

# Memorandum

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**TO:** Sunshine Reform Task Force

**FROM:** Richard Doyle,  
City Attorney

**SUBJECT:** Labor Recommendations

**DATE:** March 29, 2007

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## Background

On March 15, 2007, the Sunshine Reform Task Force made the following recommendations:

1. An early public involvement process would be conducted, such as a study session, to provide an opportunity for the public to ask questions and provide input. The process would be conducted at a time that provides a meaningful opportunity for the public to participate in the process.
2. All proposed contracts with represented and unrepresented employees and the Council appointees would be approved by the policy body in open session. Notice would be 10 days for contracts that are under \$1 million, and 14 days for contracts over \$1 million before the contract is scheduled to be discussed in open session.

The Task Force requested a legal review of the recommendations by the City Attorney's Office and labor law attorney selected by Linda Dittes, AFSCME Business Agent. The legal issues include whether implementation of the recommendations are "unfair labor practices" or violations of relevant labor laws.

## Discussion

The Sunshine Reform Task Force recommendations, if implemented, do not constitute violations or "unfair labor practices" under the state Meyers-Milias-Brown Act (MMBA) (Gov. Code Sections 3500-3511). Further, there are no legal prohibitions to implementing the recommendation on proposed contracts including notice requirements with represented, or unrepresented employees, and Council Appointees.

### 1. Early Public Involvement Process

The MMBA authorizes labor and management representatives to meet and confer and to enter into written agreements for presentation to the governing body of a municipal government or other local agency. (Gov. Code Section 3505.1). Once approved by the governing body, such as the City Council, the agreement binds the public employer and the public employee organization.

One of the stated purposes of the MMBA is to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment. (Gov. Code Section 3500). Generally, providing an opportunity for the public to have early involvement and provide input does not adversely affect the collectively bargaining process. Therefore, a recommendation for an early public involvement process, such as a study session, does not violate the MMBA.

### 2. Approval of Contracts with Represented Employees and Notice Requirements

Certain types of collective bargaining actions may be viewed as independent or "per se refusals to bargain," without regard to any considerations of good or bad faith. Higgins, *The Developing Labor Law*, (Fifth Edition, Vol. 1 p. 832). Examples of such conduct include unilateral changes by an employer or bargaining directly with employees rather than with their bargaining representative which are "unfair labor practices" under labor laws including the MMBA.

The Task Force's recommendation with regard to the notice requirement for contracts between the City and employee organizations is not the kind of action that would be considered an independent violation of the MMBA.

### 3. Approval of Contracts with Unrepresented Employees – Council Appointees

Salaries for Council Appointees are approved by resolution of the City Council. Additionally, any agreement between the City and a Council Appointee which memorializes salary and benefits is approved by the City Council. The Task Force recommendation with regard to approval of proposed contracts with unrepresented employees including City Council Appointees is legally permissible.

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By:   
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