



Memorandum

**TO: RULES & OPEN GOVERNMENT
COMMITTEE**

FROM: Ed Shikada
Albert Balagso

**SUBJECT: PUBLIC/PRIVATE PARTNERSHIP
UPDATE**

DATE: October 29, 2007

Approved

Date

11/2/07

RECOMMENDATION

It is recommended that the Rules & Open Government Committee accept this report on the status of the public/private partnership case studies and the community input staff has received.

OUTCOME

This report updates the Rules Committee on the status of public/private partnership case studies and stakeholder perspectives on the role of public/private partnerships in managing City parks and facilities, and barriers and opportunities associated with public/private partnerships. This report will also be shared with all stakeholders in order to further consensus building.

BACKGROUND

On June 12, 2007, the City Council directed staff to proceed with implementation of a proposed framework for advancing public/private partnerships, including monthly status reports to the Rules Committee beginning in August through December 2007 and presentation of policy recommendations to the City Council by January 2008. Staff was further directed to return to Council as needed for input on specific policy issues as encountered throughout the pilot period. Since August, staff has issued two monthly status reports and brought forward two key policy issues for discussion and guidance to staff. The first policy issue centered on the applicability of prevailing wage to donated services, and the second focused on requests for mutual indemnification.

As part of an on-going process to solicit community input on the barriers and opportunities to public/private partnerships, staff has facilitated four stakeholder input sessions. The first with current private company partners was held on July 11, 2007 and the second with current non-profit organization partners was held on July 12, 2007. Staff also hosted a town-hall meeting at the JTS Northside Community Center on August 16, 2007 and conducted a meeting with labor partners on September 5, 2007.

This is the third in the series of monthly updates on the pending partnership proposals. This report provides an update on the eleven public/private partnership case studies and an overview of input received from stakeholders on the common goals, challenges, and opportunities related to the role of public/private partnerships in managing City parks and facilities. The analysis below provides a summary of the common areas of agreement among stakeholders.

ANALYSIS

Status Report on Partnership Case Studies

Two key milestones were accomplished over the past month that is anticipated will improve certainty in the approval process for private partners and City officials, and may expedite future partnerships. Staff advanced two key policy issues to the City Council for guidance to staff related to the City's Prevailing Wage Policy (Policy) and requests for mutual indemnifications. On September 25, the City Council took several important actions to clarify the applicability of the City's Policy to donated services. The City Council: 1) confirmed the City's Policy applies to City maintenance projects of a routine, recurring or usual nature for City owned buildings and ground facilities, where the work performed exceeds the contractual amount of \$1,000, and 2) amended the Policy to make clear that it excludes work performed by volunteers or volunteer coordinators, the *Conservation Corps*, *Habitat For Humanity*, *Our City Forest* and community service days by paid employees of corporations. The Council also referred to the public/private partnership effort an analysis of the implications of a policy that would exempt private sector entities that donate services for parks maintenance, in coordination with ongoing Structural Deficit Task Force work.

In addition, with the issue of mutual indemnification a key issue in advancing two partnership proposals, on October 2, 2007 the City Council considered approval of an approach to be used when partners' request mutual indemnification requirements for contracts involving services donated at no cost, or with a substantial donation to the City. The City Council authorized the City Manager to negotiate and execute mutual indemnity provisions in donated service agreements, where the City Manager concludes that the benefit received by the City outweighs the risk by the City and approved the framework for a risk analysis in conjunction with any recommended mutual indemnity provision.

Overall, the 11 public/private partnership case studies continue to progress each at various stages of completion. Four of the eleven agreements are complete and are being tracked for progress. These projects are (Happy Hollow Corporation Agreement, Guadalupe River Park/Minor Public Works Irrigation project with Santa Valley Corporation, Guadalupe Gardens Master Plan with Friends of Guadalupe Park and River Gardens, and the Rose Garden Volunteer effort). Three partnerships are in the final stages of drafting the agreements (Adobe and two PAL-related partnerships), and three additional partnerships are in the contract negotiation phase. Notably, the Novellus Development Agreement in North San Jose was approved by the City Council on October 16, 2007. The approval of this agreement set forth the dedication of 6-acres of parkland and a contribution of \$3 million towards the construction of park improvements and \$1.5 million towards park maintenance. One additional project, Palmia Park, is on hold until final determination of the applicability of the City's Prevailing Wage Policy to donated services.

