business transactions. In addition, having the non-governmental bodies report to a policy body will place an undue burden on the workload of policy bodies.

II. Closed Session

There are eight bodies that are permitted to conduct closed session. These bodies include: City Council, Board of the Redevelopment Agency, Civil Service Commission, Elections Commission, Police and Fire Retirement Board, Federated Employees Retirement Board, Deferred Compensation Advisory Board, and the San Jose Arena Authority. Staff's comments below relate primarily to the City Council's conduct of closed session. Staff proposes conducting outreach to the remaining bodies that are permitted to conduct closed session to better understand the impact of the specific recommendations to their work.

Staff has concerns about the SRTF's recommendations about audio taping, certification, and disclosure

1. Audio Taping (Ref: SRTF Phase I Report, pg. 19)

The SRTF recommends the recording of closed session. Recordings must be made available unless the City Attorney certifies that the need to keep the tapes confidential outweighs the public's interest in disclosure.

Staff Concerns
Staff is concerned about the audio taping of discussions in closed session related to labor, real property, and litigation, particularly until a process is established and the City can be clear about how and when the tapes would be released.

In the case of labor negotiations, the Brown Act allows closed session with the City's labor negotiator for the purpose of seeking direction in the negotiations. Since negotiating strategy is frequently similar for all bargaining units, staff does not foresee any circumstance where the tapes would be released.

In the case of real property negotiations, the purpose of closed session is for the negotiator to get direction on the price and terms of payment. Similar to the concerns raised above regarding labor negotiations, it is not foreseeable that disclosure of discussions about the strategy about a real estate transaction would occur at any time. Instead, once the parties agree upon price, the final approval of the transaction is subject to the public meeting noticing and hearing requirements and all information (including price and terms of payment) would be disclosed.

The City Attorney's Office notes that the same concerns about audio taping labor and real estate negotiations apply to discussions about lawsuits in closed session, because litigation strategy in one case may apply to similar cases. Moreover, closed session discussions about workers' compensation settlements are specifically prohibited from disclosure by federal and state privacy laws.

As noted by the Task Force members who have served on City Councils, Margie Matthews and Judy Nadler, recording closed session will likely reduce candor and increase the role of politics in closed session discussions.

2. Certification (Ref: SRTF Phase I Report, pgs. 19 and 22)

The SRTF recommends that after an item has been discussed in closed session, the City Attorney may certify that the recording of the closed session on that matter should not be made available if he or she makes a specific finding that the public interest in non-disclosure outweighs the public interest in disclosure. The Task Force will make recommendations about the process of appealing the City Attorney's certification of a recording of closed session in its Phase II recommendations under the Enforcement Section.

Staff believes that while that while the meetings were noticed and conducted in accordance with the law, the majority of closed session discussions concern attorney-client communications. The holder of that privilege is the City Council and not the City Attorney. It is only proper for the Council, and not the City Attorney, to decide whether to waive any privilege and release audio tapes on a case-by-case basis. The role envisioned for the City Attorney may be inconsistent with the role of the City Attorney as defined in the City Charter.

Again, the primary concern of staff is that closed session not be recorded until a protocol for releasing the tape is adopted by Council.

3. Disclosure (Ref: SRTF Phase I Report, pg.20)

The SRTF recommends that before going into closed session on a real estate matter, the body meet in open session and disclose not only the property at issue (which is consistent with current law) but any proposed development for the property and the sources of payment for the purchase.

Staff Concerns
This proposal may put the City at a disadvantage by requiring greater disclosure than what is necessary to acquire the property. It could affect the ultimate price (if the plans for development are disclosed) or timing (if the source of payment is disclosed) on any proposed development. Ultimately, all desired information will be disclosed at a properly noticed public meeting once the negotiations have concluded.

III. Public Information

1. Release of Oral Information (Ref: SRTF Phase I Report, pg.23)

The SRTF recommends that public employees must not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while on duty.

Staff Concerns
The City Attorney's Office notes this recommendation is contrary to both the San Jose Municipal Code and case law, which permits employers to regulate the speech of employees while on duty.

2. Public Review File (Ref: SRTF Phase I Report, pg.23)

The SRTF recommends that the City Clerk maintain a public review file that is accessible to any person during normal office hours and that contains a copy of any letter, memorandum or other communication which the Clerk has distributed to or received from a quorum of a policy body concerning a matter calendared by the body within the previous 30 days "or likely to be calendared within the next 30 days."

Staff Concerns
The City Clerk notes that implementation of this recommendation is a resource and process issue; the ease of doing so depends on what is ultimately defined as a policy body. Moreover, staff questions the necessity of duplicating documents already maintained by policy bodies e.g. like the Planning Commission, for example, and is concerned that implementing a requirement to keep copies of items that are "likely to be calendared" places an impossible requirement on the office.

3. Calendars (Ref: SRTF Phase I Report, pgs.23 and 24)

The SRTF recommends changing the City's current practice regarding the disclosure of calendars for City officials by: (1) expanding the list of individuals required to maintain calendars and make them available upon request; (2) increasing the frequency of posting calendars for certain officials from quarterly to weekly; (3) prescribing the content the calendar must provide; and (4) proposing exceptions for activities that may be excluded from calendars.

Staff Concerns
The SRTF's recommendation does not provide an exemption for meetings of the Police Chief that may compromise police investigations, pose security concerns, or deter community involvement. Staff is also concerned about descriptions of meetings that concern personnel matters, and proposes exempting those meetings as well.

4. Lobbyist on Behalf of the City (Ref: SRTF Phase I Report, pg. 24)

The SRTF recommends that individuals or organizations that lobby in Sacramento or Washington, DC on behalf of the City report expenditures that advance lobbying efforts on behalf of the City on a quarterly basis. In addition, the SRTF recommends prohibiting the use of City funds to support any lobbying effort to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

Staff Concerns
The SRTF's recommendation to prohibit the City from taking a position on legislation prospectively is not prudent. This provision may limit the City's ability to respond to future legislation. It is essential that the City maintain the ability to analyze future legislation and amendments to bills on a case-by-case basis and to respond based on the merits of the proposed legislation. In addition, the provision provides an exception if the effort is solely for the purpose of protecting the identity and privacy rights of private citizens, but staff is concerned that "private citizens" is not intended to include public employees.

Moreover, the City Clerk notes the additional administrative burden of overseeing compliance with the increased reporting requirements.

SUMMARY

Other Related Council Referrals
Staff is working on a related referral from the Rules and Open Government Committee to consolidate the open government reforms. This analysis will examine all open government initiatives and identify the referrals that have been integrated into the SRTF's proposed Sunshine Ordinance. Staff anticipates submitting this analysis to the Rules and Open Government Committee in early June 2007.

In addition, at the April 3, 2007, City Council Meeting, Council approved actions related to the Mayor's Transition Subcommittee on Government Reforms and Ethics related to public subsidies with staff direction to: (1) work expeditiously with the Sunshine Reform Task Force to receive and analyze the Task Force's recommendations within three weeks of the Task Force's submission of recommendations; and (2) return with what the City can legally require private entities to divulge about wages and benefits. Staff's review of the SRTF's recommendations will be responded to under separate cover within the timeframe established by the City Council.

Implementation
The Task Force discussed and considered the staff, financial, and administrative challenges that the City might face in implementing the Phase I recommendations. Staff recognizes there will be unintended consequences of the proposed Sunshine Ordinance, and therefore recommends that the provisions identified in this SRTF report be implemented on a pilot basis. The pilot program will allow for more complete review of effectiveness, impacts on resources, workload and City processes. Staff is eager to move forward with the goal of adopting an ordinance that is clear and balances the benefits of open government with legitimate concerns for effective public management.

POLICY ALTERNATIVES

Not applicable

PUBLIC OUTREACH/INTEREST

Criteria 1: Requires Council action on the use of public funds equal to $1 million or great.

Criteria 2: Adoption of a new or revised policy that may have implications for public heath, safety, quality of life, or financial/economic vitality of the City.

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 or a Community group that requires special outreach.

The work of the Sunshine Reform Task Force has been well-publicized in the community. In addition to coverage by the local media, an early advertising campaign invited suggestions from the community and over 50 reform proposals were received. All meetings are televised and all documents are available online.

While some entities have engaged in discussions with the Sunshine Reform Task Force as it considered these recommendations, the final recommendations of the Sunshine Reform Task Force for Public Meetings, Closed Session, and Public Information are just now being completed for Council consideration. Because some of the definitions and requirements to be imposed for Public Meetings will affect our City's boards, commissions, committees, and private partners, some of whom may not think of themselves as entities impacted by these proposals, staff believes an additional opportunity for public input and reaction to these proposals would provide helpful information to the City Council before it acts on the proposals. Staff proposes holding two public meetings before the end of the July furlough to seek this input. As noted above, these proposals will bring changes to all of the City's boards, commissions, and committees, as well as to a number of non-governmental bodies that contract with the City. Outreach for these meetings would be accomplished through direct contact with the potentially affected entities as well as advertisements placed in our local newspapers.

COORDINATION

This report has been coordinated with the City Attorney's Office, the City Clerk's Office, the Redevelopment Agency, the City Manager's Office, and City departments.

