



# Memorandum

**TO:** SUNSHINE REFORM  
TASK FORCE

**FROM:** Tom Manheim, Communications Director  
City Manager's Office

**SUBJECT:** SEE BELOW

**DATE:** March 10, 2008

---

Approved

---

**SUBJECT: STATUS OF RULES COMMITTEE DECISIONS ON REMAINING PHASE I  
SUNSHINE REFORM TASK FORCE RECOMMENDATIONS**

## **BACKGROUND**

In October 2007, the Rules and Open Government Committee (Rules Committee) began reviewing the Sunshine Reform Task Force Recommendations on the three remaining Phase I topics: Definitions of Categories of Entities Impacted by the Recommendations, Public Meeting Requirements and Closed Session Requirements. The Rules Committee considered current practices and heard testimony from the affected entities and City staff about the practical impacts of the Recommendations. The Task Force Chair and other Task Force members also gave input on the Task Force's intent for specific recommendations. As needed, the Committee directed staff to conduct additional analysis.

The attachments to this memorandum show the final Rules Committee decisions, the Task Force Recommendations, and current practices as available, for: 1) the Council and Redevelopment Agency, 2) Council Committees, and 3) City Boards, Committees and Commissions. The differences between the Task Force Recommendations and the Rules Committee decisions are discussed below. The Committee will continue its review of Public Meeting Requirements and Closed Session Requirements and staff anticipates concluding the process in April 2008.

## **ANALYSIS**

### **Terminology for Categories of Entities**

For purposes of clarity and consistency, the Rules Committee chose to apply the terms most commonly used in the City organization for the numerous entities impacted by the proposed Sunshine Ordinance, as opposed to using the terms "Policy Body" and "Ancillary Body" as recommended by the Task Force. The Rules Committee has considered these entities in the

following groupings: 1) San Jose City Council and San Jose Redevelopment Agency; 2) City Council Committees; 3) Decision-Making (Quasi-Judicial) Bodies; 4) ) City Boards, Committees and Commissions; 5) Other Advisory Entities; and 6) Non-Governmental Bodies. While organized in a different manner than recommended by the Task Force, this list includes all of the entities addressed by the Task Force in the Phase I/Part II Recommendations.

### **Public Meeting Requirements for the City Council and the Redevelopment Agency**

**Agendas and Staff Reports.** The Rules Committee accepted the Task Force's recommendations for advance posting of Agendas and Staff Reports (10 days), and Staff Reports with Expenditures of \$1M or more (14 days.) These deadlines are consistent with the City's current practice and significantly increase transparency beyond the minimum posting requirements specified in the Brown Act (3 days.) However, in an effort to balance the increased noticing time with the need for effective management of policies and issues, the Rules Committee recommends exceptions to the noticing requirements *if* the exception is approved by the Rules Committee and is otherwise consistent with Brown Act noticing requirements.

**Staff Reports with a Public Subsidy of \$1M or more.** For Public Subsidies, the Rules Committee changed the noticing requirement while trying to stay consistent with the intent of the Task Force recommendation. The Task Force recommended a 30-day noticing requirement. The Rules Committee adopted a 14-day posting deadline for Staff Reports, however, an informational memo must be posted 28 days in advance, to address the Task Force intent of early noticing for these items. The 14-day deadline maintains consistency with the posting deadline for Staff Reports with Expenditures of \$1M or more (above), and the Rules Committee determined that the additional requirement of the informational memo creates adequate transparency.

**Supplemental Staff Reports.** The Rules Committee did not accept the Task Force recommendation requiring 5-day advance posting of Supplemental Staff Reports but maintained the current practice of allowing supplemental memos at any time as long as they are informational in nature and do not contain "substantive changes." Supplemental Staff Reports that contain "substantive changes" may be added to a meeting agenda only with the approval of the Rules Committee (consistent with exceptions permitted for posting agendas/staff reports) and if noticed within the three days required by the Brown Act. It should be noted that the Rules Committee currently meets six days prior to a City Council meeting, so the resulting notice for supplemental memos containing substantive changes would actually be greater than the five days recommended by the Task Force. With this additional requirement, the Rules Committee addressed the Task Force goal of increased transparency for Supplemental Staff Reports.

**Memos from a Subgroup of the Body.** The Committee accepted the Task Force's recommendation requiring 4-day advance posting for memos signed by more than one member of the Council or the SJRA Board. The Committee differed from the Task Force, however, in allowing more than 2 signatories to these memos. The Rules Committee was concerned that limiting the signatories to two could potentially reduce disclosure of those who may have actually participated in discussions.

