

To: Sunshine Reform Task Force Members
From: Public Meeting Subcommittee
(Ken Podgorsek, Bob Brownstein, and Ed Rast)
Date: February 12, 2007
Subject: "Public Meeting" Subcommittee Recommendations

The Public Meeting Subcommittee met on February 8, 2007. The Subcommittee reviewed a memo from Ed Davis, counsel to the Task Force, and comments from Dan Pulcrano, Bob Brownstein and Nanci Williams, all of which are attached to this memo and labeled Attachments 2, 3, 4 and 5, respectively. After considering these comments, the Subcommittee discussed the definitions of "policy body" and "ancillary body", the remaining provisions concerning public meetings and makes the following recommendations:

Revised Definitions

Policy body.

"Policy body" means:

- A. The City Council, Board of the San Jose Redevelopment Agency, San Jose Financing Authority, San Jose Clean Water Financing Authority, San Jose Parking Authority and all committees or other bodies of the City Council or Board of the San Jose 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 Jose Redevelopment Agency, San Jose Financing Authority, San Jose Clean Water Financing Authority, San Jose Parking Authority or any other policy body.
- D. Committees comprised of City Council staff that together represent a quorum of the City Council.
- E. Any body that is:
 - 1. Created by a policy body in order to exercise authority delegated to it by that policy body; or
 - 2. Exists primarily to exercise authority that has been delegated to it by a policy body; or
 - 3. Receives funds from the City and has on its governing body a member of a policy body or his or her designee with full voting rights.

- F. Any body that allocates, or advises a policy body or Department Head regarding the allocation of, more than \$200,000 in City funds.

Examples of policy bodies (this is a draft and thus an incomplete list):

City Council, Board of the San Jose Redevelopment Agency, San Jose Financing Authority, San Jose Clean Water Financing Authority, San Jose Parking Authority, Planning Commission, Civil Service Commission, Council Salary Setting Commission, Council Committees, Official City Board, Commissions and Committees, Council Assistants Meeting, Rules and Open Government Assistants Meeting, Team San Jose, CAP, OCA, Healthy Neighborhoods Venture Fund, CDBG, Arts Commission, San Jose Beautiful

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, the City Manager, the City Attorney, the City Clerk, the City Auditor, the Independent Police Auditor, the Executive Director of the San Jose Redevelopment Agency or a Department Head.
- B. Ancillary body does not include any committee or body that consists solely of City staff.

Examples of ancillary bodies include (this is a draft and thus an incomplete list):

Mayor’s Gang Prevention Task Force, Evergreen Visioning Project, Mayor-elect Reed’s Transition Team and Subcommittees

Non-governmental body.

“Non-governmental body” means:

A board or multimember body that governs a private corporation, limited liability company or other entity that exercises authority over City services that has been delegated to it by a policy body and receives more than \$200,000 in City or San Jose Redevelopment Agency funds per City fiscal year.

Examples of non-governmental bodies include (this is a draft and thus an incomplete list):

Children’s Discovery Museum, Tech Museum of Innovation, San Jose Museum of Art, San Jose Historical Museum, Mexican Heritage Corporation, Repertory Theatre, Theatre on San Pedro Square, American Musical Theatre, San Jose Stage Company, MACLA (Movimiento de Arte y Cultura Latino Americana), MACSA (Mexican-American Community Services Agency), Santa Clara Family Health Plan, Municipal Health Services (MHSP), San Jose Conservation Corps, Breakout Prison Outreach (dba California Youth Outreach), Catholic Charities of Santa Clara County, Pathway Society, Inc., Japantown, Cultural Community Center Development Project – Korean American Community Services, Inc., Fair Housing Investigation and Enforcement Servies – Project Sentinel, Merlin San Jose – Silicon Valley Economic Development Corporation, San Jose Smart Start Family Child Care – San Jose Library, Kubra, ING, Norcal, Greenwaste, AMPCO, Technology Center, Goodwill

Non-City governmental body.

“Non-City governmental body” means:

A board or multimember body that governs a non-City governmental body that exercises authority over City services that has been delegated to it by a policy body and receives more than \$200,000 in City or San Jose Redevelopment Agency funds per City fiscal year.

Examples of non-City governmental bodies include (this is a draft and thus an incomplete list):

Oak Grove School District, San Jose Unified School District

Requirements for Non-governmental and Non-City governmental bodies.