FISCAL POLICY ALIGNMENT

N/A

COST SUMMARY/IMPLICATIONS

To address new requirements growing out of both the Sunshine Reforms and Reed Reforms, the recently released *2007-2008 Proposed Operating Budget* recommended $1.1 million ($350,000 ongoing) to meet technology needs and improve access to information. An MBA distributed to the

City Council on May 9, 2007, provides the details of this expenditure and is currently being considered in the 2007-2008 Budget. The proposal would fund a Public Records Manager, a Video Producer for meeting coverage, and an Analyst position for posting notices and agendas, along with additional electronic storage capacity, and an audit of the City's website to identify improvements to enhance access to online information. Both the Reed Reforms and Sunshine Reforms focus attention on improving public access to information about the City. Generally, these efforts are focused on two areas: (1) better access to City records; and (2) better access to information about public meetings. The proposals contained in the MBA addresses many of the needs that have been identified to date.

BUDGET REFERENCE

2007-2008 Proposed Operating Budget, pg. IX-16.

Dan McFadden
Deputy City Manager

For questions, please contact Sheila Tucker, City Manager's Office 408.535.8115.

Attachment 1

Summary of Primary Requirements for Policy Bodies and Ancillary Bodies (extending beyond current practice or the Brown Act)

	Policy Body	Ancillary Body
1. Agenda Posting	10 calendar days	4 calendar days
2. Staff Reports	10 calendar days	4 calendar days
3. Staff Reports – Expenditures of $1M or More	14 calendar days	4 calendar days
4. Public Subsidy – $1M or More	30 calendar days	N/A
5. Supplemental Staff Reports	5 calendar days	2 calendar days
6. Council Memos	4 calendar days No more than 2 signatories	2 calendar days
7. Agenda Posting (Special Meeting)	4 calendar days	24 hours
8. Recording and Photography	City Council, Rules and Open Government Committee, Planning Commission, and Elections Commission must video record meetings; all other Policy Bodies must audio record meetings; Recordings to be kept for 2 years.	Audio record meetings or provide action minutes Recordings to be kept for 2 years
9. Public Testimony	Up to 4 minutes may be extended to a representative of an organization to provide public testimony if: 1) two or more members are in attendance, and 2) one representative is willing to yield his or her time.	Brown Act
10. Minutes	Current practice for Council meetings extended to all Policy Bodies; minutes provided no later than 10 days after the meeting.	Action minutes or audio recording

Attachment 2. Policy Bodies

The following boards, commissions and committees were established by the City Charter, created by some formal action of the City Council (or by some formal action of the board, commission or committee), or meet some other criteria for Policy Bodies as recommended by the SRTF. The bodies identified in bold text make decisions about policy.

1. **City Council**
2. **SJ Redevelopment Agency Board**
3. **San Jose Financing Authority**
4. **San Jose Parking Authority**
5. Advisory Commission on Rents
6. Airport Commission
7. Airport Noise Advisory Committee
8. **Appeals Hearing Board**
9. Arena Management Corporation
10. Arts Commission
11. Arts Commission, Executive Committee
12. Arts Commission, Public Art Committee
13. Bicycle and Pedestrian Advisory Committee
14. Bringing Everyone's Strength's Together Evaluation Panel
15. Children's Discovery Museum of San Jose
16. Citizens Corps Council
17. **Civil Service Commission**
18. Community Action and Pride Grant Program Evaluation Panel
19. Community and Economic Development Committee
20. Convention and Visitors Bureau
21. Council Assistants Meeting
22. Council Salary Setting Commission
23. Coyote Valley Task Force
24. **Deferred Compensation Advisory Committee**
25. Disability Advisory Committee
26. Domestic Violence Advisory Board
27. Downtown Parking Board
28. Early Care and Education Commission
29. **Elections Commission**
30. **Federated Employees Retirement Board**
31. Federated Employees Retirement Board, Investment Committee
32. Federated Employees Retirement Board, Investment Committee of the Whole
33. Federated Employees Retirement Board, Real Estate Committee
34. Friends of the Guadalupe
35. GreenTeam of San Jose
36. Happy Hollow Park and Zoo Corporation
37. Healthy Neighborhoods Venture Fund
38. Healthy Neighborhoods Venture Fund Evaluation Panel
39. Historic Landmarks Commission
40. History San Jose
41. Housing & Community Development Advisory Committee
42. Human Rights Commission
43. **Independent Hearing Panel (LEA)**
44. Library Commission
45. Mexican Heritage Corporation
46. Mobile Home Advisory Commission
47. Neighborhood Services & Education Committee
48. Norcal Waste Systems of San Jose
49. Our City Forest
50. Parks and Recreation Commission
51. **Planning Commission**
52. Police Activities League
53. **Police and Fire Retirement Board**
54. Police and Fire Retirement Board, Investment Committee
55. Police and Fire Retirement Board, Investment Committee of the Whole
56. Police and Fire Retirement Board, Real Estate Committee
57. Public Safety Bond Citizen Oversight Committee
58. Public Safety, Finance & Strategic Support Committee
59. Rules and Open Government Assistants Meeting
60. Rules & Open Government Committee
61. San José Arena Authority
62. San José Beautiful
63. San José Beautiful Evaluation Panel
64. San José Conservation Corp
65. **San José Housing Authority**
66. San José Museum of Art
67. San José Sports Authority
68. Senior Citizen Advisory Commission
69. Silicon Valley Workforce Investment Network
70. **SJ/SC Clean Water Financing Authority**
71. **SJ/SC Treatment Plant Advisory Committee**
72. Small Business Development Commission
73. Strong Neighborhoods Initiative Project Advisory Committee (SNI PAC)
74. Sunshine Reform Task Force
75. Taxi San José
76. Team San José
77. The Tech Museum of Innovation
78. **Traffic Appeals Commission**
79. Transportation & Environment Committee
80. Youth Commission

Attachment 3. Minority Opinion
Submitted by Task Force Member Margie Mathews on Non-governmental Bodies

The organizations as defined are not policy bodies. Rather, they are private and non-profit entities that maintain buildings, operate programs, or provide a service for an agreed upon fee as detailed in contracts with the City of San Jose.

The conditions and terms of these contracts are public documents approved by the City Council and managed by the City's administrative staff. Placing oversight of thousands of contracts into a parallel political arena would be duplicative, costly, and counterproductive to the professional administration of contracts.

The recent financial difficulties of a number of non-profit organizations are not the result of poor contract administration. Rather, they are symptoms of the general economic decline of the region – a condition that the City itself is suffering from along with most businesses.

The concept of establishing public-private partnerships to assist the city in its mission has been embraced whole-heartedly by the City and the larger community. This method of providing what the City can no longer provide cannot be sustained if the private partners are not given the authority to fulfill and oversee their own missions. A basic principle of non-profit management is that the board of directors must be given real authority if it is expected to bring money and other resources to the organization.

The City is not in the financial position to increase staffing and/or consulting contracts to put such a system of political oversight in place. Furthermore, if the City creates unnecessary scrutiny and bureaucratic hoops for private partners, the very resources and savings the City benefits from could be jeopardized.

SUNSHINE REFORM TASK FORCE

Phase I Report & Recommendations

May 2007

Report of the Sunshine Reform Task Force

to the San José City Council

May 2007

Sunshine Reform Task Force

May 23, 2007

Mayor Chuck Reed
San José City Council Members
San José City Hall
200 East Santa Clara Street, 17th Floor
San Jose CA 95113

Dear Mayor Reed and San Jose City Council Members:

I am pleased to submit to you the Sunshine Reform Task Force's report and recommendations on Phase I of a Sunshine Ordinance. Our Phase I recommendations include requirements for conducting public meetings and closed sessions, along with improvements to facilitate access to public information. Phase II of the Sunshine Ordinance will include recommendations for Public Records, Technology, Enforcement, and Ethics and Conduct.

This report reflects the deliberations of a group of many dedicated community volunteers who have worked together for approximately one year to learn from each other and to find common ground in the development of a Sunshine Ordinance. We have reviewed and discussed five Sunshine ordinances that have been enacted in local governments around the San Francisco Bay area. Although we have considered a variety of proposals from the City Council and the public, we include in this report only proposals which a majority of the Task Force recommended for further consideration in a Sunshine Ordinance. A complete record of the work of the Task Force, including meeting minutes, other proposals, and ancillary documents, is available on the City's website at http://www.sanjoseca.gov/clerk/TaskForce/SRTF/SRTF.asp. In instances where Task Force members had significantly different opinions on the recommendations, minority opinions were submitted for the record. The minority opinions can be found in Attachment 3 and referenced in the appropriate sections.

I am deeply grateful for the hard work of my colleagues on the Task Force. Staff from the City Manager's Office, Attorney's Office, City Clerk's Office, and the Redevelopment Agency were immensely helpful in a variety of ways and contributed significantly to transforming our intent and recommendations into thoughtful and coherent provisions contained in this report. Finally, we want to thank the City Council for providing us with the opportunity to be of service to the City and its citizens.