Since the Brown Act permits some discussion of issues over which the entity has jurisdiction as long as the number of members participating is less than the majority, as many as 5 Council members could participate in discussions that result in a memo from a minority to the entire Council. The Rules Committee determined that *not limiting* the number of signatories would therefore allow broader disclosure of those supporting the memo. In addition, the Committee recommends that while memos from individual members of the body should be discouraged if they are being submitted with less than 4 days notice, they should not be prohibited. The Rules Committee was concerned that prohibiting the distribution of memos within four days of a meeting would prevent members from providing written copies of proposed motions.

**Special Meeting Agendas.** The Committee accepted the Task Force recommendation requiring 4-day advance posting of Agendas for Special Meetings. Recent events have shown, however, that this recommendation is problematic. An urgent item concerning the City's bond insurers' recently required a special Council meeting with just two days notice and highlights the organization's need to respond more quickly to emergencies than 4-day posting allows. Staff intends to return this item to the Committee for reconsideration.

**Recording.** The Committee accepted the Task Force recommendation to video record Council and RDA Board meetings and to maintain the recordings for two years. Note: current practice exceeds Task Force Recommendations and meetings will continue to be video-recorded and streamed live on the Internet and Cable TV.

**Public Testimony.** The Committee determined that the length of public testimony at Council and RDA Board meetings should be "At the Chair's discretion," consistent with current practice. The Rules Committee's additional notation that the Chair "may make allowance for high interest items" addresses Task Force's goal to permit testimony longer than the usual practice of two minutes.

**Meeting Minutes.** The Committee did not accept the Task Force recommendation that draft minutes be provided 10 days after a meeting but chose to retain current practice: a Synopsis is posted by the next meeting, and Action Minutes are posted as soon as possible. The Committee considered the complexity of preparing minutes and the significant staffing impact of the Task Force recommendation and concluded that current practice provides sufficient transparency, given that the meeting recordings are also available on-line. The types of minutes provided are defined as follows: a Synopsis includes actions only and Action Minutes include motions/actions with public comment noted either for or against.

### **Public Meeting Requirements for Council Committees**

**Agendas and Staff Reports.** Rather than following the Task Force's recommended deadlines of 10, 14, and 30 days for posting Agendas, Staff Reports, and Staff Reports with Expenditures/Public Subsidy of \$1M or more, the Rules Committee decided to recommend the current practice of 7 days advance posting for all Committees and five days advance posting for the Rules Committee be continued. The Committee believed that the current process, which provides public distribution and noticing of at least 17 days, first on a Council Committee agenda (7 days) and then a Council

Meeting agenda (10 days), was consistent with the Task Force's and City's goal of increasing transparency.

**Supplemental Staff Reports.** The Rules Committee recommendations regarding supplemental memos for Council Committees is consistent with its approach for the City Council and Redevelopment Agency Board meetings. Rather than 5 days advance posting for Supplemental Staff Reports, the Rules recommended continuing the current practice of allowing supplemental memos that are informational in nature at any time. In addition, however, Supplemental Staff Reports that contain "substantive changes" may be added to a meeting agenda with three-days notice, which is consistent with the requirements of the Brown Act. The Council Committee would then determine whether the item should be heard or deferred. If the Committee determines that the amount of transparency is adequate for the supplemental report, it would choose to hear and act upon the item; if the Committee determines that additional noticing is warranted, the Committee would defer the item.

**Memos from a Subgroup of the Body.** The Rules Committee decisions (and discussion) on memos from members of a Council Committee are the same as for memos from members of the Council and the Redevelopment Agency: 4 days advance posting for memos with multiple signatures; memos from individual members of the body are allowed at any time but discouraged if they are being submitted with less than 4 days of notice.

**Special Meeting Agendas.** The Committee accepted the Task Force recommendation of 4-day advance posting for Special Meeting Agendas. As noted above, recent events have shown that this recommendation is problematic; staff intends to return this item to the Rules Committee for reconsideration.

**Recording.** The Rules Committee accepted the Task Force recommendation to video record Rules Committee meetings and to audio record other Council Committees and to maintain the recordings for two years. Note: Current practice exceeds Task Force recommendations and Council Committee meetings will continue to be video-recorded and streamed live on the Internet and Cable TV.

**Public Testimony.** The Rules Committee decisions on public testimony are identical to those for City Council and the Redevelopment Agency: At the Chair's discretion; the Chair may make allowance for high interest items.

