Rules Committee: 11/07/07
ITEM: I (2)(a)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Nadine Nader

SUBJECT: **Sunshine Reform Report**

DATE: November 2, 2007

Approved Deanna Santana 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
NADINE NADER
Agenda Services Manager

September 2007
CITY COUNCIL & COUNCIL COMMITTEE MEETING

- Council Meetings
- NSE Committee
- T & E Committee
- PSFSS Committee
- CED Committee
- Rules Committee

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				NSE Memos Due		1
2	3 HOLIDAY	9/25 Council Memos Due T & E Memos Due Priority Setting Session All Day	Rules Meeting (9/12 Rules memos due)	NSE Packet Out PSFSS Memos Due	Rules Packet Out	8
9	9/25 Rules Review of agenda 10/2 Council Memos Due T & E Packet Out CED Memo Due Dates	9/11 Council Meeting	Rules Meeting (9/18 Rules memos due)	NSE Committee Mtg PSFSS Packet Out	9/25 Council Packet Out Rules Packet Out	15
16	No 10/9 Council Mtg T & E Committee Mtg CED Packet Out T & E Memos Due (10/1)	9/18 Council Meeting	Rules Meeting (9/26 Rules memos due)	10/2 Rules Review of agenda PSFSS Committee Mtg	10/2 Council Packet Out Rules Packet Out	22
23	24 10/16 Council Memos Due CED Committee Mtg T & E Packet Out (10/1)	25 9/25 Council Meeting	26 Rules Meeting (10/3 Rules memos due)	27	28 Rules Packet Out	29
30	1 T & E Committee Mtg	10/2 Council Meeting NSE Minutes Report Out	Rules Meeting (10/10 Rules memos due) 10/16 Rules Review of agenda	4	5 Rules Packet Out 10/16 Council Packet Out	

RULES COMMITTEE: 10/24/07
ITEM: I 2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES COMMITTEE

FROM: Tom Manheim
Communications Director

SUBJECT: SEE BELOW

DATE: October 18, 2007

Approved

Date

RE: REVIEW OF REMAINING PROVISIONS OF SUNSHINE REFORM TASK FORCE PHASE I REPORT AND RECOMMENDATIONS

RECOMMENDATION

Review and make recommendations to the City Council on the remaining provisions of the Sunshine Reform Task Force's Phase I Report and Recommendations.

OUTCOME

To provide the Rules and Open Government Committee an opportunity to consider the outstanding provisions of the Sunshine Reform Task Force's Phase I recommendations.

EXECUTIVE SUMMARY

On October 3, 2007, the Rules and Open Government Committee approved a work plan for reviewing the remaining provisions of the Sunshine Reform Task Force's Phase I recommendations. The three remaining topics for discussion include:

1. **The definitions of each category of entity (Policy Body, Ancillary Body or Non-governmental Body) impacted by the proposed Sunshine Ordinance**. Discuss the SRTF's recommendations, which entities would be covered by these definitions, staff concerns, and the input received from the policy, ancillary and non-governmental bodies.

2. **Section 2 - Public Meeting requirements.** Review Sections 2.1 -2.11, which set out the requirements for each category of entity, and consider staff's analysis and the input received from the policy, ancillary and non-governmental bodies.

3. **Section 3 - Closed Session requirements**. Consider how the closed session provisions approved by Council on August 21, 2007, should apply to the policy bodies that conduct closed session (other than Council and the Board of the Redevelopment Agency), and consider staff's analysis and the input received from these other bodies.

This memo is organized into three sections: (1) Entities Impacted by the Phase I Recommendations; (2) Public Meeting Requirements; and (3) Closed Session Requirements. These sections are intended to align with the Rules and Open Government Committee's work plan and organize the significant amount of information that the Committee will be considering. Each section includes background information, analysis from staff, input from the impacted bodies and policy alternatives as appropriate. An executive summary of the recommendations and/or policy alternatives for each of the three sections is also provided below.

Please note that all the provisions are interrelated so the Committee will face a significant challenge in identifying the list of entities impacted by the SRTF's recommendations before deciding which requirements should apply to each entity. The SRTF faced a similar challenge and resolved the difficulty by: (1) reviewing the various entities and discussing the definitions of policy body, ancillary body and non-governmental body; (2) discussing the proposed requirements for policy, ancillary and non-governmental bodies; and (3) returning to the definitions of the bodies to make final recommendations. The Rules Committee may wish to take a similar approach to its deliberations.

POLICY ALTERNATIVES/RECOMMENDATIONS

Section 1. Entities Impacted by the Phase I Public Meeting Recommendations/Policy Alternatives

Note: The alternatives are not necessarily mutually exclusive. Alternative 1 addresses the entities that staff and the SRTF agree to the categorization but does not address the entities that staff and the SRTF disagree. Alternatives 2, 3, and 4 provide options for the entities that staff and the SRTF do not agree.

Alternative 1 – Accept categorization for entities about which the SRTF and staff agree with the following clarifications:

i. Council Committees would be categorized as policy bodies. An exception to the noticing requirements would be permitted for the Rules and Open Government Committee.

ii. Informal and ad hoc advisory committees created by the Administration would not be categorized as ancillary bodies.

iii. Committees that deal with topics that are sensitive in nature e.g. the Independent Police Auditor's Advisory Committee, hiring committees, and committees reviewing competitive solicitations would not be categorized as ancillary bodies.

iv. The Rules Committee would re-evaluate the list of non-governmental bodies after recommendations have been made on the requirements for those non-governmental bodies.

Alternative 2 – Accept SRTF's categorization for those entities about which staff and the SRTF do not agree, using a phased approach to implementation in order to address the staff and resource impacts.

Alternative 3 – Accept staff's categorization for those entities about which staff and the SRTF do not agree, using a phased approach to implementation in order to address the staff and resource impacts.

Alternative 4 – Evaluate each entity about which the SRTF and staff do not agree and provide direction about each entity individually.

Section 2. Public Meeting Requirements

Recommendation 1 - Grant policy bodies and ancillary bodies the authority through a super majority vote of the body to receive information and determine whether to consider time sensitive matters, in compliance with the Brown Act, that have not met the noticing requirements of the Sunshine Ordinance.

Recommendation 2 **–** Exempt the policy bodies that perform quasi-judicial functions from the Public Meeting requirements of the Sunshine Ordinance *or* exempt the policy bodies that perform quasi-judicial functions from the Public Meeting requirements of the Sunshine Ordinance <u>only when they are conducting quasi-judicial hearings</u>.

Recommendation 3 - Provide an exemption to allow for supplemental memos where additional information important to the decision-making process has been received after the initial memo was released but does not change the staff recommendations.

Recommendation 4 - Provide the Chair of a policy body or ancillary body the discretion to set time limits for public testimony for their meetings.

Recommendation 5 - Require all policy bodies (including the City Council) to post a synopsis of the items discussed, the action taken and the vote of the members no later than 10 days after a meeting (in lieu of detailed meeting minutes). Require the Office of the City Clerk to make available the meeting minutes of the City Council no later than 30 days after a meeting.

Recommendation 6 - Defer any additional action on the public subsidy components of the Sunshine Ordinance until the Cost-Benefit Analysis Pilot Program is completed.

Recommendation 7 - For all ancillary bodies, establish a standing role of secretary to be filled by a member of the body to ensure the timely and accurate production of agendas, reports and meeting synopses.

Recommendation 8 **–** Amend the provisions for non-governmental bodies (NGBs) to instead require the contracts, performance reports, and financial reports of all NGBs to be made available on the City's web-site.

Recommendation 9 **-** Clarify that the title "Mayor's Budget and Policy Director" includes equivalent positions, regardless of title.