- A. Every new or renewed contract with a non-governmental or non-City governmental body must include a provision that the non-governmental or non-City governmental body agrees to comply with the terms of this section.
- B. Every non-governmental and non-City governmental body must be assigned to a policy body that has oversight over the non-governmental or non-City governmental body.
- C. When a non-governmental or non-City governmental body makes any decision about a policy issue that would have been made by a policy body if the authority had not been delegated to the non-governmental or non-City governmental body, it must do so in the form of a recommendation to the policy body that has oversight over the non-governmental or non-City governmental body. The non-governmental or non-City governmental body may implement the recommendation about the policy issue only if the policy body approves the recommendation. For purposes of this section, policy issues include, but are not limited to:

1. Adoption of or amendments to budgets;
2. Levels of service;
3. Allocation of services to different areas or populations;
4. Number and qualifications of staff;
5. Maintenance and preservation of public facilities and/or property;
6. Any decision that may place the City or the public at risk of significant financial loss, property damage or personal injury.

Remaining Public Meeting Provisions

The Subcommittee evaluated the remaining provisions (Sections 2.5 – Sections 2.13) for Public Meetings as drafted in Document A. Attachment 1 provides a matrix outlining the Subcommittee's recommendation for the remaining provisions.

PUBLIC MEETING SUBCOMMITTEE
DRAFT RECOMMENDATIONS FOR REMAINING PUBLIC MEETING PROVISIONS
Policy Body v. Ancillary Body v. Brown Act

***NOTE: The highlighted cells identify the provisions previously reviewed and approved by the Task Force. Italicized cells denote Subcommittee recommendations.**

	Policy Body	Ancillary Body	Brown Act
Agenda Posting–Regular Meeting	10 calendar days	4 calendar days	72 hours
Staff Reports–Regular Meeting	10 calendar days	<i>4 calendar days</i>	Not specified.
Staff Reports – Expenditures of \$1M or More– Regular Meeting ¹	14 calendar days	<i>N/A</i>	Not specified.
Supplemental Staff Reports–Regular Meeting	5 calendar days	<i>N/A</i>	Not specified.
Council Memos–Regular Meeting	3 business days	<i>N/A</i>	Not specified.
Action Taken by Council	<i>Brown Act</i>	<i>Brown Act</i>	No action or discussion shall be taken on any item not identified on the posted agenda, except that members may make certain brief statements, ask questions or make a referral to staff. A legislative body may take action on items not identified on the posted agenda when (1) a majority votes that an emergency exists; (2) 2/3 of the members vote that there is a need to take immediate action; or (3) the item was posted on an earlier agenda.

¹ Note, this provision is an original reform referral from the City Council (Public Information Reform #4) which required a detailed accounting of all City contracts and expenditures of \$1 million or more to be made available to the City Council and public, on-line, no later than 2 weeks prior to being heard. Otherwise, a 2/3 majority vote of the Council would be required to hear an item that was received less than 2 weeks prior to the hearing.

	Policy Body	Ancillary Body	Brown Act
Agenda Posting – Special Meeting	<ol style="list-style-type: none"> 1. 4 days 2. May not be noticed on the same day as a previously scheduled regular meeting to consider same items 	24 hours	24 hours
Access to Meetings	<i>Brown Act</i>	<i>Brown Act</i>	Meetings must be held in facilities that (a) do not discriminate on the basis of race, religion, color, national origin, ancestry or gender; (b) comply with the Americans with Disabilities Act; and (c) do not require a member of the public to pay money or make a purchase.
Recording and Photography	<ol style="list-style-type: none"> 1. <i>Brown Act</i> 2. <i>City Council, Rules and Open Government Committee, Planning Commission and other Quasi-judicial bodies must video record meetings.</i> 3. <i>All other Policy Bodies must audio record meetings.</i> 4. <i>Recordings to be kept for 2 years.</i> 	<ol style="list-style-type: none"> 1. <i>Brown Act</i> 2. <i>Audio record meetings or provide action minutes</i> 3. <i>Recordings to be kept for 2 years.</i> 	Recording and broadcasting of public meetings is permitted unless the governing body makes a reasonable finding that the recording constitutes a persistent disruption of the proceedings.