Staff continues to maintain an open dialogue with the City's partners throughout this process. Most recently, the contract with Adobe had to be modified to establish the agreement between the City and Cushman-Wakefield, Adobe's Facility Management Company, rather than Adobe directly. This effort was required to ensure the appropriate responsibility of the entity managing the maintenance work on McEnery Park. The final contract has been delivered to Cushman-Wakefield/Adobe for signature and will then be executed by the City. Both agreements related to the Police Athletics League (PAL) are proceeding as a result of the acceptance of mutual indemnification language to be included in the agreements. Attachment A provides a status on each of the case studies.

Community Input

In gathering community input, staff focused on three main questions:

1. What are the various perspectives on the role of public/private partnerships in the delivery of services to City parks and facilities?
2. What are the greatest barriers in terms of our ability to meet the common goals?
3. Where are the major opportunities for the City to contribute to addressing the needs and gaps?

Analysis of the stakeholder input collected by staff shows a level of agreement on several goals of public/private partnerships and the major challenges and opportunities that face the City and its partners. The stakeholder views summarized in this report are intended to provide a foundation for priority recommendations for advancing public/private partnerships in the future. Staff will bring forward recommendations based on community and staff input, and the lessons learned from the public/private partner case studies to the City Council at the conclusion of the focused effort in December 2007.

1. Common Goals of Public/Private Partnerships

Focus groups participants were asked to identify what they believed are the ultimate goals of Public Private Partnerships, so that a clear definition and purpose for this effort can be established. Participants identified the following common goals of pursuing public/private partnerships.

a. Leveraging Community Support

Participants acknowledged there is an inherent benefit for the community (residential and corporate) to pool resources together to meet the challenges of delivering services. Many residents and potential partners are willing to provide support to deliver services if a simple and a well-organized process can be established.

b. Enhance Community Participation and Volunteerism

Public/private partnerships are a key strategy to increase community participation and encourage volunteerism. An aggressive volunteer effort that actively manages, supports, and recognizes volunteers is needed to provide the framework to more effectively engage community participation and volunteerism in delivering services to the community.

c. Promote the Assets of Partners and the City

To successfully support and advance public/private partnerships, the City must develop and leverage the assets of our partners, and the City, in ways that continually reinforce and contribute to a unique sense of benefit for all sides and that advances the marketing image of all parties.

2. Barriers to Successful Public/Private Partnerships

The process staff utilized also included questions on what challenges the City's partners see as barriers in developing stronger partnerships. Participants identified a number of barriers in the City's collective capacity to manage public/private partnerships.

a. Complicated Processes/Poor Communication/Slow Response

Across the board, participants identified complicated City processes and procedures as a major obstacle to advancing partnerships, specifically when a proposal falls outside the City's standard practices in areas such as bonding and insurance requirements, indemnification, and prevailing wage. The issues encountered included uncertainty of the approval process, inconsistent responses from departments, and the resulting inability to quickly move a proposal through to resolution.

b. City's unwillingness to assume Risk/Insurance

Both neighborhood and non-profit groups indicated that the prerequisite of various insurance requirements, and the lack of resources and support from the City to meet insurance requirements has been an impediment for partners to provide more support to the City.

c. Applicability of Prevailing Wage

The applicability of prevailing wage to donated services has been longstanding topic in public/private partnership discussions, and raises a variety of perspectives that do not all see this as a barrier. As reported above, the City Council has since clarified applicability of the City's Policy to volunteer services and referred for further analysis the issue of privately donated services for parks maintenance.

3. Opportunities to Create Successful Public/Private Partnerships

During the established focus groups, staff requested input on creative ideas and opportunities to develop partnerships. Participants identified a number of opportunities for the City to respond to needs and address barriers.

a. Establishment of a Citywide Parks Foundation

All across the nation community non-profit organizations have partnered with municipal parks systems by establishing park foundations to provide the support needed to maintain service delivery levels for parks that staff and the community desire. Depending on the experience and capability of a foundation, support to fill service gaps can range from

monetary support, to management of maintenance contracts, and organization of programs and special events.

b. Increase Volunteer Efforts

Support a greater emphasis on volunteer efforts. Volunteers and community building is a cornerstone of public/private partnerships and must be supported in ways that reflects the City's dedication to these efforts.

c. Increase Communication Between City/Community and Department/Departments

Create a neighborhood parks "ombudsman" to assist local groups to navigate City processes, and champion, support, and implement community volunteer projects. Participants believed that there is a need to standardize the partnership process, and establish a single point of contact to help partners navigate the multiple departments needed to complete a partnership project.

d. Provide Greater Recognition Programs (volunteers/corporate partners)

Establish a stronger acknowledgement system for donations and partnerships including ideas of a corporate challenge program, a stronger signage recognition program, and greater acknowledgement across all lines of media including an active web presence.

e. Establish a System to Support the Community's Insurance Costs/Policies

In an effort to create solutions to risk and insurance challenges, there is opportunity for the City to be creative by utilizing the City's economy of scale to create a lower cost option for insurance policies for community events/community groups, or an umbrella insurance policy to cover City and Neighborhood sponsored events such as Neighborhood Clean ups, and National Night Out type of events.