Section 3. Closed Session Requirements

Alternative 1 **-** Begin implementation of the closed session requirements for the additional bodies that conduct closed session with the following clarifications:

i. Implement the agenda requirements for real estate transactions for the other entities that purchase and sell real property only to the extent that the information disclosed will not adversely affect the purchasing strategy or compromise the investment opportunity.

ii. Implement the agenda requirements for Civil Service Commission hearings for peace officers to be consistent with California case law.

iii. Affirm that standing committees of entities entitled to hold closed session are also entitled to hold closed session.

iv. Permit outside counsel to the other entities entitled to hold closed session to advise the entities about filing amicus briefs.

v. Exempt the requirement for open session approval of real estate transactions for those entities that purchase and sell real property for investment purposes.

vi. Clarify that the entities that manage pension funds must disclose pension fund investment transaction decisions only when <u>made by the entity in closed session</u> as required by the Brown Act.

vii. Affirm that the requirement that "the report of any closed session discussion on real estate negotiations must include the full disclosure of the use of any funds previously budgeted for another purpose and the full disclosure of the opportunity cost of the use of those funds" will not apply to any entities except the City Council and the Board of the Redevelopment Agency.

Alternative 2 – Exempt all bodies other than the City Council and the Board of the Redevelopment Agency from the closed session provisions, and evaluate at a later time whether to phase in the requirements for these bodies.

Alternative 3 **-** Begin implementation of the closed session requirements for the additional bodies that hold closed session with the same provisions approved by Council for the City Council and Board of the Redevelopment Agency.

SECTION 1. ENTITIES IMPACTED BY THE PROPOSED SUNSHINE ORDINANCE.

Recommended Action: *Discuss the SRTF's recommendations, which entities would be covered by these definitions, staff concerns and the input received from the policy, ancillary and non-governmental bodies, and provide direction on how the entities should be categorized.*

BACKGROUND

The first of the three remaining topics for discussion includes a review of the list of entities that staff believes would be impacted by the Sunshine Ordinance (policy, ancillary, and non-governmental bodies) and to provide recommendations on the list of entities and corresponding definitions. At the Rules and Open Government Committee meeting on May 30, 2007, staff was directed to discuss the definitions of policy, ancillary and non-governmental bodies with the SRTF and report back to the Committee. Staff and the SRTF met on June 7, 2007, and agreed on the categorization of some bodies and disagreed on the categorization of others. Attachment A identifies 95 bodies that staff believes would be covered by the recommendations. Of these, staff and the Task Force agree on the categorization of 59 entities and disagree on the categorization of 32 entities. The Rules Committee has not discussed or taken any further action on this referral.

Staff invited representatives from all of the identified entities to attend two outreach sessions specifically targeted for the policy, ancillary, and non-governmental bodies identified in the Phase I Report. In addition, these meetings were advertised in the local newspaper and on the city website to reach other groups that had not yet been identified but which could be impacted by the proposals. Staff received input from 31 entities. While the majority of the comments focused on the Public Meetings and Closed Session requirements, staff did receive some comments on the categorization of some bodies as discussed below.

ANALYSIS

The SRTF's Phase I recommendations cover three types of bodies: policy, ancillary, and non-governmental. The proposals concerning how these bodies conduct meetings extend beyond what the Brown Act requires and differ significantly from current City practice. A matrix summarizing the requirements to be imposed on each category of entity is included as Attachment B. While the Rules Committee may ultimately recommend different requirements, the SRTF's recommendations may be a good starting point to set the context for the Rules Committee's discussion.

The SRTF recommends imposing public meeting requirements that exceed the Brown Act on approximately 95 entities. While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies, such as working committees of policy bodies and informal and ad hoc advisory committees created by department heads, which have not been identified but would be subject to the SRTF's recommendations for ancillary bodies. For example, simply through staff's outreach to its Boards, Commissions, Committees, Task Forces

and non-governmental partners over 20 additional entities were identified that have only just been tentatively categorized.

As depicted below in Table 1, of the 95 bodies identified in Attachment A, the SRTF and staff agree that 18 entities should be categorized as policy bodies, 21 should be categorized as ancillary bodies, and 20 should be categorized as non-governmental bodies. Four of the 95 bodies were identified as entities requiring further discussion. The SRTF and staff disagreed on the categorization of 32 bodies.

Table. 1 Policy Bodies, Ancillary Bodies and Non-governmental Bodies Areas of SRTF and Staff Agreement

Category	Count of Bodies
Areas of Agreement	
Policy Bodies	18
Ancillary Bodies	21
Non Governmental Bodies	20
Total	**59**
Areas of Disagreement	
Total	**32**
Further Analysis Required	4
Total Initial Bodies Identified	**95**
Additional Bodies Identified (Post Outreach)	**>20**

INPUT FROM STAFF, POLICY, ANCILLARY, AND NON-GOVERNMENTAL BODIES

Staff Comments

The 32 bodies about which the SRTF and staff disagreed are identified in the far right-hand column of Attachment A. Staff believes these entities should be ancillary bodies because they either make recommendations to a policy body or their decisions may be appealed to a policy body. Consequently, the extended public notice requirements would be met before any final action on a policy decision. The SRTF believes these entities are policy bodies because these entities undertake significant policy discussions and make significant policy recommendations. Staff believes that the challenge for the Rules Committee lies in balancing noticing requirements with the ability to make public policy decisions in a timely manner.

Staff noted concerns with the number of bodies affected by the SRTF's recommendations in the memorandum to the City Council dated May 23, 2007. The requirement to notice, agendize, and provide for public participation for meetings of all 95 entities will pose significant administrative challenges and have a significant staffing impact.

Staff has experienced first hand the intensive staff and resource impacts of implementing the proposed noticing requirements. Since September 1, 2007, the SRTF has been meeting the noticing requirements for policy bodies and its four subcommittees have been meeting the noticing requirements for its ancillary bodies. Agenda support, meeting management and technology needs have increased significantly.

Staff also noted preliminary concerns with extending the requirements to Council Committees. Staff indicated that the SRTF recommendation conflicted 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.

Staff has re-evaluated the impacts to Council Committees and believes there are no significant or insurmountable barriers in extended noticing requirement for policy bodies with the exception of the Rules Committee in its agenda setting function. The 10-day agenda requirements would significantly impact the cycle time needed to support the agenda process for the City Council. Staff recommends that the City Council modify the recommendation regarding noticing for the Rules and Open Government Committee as follows: The Rules and Open Government noticing deadline will be five days, except that when the item is a discussion of business to be transacted that is $1 million or more, the noticing deadline will be ten days.

Extending the requirements for ancillary bodies to informal and ad hoc advisory committees created by department heads also posed a concern for the Administration. 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, may impair staff's ability to work effectively, and may deter collaborative problem solving. Because any significant staff recommendation would be subject to thorough noticing before the City Council and, likely, at least one Council Committee before approval, staff recommends that informal, ad hoc committees formed by the Administration to address a particular issue, and disbanded after the issue is resolved, not be categorized as ancillary bodies.

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. Staff recommends that bodies that deal with topics that are sensitive in nature not be categorized as ancillary bodies.

Finally, staff notes significant concerns related to the requirements for non-governmental bodies. Under the proposed definitions, a City contractor would be a non-governmental body if: 1) it operates or maintains a community center or a City facility with a value over $5 million; or, 2) it provides a defined set of direct services and receives more than the City Manager's contracting authority in a year (currently, $250,000 for professional services). While staff's concerns will be discussed in more detail by the Rules Committee in the review of the Public Meetings provisions, specifically Sections 2.1-2.11 (page 16), staff would recommend revisiting the list of entities captured by the non-governmental body definition after decisions have been made about the requirements to be placed upon them.