	Policy Body	Ancillary Body	Brown Act
Public Testimony²	<ol style="list-style-type: none"> 1. <i>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.</i> 2. <i>Can not abridge public criticism.</i> 3. <i>Agenda changes announced at beginning of meeting.</i> 	<ol style="list-style-type: none"> 1. <i>Brown Act</i> 2. <i>Can not abridge public criticism.</i> 3. <i>Agenda changes announced at beginning of meeting.</i> 	At regular meetings, the public is entitled to comment on any item of interest; at special meetings, the public is entitled to comment on items on the agenda. The governing body may prescribe a time limit on the speakers.
Written Statements	<ol style="list-style-type: none"> 1. <i>Brown Act</i> 2. <i>Written statements become part of the public record.</i> 	<ol style="list-style-type: none"> 1. <i>Brown Act</i> 2. <i>Written statements become part of the public record.</i> 	Members of the public may submit written statements.
Minutes³	<ol style="list-style-type: none"> 1. <i>Current practice for Council meetings extended to all Policy Bodies</i> 2. <i>Minutes provided no later than 10 days after the meeting.</i> 	<i>Action minutes or audio recording</i>	Minutes are not required to be prepared for any meetings.

² Recall that one of the Council Reform Referrals (Neighborhood Participation Reform # 5) is to expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group or Community Association Designees" or those subject to an eminent domain action, clarify the speaking time allowed to a representative from an advisory commission, and create a strategy to address recently identified challenges to public participation for those with disabilities. Recall also that, even though the Task Force decided that expanding the time for the public to speak was appropriate, the expansion of time should be applied without discrimination.

³ Recall that one of the Council Reform Referrals is that (1) City Council and committee meeting minutes must more accurately reflect the actual meeting discussions; (2) public meeting videos should be immediately available after on-site meetings on the city website; and (3) public meeting videos should be available no later than 3 days after the meeting for off-site meetings or in the event of technical problems.

	Policy Body	Ancillary Body	Brown Act
Public Comment by Members of Policy Bodies	<ol style="list-style-type: none"> 1. <i>Members may comment freely.</i> 2. <i>Policy Body will not sanction, reprove or deprive members to express judgments or opinions.</i> 	<i>N/A</i>	Not specified.
Conflict Disclosures⁴	<i>Adhere to Disclosure and Sharing of Material Facts Policy No. 0-32</i>	<i>N/A</i>	Not specified.

NOTE: Two provisions under Public Meetings – Section 2.5 (Public Notice Requirements) and Section 2.13 (Senior Staff Meetings Open to Public) do not relate to meetings of policy bodies or ancillary bodies and thus are not included in the matrix above. These provisions should also be discussed and decided by the Task Force.

Subcommittee Recommendations:

Section 2.5 Public Notice Requirements – Accept provisions outlined in Document A, Section 2.5 requiring public notice to residents residing within a specific area to be brief, concise, easily understood. Inform the residents of proposal or planned activity, provide location to access additional information or submit written comments (to become official public record). In addition, incorporate requirements as outlined in Policy 6-30: Public Outreach for Land Use/Development Proposals.

Section 2.13 Senior Staff Meetings Open to Public – Delete requirement.

⁴ Recall that one of the Council Reform Referrals (Public Information Reform # 9) requires policy body members to disclose conflicts, in writing, 24 hours before a meeting. Recall also that at the 11/16/06 meeting, the Task Force endorsed staff's approach to implementation but recommended that the City address enforcement (i.e, what are the penalties for non-disclosure of conflicts of interests?).

Attachment 2

From: Davis, Edward P. Jr. [edavis@orrick.com]
Sent: Tuesday, February 06, 2007 12:24 PM
To: Herrick, Lisa; edrast@ix.netcom.com; edrast.sanjose@gmail.com; execdir@unsc.org; dp@boulevards.com; Tucker, Sheila; bbrownstein@atwork.org
Subject: Policy Body/Ancillary Body/Non-Governmental Body

Attachments: Sunshine Memo.pdf
All:

I am sending my ideas to those who have expressed a particular interest in the Policy Body/Ancillary Body subject. This effort should be used as a basis for discussion and thought; it is not meant to be dogmatic. However, it takes into account a number of issues raised during last Thursday's meeting.

As this approach contains some new ideas, let me begin with three related thoughts I have expressed before.

First, are we looking for a solution without a problem? Do we need to catch organizations that fall within my definition of Non-Governmental Bodies ("NBG")? [Please note that I am not wed to that name; I chose it for ease of reference.]

Second, it might be helpful to work backwards, i.e., pick an organization of particular interest and see if public access is important and what type of burden access would create. This is also helpful to see if the scheme actually works. I've provided a couple of examples below.

