

August 13, 2008

Mayor Chuck Reed
San José City Council Members
San José City Hall
200 East Santa Clara Street, 18th Floor
San José, CA 95113

Dear Mayor Reed and Council Members,

The members of the Sunshine Reform Task Force believe it is necessary to provide the Council a brief letter to accompany our Phase II report, in light of the staff's response to our work.

We recognize that the staff has an obligation to critically review our work. We felt that the staff's comments on our Phase I report were reasonable and contributed to a thoughtful discussion at the Rules and Open Government Committee and the Council, leading to the adoption of a strong set of reforms for the citizens of San Jose.

However, while staff also offered valuable input to the Phase II process, its thorough rejection of the most important of our Phase II recommendations does not in our view make a positive contribution to the process ahead. Many of the staff comments regarding the Phase II recommendations call for the maintenance of the status quo. The Task Force believes that leaving city policy and procedures as they are is inconsistent with the charge we received from the City Council, as well as the community's clearly expressed expectations for change.

We look forward to discussing with Rules and Open Government Committee and the Council the reasons behind our recommendations. As council members begin their consideration, we urge them to keep in mind four critical questions:

1. **Is the time right for additional sunshine reforms?** The Sunshine Reform Task Force has committed hundreds of hours of work to its Phase II report, based on our understanding that the Council expected a strong package of open government reforms. We received extensive input from community members and organizations, many of whom recommended stronger measures than we adopted. We recognize that Sunshine Reform will be complex and ongoing, and it would not be constructive to continue the process without a strong commitment to significant change. While we have seen no wavering of the Council's commitment to its charge, we are concerned that the staff is recommending – in essence – an abandonment of the reform process. If the Council shares the staff's belief that significant additional reforms should not be undertaken, it would be helpful if council could express that viewpoint promptly.
2. **How should the financial implications of Sunshine reforms be considered?** The Sunshine Reform Task Force is fully aware of the city's fiscal difficulties. The staff position on Sunshine reform appears to be that certain recommendations should be completely rejected due to the current lack of funds. The Task Force would urge the Council to take a different approach when cost is an issue, following its long-standing

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practice of implementing partial solutions and preparing “wish lists” until funds become available. Better access to information, we believe, can make government more efficient and effective as well as result in sound fiscal decisions. The Task Force believes that transparency is a good investment.

3. **Can enforcement be effective and credible if it is not independent?** A major defect of most sunshine reform efforts is the lack of accountability and enforcement. While the precise form of an enforcement system is certainly open to serious debate, we have viewed one element to be essential: independence. If a San Jose resident issues a complaint regarding the way in which a city department, city attorney or Council has implemented the Sunshine Ordinance, that complaint should not be decided by those being challenged, as the staff recommends. The principle of independent review of government actions is as old as the doctrine of separation of powers and checks and balances in the United States Constitution.
4. **What is the true intent of the proposed Sunshine reforms?** In certain cases, the Task Force believes city staff is misreading both the intent and the actual text of the Phase 2 report. For example, the city staff claims that our proposals “significantly shorten” the time allowed to respond to public records act requests – ignoring our desire to clarify murky time frames in the Public Records Act. The most consistent misrepresentations come in the section on police records. The staff suggests that the release of records will compromise police investigations and endanger officers and community members, overlooking the Task Force’s proposals to allow the police department to withhold records when such concerns are present.

As already noted, we expect our work to receive full and careful review – by Council, staff, and the community. We have worked hard to incorporate community input and to reflect the views, constraints and experience offered by the staff in our recommendations to date.

We trust that the Council’s review will be undertaken from the viewpoint that open government reforms are a necessary part of city government’s commitment to high ethical standards and meaningful public participation. Legitimate concerns may be raised about some of our recommendations, but we hope such concerns will lead to a discussion of sensible alternatives rather than a preference for business as usual.

We look forward to a full, thoughtful and positive discussion with Rules and Open Government Committee and the entire Council’s approval of community based Sunshine recommendations with full and speedy implementation.

Thank you for your consideration.



Ed Rast, Chair