Policy Bodies

Six boards and/or commissions expressed concern about being categorized as a policy body. These bodies include the Mobile Home Advisory Commission, Bicycle Pedestrian Advisory Committee, Small Business Development Commission, Human Rights Commission, and Family Domestic Advisory Board. The reasons stated include: (a) not having authority over budget or policy decisions; (b) the entity's only function is to review and recommend policy changes to the City Council; (c) the City Council never passed a resolution, ordinance, or took other formal action to form the entity; and (d) the entity provides input and shares ideas with staff, not the City Council.

Ancillary Bodies

The Five Year Housing Investment Plan Task Force (FYHTP) stated that informal and ad hoc advisory committees created by department heads, such as the FYHTP, should not be categorized as ancillary bodies. The FYHTP was an informal Task Force convened for the one-time purpose of providing input and sharing ideas with staff about the City's housing policies in preparation of the City's Five Year Housing Investment Plan and served in an advisory role to the Department Head.

Non-governmental Bodies

Staff received some comments on non-governmental bodies related to the practical considerations in valuing property, and clarifying the contract authority levels of the City Manager. Green Waste Recovery (GWR) also submitted comments questioning the value of requiring the garbage contractors to report to a policy body, since these contracts are guaranteed by performance bonds and provide for large penalties for failure to perform in accordance with the contract. GWR is also inspected by various City departments, including Code Enforcement, the Local Enforcement Agency (also known as the Independent Hearing Panel) and Environmental Services, and by other local and state agencies to ensure that GWR is complying with its contract terms. In addition, GWR reports weekly to the Environmental Services Department on the progress and fulfillment of its contracts.

POLICY RECOMMENDATIONS/ALTERNATIVES

The recommended action before the Rules Committee is to discuss the SRTF's recommendations, which entities would be covered by these definitions, staff concerns and the input received from the policy, ancillary and non-governmental bodies, and provide direction on how the entities should be categorized.

The Rules Committee may wish to consider the following policy alternatives, which are not necessarily mutually exclusive. Alternative 1 addresses the entities that staff and the SRTF agree to the categorization but does not address the entities that staff and the SRTF disagree. Alternatives 2, 3, and 4 provide options for the entities that staff and the SRTF do not agree.

Policy Alternative 1 – Accept categorization for those entities on which the SRTF and staff agree with the following clarifications:

a. Council Committees would be categorized as policy bodies. An exception to the noticing requirements would be permitted for the Rules and Open Government Committee.

b. Informal and ad hoc advisory committees created by the Administration would not be categorized as ancillary bodies.

c. Committees that deal with topics that are sensitive in nature e.g. the Independent Police Auditor's Advisory Committee, hiring committees, and committees reviewing competitive solicitations would not be categorized as ancillary bodies.

d. The Rules Committee would re-evaluate the list of non-governmental bodies after recommendations have been made on the requirements for those non-governmental bodies.

Policy Alternative 2 – Accept SRTF's categorization for those entities about which staff and the SRTF do not agree, using a phased approach to implementation in order to address the staff and resource impacts.

Policy Alternative 3 – Accept staff's categorization for those entities about which staff and the SRTF do not agree, using a phased approach to implementation in order to address the staff and resource impacts.

Policy Alternative 4 – Evaluate each entity about which the SRTF and staff do not agree and provide direction about each entity individually.

SECTION 2. PUBLIC MEETING REQUIREMENTS, SECTIONS 2.1 -2.11.

Recommended Action: *Review Sections 2.1 -2.11 which set out the requirements for each category of entity, and consider staff's preliminary concerns and input received from policy, ancillary and non-governmental bodies, and provide feedback on the SRTF's recommendations.*

BACKGROUND

The Rules Committee began discussing the Public Meetings provisions along with the SRTF's Phase I recommendations in June of 2007 but did not complete review of this section. Instead, Council directed staff to solicit feedback from the potentially impacted entities and to report the findings back to the Rules Committee. Attachment C provides the Phase 1 report approved by Council on August 21 as amended by the Rules Committee.

Staff conducted two outreach sessions, one in July and another in August, specifically targeted to the policy, ancillary, and non-governmental bodies identified in the Phase I Report, including those policy bodies that conduct closed session. The purpose of the sessions was to inform the impacted bodies and their staff about the public meeting and closed session recommendations, answer any questions, and solicit input on potential barriers to implementation. Staff requested written comments as well. As of mid-October, staff has received feedback from over 30 entities. A summary of the key concerns are provided below and a complete list of the entities and their comments can be found at http://www.sanjoseca.gov/clerk/TaskForce/SRTF/SRTF.asp.

In addition, an internal team comprised of senior managers from City departments, the City Manager's Office, City Attorney's Office, Redevelopment Agency and City Clerk's Office reviewed the SRTF's Preliminary Phase I Recommendations to identify any barriers to implementation and other issues. Staff's preliminary concerns about the SRTF's recommendations were transmitted in a memo to the Mayor and City Council, dated May 23, 2007. The concerns are also explained below.

INPUT FROM STAFF, POLICY, ANCILLARY, AND NON-GOVERNMENTAL BODIES

This section provides staff's preliminary analysis on the SRTF's recommendations for public meetings, and the comments received by entities that would be considered policy bodies, ancillary bodies, and non-governmental bodies. Some of the policy bodies are quasi-judicial bodies (Appeals Hearing Board, Civil Service Commission, Elections Commission, Federated Employees Retirement Board, Independent Hearing Panel, Planning Commission, Police and Fire Retirement Board and Traffic Appeals Commission). These quasi-judicial bodies have raised significant concerns about the noticing and agenda requirements, especially in their function as administrative appeals bodies. Because of the nature of the quasi-judicial bodies, application of the SRTF's noticing requirements may be impracticable. The specific concerns of and recommendations for the quasi-judicial bodies are explained below.

Policy Bodies

1. Notice and Agenda Requirements (Ref: SRTF Phase I Report, pgs. 9 and 12)

   The SRTF recommends that agendas be posted 10 days in advance of a regular meeting and 4 days in advance of a special meeting. The 10-day requirement caused the greatest concern for the policy bodies. One commission noted that due to its meeting schedule, it would require posting an agenda over the weekend or the Friday before the weekend deadline, which would add additional days to the requirement. Other commissions cited concerns with staff's ability to respond to time-sensitive committee requests.

   Policy bodies also expressed concern over the requirement that all staff reports and other supporting documents related to items on the agenda be made available for inspection and copying 10 calendar days before a regular meeting. One commission expressed concern about the consequence of delaying an "imperative" action until the next monthly meeting.

   These concerns are more obvious when bodies meet less frequently, for example, on a monthly basis rather than weekly. If an entity that meets monthly misses the noticing requirement for a decision that ultimately must be approved by a Council Committee or the City Council, the policy decision could be delayed from 6 weeks to two months. In addition, the longer noticing requirements could limit the ability of the City's Boards and Commissions to review and comment on issues developing rapidly before the Council.

   The quasi-judicial bodies raised a number of concerns to the 10-day and 4-day notice and agenda requirements:

   Appeals Hearing Board – The Appeals Hearing Board (AHB) acts as the hearing panel for enforcement of Administrative Compliance Orders under the City's Administrative Remedies Ordinance and meets on the second and fourth Thursdays of each month. The AHB determines whether the person is in violation and can impose an order requiring compliance, reimbursement of all City enforcement costs and payment of civil penalties. The 10-day notice requirement would impair the ability of the staff to timely schedule matters, since the timing of such hearings is highly regulated under the San Jose Municipal Code to include notice to affected parties directly. Moreover, the 10-day agenda requirement would be difficult to meet since the packets are voluminous – they contain photographs and copies of entire files. Currently, a completed packet is presented to the Board on the Friday before the Thursday Board meeting. This process provides ample opportunity for the affected parties to review the information in advance of the hearing.