**Meeting Minutes.** The Committee did not accept the Task Force recommendation that minutes be provided 10 days after a meeting but decided that action minutes should be posted 5 days in advance of the Council meeting at which the Committee meeting will be reported; if the minutes are not posted in time, the report will be deferred. The Committee determined that the 5-day advance posting achieved adequate transparency.

### **Public Meeting Requirements for Boards, Committees and Commissions**

**Agendas and Staff Reports.** The Rules Committee adopted a consistent 7-day posting deadline for Agendas, Staff Reports including Staff Reports with Expenditures/Public Subsidy of \$1M or more, as opposed to the 10-day, 14-day and 30-day Task Force recommendations. The Rules Committee determined that adequate transparency was achieved with 7 days noticing, since items moving through the reporting process from a Board, etc., to a Council Committee and then to the Council Agenda will have at least 24 days of transparency (7 days for the Board meeting posting + 7 days for Council Committee posting + 10 days for City Council meeting posting.)

**Supplemental Staff Reports, Memos from a Subgroup of the Body, Special Meeting Agendas, Public Testimony.** The Rules' decisions and discussion on these items are identical to those described above for Council Committees.

**Recording.** The Rules Committee accepted the Task Force recommendation to video broadcast and archive the Planning Commission but decided not to recommend that Elections Commission meetings be video-recorded. The Rules Committee did accept the recommendation that all Board, Committee and Commission meetings be audio-recorded and recordings maintained for two years.

**Meeting Minutes.** The Rules Committee accepted the Task Force recommendation that draft Action Minutes from Board, Committee and Commission meetings be posted 10 days after the meeting was held.

### **SUMMARY**

The Rules Committee considered the Task Force recommendations for increased transparency along with the practical implications and the need for effective public processes. In many cases the Committee achieved a balance by increasing sunshine on City processes but allowing exceptions to the new requirements. The Rules Committee will continue to review the Task Force recommendations, continuing with Other Advisory Entities, Quasi-Judicial Bodies, Non-Governmental Bodies, and Closed Session Requirements. Staff anticipates completing the review in April and will provide the Task Force with an additional report on the final Rules Committee decisions on the outstanding items.

Tom Manheim  
Communications Director

## Rules Decisions on Open Government for Boards, Committees, and Commissions

Category	Task Force Recommendations	Rules Decisions
<b>1. Agenda Posting</b>	10 Calendar days	7 Calendar Days
<b>2. Staff Reports</b>	10 Calendar days	7 Calendar Days
<b>3. Staff Reports - Expenditures of \$1M or More</b>	14 Calendar days	7 Calendar Days
<b>4. Public Subsidy - \$1M or More</b>	30 Calendar days	7 Calendar Days
<b>5. Supplemental Staff Reports</b>	5 Calendar days	Informational Anytime; Substantive Changes: If distributed as required by the Brown Act, group may hear and act on the item or defer it
<b>6. Memos - From Subgroup of the Body</b>	4 Calendar Days No more than 2 signatories	Multiple signatures 4 days; Single signatures anytime but discouraged if ≤ 4 days
<b>7. Agenda Posting (Special Meeting)</b>	4 Calendar Days	4 Calendar Days
<b>8. Recording</b>	Council, Rules, Planning, Elections: video record; All other Policy Bodies audio record; Retained 2 yrs.	Video Record Planning Commission; Audio Record all others and maintain for 2 years.
<b>9. Public Testimony</b>	Up to 4 mins. may be extended to representative of an org. if: 1) two or more members are in attendance, and 2) one is willing to yield his/her time.	At the discretion of the Chair; May make allowance for high interest items
<b>10. Minutes</b>	Draft Summary Minutes posted no later than 10 days after the meeting. Final Summary Minutes posted 10 days after the meeting.	Draft Action Minutes Posted 10 Days After Meeting

