

Closed Session Principles

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The following is a list of important elements that should be considered in discussing the closed sessions provisions of the San Jose Sunshine Ordinance. In particular, this focuses on deciding when closed sessions can be held and what information about closed sessions should be made public. As the Task Force has discussed, I have tried to identify the principles that should be addressed, without identifying the specific language to be used in the ordinance. However, it will be vital for both counsel and the Task Force to ensure that the language proposed for the ordinance actually implements the intent of the Task Force. Some of that detail is in the document responding to the draft provisions.

Overall, the direction from Mayor Reed is to “adopt a Sunshine Ordinance that will make it easier for the public to know their rights and easier for the public to find out what the city is doing.” It’s not enough to just repeat what the Brown Act already says. That won’t make anything any easier for the public. I believe our goal is to change the way things are done.

Closed Session Disclosures

Principle: Prohibit *all* closed sessions by most City policy bodies.

(1) Reed Reform No. 11 says: “Prohibit closed door meetings for city task forces, commissions and committees.”

(2) City staff says there are only seven City bodies that are allowed to hold closed sessions. The ordinance should prohibit closed sessions by the others, and we should get an explanation for why the seven bodies that hold closed sessions need to continue to do so. (City Council, Redevelopment Agency, Civil Service Commission, Elections Commission, Federated Employees Retirement Board, Police and Fire Retirement Board and Deferred Compensation Advisory Committee.) For example, why does the Election Commission need a closed session?

Principle: Require fuller, more detailed descriptions of matters that are going to be discussed in closed session, both on agendas and in open session before the meeting is closed. This description must be inclusive of all items to be discussed. For example, if you are going into closed session to discuss buying a piece of property, it must be stated openly what that property is for (a ballpark, housing, etc); the negotiation itself can be closed.

(1) Reed Reform No. 10 says: “Make broader disclosures of what the Council does in closed sessions.”

(2) The Council has mostly left this up to the Task Force.

(3) The ordinance should limit the topics that can be discussed in closed session (see specific limits below).

(4) The ordinance should increase the amount and kind of information that has to be disclosed regarding actions taken in closed session, to the greatest extent possible, to protect the public interest. Specifically require that every vote taken in closed session be reported (again, specific ideas are discussed below.) Currently, under the Brown Act, roll call votes now have to be disclosed only on approved actions.

Closed Session Topics

Principle: On personnel matters, limit closed sessions regarding appointment, hiring, firing, evaluation and discipline, and require increased disclosure.

(1) Like the Brown Act and most other sunshine ordinances, all make discussions of elected officials public.

(2) Because of their considerable power and influence over City government and public affairs, evaluation and discipline of certain key appointed officials of the City and all department heads should also be public.

(3) Report out all discipline of public employees, consistent with the California Public Records Act. This will implement Reform No. 14, which says: “Disclose records of city employee disciplinary actions to the extent allowed by state law.” Note I: the law prohibits extending this to police officers. Note II: The discipline hearing itself will be closed for all but the most major officials. This says only that the results of the discipline have to be reported out in open session.

Principle: On real estate matters, limit closed sessions regarding negotiations, and require advance disclosure of real estate agreements.

(1) Clarify that closed sessions regarding real estate negotiations may not address *any* subjects other than instructions from the City Council to its negotiators regarding the price and terms of payment (see attached Mercury News story).

(2) Require that policy bodies identify the properties at issue *and any development plans regarding the property* in open session, so that proposed development of property being considered for purchase or sale cannot be discussed in closed session.

(3) Require public disclosure of all proposed agreements, after the agreements are negotiated, but *before* the deal is approved in a public vote. Otherwise, the public has no meaningful input on these agreements. Note: San Francisco now does

this with respect to collective bargaining agreements. This also is similar to the Reed Reform requiring this of collective bargaining.

Principle: On labor negotiations, limit closed sessions and require advance disclosure of contracts.

(1) Require the disclosure of union contracts and final contracts with key officials after they are negotiated, but *before* they are approved in a public vote. Otherwise, the public has no meaningful input on labor agreements.

(2) Incorporate Reed Reform No. 8: “Disclose all offers made to city unions for pay or benefit increases when the offers are made.”

Principle: On litigation matters, require greater disclosure of information.

(1) Require disclosure of all significant settlements after they are negotiated, but *before* they are approved. Note: now, settlements are disclosed, but after they are approved. Note II: San Francisco makes settlement agreements available to the public 10 days before they are voted on in public.

(2) Specify that the City may not enter into confidential settlements.

Principle: Require recording of closed sessions, and preservation of the recordings. Provide for disclosure of recordings when the justification for the closed session has passed.

(1) Implement Reed Reform No. 17: “Record all Council closed session meetings electronically and make the information available after the reason for secrecy has passed.”

(2) See detailed closed session documents for specific recommendations.