We are forwarding our Phase I recommendations for implementation. We have a few outstanding issues to resolve in Phase I and we will be adding our recommendations on those topics when we forward our final recommendations on Phase II.

Sincerely,

Ed Rast

Ed Rast, Chair

TASK FORCE MEMBERS

Task Force Members

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South Bay Labor Council

Bobbie Fischler
League of Women Voters

Susan Goldberg
San José Mercury News

Karl Hoffower
Citizens Commission on Human Rights

Virginia Holtz
Willow Glen Neighborhood Association

Margie Matthews
Former Councilmember

Judy Nadler
Markkula Center for Applied Ethics

Brenda Otey
At Large-Representative

Ken Podgorsek
United Neighborhoods of SCC

Dan Pulcrano, Vice-Chair
Silicon Valley Leadership Group

Joan Rivas-Cosby
Five Wounds/Brookwood Terrace Neighborhood Advisory Committee

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Attachment 2. Summary of Primary Differences Between Policy Bodies and Ancillary Bodies

Attachment 3. Minority Opinions

Introduction

Background

On March 21, 2006, the City Council held a public hearing and considered a number of proposed reforms designed to promote open, accessible, and inclusive government. At the end of the public hearing, the City Council directed staff to develop a work plan with specific recommendations about the implementation of 22 Sunshine reform measures focused in three areas: 1) Public Information; 2) Neighborhood Participation; and 3) Government Accountability. The City Council further directed staff to create a framework for the selection of a task force charged with reviewing the City Council's recommendations, proposals submitted by the public, and any other Sunshine reforms that the task force determined worthy of consideration. At its April 18th meeting, the City Council approved the formation of the "Sunshine Reform Task Force," a 15 member body representing diverse community perspectives and interests, to review proposals and make recommendations to the City Council about adoption and implementation of the proposals. On May 23, 2006, the City Council referred nine proposals to the Sunshine Reform Task Force and directed staff to proceed with a pilot program to implement 14 proposals. Additionally, on June 6, and June 27, 2006, the City Council referred two additional reforms to the Task Force that were included in the Task Force's work plan.

Process

The Sunshine Reform Task Force has been meeting since June 2006. For the first months of meetings, the Task Force engaged in thorough discussions on a number of issues, including the role and responsibility of the Task Force, the process by which the Task Force would conduct business, the selection of Chair and Vice-Chair, whether to meet as a "committee of the whole" or to create sub-committees, and, most importantly, whether to consider reform measures beyond the nine referrals referred by the City Council.

Three important outcomes occurred as a result of these early discussions. First, the Task Force developed and adopted a *Code of Ethics and Conduct* that serves as the guiding principles for the Task Force. Second, after reviewing the Sunshine ordinances from five Bay Area local governments (San Francisco, Oakland, Milpitas, Benicia, and County of Contra Costa), the Task Force agreed to develop a Sunshine Ordinance using the framework of the San Francisco Sunshine Ordinance and some of the provisions of the City of Milpitas Open Government Ordinance. Third, the Task Force agreed to deliberate the provisions of a proposed ordinance as a "committee of the whole."

Sunshine Reform Goals

The Task Force also agreed on an over-arching philosophical framework to guide the work of the Task Force in developing the Sunshine Ordinance. The 10 Sunshine Reform goals are:

1. The public's business should be conducted in public.
2. Information about the time and location of public meetings should be readily accessible and convenient to access.
3. The public should have a meaningful opportunity to participate in public decisions.
4. The public should have both easy access and sufficient time to fully review all information that is relevant to an item being discussed at a public meeting.

5. There should be full and complete disclosure of information relevant to an issue being considered by any public body.
6. Stakeholders should be provided with an opportunity to be fully engaged before significant items are brought to a public body for consideration.
7. Broader disclosure should be made of what the Council does in closed session.
8. Public records should be broadly defined and inclusive.
9. The public should have easy and convenient access to public records.
10. Reforms should be enforceable and take into consideration recent efforts to increase efficiency, timeliness, and responsiveness in the delivery of public services.

Public Participation

The Task Force solicited public input through a call for reform proposals during the period July 26, 2006 through September 12, 2006. These public proposals were evaluated along with proposals submitted by members of the City Council when the corresponding topic was scheduled for discussion by the Task Force. Moreover, the Task Force heard public testimony at each meeting which allowed for meaningful participation by members of the public throughout the Task Force's work. Additionally, staff developed the Sunshine Reform Task Force web page, accessible through a link on the City's home web page, that includes live broadcasts, meeting videos, agendas, reports, captioned transcripts, and synopses that are available on demand.

Sunshine Ordinance – Phase I and Phase II

The Task Force established its work plan and agreed to meet every 1st and 3rd Thursday of the month. Due to the complexity of the various provisions in the ordinance, the vetting and drafting of the ordinance took considerably longer than originally anticipated. As a result, the Task Force extended its meeting hours, held meetings on Saturdays, as necessary, and agreed to establish committees on specific topics to prepare preliminary drafts for consideration and adoption by the Task Force. The Task Force also recognized the importance of moving forward expeditiously, and thus agreed to present its recommendations to the City Council in two phases.

Phase I of the proposed Sunshine Ordinance, submitted with this report, includes provisions for: 1) Public Meetings, 2) Closed Session, and 3) Public Information and Outreach. Phase II of the proposed ordinance is expected to be submitted to the City Council in fall 2007 and will include: 1) Public Records, 2) Technology, 3) Enforcement, and 4) Ethics and Conduct.

Implementation

The Task Force made every attempt to carefully consider the staff, financial, and administrative challenges that the City might face in implementing the Phase I provisions. The Task Force, however, recognizes there may be potential unintended consequences of the proposed Sunshine Ordinance, and that the City Council may choose to implement some of the provisions on a pilot basis to allow a more complete review of effectiveness, impacts on resources, workload and City processes. Nevertheless, we urge the City Council to implement these provisions as soon as possible.

Section 1. Definitions

1.1 Agenda

"Agenda" means a list of information about a meeting, including the identity of the policy body conducting the meeting, the time and location of the meeting, a meaningful description of each item of business to be transacted or discussed at the meeting, the proposed action for each item and a list of the documents that have been or will be provided to the policy body in connection with each item.

1.2 Agenda packet

"Agenda packet" means agendas of meetings and any other documents that have been or are intended to be distributed to a policy body or an ancillary body in connection with a matter anticipated for discussion or consideration at a public meeting. Any document provided to a policy body must be included in the agenda packet. The agenda packet must include:

A. Any contract terms, agreement, letter of intent or memorandum of understanding, including any amendment or modification thereto, that is submitted to the policy body for approval.

B. Any memorandum prepared by a member of the policy body, City staff or Council staff pertaining to a matter to be considered by the policy body at the meeting.

C. The report of any outside consultant, advisor, contractor or attorney that will or may be considered by the policy body in taking action on any item on the agenda for the meeting.

D. The agenda packet need not include any material exempt from public disclosure under this chapter.

E. If a document distributed or intended to be distributed in connection with a matter on the agenda is more than fifteen pages, it must be made available for public inspection and copying at a location indicated on the agenda during normal office hours and available on the City's website.

1.3 Ancillary body

"Ancillary body" means:

A. Committees or other bodies created by and to serve as an advisor to a member of a policy body, the Mayor, a City Councilmember, the Mayor's Chief of Staff, the Mayor's Budget and Policy Director, a Council appointee or a Department Head.

B. Ancillary body does not include any committee or body that consists solely of City staff.

See Attachment 1 for a partial list of ancillary bodies.

1.4 City

"City" means the City of San José, California.

1.5 City Council

"City Council" means the Mayor and ten Councilmembers who have the right to vote on all matters coming before them.

1.6 City staff

"City staff" means Council appointees, Department heads and all employees of Council appointees and Department heads.

1.7 Council appointees

"Council appointees" means the City Manager, the City Attorney, the City Clerk, the City Auditor, the Independent Police Auditor, the Executive Director of the San José Redevelopment Agency.

1.8 Councilmember report

"Councilmember report" means any memorandum prepared by a member of the City Council or Council staff pertaining to a matter to be considered by the policy body at the meeting.

1.9 Council staff

"Council staff" means all employees of the City Council and the Mayor.

1.10 Department head

"Department head" means a director or head of the various City offices or departments.

1.11 Lobbyist

"Lobbyist" means a person or business entity that receives or is entitled to receive $250 or more in any month from the City to represent the City in matters before any local, regional, state, or federal administrative or legislative body.

1.12 Meeting

"Meeting" means:

A. A congregation of a majority of the members of a policy body or ancillary body at the same time and place to discuss or deliberate any matter that is within the jurisdiction of the City. A meal gathering of a policy body or ancillary body before, during or after a meeting of the policy body or ancillary body is part of that meeting and must be

conducted only under circumstances that permit public access to hear and observe the discussion. Meal gatherings must not be conducted in restaurants or other locations where public access is possible only by making a purchase or some other payment.

B. A series of gatherings, each of which involves less than a majority of a policy body or ancillary body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, is prohibited if the cumulative result is that a majority of the members of the policy body or ancillary body has become involved in such gatherings. A series of gatherings may occur by use of direct communication, personal intermediaries, or technological devices that involves a majority of the members of a policy body or ancillary body.