Three, if the addition of the Non-Governmental category is unnecessary, too complex or too burdensome, drop it and move on.

Here is what I did and why. Note that the non-highlighted text in the attached memo is language to which I believe the TF has agreed.

I have added three categories to Public Body that we have discussed and about which I think there is agreement. We dropped them as we tried to build a more comprehensive definition and to avoid redundancy. They parallel in large part the Brown Act; I have noted the differences. (See E(1-3).) The NGB category can be eliminated without affecting these additions. .

After initially disagreeing with Ken's idea about creating a third category, upon further review, I think he's right. Lumping companies and non-profits in with actual government bodies is too cumbersome and logically inconsistent. Creating a separate type of body, allows you can make access requirements even less stringent than those applicable to Ancillary Bodies if you choose. [Note: I did not attempt to establish what access standards or burdens apply to Ancillary or NGBs.]

Rather than attempting to narrow definitions of Core City Services, I simply made it clear what the intent of the ordinance is: Access is allowed when discussing Core City services **and** when such topics would otherwise be discussed by the delegating Policy Body. I believe we all agree this is the goal we would like to achieve. Meetings to discuss administrative matters or matters that would place the NGB at a competitive disadvantage would not be public. Pre-Sunshine contracts are grandfathered and access is not required if prohibited by Federal or State law.

We have attempted to define policy discussions in a number of ways, e.g., core services, amount of money. It is still hard to pin down. Thus, I established a process to resolve disputes about whether it's a policy matter or not.

First, during the contracting or funding process, the City would initially decide if the body is an NGB or not. Remember, to qualify as an NGB, authority has to be delegated to it in the first place. Thus, not all (in fact most) contracts would create an NGB relationship. If either the contracting body or a member of the public disagrees with designation or lack thereof, there is an appeal process to the same body that decides other Sunshine disputes.

Second, if the City does decide the body is an NGB, the contract requires compliance with the Sunshine ordinance.

Third, If there is an issue whether a particular topic should be discussed in public or not, the dispute resolution entity is there to help, either pre- or post-meeting.

Does this work? Let's look at a couple of examples?

Example A: The City is considering installing cameras to catch speeders and traffic light runners. It signs a contract with an engineering company. If the City delegates to the company the ability to decide whether to install cameras in the first place, that's a policy decision that would typically be considered by a policy body. Discussion of that decision would have to be made public. If the City delegates to the Company the ability to decide where to place the lights, that probably would be administrative (unless such decisions have historically been made by a policy body).

Example B: The City retains an adviser/broker to make investments of City funds. In San Jose, I do not believe individual investment decision have historically been made by a policy body. Such meetings at which such decisions were made thus would not be subject to public access.

I would suggest that you take a look at the lists or organizations provided by the City at our last meeting that staff believed would meet our earlier definitions of policy body and ancillary body. Where do they fit in under this new process?

All of this sounds, complex, but I'm not sure it really is. Having said that, however, is this a process that is necessary given what agencies it would encompass and is it too burdensome? Let me know if you have any questions. I'll be out of the country next week, but available by email.

Best,

Ed

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IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.



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MEMORANDUM

To Lisa Herrick
Ed Rast
Dan Pulcrano
Ken Podgorsek

FROM Edward P. Davis, Jr.

DATE 2/6/07

RE San Jose Sunshine Task Force

Policy body.

“Policy body” means:

- A. The City Council, the Board of the City Redevelopment Agency, the San Jose Financing Authority, the San Jose Clean Water Financing Authority, the San Jose Parking Authority and all committees or other bodies of the City Council or the Board of the San Jose Redevelopment Agency, whether permanent or temporary, decision making or advisory.
- B. All boards and commissions established pursuant to the City Charter.
- C. All commissions, boards, committees or other bodies created by ordinance, resolution or other formal action of the City Council, the Board of the San Jose Redevelopment Agency, the San Jose Financing Authority, the San Jose Clean Water Financing Authority, the San Jose Parking Authority or any other policy body.
- D. Committees comprised of City council staff that together represent a quorum of the City Council.