   Furthermore, the requirement that all agenda materials be posted 10 days before the meeting would impact the work of the Appeals Hearing Board. First, staff verifies if a party is in compliance with an order on the day of the hearing and often submits additional information on that day. Second, the parties may introduce evidence at the hearing. This format allows for relevant evidence and testimony by the responsible owners and by affected neighbors to be taken into consideration in the Board's deliberations. Delaying a hearing because additional information is presented at the hearing would pose a major inconvenience to both

the appellants and any concerned citizens who appear before the Board in anticipation of a decision.

Civil Service Commission – The Civil Service Commission acts as the administrative hearing body for appeals of certain personnel decisions affecting City employees. The Commission has serious concerns about due process since the employee has a right to a speedy hearing when faced with a disciplinary action. Under Civil Service regulations, the employee has twenty days to file an appeal from a notice of discipline. The Commission must then hold a hearing on the appeal within 45 days. The Commission holds regular meetings once a month. The 10-day posting requirement creates a situation where, under certain circumstances, the 45-day period can be exhausted before the Commission can schedule a hearing. If this requirement were to apply to the Civil Service Commission, it must have the ability to post an amended agenda in compliance with the Brown Act in order to hold hearings within the required time.

Elections Commission – The Elections Commission must complete its investigation and hearing at the earliest possible time. In fact, according to Resolution No. 72547, the investigation must be completed in time for a Commission Hearing in no more than two weeks from receipt of the complaint. And the Evaluator's Report and Recommendations must be delivered to the Commission, the Respondent and all interested parties 72 hours in advance of the Commission Hearing. To meet the requirements of both Resolution No. 72547 and the SRTF's proposal, the investigation would have to be completed within 4 days so that the Elections Commission could provide 10 days of notice and conclude the hearing within 2 weeks. But often, an election is only days away and the Commission cannot wait for 10 days of notice to make a determination. Candidates, committees and the public deserve an expedient resolution to any outstanding complaint before Election Day.

Retirement Boards – The Federated Employees Retirement Board and Police and Fire Retirement Board meet on a monthly basis, rather than a weekly basis. The 10-day posting requirement can adversely affect the prompt delivery of benefits to participants and beneficiaries because, if applications are not received in time to process them for the 10-day requirement, the applicants would have to wait another month and benefits would be delayed. This can be particularly burdensome in those cases where situations arise after the 10-day requirement (e.g., the death of a member and the need to determine survivorship benefits for the surviving spouse and/or children). This requirement could also have an adverse effect on the trust fund investments. The Boards frequently have no control over situations that may require prompt action to protect the trust assets. Thus, the Retirement Boards believe they should be exempt from the 4-day notice and agenda requirement for special meetings.

The Retirement Boards are also concerned about the posting of agenda materials, since they frequently review sensitive medical records or reports in the course of considering disability retirement applications. Posting such material raises significant fiduciary concerns and concerns regarding the privacy rights of participants. Furthermore, the Retirement Boards may receive additional information from the applicant after the hearing date has been set. Because the Boards meet on a monthly basis, in those cases where the additional submittal necessitates additional staff analysis, the 10 day requirement could result in delaying the

hearing on the application for another month and adverse affect the ability of the Boards to provide benefits promptly. The 10-day posting requirement could also have an adverse effect on investment decisions where circumstances change after the initial report.

The Retirement Boards also question the 14-day notice and posting requirement for expenditures over $1 million and suggest that the provision should be clarified to state it does not apply to investments of trust funds in order to prevent lost opportunity costs. In addition, there are some investments which the Boards are authorized to discuss in closed session because the information is proprietary and disclosure would compromise the investment. Documents provided in connection with such investments should not be posted with the agenda.

Deferred Compensation Advisory Committee – The Deferred Compensation Advisory Committee (DCAC) administers the City of San José Deferred Compensation Plan (a voluntary plan available to all City employees) and the PTC 457 Plan (a mandatory deferred compensation plan provided only to employees who do not qualify for membership in one of the City's pension plans). The DCAC has fiduciary responsibilities in the administration of the retirement plans it oversees and it must be able to respond quickly to situations which may have an adverse effect on the assets of the plans. The DCAC also meets once a month and is concerned about the 10-day posting and 4-day posting requirements for that reason. The DCAC is also concerned about posting certain agenda materials since it hears appeals by participants of denials of applications for withdrawals based on unforeseen emergencies. Applicants are required to submit personal financial information that may include tax returns and, depending on the circumstances, they may submit personal medical information. The staff reports will describe this information.

2. 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.

   The Retirement Boards and the DCAC object to the limitation on supplemental memos. Because the Boards and the DCAC meet on a monthly basis, as opposed to a weekly basis, deferral of an item for a month could limit these bodies from taking action in a timely manner. Additionally, the Elections Commission's Independent Investigator or Legal Evaluator may discover new information before a hearing on a complaint. It is paramount that the Elections Commission receives any and all evidence before making a finding or determination. To delay a hearing to meet the five day requirement could delay the Elections Commission's decision until after a pending election.

3. Documents Distributed by the Public (Ref: SRTF Phase I Report, pg. 12)

The SRTF recommends that 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. Several of the quasi-judicial bodies disagree.

Participants in the Retirement Boards or the DCAC may submit personal private financial or medical information in support of an application for a disability retirement or emergency withdrawal. Similarly, the Civil Service Commission notes that in disciplinary hearing cases there may be instances where an appellant distributes documents to the Commission as evidence. In certain cases, the documents may be personal medical information or may contain confidential information the release of which would be an invasion of the appellant's privacy.

4. Additional Agenda Requirements (Ref: SRTF Phase I Report, pg. 13)

The SRTF recommends that every agenda 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. The SRTF also recommends that the agenda identify all documents that will be provided to the body in connection with an agenda item.

The Retirement Boards request exemption from this requirement since they confront complex issues and it is not always possible to specify on the agenda any "proposed" action. The eventual action taken by one of the Boards often arises during the course of the discussion at the meeting. To restrict the Boards to action proposed on the agenda would seriously impair their operations. The Boards recommend that when action is to be taken, the item be noted on the agenda as an action item (as opposed to an item for discussion only).

Furthermore, the Retirement Boards consider a significant number of documents at each meeting. Identifying them in the agenda would be significantly burdensome and would not appear to advance significantly the public's ability to be informed and to participate in the discussion of the item. In addition, it is impossible to identify all documents that "will be provided" unless members of the public and Plan participants are to be precluded from submitting documents at the meeting. In addition, this would be unwieldy and confusing when listing large packets such as disability applications. The Boards request that they be exempted from the requirement to list all documents.

The DCAC notes that it is not possible to list all documents that "will be provided" in connection with an agenda item unless Plan participants and members of the public are precluded from submitting additional information at the meeting. In addition, listing all documents on the agenda can be cumbersome. The DCAC requests an exemption from the requirement to identify documents submitted in connection with an application for an unforeseen emergency withdrawal.

5. Recording Meetings (Ref: SRTF Phase I Report, pg. 15)

   The SRTF recommends that all open meetings of the City Council, Redevelopment Agency Board, Rules and Open Government Committee, Planning Commission, and Elections Commission be video recorded. However, from time to time, the Elections Commission asks witnesses to voluntarily leave its hearings. If the hearings were video recorded and streamed live over the Internet or televised on Channel 26, the Commission's purpose in asking witnesses to leave voluntarily could be circumvented.

6. Public Testimony (Ref: SRTF Phase I Report, pg. 16)

   One of the origina1 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: (l) 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 and 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. Staff notes that it is often difficult to determine who qualifies as a Neighborhood Group or Community Association Designee in order to extend the time for public testimony; staff does believe that additional time would be appropriate for speakers representing Council-appointed advisory bodies. In any event, the City Attorney is concerned about the constitutional implications of extending additional time to any select group.

7. 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 of the proposed policy bodies identified by the Task Force would be a significant staffing impact.

   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 includes a list of documents filed for each agenda item) takes time and skill.

