



Sunshine Reform Task Force

Phase 1 Report & Recommendations

City of San José
Proposed Sunshine Ordinance

Expected Outcomes

1. Understand the key elements of the SRTF's Phase I recommendations – staff overview
2. Discuss the specific questions and concerns raised by the Committee members and staff – review written responses/additional comments.
3. **Public Information** – Provide recommendations for Council consideration in early August.
4. **Closed Session** - Provide recommendations for Council consideration in early August (Council & RDA); direct staff to conduct outreach to other bodies that hold closed session and report back in September.
5. **Public Meetings** - Review list of bodies subject to the Sunshine Ordinance and provide recommendations; direct staff to conduct outreach and report back.

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Public Information

SRTF Recommendations

- Release of Oral Information
 - Mirrors current city practice
 - Prohibits controls on City employees express personal opinion while on duty
- Public Review File
 - Clerk's Office to Maintain
 - Expanded list of Policy Bodies
 - 30-day file required—retrospective and prospective

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Public Information

SRTF Recommendations

- **Calendar Disclosure**
 - Elected & Appointed Officials Must Post Calendars
 - Department/Office Directors Must Maintain Calendars
 - Exempts HR and Employee Relations Directors
 - Calendars to include attendees and general topic area
 - Retrospective calendars to be posted weekly on Mondays
- **Calendar Disclosure Exceptions**
 - Personal appointments
 - Attorney-Client
 - "Private/Proprietary City Business"
 - Personnel & Recruitment
 - Economic Development
 - Whistle-Blowers and those fearing retaliation

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Public Information

SRTF Recommendations

- Lobbyists on Behalf of the City
 - Establishes Quarterly Reporting Requirements
 - Posted on Website
 - Excludes City employees

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Public Information

SRTF Recommendations

- Additional Public Outreach
 - New Community Engagement Process
 - Applies to items of "...significant citywide impact" such as:
 - Master Planning Processes
 - Budget Process
 - Requires outreach similar to Policy 6-30
 - Website posting and email notification
 - Flyers in Community Centers/Libraries
 - Notices in newspapers
 - CivicCenter Television

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Public Information

Preliminary Staff Comments

- **Release of Oral Information (Section 4.1 – pg.23)**
 - Employees' speech while on duty may be regulated
- **Public Review File (Section 4.2 – pg.23)**
 - May be resource intensive given # of bodies; may be duplicative
 - Items that are "likely to be calendared" may place an impossible requirement on the Clerk's Office
- **Calendars (Section 4.3 – pgs.23 and 24)**
 - No exemptions for Police Chief meetings (investigations/security concerns)
 - No exemption provided for meetings that concern personnel matters
- **Lobbyist on Behalf of the City (Section 4.4 – pg. 24)**
 - No ability to analyze future legislation based on its merits
 - Protection of privacy rights appears not to extend to public employees
 - Administrative concern with increased reporting requirements

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Closed Session

SRTF Recommendations

- **Agenda Requirements**

Descriptions must follow the provisions of the Brown Act with some additional information
- **Additional Requirements for Closed Session**
 - Audio record all closed sessions
 - Recordings made available when the rationale for closing the session has ended
 - Disclosure of recordings is the default unless certified by the City Attorney

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Closed Session

SRTF Recommendations

- Permitted Topics
 - Limitations on discussions about real estate negotiations
 - Early public process about labor negotiations
- Open Session Approval Required
 - 10 days if less than \$1 million
 - Litigation settlement is at least \$50,000
 - 14 days if more than \$1 million

Closed Session

SRTF Recommendations

- Disclosure in Open Session
 - Additional information disclosed about real estate deals
- Outstanding Issues
 - Process for appealing certification – deferred
 - Length of time recordings to be retained – deferred

Closed Session



Preliminary Staff Comments

- **Recording Closed Session (Section 3.2(A) – pg.19)**
 - First establish process for certification and appeal
 - Rationale for closed session may not end in certain instances
 - Reduction in candor
- **Certification (Sections 3.2(B) and 3.7 – pgs.19 and 22)**
 - City Council should decide since it holds the attorney-client privilege
- **Disclosure Before Closed Session (Section 3.4(A)(1) – pg.22)**
 - Disclosure in open session of development plans and source of payment could disadvantage City in negotiations

Expected Outcome:

Staff is seeking: (1) recommendations to Council about how Council & RDA conduct closed session; and (2) direction to staff to conduct outreach to other bodies that hold closed session and report back in September.