C. Meeting does not include:

1. Individual contacts or conversations between a member of a policy body or ancillary body and another person that do not convey to the member of the policy body or ancillary body the views or positions of other members of the policy body or ancillary body upon the subject matter of the contact or conversation and in which the member of the policy body or ancillary body does not solicit or encourage the restatement of the views of the other members of the policy body or ancillary body.

2. The attendance of a majority of the members of a policy body or ancillary body at a regional, state or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members of a policy body or ancillary body do not discuss any item within the subject matter jurisdiction of the City.

3. The attendance of a majority of the members of a policy body or ancillary body at a purely social, recreational or ceremonial occasion provided that a majority of the members do not discuss any item within the subject matter jurisdiction of the City.

4. The attendance of a majority of the members of a policy body or ancillary body at an open and noticed meeting of a standing committee of the policy body or ancillary body, provided that the members of the policy body or ancillary body who are not members of the standing committee attend only as observers or as members of the public.

1.13 Non-governmental body

"Non-governmental body" means:

A. The contractor operates or fully maintains any community center or a City facility with a value of over $5,000,000; or

B. The contractor receives, per City fiscal year from the City or San Jose Redevelopment Agency, at least the amount of the City Manager's contract authority set forth in San José Municipal Code Section 4.04.020(A)(3)(c); and

1. Provides direct services defined as:
   a. Police services;
   b. Fire services;
   c. Sewage treatment and water utility services;
   d. Garbage collection services;
   e. Street maintenance services; or
   f. Library services.

See Attachment 1 for a partial list of non-governmental bodies.

See Attachment 3 for minority opinions submitted by Task Force Members Margie Matthews, Dan Pulcrano and Nanci Williams about the Task Force recommendations for non-governmental bodies.

Please note: The Task Force recommends implementing the definition in (A) and (B)(1) for one year, and at the end of the pilot, evaluating the feasibility of adding the following alternative: "The contractor receives, per City fiscal year from the City or San José Redevelopment Agency, at least the amount of the City Manager's contract authority set forth in San José Municipal Code Section 4.04.020(A)(3)(c) and the contractor provides support services to the City that significantly impacts public access to property owned or leased by the City or prevents substantial damage to property owned or leased by the City." [The intent is to capture, among other things, airport taxi and shuttle services, airport concessions, custodial and landscaping services - to the extent that non-performance of the services would prevent the public from accessing property owned or leased by the City - and security services.]

1.14 Policy body

"Policy body" means:

A. The City Council, Board of the San José Redevelopment Agency, San José Financing Authority, San José Clean Water Financing Authority, San José Parking Authority and all committees or other bodies of the City Council or Board of the San José Redevelopment Agency, whether permanent or temporary, decision-making or advisory.

B. All boards and commissions established pursuant to the City Charter.

C. All boards, commissions, committees or other bodies created by ordinance, resolution or other formal action of the City Council, Board of the San José Redevelopment Agency, San José Financing Authority, San José Clean Water Financing Authority or San José Parking Authority and their standing committees.

D. Committees comprised of City Council staff that together represent a quorum of the City Council.

E. Any body that is:

   1. Created by a policy body in order to exercise authority delegated to it by that policy body; or

   2. Exists primarily to exercise authority that has been delegated to it by a policy body; or

3. Receives funds from the City and has on its governing body a member of a policy body or his or her designee who was appointed to the governing body by the policy body as a full voting member.

F. Any body that grants or advises a policy body or Department Head about grants to a non-City organization where the aggregate amount of funds granted totals more than $200,000 in City or San José Redevelopment Agency funds per City fiscal year.

G. Policy body does not include any committee or body that consists solely of City staff.

H. If a body meets the critieria for more than one type of body, the definition and requirements that would result in greater public access will apply to that body.

See Attachment 1 for a partial list of policy bodies.

See Attachment 3 for minority opinions submitted by Task Force Members Bob Brownstein, Dan Pulcrano and Nanci Williams about the Task Force recommendations for policy body.

1.15 Public information

"Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Sections 6252 et seq.), whether provided in documentary form, oral communication or other format that contains information such as computer tape or disc or video or audio recording. "Public information" does not include computer software developed by the City of San Jose as defined in the California Public Records Act (Government Code Section 6254.9).

1.16 Public subsidy

A. A public subsidy is a provision of economic value by the City or San Jose Redevelopment Agency and other related entities to a private entity for purposes beneficial to the public, such as the operation of a business or event within San Jose, but for which the City or Redevelopment Agency or other related entities do not directly or indirectly receive goods or services in return for that expenditure.

B. For the purposes of this definition, “provision of economic value” is defined as:

1. Cash payments;

2. Loans below the interest rate the City earns on its investment portfolio, known as “the City’s portfolio rate”, or loan guarantees;

3. Land or access to land at prices below fair market value;

4. Buildings or access to buildings at prices below fair market value as determined by either the city’s purchase price, appraisal or replacement value (purchase price may be used for “unique” structures for which the city does not want to do a costly appraisal); or

5. Waiver or reduction of fees or taxes.

C. For the purposes of this definition, "goods or services" include products or services provided at prices below market value. For example, if the City pays businesses or non-profit organizations to make affordable housing units or discounted rides on buses or shuttles available to residents, it is purchasing the discount and not offering a subsidy.

D. For the purposes of this definition, if the City or Redevelopment Agency signs a contract that stipulates the amount and terms of a subsidy for several years, the subsidy requiring disclosure is the initial approval of the contract, not the annual payments rendered in accordance with the contract.

See Attachment 3 for minority opinions submitted by Task Force Members Dan Pulcrano and Nanci Williams about the Task Force recommendations for public subsidies.

1.17 Staff report

"Staff report" means any memorandum prepared by a member of City staff pertaining to a matter to be considered by the policy body at the meeting.

Section 2. Public Meetings

2.1 Meetings to be Open and Public

All meetings of policy and ancillary bodies must be open and public and governed by the provisions of the Ralph M. Brown Act and the Sunshine Ordinance that is enacted. In the case of inconsistent requirements under the Brown Act and the Sunshine Ordinance that is enacted, the requirement that would result in greater public access will apply.

2.2 Time and Place for Meetings

2.2.010 Policy Bodies

Each policy body must establish a time and place for holding regular meetings.

2.2.020 Ancillary Bodies

If an ancillary body holds regular meetings, it must establish a time and place for holding regular meetings.

2.3 Notice and Agenda Requirements

See Attachment 2 for a matrix that lists the primary differences between policy bodies and ancillary bodies.

2.3.010 Policy Bodies

A. Regular Meetings

1. Agenda Posting

   a. Each policy body must designate a location to post notices and agendas required by this ordinance. At a minimum, each policy body must post notices and agendas at a place that is freely accessible to members of the public 24 hours per day and on the City's website.

   b. At least 10 calendar days before a regular meeting, a policy body must post an agenda for the meeting.

   c. When a Council Committee or Council Board, Commission or Committee reports to the City Council, an agenda item must be noticed 10 days before the Council Committee or Council Board, Commission or Committee meeting and then another 10 days before the City Council meeting. When any other policy body reports to the City Council, an agenda item must be noticed 10 days before the other policy body meeting and then another 4 days before the City Council meeting unless there is a significant change to the initial staff recommendation, in which case the agenda item must be noticed 10 days before the City Council meeting.

2. Staff Reports and Councilmember Reports

a. Except as provided in subsections (b), (c) and (d) all staff reports and other supporting documents related to the items on the agenda for a regular meeting must be posted on the City's website or available in the Office of the City Clerk and made available for inspection and copying 10 calendar days before a regular meeting.

b. The following staff reports are exempted from the requirement in subsection (a):

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 distributed to the City Council on time;

iii. Supplemental memos where additional information has been received after the initial memo was released, granting Council the opportunity to receive the information and determine whether to hold the hearing or defer the matter;

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:

(a) Emergency repair funding;

(b) Appointments to boards, commissions, committees and other bodies when a timely appointment is needed;

(c) Approval of the City's position on legislation, if a timely response is necessary; and

(d) 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.

c. If an item of business to be transacted or discussed is for an expenditure of $1 million or more, the staff reports and other supporting documents must be posted on the City's website and made available for inspection and copying 14 calendar days before a regular meeting.

d. If an item to be discussed is for a public subsidy of $1 million or more, the staff reports and other supporting documents must be posted on the City's website and made available for inspection and copying 30 calendar days before a regular meeting. In exceptional circumstances where there is a risk that a high priority project may be jeopardized, staff may request a waiver to move the issue forward in 21 calendar days. The staff reports must 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

See Attachment 3 for minority opinions submitted by Task Force Members Dan Pulcrano and Nanci Williams about the Task Force recommendations for public subsidies.

e. In the event that supplemental staff reports and other supplemental documents related to items on the agenda for a regular meeting are not posted on the City's website and made available for inspection and copying 5 calendar days before the regular meeting, the item will be deferred.

f. Councilmember reports may be signed by no more than two Councilmembers and must be posted on the City's website and made available for inspection and copying 4 calendar days before a regular meeting.