   Boards and Commissions also expressed concern with the requirement of preparing minutes of each meeting and posting them no later than ten business days after the meeting, citing limited staff resources. Specifically, the Retirement Boards, DCAC and Civil Service Commission recommend that instead of posting draft minutes, the requirement be that a synopsis of the items discussed, the action taken and the vote of the members be posted. The

Office of the City Clerk concurs with this recommendation as it relates to the posting of the synopsis for City Council meetings.

8. Public Subsidies (Ref: SRTF, pg 11)

The SRTF recommends that for public subsidies of a $1 million or more, staff reports and supporting documents must be posted 30 days in advance of the meeting and include information on accountability, net fiscal impacts, net job impacts, housing impacts, source of funds, and neighborhood impacts.

In April 2007, when the City Council approved the Cost-Benefit Analysis Pilot Program, it chose not to approve specific definition of public subsidies and instead directed that potential projects for inclusion in the Pilot Program with a value over $1 million be brought to the Council for its consideration. The proposed FMC/iStar Development has been identified as the first project for inclusion in the pilot project.

On August 28, 2007, the City Council voted to incorporate all of the SRTF recommendations into the Cost Benefit Analysis Pilot Program. During the deliberations, Council stated its intent to review the progress of the Cost-Benefit Analysis Pilot Program at the completion of six projects and to make appropriate changes to the program at that time. Once this review is complete, Council will consider how to incorporate the lessons learned from the pilot program into an adopted Sunshine Ordinance. Staff recommends that the Council defer any additional action on the public subsidy components of the Sunshine Ordinance until the Cost-Benefit Analysis Pilot Program is completed.

Ancillary Bodies

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 previously noted in Section 1 concerns both with extending the requirements for ancillary bodies to informal and ad hoc advisory committees created by department heads and with 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).

Staff also has significant concerns with the number of ancillary bodies that may be affected by the SRTF's recommendations. Staff suspects there are numerous working committees that advise the various boards, commissions and committees that have not yet been identified. The requirement to notice, agendize, and accommodate the public's attendance may exceed the City's available meeting room capacity and, consequently, its ability to provide reasonable accommodations for such meetings and will have a significant staffing impact. In most instances, a single staff person supports these policy bodies as a part of his or her overall job responsibilities.

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

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

The SRTF recommends applying certain requirements to "non-governmental bodies" (NGBs). Under the proposed definitions, a City contractor would be a non-governmental body if: 1) it operates or maintains a community center or a City facility with a value over $5 million; or, 2) it provides a defined set of direct services and receives more than the City Manager's contracting authority in a year (currently, $250,000 for professional services).

NGBs would be assigned to a policy body and required to provide annual written reports indicating compliance with contract requirements. Supplemental reports would also be required whenever a contractor made a significant policy or program change, as defined by the SRTF.

Staff is concerned that transferring oversight of contracts from staff to policy bodies would be duplicative, costly (in terms of time and resources for the City and its contractors) and counterproductive to the professional administration of contracts. Staff believes that the SRTF's requirements for NGBs 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.

Furthermore, GreenWaste Recovery, Inc. expressed concern about the number of contracts with the City and the requirements or penalties for non-compliance associated with those contracts. GWR also cited weekly reporting to the Environmental Services committee on the progress of fulfilling its contract and the two staff members assigned to monitor GWR activities and ensure compliance. In general, however, few comments were submitted by non-governmental bodies; of the comments received, most did not identify any barriers to implementation.

POLICY RECOMMENDATIONS/ALTERNATIVES

Recommendation 1 - Grant policy bodies and ancillary bodies the authority through a super majority vote of the body to receive information and determine whether to consider time sensitive matters, in compliance with the Brown Act, that have not met the noticing requirements of the Sunshine Ordinance.

Recommendation 2 – Exempt the policy bodies that perform quasi-judicial functions from the Public Meeting requirements of the Sunshine Ordinance *or* exempt the policy bodies that perform quasi-judicial functions from the Public Meeting requirements of the Sunshine Ordinance <u>only when they are conducting quasi-judicial hearings</u>.

Recommendation 3 - Provide an exemption to allow for supplemental memos where additional information important to the decision-making process has been received after the initial memo was released but does not change the staff recommendations.

Recommendation 4 - Provide the Chair of a policy body or ancillary body the discretion to set time limits for public testimony for their meetings.

Recommendation 5 - Require all policy bodies (including the City Council) to post a synopsis[1] of the items discussed, the action taken and the vote of the members no later than 10 days after a meeting (in lieu of detailed meeting minutes). Require the Office of the City Clerk to make available the meeting minutes[2] of the City Council and RDA no later than 30 days after a meeting.

Recommendation 6 - Defer any action on the public subsidy components of the Sunshine Ordinance until the Pilot Program is completed.

Recommendation 7 - For all ancillary bodies, establish a standing role of secretary to be filled by a member of the body to ensure the timely and accurate production of agendas, reports and meeting synopses.

Recommendation 8 – Amend the provisions for non-governmental bodies (NGBs) to instead require the contracts, performance reports, and financial reports of all NGBs to be made available on the City's web-site.

Recommendation 9 - Clarify that the title "Mayor's Budget and Policy Director" includes equivalent positions, regardless of title.

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[1] The synopsis is an efficient way to disclose actions taken by a body after the meeting. A synopsis does not capture all the information that is included in minutes. For example, while a synopsis succinctly denotes if an item is approved, adopted, denied, continued, deferred, etc., it does not include information about the documents filed related to the agenda topics, disclosure of conflict of interests, comments or public testimony, or a formal tally of the vote.

[2] The minutes are the official written record of what transpires during a meeting. The minutes contain who was present and who was absent, disclosure of any conflicts of interest, the items discussed, all public testimony received, discussion if it is germane to the final disposition, and the action, including the vote on each matter on the agenda.

SECTION 3 - CLOSED SESSION REQUIREMENTS, SECTIONS 3.1 – 3.6

Recommended Action: Consider how the closed session provisions approved by Council on August 21, 2007 should apply to policy bodies that conduct closed session (other than Council and the Board of the Redevelopment Agency), and discuss staff's analysis and the input received from these other bodies, and make recommendations about the provisions to the City Council.

BACKGROUND

On August 21, 2007, the City Council approved the Rules and Open Government Committee's amendments to the Sunshine Reform Task Force (SRTF) Phase I Report and Recommendations for Closed Session provisions for the City Council and the Board of the Redevelopment Agency (RDA) only. The City Council also directed staff to proceed with outreach to other bodies that conduct closed session and to report the findings back to the Rules Committee.

The Council did not make any decisions about audio recording closed session. The Rules and Open Government Committee has continued to discuss the issue of audio recording closed session with the intention of providing staff and the SRTF some direction on the issue. To further facilitate discussion, the Rules Committee asked the Attorney's Office to return with 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. This information has been provided in a separate memo from the Attorney's Office.

ANALYSIS

Besides the City Council and the Board of the Redevelopment Agency, six additional entities in San Jose hold closed session:

1. Civil Service Commission
2. Deferred Compensation Advisory Board
3. Elections Commission
4. Federated Employees Retirement Board
5. Police and Fire Retirement Board
6. San Jose Arena Authority

The SRTF recommended that these additional entities be subject to its Closed Session recommendations. However, the bodies that hold closed session have raised concerns about the Closed Session requirements and the impact to their day-to-day work. Staff does not believe the conduct of closed sessions for these bodies has been the cause of public criticism; staff therefore suggests that the Rules Committee consider identifying whether any problems exist in the way the six other policy bodies conduct closed session, and, if so, what practices should be addressed. By taking this measured approach, the Rules Committee can either recommend modifications to existing policy and practice for these six bodies if needed or exempt these bodies altogether from the closed session requirements.