EVALUATION AND FOLLOW-UP

The stakeholder input received will be used to develop priority recommendations to advance public/private partnerships to augment critical service delivery gaps. Staff will conduct another set of stakeholder meetings in November 2007 to further refine the priority recommendations and will use all of the input received, along with the lessons learned from the public/private partner case studies to develop a plan that harnesses the strengths and opportunities of the City and its partners to address the City's needs and priorities.

Parks, Recreation and Neighborhood Services (PRNS) is currently evaluating the establishment of a Foundation and its ability to re-engineer its current volunteer efforts. PRNS staff is discussing preliminary concepts and strategies with the City's Parks and Recreation Commission for further input and direction. It is anticipated that staff will bring forward final recommendations in its presentation of policy recommendations to the City Council in December.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This staff report has been coordinated with the following Departments and Offices: Employee Relations, Finance, General Services, Human Resources, Parks, Recreation and Neighborhood Services, Public Works, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

Not applicable.

COST SUMMARY/IMPLICATIONS

This work effort is being pursued within existing operating budgets; no special budget allocation has been established.

BUDGET REFERENCE

Not applicable.

RULES AND OPEN GOVERNMENT COMMITTEE

Subject: Public/Private Partnership Update

October 29, 2007

Page 7 of 10

CEQA

Not a project.



ED SHIKADA
Deputy City Manager



Albert Balagso
Director, Parks, Recreation, and
Neighborhood Services

For questions, please contact Ed Shikada, Deputy City Manager, at (408) 535-8190.

Project	Milestones	Schedule		Accomplishments/Plans	
		Schedule for Completion	Status	October 2007	November 2007 Plans
McEnery Park - Adobe provides supplemental maintenance work that allows current maintenance staff to increase service levels at other local parks.	1. Finalize contract with Adobe by August 2007. 2. Contract proposed for 3 years - expiring 2010. 3. If service is good, re-examine contract in Jan 2010.	8/31/2007	schedule extended - target 10/31	The Adobe contract was modified as to make the agreement between the City and Cushman-Wakefield, Adobe's Facility Management Company, rather than Adobe directly. This effort was required to ensure the appropriate responsibility of the entity managing the maintenance work on McEnery Park. This finalized contract has been delivered to Cushman-Wakefield/Adobe for signature and will then be set through the City's execution process.	Process agreement for City approval and final execution.
Guadalupe Gardens Masterplan - Prepare design guidelines and a master plan amendment to Guadalupe Gardens, as a prerequisite to seek future grants.	1. Community engagement to begin in late summer 07. 2. Master plan amendment to be completed in spring 08.	5/1/2008	contract complete and monitoring progress	The master plan team meets as part of the Guadalupe Gardens Technical committee on a regular basis. Project is underway.	Continue planning work.
Guadalupe River Park & Garden/ Minor Public Works Irrigation Project - Donation of services to install irrigation system and concrete curb by new planting area.	Execute Contract in June 2006	Contract completed	project complete	No other issues. Project Complete.	Project Complete.
Happy Hollow Park and Zoo - Promotion and Support Agreement.	Active campaign for ~18 months followed by a 3-5 year period to receive pledges.	Contract completed	complete and monitoring progress	The Fundraising Support, Donor Relations, and Capital Campaign Committees have met and the Board has recently adopted a \$24,000 mini campaign goal. The board is planning a 10/16 event to kick off the silent portion of the capital campaign.	Continue working with HHC to support efforts.
Moitozo Park - Establish volunteer base for litter pick up and graffiti abatement with possibility to create a gift trust fund or fundraising means to support additional maintenance.	Adopt a Park agreement in place with Irvine Corporation.	TBD	in negotiations	Discussions with new management staff continue with a re-introduction to the concept of establishment of this type of partnership.	Continue with discussions.
Municipal Rose Garden - Supplemental maintenance through organized volunteers.	Volunteer work day with over 35 residents on 6/2/07. Volunteer work day scheduled for 9/15.	Completed. Volunteer program started	on-time	The Rose Garden Preservation Association and City Staff hosted its 2nd successful volunteer day on 9/15 with over 100 volunteers participating in weeding and cleaning the rose beds. The group is looking to formalize its relationship through the Adopt-a-Park program, and scheduling its next major pruning activity for January 2008.	Schedule the major pruning activity estimated for January 2008.