3. Documents Distributed by Members of the Public

   Documents related to an item on an agenda that are distributed by a member of the public during discussion of the item at a meeting must be made available for public inspection immediately or as soon thereafter as is practicable. No documents from City staff or Councilmembers may be distributed any later than set forth in Section 2.3.010(A)(2).

4. Action by a Policy Body

   a. A policy body may only discuss or take action on an item appearing on the posted agenda except that members of a policy body may respond to statements or questions from members of the public at a meeting by (a) asking a question for clarification; (b) providing a referral to staff or other resources for factual information; or (c) making a request of staff to report back to the policy body at a subsequent meeting concerning the matter raised by such testimony.

   b. Notwithstanding Section 2.3.010(A)(4)(1), a policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

      i. Upon a determination by a majority vote of the policy body that an emergency situation exists. An emergency situation is either (a) a work stoppage, crippling activity or other activity that severely impairs public health, safety or both; or (b) a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a policy body to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.

      ii. Upon 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 members present, that (a) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or that the item is a purely commendatory action, and (b) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in this Section.

      iii. The item was on an agenda posted pursuant to this chapter for a prior meeting of the body occurring not more than ten calendar days prior to 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.

B. Special Meetings

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

2. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with the Task Force's recommendations if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

2.3.020 Ancillary Bodies

A. Regular Meetings

1. Agenda Posting

   a. Each ancillary body must designate a location to post notices and agendas required by this ordinance. At a minimum, each ancillary body must post notices and agendas at a place that is freely accessible to members of the public 24 hours per day and on the City's website.

   b. At least 4 calendar days before a regular meeting, a policy body must post an agenda for the meeting.

2. Staff Reports and Councilmember Reports

   a. All staff reports and other supporting documents related to the items on the agenda for a regular meeting – including any item of business to be transacted or discussed for an expenditure of $1 million or more – must be posted on the City's website at least 4 calendar days before a regular meeting.

   b. In the event that supplemental staff reports and other supplemental documents related to items on the agenda for a regular meeting are not posted on the City's website at least 2 calendar days before the regular meeting, the item will be deferred.

   c. Councilmember reports, which may be signed by no more than two Councilmembers, must be posted on the City's website at least 2 calendar days before a regular meeting.

3. Documents distributed by members of the public.

   Documents related to an item on an agenda that are distributed by a member of the public during discussion of the item at a meeting must be made available for public inspection immediately or as soon thereafter as is practicable. No documents from City staff or Councilmembers may be distributed any later than set forth in Section 2.3.020(A)(2).

B. Special Meetings

1. A presiding officer of an ancillary body or a majority of members of an ancillary body may call a special meeting with 24 hours notice.

2.3.030 Additional Agenda Requirements

Every agenda must identify the policy body or ancillary body conducting the meeting, specify the time and

location of the meeting, contain a meaningful description of each item of business to be transacted or discussed at the meeting and specify the proposed action for each item or state that the item is for discussion only. If an exception to a significant standing City policy is at issue, the policy should be listed in the agenda description. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood language and must identify all documents that will be provided to the body in connection with an agenda item.

2.4 Requirements for Non-Governmental Bodies

A. Every City contract and RFP or RFQ will indicate clearly whether the contractor will be subject to Sunshine requirements and fully describe those requirements. Existing contracts will not be covered until they are renewed (if the contract includes options, Sunshine requirements must be incorporated within 3 years) or amended at which time Sunshine requirements will incorporated as specified. If a contract expires in more than 3 years, the contractor should be encouraged to agree to amend the contract to include the Sunshine requirements for no additional consideration.

B. Every contractor subject to Sunshine requirements must be assigned to a policy body to which the contractor will submit the reports described in Section C. When a contractor has more than one contract which, in the aggregate totals the amount of the City Manager's contract authority set forth in San Jose Municipal Code Section 4.04.020(A)(3)(c), the City must assign the contractor to one primary policy body and consolidate the reports from that contractor for presentation to that policy body.

C. Sunshine requirements to be included in contracts include the following:

1. The contractor will provide written reports to the policy body indicating compliance with contract requirements annually;

2. The contractor will provide supplemental written reports to the policy body whenever it takes an action denoted in the contract as a "Sunshine Policy Issue" as described in Section D.

3. Upon a determination by the Policy Body that the report on a Sunshine Policy Issue requires public discussion, the contractor must attend a public meeting of the Policy Body to present the reasons for its action and answer questions.

D. Sunshine requirements to be included in contracts must define appropriate Sunshine Policy Issues for that service. Sunshine Policy Issues should include the following types of actions, tailored to the specific nature of the service provided by the NGB:

1. Changes in revenue or expenditures that would affect the NGB's status as a going-concern;

2. Changes in levels of service of a type and scale that affects the performance of the contract in a substantial manner;

3. Changes in allocation of service to different areas or populations that affects the performance of the contract in a substantial manner;

4. Changes in the number or qualifications of staff that jeopardize the ability of the NGB to fulfill the obligations of the contract;

5. Changes in activities that maintain or preserve public facilities and/or property of a type or scale sufficient to impede public use of those facilities or to jeopardize the physical integrity of the facility;

6. Actions that place the City or public at risk of financial loss, property damage, or personal injury beyond those risks normally associated with responsible delivery of the contracted service.

See Attachment 3 for a minority opinion submitted by Task Force Member Dan Pulcrano about the Task Force recommendations for non-governmental bodies.

2.5 Access to Meeting Facilities

Meetings of policy bodies and ancillary bodies must be open and public and all persons must be permitted to attend any meeting. Meetings of policy bodies and ancillary bodies must also be held in facilities that (1) are accessible to disabled persons and comply the Americans with Disabilities Act of 1990, as may be amended; (2) do not discriminate on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, ethnicity, or national origin; and (3) allow members of the public to be present without making a payment or purchase.

2.6 Recording Meetings

A. Any person attending a meeting of a policy body or ancillary body may record the proceeding with an audio or video recorder or a still or motion picture camera, or broadcast the proceeding, unless or until the body makes a finding that the recording creates noise, illumination or obstruction of view that constitutes an unreasonable and persistent disruption of the proceeding.

B. All open meetings of the City Council, Redevelopment Agency Board, Rules and Open Government Committee, Planning Commission, and Elections Commission must be video recorded. Any other policy body must record its open and public meetings with an audio recorder. Any ancillary body must either record its open meetings with an audio recorder or prepare action minutes. All recordings of open meetings of a policy body or ancillary body must be retained for two (2) years and be available to the public.

2.7 Public Comment and Testimony

A. Any person attending an open meeting of a policy body or ancillary body must be provided an opportunity to directly address the body, during the body's consideration of the item and during the open forum session, on any item of interest to the public that is within the body's subject matter jurisdiction. If the open meeting is a special meeting, any member of the public may comment on the items on the agenda.

B. To facilitate public input, the policy body or ancillary body may adopt reasonable rules including, but not limited to, time allocated for public testimony on particular issues and for each individual speaker. Any group of two or more persons that wishes to make a public comment where one other member of the group yields his or her time must be permitted to speak for a maximum of four (4) minutes. Time limits must be applied uniformly to all members of the public.

2.8 Written Statements or Evidence

A. Any person interested in an item on the agenda may submit a written statement relevant to the item which will become part of the public record.

B. Any person interested in the matter which is the subject of an administrative hearing before the Appeals Hearing Board, Civil Service Commission, Federated Employees Retirement Board, Independent Hearing Panel, Planning Commission, Police and Fire Retirement Board and any other policy body conducting an administrative hearing must be entitled to submit written evidence which will become part of the record and must be given opportunity to present other evidence relevant to such subject.

2.9 Minutes

2.9.010 Policy body

The City Clerk or secretary of the policy body must prepare the minutes of each open meeting. The minutes must state the date of the meeting, the names of the members attending the meeting, closed session announcements, disclosures of any conflicts of interest, the item discussed, public testimony received, brief discussion of the body only if relevant to the final action, and the action taken by the body including the vote of each member. The draft minutes of each open public meeting must be posted on the city's website and be available for inspection and copying upon request no later than ten (10) business days after the meeting. The officially adopted minutes must be available for inspection and copying upon request no later than ten (10) working days after the meeting at which the minutes are adopted.

2.9.020 Ancillary body

For each open meeting, an ancillary body must either prepare minutes stating the action taken by the body including the vote of each member or record the meeting with an audio recorder.

2.10 Public Comment by Members of Policy Bodies and Ancillary Bodies

A. Any member of a policy body or ancillary body may comment publicly on the policies, procedures, programs, or services of the City, or of acts or omissions of the body. A policy body or ancillary body must not sanction, reprove or deprive members of their right to speak freely.

B. No member of a policy body or ancillary body may release specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications.

2.11 Public Notice Requirements

A. Any notice that is mailed, posted or published by a City department, agency, board or commission to residents living within a specific area to inform them of a proposal that may impact their property or neighborhood area must be brief, concise and written in plain, easily-understood language.

B. The notice should inform the residents of the proposal, the length of time planned for the proposal, the effect of the proposal, the website on which documents related to the proposal have been posted and a telephone contact and email address for residents who have questions about the proposal.