E. Any entity that is:

- 1. Created by a Policy Body in order to exercise authority delegated to it by that Policy Body; or [Note: This expands Brown Act to include delegation by *any* Policy Body, not just an elected body.]**
- 2. Exists primarily to exercise authority that has been delegated to it by a Policy Body; [Note: There is no equivalent in Brown Act] or**
- 3. Receives funds from the City and has on its governing body a member of a Policy Body or its designee with full voting rights. [Note: This parallels Brown Act, but adds designee.]**

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, the City Manager, the City Attorney, the City Clerk, the City Auditor, the Independent Police Auditor, the Executive Director of the San Jose Redevelopment Agency or a Department Head.**
- B. Ancillary body does not include any committee or body that consists solely of City staff.**

Non-Governmental Body definitions [New].

Non-governmental Body means:

A board or other multimember body that governs a private corporation, limited liability company, or other entity that exercises authority over Core City Services that has been delegated to it by a Policy Body and:

- 1. Receives more than \$200,000 in City funds per year; or***
- 2. Receives more than 50% of its operating budget from City funds per year.***

Core City Service means:

Maintaining and protecting health and safety;

Performing municipal financial operations;

Operating public infrastructure such as libraries and community centers that provide basic services to residents;

Operating sewage systems, water systems, or other utilities;

Maintaining and managing parks and roadways;

Exercising municipal regulatory authority;

Managing or operating recreational, sports, or performing arts facilities or

Making decisions about land use.

Access to meetings of a Non-Governmental Body [New].

- 1. Public Access shall be permitted to those portions of meetings of a Non-Governmental Body:**
 - a. When that body is discussing Core City Service topics; and**
 - b. When such topics would be, absent the delegation of authority from the Policy Body, considered by the Policy Body itself.**

- 2. Public access to meetings of a Non-Governmental Body shall not be mandated if:**
 - a. The matter being discussed would be subject to an exception enumerated in the Brown Act if the topic were being considered by a Policy Body;**
 - b. Access by the public would place the Non-Governmental Body at a specific competitive disadvantage;**
 - c. The topic being discussed is purely administrative;**
 - d. Access is prohibited by State or Federal law.**

- 3. In the event the requirements of this provision conflict with valid contractual obligations conferred by a contract existing on Effective Date of this ordinance, the terms of the contract shall apply.**
 - a. Prior to entering into a contract, the City shall determine whether the contracting party is a Non-Governmental Entity, *i.e.*, whether the City has delegated authority to it for Core City Services and whether the contracting party receives more that \$200,000 in City funds per year or receives more than 50% of its operating budget from City funds per year.**
 - b. If the City makes such a determination, the contract shall require the contracting party to comply with the terms of this provision.**

Attachment 3

From: Dan Pulcrano [dpulcrano@Metronews.com]
Sent: Tuesday, February 06, 2007 1:15 PM
To: Davis, Edward P. Jr.
Cc: bbrownstein@atwork.org; Tucker, Sheila; Herrick, Lisa;
execdir@unsc.org; edrast@ix.netcom.com
Subject: Re: Policy Body/Ancillary Body/Non-Governmental Body

Ed. thanks for the clear explanations and helpful examples.

I'd like to propose the following refinements:

1. In the memo, change NGB point 1 to read:

"Receives more than \$200,000 in City funds per year and such funds represent more than 5% of such entity's annual budget, or"

2. That competitively bid product purchases not be construed as "City funds"

3. That "core city services" include convention facilities and public assembly places.

Thanks,

Dan

Attachment 4

From: Bob Brownstein [bbrownstein@atwork.org]
Sent: Thursday, February 08, 2007 12:15 PM
To: Davis, Edward P. Jr.; Herrick, Lisa; edrast@ix.netcom.com; edrast.sanjose@gmail.com; execdir@unsc.org; dp@boulevards.com; Tucker, Sheila
Cc: unitedneighborhoods@gmail.com; nwilliams@orloffwilliams.com
Subject: RE: Policy Body/Ancillary Body/Non-Governmental Body
Attachments: NGB Comments.doc

Hello All-

I'd like to offer some preliminary thoughts on Ed's useful new ideas.

First, I definitely do not think we are seeking a solution without a problem. In fact MOST of the major ethical or fiscal misadventures the city has experienced over the last few years directly involved NGB's; just review the list - Cisco, NorCal, Northside, San Jose Rep.

Second, one of the points we'll need to focus on is how to identify the kinds of decisions on which we want to require sunshine, as opposed to merely administrative actions. To further that discussion, I include an attachment which follows Ed's advice and works backwards - starting with organizations and issues.

Hope this is helpful.

