

Sunshine Reform Task Force Phase I Report and Recommendations

Questions and Responses on Phase I Recommendations

Below you will find the questions submitted by members of the Rules & Open Government Committee on the Sunshine Reform Task Force's Phase I Report and Recommendations and the responses by staff and/or the Sunshine Reform Task Force.

Public Information Recommendations

1. Under 4.3(A-E), the Chiefs of Staff for Councilmembers must maintain, and post calendars. What about Council Offices that do not technically have a Chief of Staff by title (the employment classifications are Council Assistant I, II and Senior Assistant)?
(Councilmember Chirco, June 15, 2007)

SRTF Response: *The intent here is to disclose calendars for those council office staff members that are generally second in command to the elected official and play a role in things such as: oversee operations in the office, meet with constituents in lieu of the Councilmember and manage the office staff. If a Councilmember has not designated a single person in this role, then the Task Force may want to reconsider its recommendation here to determine which staff member should be the one to disclose its calendar.*

2. Under 4.5(B), what is a significant Citywide impact? How is it measured? At who's discretion? (Councilmember Chirco, June 15, 2007)

SRTF Response: *The intent of the SRTF is to provide examples as guidance because: 1) it was impossible to come up with a definition that covers every instance; and, 2) the subcommittee was trying to be sensitive to the cost of some of the outreach measures associated with the community engagement process. So the examples included (Master Planning Process, e.g. Aquatics Master Plan and Community Center Reuse Project) was intended to provide guidance to staff for implementation.*

Closed Session Recommendations

1. 3.3C – Delay any action on 3.3C until the City Attorney explains the differences between the terms “potential use of property” and “proposed development.” The language in 3.3C appears to be inconsistent and I would like clarification from the Task Force or the attorney.
(Mayor Reed, June 5, 2007)

SRTF Response: *The intent of the SRTF is to prohibit the discussion of sources of funds in closed session for the two specific items listed. They are: 1) to purchase real property, or 2) for any proposed development of property being considered for purchase or sale.*

Staff Response: *See Memorandum from Attorney's Office, 6/22/07.*

2. Under (3.5) B, how do the recommendations made in this section alter our current practice? Does this affect the City's ability in any way to negotiate on behalf of the public, and for the Council to meet their fiduciary duty? (Councilmember Chirco, June 15, 2007)

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Staff Response: *All proposed contracts must be approved in open session, but in the past staff has submitted Council memos regarding tentative agreements shortly before the Council meeting in order to have the agreement approved before expiration of the current contract and to ensure the employees are paid the increases that were negotiated in a timely manner. Moreover, staff has been able to bring tentative agreements forward to the Rules Committee, and with a 2/3 majority approval, receive an exemption to the posting requirements and proceed to Council. Staff understands the SRTF recommendations would require that memos and agreements be posted 14 calendar days before the meeting. Without any exemption process, staff we may have to wait several weeks to bring a tentative agreement forward to Council for approval. It is difficult to anticipate what problems, if any, may arise from a delayed approval or implementation of a tentative agreement, but increasing the number of calendar days itself does not directly affect the City's ability to negotiate.*

3. With respect to Disclosure of Closed Session Discussions and Actions, I am deeply concerned about the disclosure of "negotiating strategy/posture" of the City. I question whether we ultimately might be serving the public well if we adopt this policy. As was noted by Taskforce members Mathews and Nadler, there should be concern about increased political activity surrounding closed session, and a reduction in candor. I am hoping the Taskforce can speak to these concerns. *(Councilmember Chirco, June 15, 2007)*

SRTF Response: *Section 3.7A grants the City Attorney the ability to certify which material can be disclosed or not. The SRTF will be making recommendations in Phase II on the process to certify a closed session discussion.*

Staff Response: *See Memorandum from Attorney's Office, 6/22/07.*

Public Meeting Recommendations

1. Definitions - Public Subsidy: Under the definition of "provision of economic value" (B)(3), how and when is fair market value determined (e.g. what about a long-term leasehold interest that is below FMV on the back years); by whom; and what triggers that analysis? Please help me understand subsection C and the discussion of "goods and services," and the distinction between purchasing a discount and receiving a subsidy? *(Councilmember Chirco, June 15, 2007)*

SRTF Response:

a. *Fair Market Value*

City and/or RDA staff will be assigned the obligation of implementing the sections of the Sunshine Ordinance regarding public information about subsidized projects. One of the tasks associated with that assignment is the determination whether the project meets the definition of a "public subsidy." The "trigger" for making this determination will be a recognition by staff that characteristics of a project appear to meet the definition and closer analysis is required.

One component of this review will be whether an asset was transferred at less than fair market value. In some cases, this determination will be simple; comparable assets may have

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been sold in the recent past. In other cases, such as leasehold interests below fair market value in future years, more complex analyses may be required, and the services of an appraiser or a consultant may be required. It is not reasonable in an ordinance to specify the precise methodology that should be used in all potential, complex evaluations of fair market value. The methods employed by staff will be open to public review, and the city council will have the opportunity to hear questions regarding the validity of any specific method.

b. Discounts vs Subsidies

A subsidy is a provision of economic value to a private entity for which the city does not receive goods or services in return. In basic terms, if the city pays Adobe for \$5 million dollars worth of software, it is a purchase. If the city offers Adobe \$5 million dollars to induce the firm to occupy a building downtown, it is a subsidy.

In some cases, the City may purchase goods or services from a firm with the intent to make those goods or services available to residents at discounted prices or for free. In such cases, the City is not subsidizing the firm. For illustrative purposes, assume that Hewlett-Packard sells a desktop computer for \$700.00. The City decides to encourage at-risk youth to stay in school by assisting their families to buy computers. So the City pays HP \$1,000,000 to make 2000 computers available to these families at \$200.00 each. In this case, the City has not subsidized HP. It has paid a fair price for the computers in order to benefit the families of at-risk youth. However, if the City were to offer HP a million dollars to move downtown, and receives nothing else in exchange, that payment would be a subsidy.

This distinction applies whether the goods and services provided to residents are computers or shuttle rides or housing.

Staff Response: *Staff will be responding under separate cover to the City Council on the SRTF's recommendations regarding public subsidies.*

2. Under item 2.3(f), if the timeliness requirement of Councilmember memos (4 day requirement) is not met, is the item subject to deferral as listed in subsection 2.3(e) (deferral requirement for late supplemental staff reports)? (Councilmember Chirco, June 15, 2007)

SRTF Response: *If a Councilmember report is not posted at least 4 calendar days before a meeting, the agenda item to which the report was directed must be deferred.*

3. What % of the policy/ancillary bodies currently conform to the Brown Act? (Councilmember Chirco, June 15, 2007)

Staff Response: *Of the entities captured in the revised "List of Bodies Subject to the Sunshine Reform Task Force's Phase 1 Recommendations," approximately 90% of the policy and ancillary bodies currently conform to the Brown Act. It is important to note, however, that while staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that are covered by the Ordinance that may or may not conform to the requirements of the Brown Act.*