Project	Milestones	Schedule		Accomplishments/Plans	
		Schedule for Completion	Status	October 2007	November 2007
North San Jose Development - 20 years of Park maintenance of the 5-acre community park plus \$1 to \$3 million to help build the park for extraordinary benefit in development agreement.	Development Agreement by September 1, 2007 with Novellus. Planning approvals by December 1, 2007. Turnkey Agreement by TBD.	Planning Agreement 9/1/2007; Planning approvals by 12/1/07	planning agreement schedule extended - target 10/31	The development agreement for the Novellus site was approved by the City Council on 10/16/07. Approval of this action set forth the dedication of 6-acres of parkland and a contribution of \$3 million towards the construction of park improvements and \$1.5 million towards park maintenance.	Finalize Development agreement, and begin Parks Maintenance agreement.
PAL/Support and Promotion - Include corporate contributions to improve and renovate PAL stadium.	Finalize contract for signature by or before August 31, 2007 report out to Council.	9/30/2007	schedule extended - target 11/30	The PAL Board has requested mutual indemnification be added as a condition of the agreement. Council is considering this condition related to Public/Private Partnerships on October 2, 2007 Item 4.3. After Council has acted on this issue the PAL agreement will be presented to Council for action. It is likely the PAL agreement will be agendize for early November 2007.	Execute contract through City signature process.
PAL/Restroom Design - Private architectural firm to donate architectural services to remodel restroom.	Mutual Indemnification issues have been clarified, contract development proceeding.	10/30/2007	in negotiations	In negotiations. PW incorporated City Attorney's latest comments on the indemnification clause into the agreement. The revised agreement has been delivered to Steinberg Architects who are now collecting fee proposals from sub consultants.	Continue negotiations.
Palmia Park - More formalized agreements presenting scope of work that will supplement current maintenance.	Continue discussions and resolve issues on partnership with Barbaccia Properties.	TBD	on-hold	Negotiations on hold pending City review of partnership policies.	Discuss with Company final decision on Prevailing wage.
Ryland Pool - Partner with the community to provide financial and manual labor support the renovation of Ryland Pool.	CPAC presentation 6/21 and 8/15.	9/1/2007	looking for new partnerships	The preliminary estimated cost of the tile restoration is \$17,500. Staff of Public Works and PRNS have met to determine the scope of the project, and how to proceed. The community will meet again on October 24th for the monthly CPAC meeting.	Overall project is expected to be awarded in November. Will monitor efforts with Community on securing support for Tile replacement.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nadine Nader

SUBJECT: Sunshine Reform Report

DATE: November 2, 2007

Approved

Date

11/2/07

COUNCIL DISTRICT: N/A
SNI AREA: N/A

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL MEMORANDUM

At the Rules and Open Government Committee Meeting of October 31, 2007, the Committee requested that staff provide the overlay of Committee and Council Meeting due dates, packet distribution dates and committee dates.

ANALYSIS

The attached calendar provides a one-month overview of the City Manager's Office activities for Committee and Council Meetings. This calendar shows the due dates for Council and Committee meetings as well as the packet distribution dates leading up to each meeting. Additionally, the Council Meetings and Rules Committee Meetings are noted to further show the activities for each week.

One element that does not appear on this calendar is the advanced staff preparation work for various Council and Committee meetings as well as study sessions, which are often held on Tuesday where Council Meetings are cancelled or Monday and Thursdays where Committee Meetings are not taking place.

NADINE NADER
Agenda Services Manager



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: RICHARD DOYLE
City Attorney

SUBJECT: CITY ATTORNEY'S RESPONSE
TO REFERRAL DATED
AUGUST 29, 2007 FROM RULES
AND OPEN GOVERNMENT
COMMITTEE

DATE: September 27, 2007

RECEIVED
San Jose City Clerk
2007 SEP 27 PM

BACKGROUND

The Sunshine Reform Task Force issued its Phase I Report and Recommendations in May, 2007. The Phase I Recommendations include provisions that all closed session discussions be audio recorded and that the recordings be made available unless the City Attorney certifies otherwise. The Task Force's recommendations also provide that the City Attorney may certify closed session recordings only if he or she makes a specific finding that the public interest in non-disclosure outweighs the public's interest in disclosure.