## Rules Decisions on Open Government for CITY COUNCIL and REDEVELOPMENT AGENCY

	Task Force Recommendations	Current Practice	Rules Decisions
<b>1. Agenda Posting</b>	10 Calendar days	10 Calendar days	10 Calendar days. Exceptions may be requested from Rules if within Brown Act.
<b>2. Staff Reports</b>	10 Calendar days	10 Calendar days	10 Calendar days. Exceptions may be requested from Rules if within Brown Act.
<b>3. Staff Reports (Expenditures of \$1M or More)</b>	14 Calendar days	14 Calendar days	14 Calendar days. Exceptions may be requested from Rules if within Brown Act.
<b>4. Public Subsidy – \$1M or More</b>	30 Calendar days	30 calendar days for six specific pilot project initiatives.	Info Memo 28 days. Staff Reports 14 days.
<b>5. Supplemental Staff Reports</b>	5 Calendar days	Informational Anytime. Substantive changes allowed if consistent with the Brown Act.	Informational Anytime; Substantive Changes - Exceptions may be requested from Rules if w/in Brown Act
<b>6. Memos – From Subgroup of the Body</b>	4 Calendar Days No more than 2 signatories	No deadline.	Multiple signatures 4 days; Single signatures anytime but discouraged if $\leq$ 4 days
<b>7. Agenda Posting (Special Meeting)</b>	4 Calendar Days	Minimum of 24 hours required (but generally 10 days notice given)	4 Calendar days.
<b>8. Recording</b>	Council, Rules, Planning, Elections: Video Record; All other Policy Bodies audio record; Retained 2 yrs.	Council, SJRA and Committee Meetings are videotaped and streamed live on the Internet and on Cable Channel 26. Recordings available since 05	Video Record. Maintain for 2 years.
<b>9. Public Testimony</b>	Up to 4 mins. may be extended to representatives of an org. if: 1) two or more members are in attendance, and 2) one is willing to yield his/her time.	At Mayor's discretion. Usually two minutes. For Planning items, applicant and/or appellant allowed five minutes.	At Chair's discretion. May make allowance for high interest items.
<b>10. Minutes</b>	Draft summary minutes posted no later than 10 days after the meeting. Final summary minutes posted 10 days after the meeting.	Synopsis and Action Minutes. No deadline.	Post Synopsis by next meeting. Action Minutes ASAP.

## Rules Decisions on Open Government for COUNCIL COMMITTEES

	Task Force Recommendations	Current Practice	Rules Decisions
<b>1. Agenda Posting</b>	<b>10 cal. Days</b>	<b>5 Days</b> for Rules & Open Government Committee <b>7 Days</b> for all other committees.	5 days for Rules & Open Government Committee 7 days for all other committees
<b>2. Staff Reports</b>	<b>10 cal. Days</b>	<b>5 Days</b> for Rules & Open Government Committee <b>7 Days</b> for all other committees.	5 days for Rules & Open Government Committee 7 days for all other committees
<b>3. Staff Reports –Expenditures of \$1M or More</b>	<b>14 cal. Days</b>	<b>5 Days</b> for Rules & Open Government Committee <b>7 Days</b> for all other committees.	5 days for Rules & Open Government Committee 7 days for all other committees
<b>4. Public Subsidy –\$1M or More</b>	<b>30 cal. Days</b>	<b>5 Days</b> for Rules & Open Government Committee <b>7 Days</b> for all other committees.	5 days for Rules & Open Government Committee 7 days for all other committees
<b>5. Supplemental Staff Reports</b>	<b>5 cal. Days</b>	Informational Anytime. Sunstantive changes allowed if consistent with the Brown Act.	Informational Anytime Substantive Changes - Committee may hear and act on the item or defer it.
<b>6. Memos – From Subgroup of the Body</b>	<b>4 cal. Days</b> <b>No more than 2 signatories</b>	No Deadline	Multiple signatures - 4 days; Single signatures anytime but discouraged if ≤ 4 days
<b>7. Agenda Posting (Special Meeting)</b>	<b>4 cal. Days</b>	24 hours	4 calendar days
<b>8. Recording</b>	<b>Council, Rules, Planning, Elections: video record; All other Policy Bodies audio record; Retain for 2 years</b>	Meetings are videotaped, streamed live on the Internet, and broadcast on Cable Channel 26.  All meetings since 2005 are available online.	Video record; Maintain for 2 years
<b>9. Public Testimony</b>	<b>Up to 4 mins. may be extended to representatives of an org. if: 1) two or more members are in attendance, and 2) one is willing to yield his/her time.</b>	At Chair’s discretion;	At Chair’s discretion; May make allowance for high interest items
<b>10. Meeting Reports (otherwise known as Minutes)</b>	<b>Draft Summary Minutes posted no later than 10 days after the meeting. Final Summary Minutes posted 10 days after the meeting.</b>	Reports (in Action Minutes format) are due for second City Council meeting following the Committee meeting.	Minutes must be posted 5 days before the Council meeting at which the Committee meeting will be reported; if the minutes are not posted in time, the report will be deferred