Bob

Non-Government Bodies: Thinking About Examples

1) Problems from Recent History

- a) NorCal
Clearly, the public should have known that NorCal was negotiating an agreement with a recycling subcontractor premised on the expectation of higher reimbursement from the City of San Jose. More generally, any major financial decision by a NGB that will lead to the requirement of additional City expenditures or generate a request for additional city expenditures should be public. The best way to do this is to make adoption of budgets and budget amendments take place in open session.
- b) Northside Community Center
The decisions to significantly change the services that the agency provided should have been made in public. More generally, the decisions to adopt service plans or significantly alter service plans should be open to the public.
- c) San Jose Rep
The decisions to approve expenditure plans without adequate revenues, thereby risking the financial stability of the organization, should have been made in public. More generally, any decision that places at risk the ability of a NGB to fulfill its contract or to operate/maintain a public facility should be made in public.

2) Ed's examples

- a) Cameras to catch speeders
In addition to the decision to use cameras in the first place, the criteria to be used to determine the sites for the cameras would be a policy decision. For example, should they be at heavily traveled streets, near schools, where accidents have happened. Once the criteria have been adopted, the decision about whether the intersection of Lincoln and Willow meets the criteria would be an administrative one.
- b) Investment Advisors
The criteria to be used in investing city funds would be made in public. These criteria could be to avoid risky hedge funds (remember the \$60 million dollar loss) or to avoid investing in South Africa (if that's what the policy body wanted to do). Selecting investments that meet the criteria would be administrative.

3) Bob's Suggestions

On Dec. 20th, I offered the Task Force some ideas regarding the definition of policy issues for application to NGB's. I repeat those suggestions below.

"For the purposes of this section, policy issues include, but are not limited to, the following categories:

- a) adoption of, or amendments to, budgets;
- b) levels of service;
- c) allocation of services to different areas or populations;
- d) number and qualifications of staff;
- e) maintenance and preservation of public facilities and/or property;
- f) any issue that involves placing the City or the public at risk of significant financial loss, property damage, or personal injury. "

Attachment 5

From: Nanci Williams [nwilliams@orloffwilliams.com]

Sent: Thursday, February 08, 2007 2:11 PM

To: Bob Brownstein

Cc: Davis, Edward P. Jr.; Herrick, Lisa; edrast@ix.netcom.com; edrast.sanjose@gmail.com; execdir@unsc.org; dp@boulevards.com; Tucker, Sheila; unitedneighborhoods@gmail.com

Subject: Re: Policy Body/Ancillary Body/Non-Governmental Body

Bob -

First, thank you for forwarding to me Ed's new draft and informing me of the meeting today. While I first thought I could make that meeting, I now have a conflict that will prevent me from doing so. I did review the draft, and believe it addresses many of the concerns I had about making corporations and non-profits "Ancillary Bodies" of the City. I particularly like the fact that - when dealing with NGBs - the new draft specifies that the task force is only looking for "sunshine" on the NGB's dealings with the City - not everything they do.

The examples you cite, Bob, are good examples of what I'm talking about. No one questions whether or not Cisco is an ethical corporation and there are State and Federal agencies in place to oversee their corporate behavior. It was the City's handling of an RFP process that was found improper. I don't recall any wrongdoing on the part of Cisco or its employees. NorCal is a similar story, although its top local executive was indicted as well as the Mayor, if I recall correctly. In my opinion, the Norcal incident could have been avoided if there was more sunshine on the Mayor's office, and on the contracting process - without casting the net wider to include NorCal.

As for non-profits, my concern differs slightly, and is probably addressed in this new draft as well. My familiarity is with The Rep and The Tech Museum, both of whom are my clients. Both of these groups receive significant contributions from corporations and individuals, in addition to the funds they get from the City. Their Board meetings are often where these gifts and grants are discussed, along with conditions and stipulations of receiving the funds. It seems to me that a wealthy individual or corporation interesting in making a sizable gift to one of these organizations would be less inclined to do so if that entity were to become an Ancillary body of the City of San Jose that was subject to Sunshine requirements. We could find ourselves with a non-profit community that was wholly dependent on the City for funds in our attempt to see the need for additional funding in advance of the request.

As for Northside, I think it is a good example of why it is important to NOT exempt small NGOs. If a company or non-profit is so small that it would find sunshine requirements unworkable, they are probably going to have difficulty managing a government contract at all. I do not have the time to wordsmith my comments, so hopefully my stream-of-consciousness understandable.

Take care.

- Nanci