The Rules and Open Government Committee began reviewing and discussing the Task Force's Phase I Report and Recommendations at meetings on May 30, June 6 and June 27, 2007.

At its meeting on June 27, 2007, the Rules and Open Government Committee did not reach consensus about recording closed session. Consequently, the Committee agreed to ask the Council whether it wanted to audio record closed session for the purpose of having the recording available to review for possible violations of the Brown Act. The Committee also agreed that no action would be taken to record closed session until the Council discusses its intentions and takes some action.

On August 21, 2007, the City Council approved a number of actions related to the Phase I Report and Recommendations for Closed Session and Public Information. The Council referred back to the Rules and Open Government Committee the question about audio recording closed session.

On August 29, 2007, the Rules and Open Government Committee discussed the question about audio recording closed session. The Committee rejected the Task Force's recommendation that the City Attorney certify closed session recordings; the Committee believes that the decision to disclose closed session discussions rests with the Council exclusively. The Committee asked that the City Attorney's Office prepare a

matrix listing the types of matters that are discussed in closed session, when, if ever, the need for confidentiality might end on those discussions, and, if the recordings were to be disclosed after the need for confidentiality ended, what, if any, information should be redacted. In addition, the Vice-Mayor questioned whether producing a transcript of closed session discussions, with sensitive information redacted, would be appropriate.

The Mayor also noted that the Council had to decide whether closed session should be recorded (1) for the purpose of having the recording available to review for possible violations of the Brown Act; or (2) for possible future release. And, in the event that the Council decided that the recordings should be available for future possible release, whether the Council could decide that recordings would be released on more than a majority vote.

ANALYSIS

Attached to this memo is the matrix requested by the Committee.

The Attorney's Office recommends that closed session be recorded only for the purpose of having the recording available to review for possible violations of the Brown Act. As listed in the matrix attached to this memo, closed session discussions include information about very sensitive subjects, including the City's strategy in labor negotiations, litigation and real estate negotiations as well as private information about City employees, Council Appointees and third parties. Release of the recordings would compromise this information, even after the negotiations or litigation has ended. Moreover, the other jurisdictions that record closed session – San Francisco and Milpitas – do so without the intention of releasing the recordings.

In the event that the Council chooses to record closed session for possible future release, the Attorney's Office recommends that disclosure of the discussions be in the form of a transcript, with the appropriate information redacted. Transcription of the recordings will ensure that necessary redaction is accurate and thorough.

Finally, the Brown Act prohibits disclosure of confidential information "acquired by being present in a closed session" "unless the legislative body authorizes disclosure of that confidential information" by a majority vote.¹ The Brown Act permits legislative bodies only to "impose requirements upon themselves which allow greater access to their meetings..."² If the Council decided that recordings could be released only on more than a majority vote, the requirement would permit less access to its meetings. Consequently, we do not believe that the Council may enact any provision that would require more than a majority vote to release closed session information.

¹ Government Code Section 54963.

² Government Code Section 54953.7.

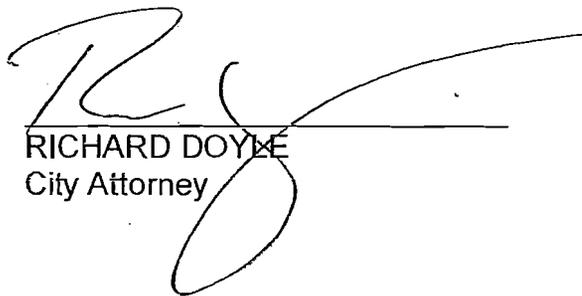
CONCLUSION

The matrix attached to this memo lists the types of matters that are discussed in closed session, when, if ever, the need for confidentiality might end on those discussions, and, if the recordings were to be disclosed after the need for confidentiality ended, what, if any, information should be redacted.

The Attorney's Office recommends that closed session be recorded only for the purpose of having the recording available to review for possible violations of the Brown Act. We believe that release of closed session recordings would compromise information about the City's strategy in labor negotiations, litigation and real estate negotiations as well as private information about City employees, Council Appointees and third parties.

If the Council chooses to disclose closed session recordings when the need for confidentiality has ended, the Attorney's Office recommends that disclosure of the discussions be in the form of a transcript, with the appropriate information redacted.

Finally, we believe that the Council may not enact any provision that would require more than a majority vote to release closed session information.



RICHARD DOYLE
City Attorney