INPUT FROM STAFF AND POLICY BODIES

The SRTF Phase I Report on closed session includes recommendations about agenda requirements, bodies that hold closed session, topics that may be discussed in closed session, closed session discussions that must be approved in open session and disclosures that must be made about closed session.[3]

On August 21, 2007, the City Council approved the Rules and Open Government Committee's recommendations and directed staff to implement the following provisions for closed session meetings of the City Council and Board of the Redevelopment Agency. A description of each requirement and the concerns of some policy bodies are identified below.

1. Agenda Requirements (Ref: SRTF Phase I Report, pg. 18)

   The Brown Act includes discretionary methods for describing closed session agenda items. The Council approved the Rules Committee's recommendation that the Brown Act descriptions be mandatory with some additional information. For example, in the case of litigation, the amount of money or other relief requested in the lawsuit would have to be described on the agenda; for real estate negotiations, the likely range of the value of property at issue would have to be specified on the agenda; in a personnel matter, the number of employees and the agency or department involved would have to be identified on the agenda.

   The Retirement Boards, which purchase or sell real property in their respective real estate portfolios, are concerned about the requirement of listing the likely range of the value of the property. They contend that this requirement could adversely affect their purchasing strategy or compromise the investment opportunity. They request exemptions from this recommendation.

   The Civil Service Commission objects to the agenda requirements about public employee discipline. The Commission states that it is limited by California case law with respect to disclosure of information in disciplinary cases involving peace officers and therefore lists the matters only by case numbers. In reference to the number of employees involved, hearings are by definition for individual employees only.

2. Bodies that Hold Closed Session (Ref: SRTF Phase I Report, pg. 19)

   The Police and Fire Retirement Board and Federated Employees Retirement Board noted that their investment and real estate committees are authorized to make certain investments and,

[3] The SRTF also recommended that all closed session discussions be audio recorded and that the recordings be made available unless the City Attorney certifies otherwise. The SRTF recommended further 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. Staff and the other bodies that hold closed session have concerns about audio recording closed session and requiring disclosure of the recordings unless the City Attorney has certified otherwise. Because the Rules Committee has not made any decision about audio recording closed session, these concerns will not be discussed in this memorandum.

consequently, may hold closed session to discuss investments. These committees should be included in this list of the bodies that hold closed session. In addition, the Boards request a procedure for adding bodies to this list in the event they delegate other authority to a committee and that the delegation include the authority to take action where closed session is permitted under the Brown Act.

3. Topics Discussed in Closed Session (Ref: SRTF Phase I Report, pg. 19)

The Council approved the Rules Committee's two recommendations about the topics permitted to be discussed in closed session. First, the Council or Board of the Redevelopment Agency cannot discuss any re-budget decisions in the context of real estate negotiations. This means that discussions about the purchase or development of real property could not include any conversation about what money would be used to do so if money was already allocated for another purpose. Second, approval to file a brief as a friend of the court must be discussed in open session unless the City Attorney advises that, because of potential liability, the matter should be discussed in closed session.

Staff raised a significant concern in the memo dated May 23, 2007 about real estate negotiations; requiring open session disclosure of any proposed development for the property and the sources of payment for the purchase before the matter is discussed in closed session could put the City at a disadvantage by requiring greater disclosure than is necessary to acquire the property. The disclosure could affect the ultimate price of the property (if the plans for development are disclosed) or timing (if the source of payment is disclosed) on any proposed development.

Given that the Retirement Boards may from time to time have to consider filing an amicus brief with respect to important cases involving retirement issues and given that the Boards retain outside legal counsel as conflicts counsel, the Boards request that the proviso be modified to read: "unless the City Attorney or other counsel retained by the policy body advises the policy body that, because of potential liability to the City or to the policy body, filing a brief as a friend of the court should be discussed in closed session."

4. Open Session Approval (Ref: SRTF Phase I Report, pg. 20)

The Council approved the Rules Committee's recommendations about changes to the noticing requirements for open session approval of certain items. In the case of real estate or labor negotiations, if the value of the agreement is less than $1M, the item must be noticed 10 days before the meeting. The value of a litigation settlement must be at least $50,000 to require 10 days notice. For real estate, labor and litigation agreements, if the expenditure exceeds $1M, the item must be noticed 14 days before the meeting.
The Retirement Boards' real estate transactions are for investment purposes, and from time to time must take action quickly concerning real estate transactions in order not to lose the investment opportunity. The Retirement Boards request that they be exempted from the requirement that real estate transactions be approved in open session. The Retirement Boards also believe that discussing proposed settlements in public could jeopardize the position of the Boards and request exemption from this requirement.

5. Disclosures After Closed Session: (Ref: SRTF Phase I Report, pg. 21)

The Brown Act requires that certain reports be made in open session about topics discussed in closed session after closed session has been held. The Council approved five changes to the practice under the Brown Act. First, although the City must report out certain information about pending litigation in open session, the Brown Act does not require routine disclosure when the City has filed or intervened in a lawsuit; the Brown Act simply requires that the City respond to an inquiry if a lawsuit has actually been filed. The Council approved routine disclosure in open session when the City or Redevelopment Agency has filed or intervened in a lawsuit. Second, the Council approved the requirement that the Council and Board of the Redevelopment Agency report in open session when either has rejected a formal claim. Third, the Council approved the requirement that reports of real estate negotiations include a disclosure of the use of funds not previously budgeted for that purpose and a full disclosure of the opportunity cost of the use of those funds. Fourth, the Council approved the requirement that appraisals used in the condemnation of property be disclosed after the condemnation proceedings have concluded. Finally, a written summary of the reports made in open session must be posted by the close of business the following day.

The Retirement Boards through their investment managers are continuously purchasing and selling equities, fixed income securities, and other investments. These transactions are included in the periodic investment reports that are part of the regular meetings of the Boards. The Boards are not clear what the purpose is for requiring disclosures about pension fund investments.

The Deferred Compensation Advisory Committee administers the trust in which the assets are held, but does not make investment transactions; the investments are self-directed by the Plan participants. The Deferred Compensation Advisory Committee requests clarification that the requirement for disclosing pension fund investments does not apply to investment decisions made by Plan participants. The Retirement Boards are unclear about the meaning of the requirement that "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." Funds for real estate purchases by the Retirement Boards come from the investment portfolio in accordance with the asset allocation policies adopted by the Boards in open session. The Boards request that they be exempted from this provision.

The Retirement Boards also request that they be exempted from the requirement that disclosures be supported by copies of any contracts, settlement agreements, or other documents related to the action that was approved in the closed session until litigation is concluded or until the real estate transaction is consummated.

Finally, the Retirement Boards request that they be exempted from the requirement that a written summary of the disclosures required to be made 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. Due to the distance between the location where the agendas are posted and the

Boards' offices, the Board requests the written summary be posted two business days after the open session.

POLICY RECOMMENDATIONS/ALTERNATIVES

Alternative 1 - Begin implementation of the closed session requirements for the additional bodies that conduct closed session with the following clarifications:

i. Implement the agenda requirements for real estate transactions for the other entities that purchase and sell real property only to the extent the information disclosed will not adversely affect the purchasing strategy or compromise the investment opportunity.

ii. Implement the agenda requirements for Civil Service Commission hearings for peace officers to be consistent with California case law.

iii. Affirm that standing committees of entities entitled to hold closed session are also entitled to hold closed session.

iv. Permit outside counsel to the other entities entitled to hold closed session to advise the entities about filing amicus briefs.

v. Exempt the requirement for open session approval of real estate transactions for those entities that purchase and sell real property for investment purposes.

vi. Clarify that the entities that manage pension funds must disclose pension fund investment transaction decisions only when made by the entity in closed session as required by the Brown Act.

vii. Affirm that the requirement that "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" will not apply to any entities except the City Council and the Board of the Redevelopment Agency.

Alternative 2 – Exempt all bodies other than the City Council and the Board of the Redevelopment Agency from the closed session provisions, and evaluate at a later time whether to phase in the requirements for these bodies.