C. If the notice informs the public of a public meeting or hearing, then the notice must state that persons who are unable to attend the public meeting or hearing may submit to the City or the San José Redevelopment Agency, by the time the meeting or hearing begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

D. For noticing land use and development proposals, City staff must follow City Council Policy Number 6-30, entitled Public Outreach Policy for Pending Land Use and Development Proposals.

E. Decisions on items of significant community interest, as defined in City Council Policy Number 6-30, may be appealed to the City Council.

Section 3. Closed Session

3.1 Agenda Disclosures

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

1. 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 should be identified in addition to the number of applicants.

2. Real Property Negotiations: If the purpose of closed session is to meet with a policy body's negotiator before the purchase, sale, exchange, or lease of real property or for the policy body to grant authority to its negotiator regarding the price and terms of payment for purchase, sale, exchange, or lease, the likely range of value of the property at issue should be provided 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, whether instructions to the negotiator will concern price, terms of payment, or both.

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

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

5. 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, should be provided.

6. 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, should be provided.

7. 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 should be disclosed.

8. Labor Negotiations: If the purpose of closed session is to meet with the policy body'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 should 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.

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

3.2 Additional Requirements for Closed Session

A. All closed sessions of any policy body must be audio recorded in their entirety. Closed session recordings are confidential unless and until they are made available to the public.

B. Closed session recordings must be made available unless the City Attorney has certified the recording of the matter. *The Task Force will make additional recommendations about the process of certification – including the length of time the recordings must be maintained – during Phase II.*

3.3 Bodies Permitted To Hold Closed Session

A. Except as otherwise provided, policy bodies may conduct closed session as permitted by the Brown Act or by other provisions of state law expressly permitting closed sessions by such bodies.

B. Only the following policy bodies are permitted to hold closed session: City Council, Board of the Redevelopment Agency, Civil Service Commission, Elections Commission, Police and Fire Retirement Board, Federated Employees Retirement Board, Deferred Compensation Advisory Board and the San José Arena Authority. No other policy bodies are permitted to hold closed session.

C. 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 real property negotiations may not include the source of funds to be used to purchase real property or any proposed development of property being considered for purchase or sale.

3.4 Statement of Reasons for Closed Sessions

A. Before any closed session a policy body 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 policy body may discuss only those matters covered in its statement.

1. Real property negotiations: A policy body 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.

B. If an item is added to the agenda (1) upon a determination by a majority vote of the policy body that an emergency situation exists; (2) upon a determination by a 2/3 vote of the members of the policy body 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 policy body after the agenda was posted; or (3) the item was posted for a prior meeting of the policy body occurring not more than five calendar days before the date action is taking on the item and at the prior meeting the item was continued to the meeting at which action is being taken, the policy body 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. 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 a policy body to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.

C. Only items on the written agenda or added pursuant to Section 3.4(B) 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.

3.5 Approval in Open Session of Certain Closed Session Discussions

A. All proposed agreements for the purchase or sale of real estate must be approved by the policy body in open session. For transactions less than $1 million, the policy body must post the item on the agenda at least 10 calendar days before a regular meeting. For transactions $1 million and more, the policy body must post the item on the agenda at least 14 calendar days before a regular meeting.

B. All proposed contracts with represented and unrepresented employees and the Council Appointees must be approved by the policy body in open session. For contracts less than $1 million, the policy body must post the item on the agenda at least 10 calendar days before a regular meeting. For contracts $1 million and more, the policy body must post the item on the agenda at least 14 calendar days before a regular meeting.

C. All proposed settlements of litigation or claims that are $50,000 and more must be approved by the policy body in open session. For settlements less than $1 million, the policy body must post the item on the agenda at least 10 calendar days before a regular meeting. For settlements $1 million and more, the policy body must post the item on the agenda at least 14 calendar days before a regular meeting.

3.6 Disclosure of Closed Session Discussions and Actions

A. After every closed session, a policy body must meet in open session to make the following disclosures:

1. 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 to any person upon inquiry, unless to do so would jeopardize the policy body's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

2. 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:

   (a) If the policy body accepts a settlement offer signed by the opposing party, the policy body 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.

   (b) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the policy body must disclose the fact of that approval, and identify the substance of the agreement.

3. 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 policy body claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

4. 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.

5. Pension fund investment transaction decisions must be disclosed at the first open meeting of the policy body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

6. The report of any closed session discussion on real estate negotiations must include the full disclosure of the use of any funds not previously budgeted for that purpose and the full disclosure of the opportunity cost of the use of those funds.

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

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

C. 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.

D. 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 policy body are posted.

3.7 Certification of Closed Session Discussions and Actions

A. After an item has been discussed in closed session, the City Attorney may certify that the recording of the closed session on that matter should not be made available if he or she makes a specific finding that the public interest in non-disclosure outweighs the public interest in disclosure. The finding must be specific enough for the public to understand the reason for the certification without disclosing confidential information. The certification must also state when the recording may be made available, but the City Attorney may extend the time of the certification if he or she makes a specific finding that the public interest in non-disclosure outweighs the public interest in disclosure.

B. The Task Force will make additional recommendations about the process of certification – including the length of time the recordings must be maintained – during Phase II.

C. The Task Force will make recommendations about the process of appealing the City Attorney's certification of a recording of closed session during Phase II.

Section 4. Public Information and Outreach

4.1 Release of Oral Information

A. Every Office or Department must designate as a records coordinator a person knowledgeable about the affairs of the department who has custody of records and information relating to the responsibilities and work performed by the Office or Department.

B. The role of the records coordinator is to provide information, including oral information, to the public about the Office or Department's operations, plans, policies and positions.

C. If a request seeks information from more than one Office or Department, the request should be forwarded to the City Manager and City Attorney as well as the designated records coordinators of all affected Offices/Departments. The City Attorney or the City Manager will coordinate and respond to the request with the assistance of the other Offices/Departments.

D. Public employees must not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while on duty. Public employees must not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public.

4.2 Public Review File

A. The City Clerk must maintain a public review file that is accessible to any person during normal office hours and that contains a copy of any letter, memorandum or other communication which the Clerk has distributed to or received from a quorum of a policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days.

B. Communications sent or received in the last three business days must be maintained in chronological order in a public review file in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for 48 hours after being received they must be placed in a monthly chronological public review file.

C. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the public review file as long as the letter or memorandum of transmittal is included.

4.3 Calendars of Certain Officials

A. The following officials must maintain a calendar: the Mayor, City Councilmembers, Chiefs of Staff for the Mayor and City Councilmembers, City Manager, City Clerk, City Attorney, Executive Director of the San José Redevelopment Agency, Airport Director, Budget Director, Chief Development Officer, Emergency Services Director, Environmental Services Director, Fire Chief, Finance Director, General Services Director, Housing Director,

Information Technology Director, Library Director, Parks Director, Planning Director, Police Chief, Public Works Director, Retirement Director and Transportation Director.

B. Calendars must include, at a minimum, all City-related appointments, including regular and special City Council meetings, public events or speaking engagements, meetings with developers, meetings with consultants, meetings with lobbyists, regional meetings, and meetings of subcommittees or task forces. City officials are encouraged to record unscheduled meetings of a material nature with interested parties in any matter coming before a policy body for a vote in which the matter under consideration is discussed.

C. Each City-related appointment must include the following information: name(s), title(s), affiliated organization(s) and a general statement of the issues discussed. The following information may be exempted:

1. Personal appointments;
2. Information protected by the attorney-client privilege;
3. Information about City staff recruitment;
4. Information about City economic development;
5. Information about whistle-blowers; and
6. Information about those who may fear retaliation.

D. The Mayor, City Councilmembers, Chiefs of Staff for the Mayor and City Councilmembers, City Manager, City Clerk, City Attorney, Executive Director of the San Jose Redevelopment Agency must publish their calendars to the City's website once a week, on Monday, by 12 pm, for the previous seven days.

E. The calendars of the Airport Director, Budget Director, Chief Development Officer, Emergency Services Director, Environmental Services Director, Fire Chief, Finance Director, General Services Director, Housing Director, Information Technology Director, Library Director, Parks Director, Planning Director, Police Chief, Public Works Director, Retirement Director and Transportation Director need not publish their calendars to the City's website, but they will be considered public records and must be available promptly upon request by a member of the public.

4.4 Lobbyists on Behalf of the City

A. Any lobbyist who is paid by the City to represent the City in matters before any local, regional, state, or federal administrative or legislative body must file a public records report of his or her activities on a quarterly basis with the City Clerk's office. This report will be maintained by the City Clerk's office and not be exempt from disclosure. Each quarterly report must identify all financial expenditures by the lobbyist on behalf of the City, the individual or entity to which each expenditure on behalf of the City was made, the date the expenditure on behalf of the City was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure on behalf of the City.

B. Lobbyists must register with the City Clerk specifying the general nature of the issues they are trying to influence, compensation ranges received from their clients, all campaign contributions to elected City officials, all fundraising activities conducted on behalf of elected City officials, all contributions to political campaigns or charities made at the behest of City officials, all payments received for services as a consultant to the City or Redevelopment Agency, and any compensated work performed as a campaign consultant for any elected City official.