Public Meetings

Policy Body

1. City Council, Redevelopment Agency Board, all committees of the City Council or Agency Board, whether permanent or temporary, decision-making or advisory.
2. All boards, commissions or other bodies established by City Charter or formal action by a policy body.
3. Committees of Council staff that represent a quorum of the City Council.
4. Any body that exists primarily to exercise authority delegated to it; or receives City funds and has on its governing board a member of a policy body or designee with voting rights.
5. Any body that grants or advises a policy body or department head on grants where the aggregate amount of funds total more than \$200,000 in City or Agency funds per City fiscal year.
6. Policy body does not include any committee or body that consists solely of City staff.

Public Meetings (cont'd)

Ancillary Body

1. Committees or other bodies created by and to serve as an advisor to a member of a policy body, the Mayor, a Councilmember, the Mayor's Chief of Staff, the Mayor's Budget and Policy Director, the City Manager, Attorney, Clerk, Auditor, the Independent Police Auditor, the Exec. Director of the SJ Redevelopment Agency or a Department Head.
2. Ancillary body does not include any committee or body that consists solely of City staff.

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Requirements for Policy Bodies and Ancillary Bodies

	Policy Body	Ancillary Body	Brown Act
Agenda Posting	10 calendar days	4 calendar days	72 hours
Staff Reports	10 calendar days	4 calendar days	not specified
Staff Reports – Expenditures of \$1M or More	14 calendar days	4 calendar days	not specified
Supplemental Staff Reports	5 calendar days	2 calendar days	not specified
Council Memos	4 calendar days	2 calendar days	not specified
Agenda Posting (Special Meeting)	4 calendar days	24 hours	24 hours

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Requirements for Policy Bodies and Ancillary Bodies

	Policy Body	Ancillary Body	Brown Act
Recording & 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.	Recording and broadcasting of public meetings is permitted unless the governing body makes a reasonable finding that the recording constitutes a persistent disruption of the proceedings.
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	At regular meetings, the public is entitled to comment on any item of interest; at special meetings, the public is entitled to comment on items on the agenda. The governing body may prescribe a time limit on the speakers.
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	Minutes are not required

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Public Meetings (cont'd)

Non-governmental Body

1. The contractor operates or fully maintains any community center or a City facility with a value of over \$5,000,000; or
2. 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 the SJMC, and
3. Provides direct services defined as:
 - Police services;
 - Fire services;
 - Sewage treatment and water utility services;
 - Garbage collection services;
 - Street maintenance services; or
 - Library services.

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Public Meetings (cont'd)

Requirements for NGBs, NCGBs

Every non-governmental body must:

1. Be assigned to a policy body that has oversight over the body
2. Provide annual report indicating compliance with contract requirements
3. Provide supplemental reports to the policy body whenever it takes an action on significant policy issues (see pg. 14, Section D.1.
4. Upon a determination by the Policy Body that the report on a 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

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Public Meetings (cont'd)

List of Bodies Covered by Sunshine Ordinance

Review list of entities that staff and the Task Force agree are policy bodies; and list of entities that staff and the Task Force did not agree.

Expected Outcome:

Staff is seeking: (1) direction from the Committee on the list of bodies subject to the SRTF's Phase I Recommendations; and (2) direction to staff to proceed with outreach to the appropriate bodies in July and August and report back to Council in September.

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