Alternative 3 - Begin implementation of the closed session requirements for the additional bodies that hold closed session with the same provisions approved by Council for the City Council and Board of the Redevelopment Agency.

POLICY ALTERNATIVES

See Sections 1, 2 and 3 above.

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.

Staff conducted two outreach sessions specifically targeted to the policy, ancillary, and non-governmental bodies identified in the Phase I Report, as well as those additional bodies that conduct closed session. The sessions were held on: Tuesday, July 31, 2007, 1:30pm -4:00 pm, Council Chambers, and Monday, August 6, 2007, 6:00pm -8:00 pm, Council Chambers. The purpose of the sessions was to inform the impacted bodies and their staff on the public and closed session recommendations, answer any questions, and solicit input on potential barriers to implementation.

COORDINATION

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

Tom Manheim
Director of Communications

If you have any questions, please contact Eva Terrazas at 408-795-1809.

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

Staff believes that the bodies in the far right-hand column should be ancillary bodies because they either make recommendations to a policy body or their decisions may be appealed to a policy body. The SRTF believes these bodies should be policy bodies because these entities undertake significant policy discussions and make significant policy recommendations.

Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
Policy Body				
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.	1. City Council 2. RDA 3. SJ Financing Authority 4. SJ/SC Clean Water Financing Authority 5. SJ Parking Authority 6. SJ Housing Authority			1. Community & Economic Development Committee 2. Neighborhood Services & Education Committee 3. Public Safety, Finance & Strategic Support Committee 4. Rules & Open Government Committee 5. Transportation & Environment Committee
B. All boards and commissions established pursuant to the City Charter.	1. Planning Commission 2. Civil Service Commission			Council Salary Setting Commission
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,	1. Appeals Hearing Board 2. Deferred Compensation Advisory Committee 3. Elections Commission 4. Federated Employees Retirement Board 5. Historic Landmarks Commission	1. Police and Fire Retirement Board, Investment Committee 2. Police and Fire Retirement Board, Investment Committee of the		1. Advisory Commission on Rents 2. Airport Commission 3. Airport Noise Advisory Committee 4. Arts Commission 5. Bicycle and Pedestrian Advisory Committee

Deleted: and their standing committees

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
	6. Independent Hearing Panel (LEA) 7. Police and Fire Retirement Board 8. SJ/SC Treatment Plant Advisory Committee 9. Traffic Appeals Commission	Whole 3. Police and Fire Retirement Board, Real Estate Committee 4. Federated Employees Retirement Board, Investment Committee 5. Federated Employees Retirement Board, Investment Committee of the Whole 6. Federated Employees Retirement Board, Real Estate Committee 7. Arts Commission, Exec.		6. Coyote Valley Task Force 7. Disability Advisory Committee 8. Domestic Violence Advisory Board 9. Downtown Working Group 10. Downtown Parking Board 11. Early Care and Education Commission 12. Healthy Neighborhoods Venture Fund 13. Housing & Community Development Advisory Committee 14. Human Rights Commission 15. Library Commission 16. Mobile Home Advisory Commission 17. Parking and Traffic Committee 18. Parks and Recreation

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
		Committee 8. Arts Commission, Public Art Committee		Commission 19. Public Safety Bond Citizen Oversight Committee 20. San Jose Beautiful 21. Senior Citizen Advisory Commission 22. Silicon Valley Work2Future 23. Small Business Development Commission 24. Strong Neighborhoods Initiative Project Advisory Committee 25. Sunshine Reform Task Force 26. Youth Commission
		1. Council Assistants Meeting 2. Rules and Open Government		

Deleted: D.→Committees comprised of City Council staff that together represent a quorum of the City Council.¶

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
		Assistants Meeting		
D. Any body that is: 1. Created by a policy body in order to exercise authority delegated to it by that policy body; or	San Jose Arena Authority			
		San Jose Sports Authority	1. Arena Management Corp. 2. Children's Discovery Museum of San Jose 3. GreenTeam of San Jose 4. History San Jose 5. Mexican Heritage Corporation 6. Norcal Waste Systems of San	

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Deleted: <#>Exists primarily to exercise authority that has been delegated to it by a policy body; or ¶

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Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
			Jose 7. San Jose Museum of Art 8. Team San Jose 9. Tech Museum of Innovation	
2. 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.				
		1. Bringing Everyone's Strengths Together Evaluation Panel 2. Community Action and Pride Grant Program Evaluation Panel		
E. Policy body does not include any				

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Deleted: 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

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Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
committee or body that consists solely of City staff.				
F. If a body meets the criteria for more than one type of body, the definition and requirements that would result in greater public access will apply to that body.				
Ancillary Body				
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.		1. Mayor's Gang Prevention Task Force 2. Evergreen Visioning Project 3. Mayor-elect Reed's Transition Team and Subcommittees 4. Independent Police Auditor's Advisory		

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Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
		Committee 5. Citizens Corps Council 6. Community Project Action Committees 7. 5 Year Housing Planning Committee 8. Downtown Advisory Group		
B. Committees comprised of City Council staff that together represent a quorum of the City Council.				
C. 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				

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Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

Staff believes that the bodies in the far right-hand column should be ancillary bodies because they either make recommendations to a policy body or their decisions may be appealed to a policy body. The SRTF believes these bodies should be policy bodies because these entities undertake significant policy discussions and make significant policy recommendations.

Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
per City fiscal year.				
D. Ancillary body does not include any committee or body that consists solely of City staff.				
Non-governmental Body				
A. The contractor operates or fully maintains any community center or a City facility with a value of over $5,000,000; or			1. Catholic Charities 2. San Jose Repertory Theater 3. San Jose Stage Company 4. AMPCO 5. Central Parking Systems 6. Dolce International 7. Logitech Ice/Silicon Valley Sports and Entertainment 8. Palace	

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

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Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
			Entertainment 9. Los Lagos Golf Course LLC 10. San Jose Golf LLC 11. Mike Rawitser Golf Shop 12. River Street Development Group 13. San Jose Giants	
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;			1. GreenWaste Recovery 2. Browning-Ferris Industries of CA 3. California Waste Systems 4. Garden City Sanitation 5. Universal Maintenance 6. Bond Black Top	

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

Staff believes that the bodies in the far right-hand column should be ancillary bodies because they either make recommendations to a policy body or their decisions may be appealed to a policy body. The SRTF believes these bodies should be policy bodies because these entities undertake significant policy discussions and make significant policy recommendations.

Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

Definition/Criteria	Policy Bodies	Ancillary Bodies	NGBs	The SRTF and Staff Disagree
c. Sewage treatment and water utility services; d. Garbage collection services; e. Street maintenance services; or f. Library services.			7. Goodwill 8. San Jose Conservation Corps	

Entities Requiring Further Discussion

1. San Jose Downtown Association – In order to capture the Downtown Business Improvement District (BID) (as well as the Downtown Property BID, Hotel BID, Willow Glen BID and Japantown BID), subsection B(1)(f): "manages funds from a business improvement district or a property business improvement district" could be added to the definition of non-governmental body.
2. Convention and Visitors Bureau – The CVB cannot be categorized as a non-governmental body under the SRTF's definition.
3. Taxi San Jose – Taxi San Jose cannot be categorized as a non-governmental body under the SRTF's definition.
4. Police Athletic League – Staff has learned that a deed restriction limits the use of this land to a park, which also limits the value of the land. As a result, staff believes PAL would not be categorized as a non-governmental body.

Additional Entities Identified

Since the Phase I Report was released, the following entities have been created and/or identified:

Attachment A. Public Meetings: Definitions and Categorizations of Policy Bodies, Ancillary Bodies and Non-governmental Bodies

Staff believes that the bodies in the far right-hand column should be ancillary bodies because they either make recommendations to a policy body or their decisions may be appealed to a policy body. The SRTF believes these bodies should be policy bodies because these entities undertake significant policy discussions and make significant policy recommendations.