C. Funds of the City must not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

4.5 Additional Public Outreach

A. City Council Policy Number 6-30: Public Outreach for Land Use/Development Proposals establishes a range of outreach efforts depending on the size of a land use proposal. CIP Outreach Policy, City Council Policy 5-6: Traffic Calming and Outreach Policy for Parks, Recreation and Neighborhood Services establish the methods for outreach for capital projects.

B. When any City Agency, Department or Office is initiating a planning process that would have significant Citywide impact or lead to a change in Citywide service levels such as a Master Planning Process and the Annual Budget Process, a Community Engagement Process will be initiated that, at a minimum, employs the following outreach methods:

1. During the Early Notification Process, information will be posted on the City's website and an email will be sent to those who subscribe to receive email notice.

2. At least two Community Meetings will be held at meaningful points in the process and one Community Meeting will be held to present the final recommendation. During the Community Meetings Process, information will be posted on the City's website, an email will be sent to those who subscribe to receive email notice, information will be sent by direct mail to those who subscribe to receive direct mail notice and flyers in community centers and libraries will be posted.

3. During the Public Hearing Notice Process, information will be posted on the City's website, an email will be sent to those who subscribe to receive email notice, information will be sent by direct mail to those who subscribe to receive direct mail notice, flyers in community centers and libraries will be posted, notice will be advertised in at least one general circulation or community English language newspaper publication and notice will be broadcast on the City television channel.

C. A study session must be conducted annually, at a time that provides meaningful opportunity for the public to participate in the process, to educate the public on the negotiations process for all bargaining units and provide an opportunity for the public to ask questions and provide meaningful input to impending labor negotiations.

Attachment 1

Examples of Policy Bodies, Ancillary Bodies and Non-Governmental Bodies

Policy Bodies (partial list):

1. City Council
2. SJ Redevelopment Agency Board
3. San Jose Financing Authority
4. San Jose Parking Authority
5. Advisory Commission on Rents
6. Airport Commission
7. Airport Noise Advisory Committee
8. Appeals Hearing Board
9. Arena Management Corporation
10. Arts Commission
11. Arts Commission, Executive Committee
12. Arts Commission, Public Art Committee
13. Bicycle and Pedestrian Advisory Committee
14. Bringing Everyone's Strength's Together Evaluation Panel
15. Children's Discovery Museum of San Jose
16. Citizens Corps Council
17. Civil Service Commission
18. Community Action and Pride Grant Program Evaluation Panel
19. Community and Economic Development Committee
20. Convention and Visitors Bureau
21. Council Assistants Meeting
22. Council Salary Setting Commission
23. Coyote Valley Task Force
24. Deferred Compensation Advisory Committee
25. Disability Advisory Committee
26. Domestic Violence Advisory Board
27. Downtown Parking Board
28. Early Care and Education Commission
29. Elections Commission
30. Federated Employees Retirement Board
31. Federated Employees Retirement Board, Investment Committee
32. Federated Employees Retirement Board, Investment Committee of the Whole
33. Federated Employees Retirement Board, Real Estate Committee
34. Friends of the Guadalupe
35. GreenTeam of San Jose
36. Happy Hollow Park and Zoo Corporation
37. Healthy Neighborhoods Venture Fund
38. Healthy Neighborhoods Venture Fund Evaluation Panel
39. Historic Landmarks Commission
40. History San Jose
41. Housing & Community Development Advisory Committee
42. Human Rights Commission
43. Independent Hearing Panel (LEA)
44. Library Commission
45. Mexican Heritage Corporation
46. Mobile Home Advisory Commission
47. Neighborhood Services & Education Committee
48. Norcal Waste Systems of San Jose
49. Our City Forest
50. Parks and Recreation Commission
51. Planning Commission
52. Police Activities League
53. Police and Fire Retirement Board
54. Police and Fire Retirement Board, Investment Committee
55. Police and Fire Retirement Board, Investment Committee of the Whole
56. Police and Fire Retirement Board, Real Estate Committee
57. Public Safety, Finance & Strategic Support Committee
58. Public Safety Bond Citizen Oversight Committee
59. Rules and Open Government Assistants Meeting
60. Rules & Open Government Committee
61. San José Arena Authority
62. San José Beautiful
63. San José Beautiful Evaluation Panel
64. San José Conservation Corp
65. San José Housing Authority
66. San José Museum of Art
67. San José Sports Authority
68. Senior Citizen Advisory Commission
69. Silicon Valley Workforce Investment Network
70. SJ/SC Clean Water Financing Authority
71. SJ/SC Treatment Plant Advisory Committee

Attachment 1

Examples of Policy Bodies, Ancillary Bodies and Non-Governmental Bodies

Policy Bodies (partial list, con't):

72. Small Business Development Commission
73. Strong Neighborhoods Initiative Project Advisory Committee (SNI PAC)
74. Sunshine Reform Task Force
75. Taxi San José
76. Team San José
77. The Tech Museum of Innovation
78. Traffic Appeals Commission
79. Transportation & Environment Committee
80. Youth Commission

Ancillary Bodies (partial list):

Mayor's Gang Prevention Task Force
Evergreen Visioning Project
Mayor-elect Reed's Transition Team and Subcommittees
Independent Police Auditor's Advisory Committee

Examples of Non-Governmental Bodies (partial list):

1. Catholic Charities and any other operators of community centers
2. San Jose Repertory Theater
3. San Jose Stage Company
4. AMPCO
5. Central Parking Systems
6. Dolce International
7. Logitech Ice
8. Palace Entertainment (runs Raging Waters)
9. Los Lagos Golf Course LLC (90% owned by CourseCo LLC
10. San Jose Golf LLC (runs Rancho del Pueblo Golf Course and is 90% owned by CourseCo LLC)
11. Mike Rawitser Golf Shop (runs San Jose Municipal Golf Course)
12. San Jose Downtown Association
13. River Street Development Group
14. GreenWaste Recovery
15. Browning-Ferris Industries of CA

See Attachment 3 for a minority opinion submitted by Task Force Members Ken Podgorsek and Ed Rast about Policy Bodies (partial list).

Attachment 2

Summary of Primary Requirements for Policy Bodies and Ancillary Bodies (extending beyond current practice or the Brown Act)

	Policy Body	Ancillary Body
1. Agenda Posting	10 calendar days	4 calendar days
2. Staff Reports	10 calendar days	4 calendar days
3. Staff Reports – Expenditures of $1M or More	14 calendar days	4 calendar days
4. Public Subsidy – $1M or More	30 calendar days	N/A
5. Supplemental Staff Reports	5 calendar days	2 calendar days
6. Council Memos	4 calendar days No more than 2 signatories	2 calendar days
7. Agenda Posting (Special Meeting)	4 calendar days	24 hours
8. Recording and Photography	City Council, Rules and Open Government Committee, Planning Commission, and Elections Commission must video record meetings; all other Policy Bodies must audio record meetings; Recordings to be kept for 2 years.	Audio record meetings or provide action minutes Recordings to be kept for 2 years
9. Public Testimony	Up to 4 minutes may be extended to a representative of an organization to provide public testimony if: 1) two or more members are in attendance, and 2) one representative is willing to yield his or her time.	Brown Act
10. Minutes	Current practice for Council meetings extended to all Policy Bodies; minutes provided no later than 10 days after the meeting.	Action minutes or audio recording

Attachment 3

Minority Opinions

Non-governmental Bodies (Definitions, Section 1.13.) – Minority Opinion Submitted by Task Force Member Margie Matthews

The organizations as defined are not policy bodies. Rather, they are private and non-profit entities that maintain buildings, operate programs, or provide a service for an agreed upon fee as detailed in contracts with the City of San José.

The conditions and terms of these contracts are public documents approved by the City Council and managed by the City's administrative staff. Placing oversight of thousands of contracts into a parallel political arena would be duplicative, costly, and counterproductive to the professional administration of contracts.

The recent financial difficulties of a number of non-profit organizations are not the result of poor contract administration. Rather, they are symptoms of the general economic decline of the region – a condition that the City itself is suffering from along with most businesses.

The concept of establishing public-private partnerships to assist the city in its mission has been embraced whole-heartedly by the City and the larger community. This method of providing what the City can no longer provide cannot be sustained if the private partners are not given the authority to fulfill and oversee their own missions. A basic principle of non-profit management is that the board of directors must be given real authority if it is expected to bring money and other resources to the organization.

The City is not in the financial position to increase staffing and/or consulting contracts to put such a system of political oversight in place. Furthermore, if the City creates unnecessary scrutiny and bureaucratic hoops for private partners, the very resources and savings the City benefits from could be jeopardized.

Non-governmental Bodies (Definitions, Section 1.13., Public Meetings, Section 2.4.) - Minority Opinion Submitted by Task Force Member Dan Pulcrano

Attachment 1 (List of non-governmental bodies): This list is overly broad. It was not drafted by the committee, but rather reflects staff's interpretation of proposed ordinance language in an attempt to illustrate impacts. Clearly further direction from council and the task force is needed to decide how wide to cast the net — and what types of disclosures are appropriate to protect the public's interests.