Note: While staff has made every effort to identify all the bodies that meet the SRTF's criteria, there may be additional bodies that would be subject to the SRTF's recommendations.

New Policy Bodies:

1. North San Jose Neighborhoods Planning Task Force
2. Envision San Jose 2040 General Plan Task Force

New or recently identified Ancillary Bodies:

1. Mayor's Budget Shortfall Advisory Group
2. Senior Citizen Commission – several subcommittees (need more information)
3. Human Rights Commission - 3 subcommittees (Outreach, Public Safety, HRC Liaison to the Youth Commission)
4. Airport Commission Rules Subcommittee - Rules
5. Animal Advisory Committee – residents, volunteers, representatives from the other cities we serve, no elected officials
6. Arts Commission - 4 subcommittees (Executive, Programs, Public Art, Airport Art Program Oversight Committees)
7. Airport Neighborhood Services Group - employees who meet with different neighborhood groups, not a standing committee of residents
8. San Jose Beautiful - 3 subcommittees (Neighborhood Beautification Awards, Daffodil Planting Program, Earth Balloon)
9. School Pedestrian Advisory Board
10. TPAC – TAC (technical advisory committee) subcommittee
11. City Labor Alliance - employees -Benefits Review Forum - employees, business agents, retirees
12. Contracting-In Committee - employee and union business agents -Labor Management Committees - employees

Attachment B

I. 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

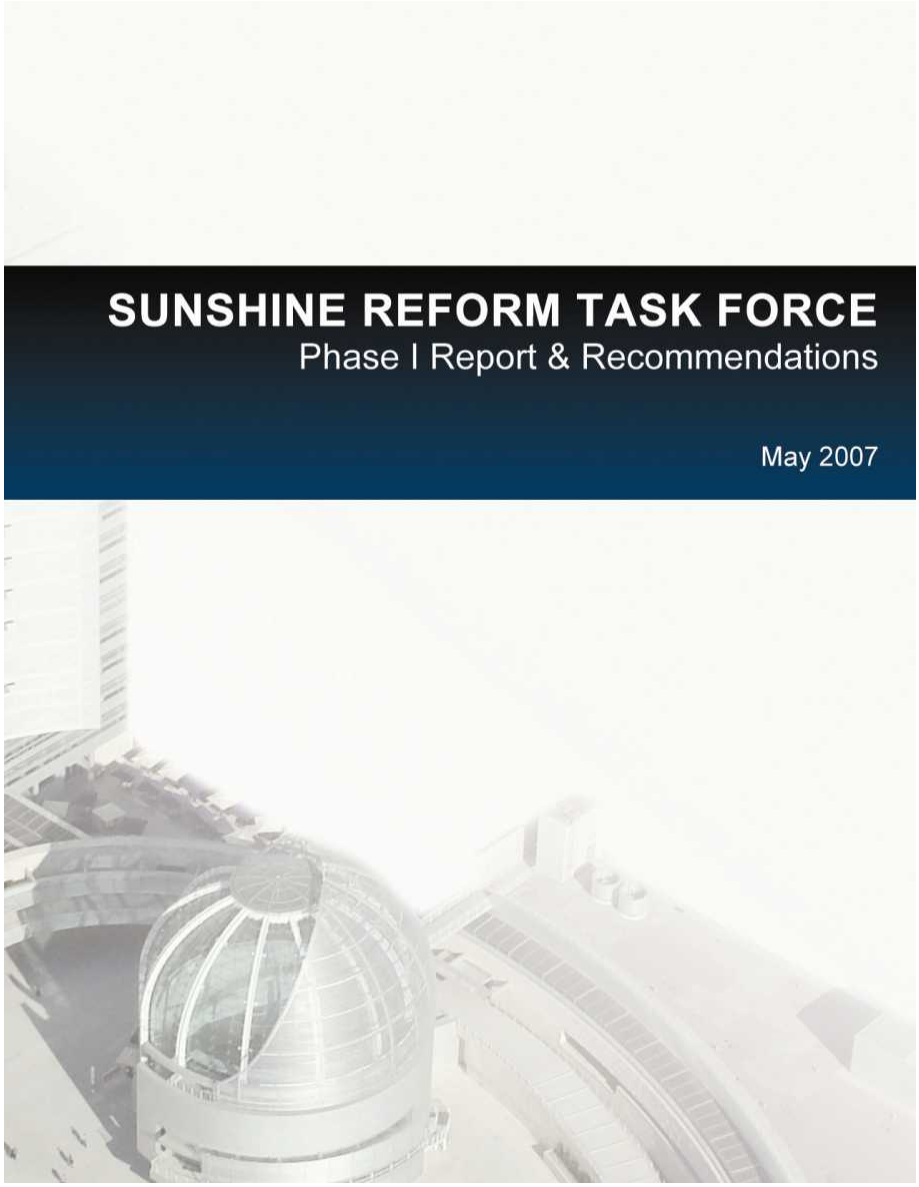
II. Summary of Requirements for Non-governmental Bodies

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

Attachment C.

Relevant Sections of the Sunshine Reform Task Force Phase 1 Report as amended by the Rules & Open Government Committee and Approved by the City Council on August 21, 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, Chair

TASK FORCE MEMBERS

Task Force Members

Bob Brownstein
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

Ed Rast, Chair
Strong Neighborhoods Initiative PAC

Mary Ann Ruiz
Parks and Recreation Commission

Nanci Williams
San José/Silicon Valley Chamber of Commerce

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Eva Terrazas
Senior Community Relations Officer

Rosa Tsongtaatarii
Associate Deputy City Attorney

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Senior Executive Analyst

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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. Committees comprised of City Council staff that together represent a quorum of the City Council. Formatted: Bullets and Numbering

C. 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. Formatted: Bullets and Numbering

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

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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 Lobbyist

"City 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, and who is required to register as a state or federal lobbyist as a result of such activity on behalf of the city.

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1.7 City staff

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

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1.8 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.

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1.9 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.

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1.10 Council staff

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

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1.11 Department head

"Department head" means a director or head of a City office or department that is under the direct authority of a Council appointee.

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1.12 Meeting

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¶
"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.¶

"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.

Deleted: and their standing committees

Deleted: D.→Committees comprised of City Council staff that together represent a quorum of the City Council.¶

D. Any body that is:

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

2. 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.

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

F. 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.

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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. [On June 27, 2007, the Rules and Open Government Committee referred to the City Attorney the question of whether closed session recordings would be subject to the Brown Act or the Public Records Act. The Committee also agreed to ask the Council at its meeting on August 7, 2007, whether the Council wanted to audio record closed session for the purpose of having the recording available to review for possible violations of the Brown Act. No further action will be taken to record closed session until the Council discusses its intentions and takes some action.] All closed sessions of the City Council and the Board of the Redevelopment Agency must be audio recorded in their entirety. Closed session recordings are confidential unless and until they are made available to the public.

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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 the purchase of real property or any proposed development of property may not include re-budget decisions.

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D. Approval given to legal counsel to file a brief as a friend of the court in any form of litigation must be discussed in open session unless the City Attorney advises the policy body that, because of potential liability to the City, filing a brief as a friend of the court should be discussed in closed

session.

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 publicly.,

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, 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

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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.

8. Formal claims rejected by the Council must be reported in a manner that identifies the name of the claimant, the name of the policy body claimed against and the substance of the claim.

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. [On June 27, 2007, the Rules and Open Government Committee referred to the City Attorney the question of whether closed session recordings would be subject to the Brown Act or the Public Records Act. The Committee also agreed to ask the Council at its meeting on August 7, 2007, whether the Council wanted to audio record closed session for the purpose of having the recording available to review for possible violations of the Brown Act. No further action will be taken to record closed session until the Council discusses its intentions and takes some action.] 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.