2.4.C. (Requirements for Non-Governmental Bodies): Annual compliance statements, supplemental reports and mandatory attendance requirements seems a recipe for paperwork and red tape that will provide little meaningful information for public discussion.

2.4.D introduces six required notification events that are based on subjective criteria. This complexity will complicate administration on both compliance and enforcement ends, and will be difficult to manage. Good law should be easy to comply with and administer.

The city needs to come up with a reasonable level of disclosure for subsidized entities that provides financial accountability but does not create an administrative burden to those entities. Reasonable levels of transparency could be accomplished by allowing members of the public to obtain information about

taxpayer-funded entities closely linked to the city through publicly noticed annual meetings, auditable books or periodic web-posted financial statements.

Non-governmental Bodies/Policy Bodies (Definitions, Section 1.13., Section 1.14. E.) - Minority Opinion Submitted by Task Force Member Nanci Williams

I have opposed the inclusion of any and all non-government entities - whether they are non-profit groups or private companies - in our Sunshine reform recommendations for the basic reason that it casts the net too wide and reaches beyond the SRTF charter to create reforms that will make *government* more transparent.

The minority opinions expressed by Margie Matthews and Bob Brownstein support my concern that our definitions of Non-Government Bodies, Ancillary Bodies and Policy Bodies include too many unintended consequences to non-government entities, and should not be included in Sunshine Reforms.

Policy Bodies (Definitions, Section 1.14. E.2.) - Minority Opinion Submitted by Task Force Member Bob Brownstein

I disagree with the provision in E(2) because it requires a lesser degree of public scrutiny over firms or organizations that are large and national or even multinational vs. firms or organizations that are small and local. A better alternative would be to base levels of public scrutiny on the *function* that organizations perform. If the function is important, then sunshine requirements should be imposed regardless of whether the organization performing the function is small and based in San José or large and operating in numerous cities.

Because of subsection E(2), entities such as The Tech, the Mexican Heritage Plaza, the Arena, Team San José, etc are defined as policy bodies because they exist "primarily" to perform a function for the City of San José. Another organization that performed the *exact same* function but did so for several cities and not primarily for San José would be exempt from the requirements for policy bodies. For example, the reason that the Board of Directors of The Tech is a policy body and subject to greater scrutiny is that it is a local entity and doesn't perform its function in multiple jurisdictions. If The Tech were to be operated by a San Francisco firm specializing in managing museums throughout the country, it would not be a policy body and not covered by the sunshine requirements for policy bodies - despite the fact that it would perform the same activity for San José as the current Tech Board. Similarly, if the Convention Center were to be operated by a massive multi-national corporation, that firm would not be a policy body because that business would not exist "primarily" to operate San José's convention facilities, and the public would be excluded from its decision-making processes.

The bizarre implications of this language become more evident if one considers the potential expansion of any of these organizations. If Team San Jose were to take over the operations of additional convention centers in other cities, it would no longer be a policy body because it would not exist "primarily" to operate San Jose's Convention Center alone. Obviously, in that circumstance, with Team San José operating other convention centers in direct competition with San José's facilities, it would make sense to seek more public review, not less.

Attachment 3

Minority Opinions

As an alternative, I suggest the City Council define policy bodies by the function that they perform rather than whether they perform that function "primarily" for the city. If we want to require organizations that manage our large public facilities like the Convention Center, the Arena, the Mexican Heritage Plaza, and The Tech to be policy bodies and subject to the Brown Act, we should have the Sunshine Ordinance say so directly. The operators of the facility should be policy bodies whoever they are. Otherwise, we will wind up with an ordinance that requires small and local organizations to operate in the open while allowing massive, remote organizations to operate in secret. That outcome seems contrary to both good public policy and the spirit of open government.

Policy Bodies (Definitions, Section 1.14. F.) - Minority Opinion Submitted by Task Force Member Dan Pulcrano

1.14 F: Too many irrelevant entities fall under this definition. There should be a dependency threshold in determining which bodies are included in the ordinance requirements. For example, if an entity receives more than 20 percent of its budget from the city, then it should be subject to transparency and accountability, since it would be more easily influenced than an organization that receives a fraction of a percent of its revenues from the City of San José. In the latter situation, CSJ would have little basis for exercising oversight over that organization's governance, nor would such an entity be a likely candidate for resubsidization in the event of financial failure.

Public Subsidy/Loans (Definitions, Section 1.16.B.2.) - Minority Opinion Submitted by Task Force Member Dan Pulcrano

1.16 B 2: (Loans at below market interest rates): Portfolio rate is an inappropriate criterion for determining subsidization. If the city lends at its investment portfolio return rate, it is without question a subsidy, since neither administrative cost nor risk of loss is factored in. No commercial lender would ever loan at the same rate it receives on its investments. Further, if the city does an outstanding job managing its investment portfolio and achieves exceptionally high rates of return, even *above*-market loan rates would be defined as a subsidy under this flawed definition.

A city is not a lending institution and only grants credit to achieve a purpose that presumably would not otherwise qualify for debt funding — or for which the borrower's interest rates would be higher. In actuality, the very act of the city becoming a lender can be viewed as subsidization, since it presumes that funds could not be obtained from a commercial lender on comparable terms. Otherwise why would that entity approach the city for a loan in the first place? (Certainly not for the inherent pleasure of dealing with a government agency.) For these reasons, any loan should be considered a subsidy.

Staff Reports (Public Meetings, Section 2.3.010.A.2.(d) - Minority Opinion Submitted by Task Force Member Dan Pulcrano

2.3.010 A 2 (d), i through vi: This section goes beyond traditional sunshine law. A legislated staff analysis requirement with defined methodology quantifying community impacts and wage policy breaks new ground and has not been tested by other cities' sunshine laws. Further, staff has not had the opportunity to see how this process works in actual practice. A testing period by staff may be advisable before incorporating this language into an ordinance.

Attachment 3

Minority Opinions

The sunshine process should be neutral and not favor any group or class of interests. A good sunshine ordinance provides the time, notice and opportunity for any member of the community to raise exactly the concerns this section attempts to address. It allows stakeholders to publicly debate the issues without over-encumbering the process with government red tape or giving special consideration to specific interests.

Attachment 1. Example of Policy Bodies, Ancillary Bodies and Non-Governmental Bodies (Policy Bodies Partial List) - Inclusion of Certain Outside Organizations - Minority Opinion Submitted By Task Force Members Ken Podgorsek and Ed Rast

The purpose of the Sunshine Ordinance is to create Open and Transparent Government by providing the public complete and timely information.

We disagree with staff's interpretation of the policy body definition that the following organizations are policy bodies: Mexican Heritage Corporation, the Tech Museum of Innovation, San Jose Museum of Art, Children's Discovery Museum, History San José, NorCal Waste Management, and Green Team.

We do not agree with staff's interpretation because:

1. they do not exist primarily to exercise authority delegated to it by a policy body.
2. they are independent organizations and were not created by a policy body in order to exercise authority delegated to it by a policy body;
3. they do not have a full voting member on the governing body appointed by the policy body.

We believe that these organizations meet the definition and intent of a Non-Governmental Body (NGB) and should be subject to the NGB Sunshine Rules.

Public Subsidy Staff Report Requirements (Public Meetings, Section 2.3.010.A.2.(d) - Minority Opinion Submitted by Task Force Member Nanci Williams

Mayor Reed has identified job growth and economic development as a primary goal is his administration. Among the recommendations set forth by the Mayor's Transition Team Subcommittee on Jobs and the Economy is the need to streamline government processes and transform the business climate with measurable improvements and accountability.

The Sunshine Reform Task Force Phase One Report & Recommendations include requirements for staff reporting on subsidized projects that will seriously jeopardize the City's ability to do business with the private sector, and defy basic Economic Development principles. In the spirit of "first, do no harm," I do not believe San José can afford to adopt any new policies or procedures that will make it even more difficult to do business here.

In 2003 the San Jose Silicon Valley Chamber of Commerce, as part of the *Coalition For Jobs Now*, commissioned a white paper analyzing the impediments to doing business in San José. That report -- titled *Business Perspectives on the San Jose Silicon Valley Economy: What San* José *Can Do to Stimulate*

Attachment 3

Minority Opinions

Private Investment and Job Growth -- played a role in Mayor Gonzales' "Put Families Back to Work" campaign introduced later that year.

It is the opinion of the Chamber of Commerce, as well as the 13 organizations that make up the *Coalition For Jobs Now*, that the findings of that report still hold true today. We ask that the City Council consider the potential impact on San José's business climate before approving the recommendations of the SRTF. In particular, the requirement of a Community Benefits Assessment for all projects requiring a public subsidy or investment, is essentially the Community Benefits Initiative referred to in the Coalition report re-packaged as a Sunshine Reform. As was said in 2003, any new policy or ordinance that will discourage private investment in San José should be carefully assessed and evaluated against unintended consequences and lost opportunities.

Attached are the last three pages of the white paper that contain the Coalition's recommendations for stimulating private investment and job growth in San José.