

**SUNSHINE REFORM TASK FORCE
MEETING MINUTES**

**Thursday, May 3, 2007
6:00pm – 9:00pm**

City Hall, W118-119

Present: Bob Brownstein, South Bay Labor Council; Ken Podgorsek, United Neighborhoods of SCC; Ed Rast, Strong Neighborhoods Initiative PAC; Virginia Holtz, Willow Glen Neighborhood Assoc.; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Margie Matthews, Former Councilmember; Mary Ann Ruiz, Parks and Recreation Commission; Karl Hoffower, Citizens Commission on Human Rights; Dave Zenker, Falls Creek Neighborhood Association; Brenda Otey, At Large-Representative; Bobbie Fischler, League of Women Voters; Susan Goldberg, San José Mercury News.

Absent: Nanci Williams, San José/Silicon Valley Chamber of Commerce; Dan Pulcrano, Silicon Valley Leadership Group; Judy Nadler, Markkula Center for Applied Ethics; Edward Davis, Orrick Law Firm (Legal Counsel).

Staff: Lee Price, City Clerk's Office; Lisa Herrick, Senior Deputy City Attorney; Dan McFadden, Interim Deputy City Manager; Tom Manheim, Office of the City Manager.

I. Approval of April 19, 2007 Meeting Minutes

Upon a motion by Dave Zenker, seconded by Brenda Otey, the April 19, 2007, minutes were approved with one abstention, Bobbie Fischler (absent 4/19/07).

II. Approval of April 26, 2007 Meeting Minutes

Upon a motion by Ken Podgorsek, seconded by Brenda Otey, the April 26, 2007, minutes were approved with four abstentions, Joan Rivas-Cosby, Virginia Holtz, Mary Ann Ruiz, and Dave Zenker (absent 4/26/07).

III. Comments from the Chair

Chair Rast noted the progress staff has made with Phase 1 Report. Task Force members are permitted to offer comments, corrections, and clarifications on the report. Task Force members are also welcome to provide minority opinions on a topic.

IV. Review of Meeting Material

Staff provided an overview of the documents for the meeting.

V. Discussion and Decisions on Public Meeting Provisions

Task Force member Ken Podgorsek disclosed the various City departments/groups the Public Meetings committee met with to develop the following definitions:

Sunshine Reform Task Force

Meeting Minutes

May 3, 2007

Page 2

A. Definition and Requirements for Non-governmental Bodies and Non-city Governmental Bodies Public Meeting Subcommittee Recommendations, 4/27/07

1. A lengthy discussion ensued on contractual requirements for Non-governmental bodies (NGBs).
2. Six triggers were outlined in Section E. Ken Podgorsek explained that “triggers” are events which cause significant change to a contract. The committee decided when a trigger is identified it will be filed in a report.
3. Dan McFadden noted that it would be difficult to report triggers; a database has yet to be developed to track triggers.
4. Chair Rast identified the intent of requirements – sunshine and overview of large public facilities (those valued over \$1M).

Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, agreed with Dan McFadden that it is difficult to track all triggers. Mr. Munro explained how the public can monitor nonprofits – notice meetings pursuant to the Brown Act, submit monthly financials, and provide an annual report. He insisted that in doing this, there would be no reason to write up a lot of reports.

4. Ken Podgorsek stressed that reports should be made simple (i.e., report whether the contract is completed, in the process of being completed, at risk to any of the terms in the contract, etc.).
5. Mary Ann Ruiz suggested when there is a problem with a contract then a solution must also be offered in the report.
6. Dan McFadden confirmed that memos and presentations are already made when issues in contracts are found.

Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, stated that requirements proposed by the committee seem inconsistent. Mr. Munro advocated that the best way to have disclosure is to open all board meetings.

7. Scott Johnson, Finance Department Director, made the following recommendations/comments on the definitions:
 - In Section A, rethink the value of the facilities listed (change \$1M to \$5M). Also need to specify that Section A.1 does not include leases.
 - In Section C, definition may stifle the business. Would need additional staff and resources to carry out what is proposed.

Public Comment: Bob Nazarenus, Chief Financial Officer for the American Musical Theatre of San José, explained that the American Musical Theatre (AMT) pays the City to maintain their facilities; therefore, the AMT does not apply to Sections A.2a or A.2b.

Sunshine Reform Task Force

Meeting Minutes

May 3, 2007

Page 3

Public Comment: Jo Zientek, Environmental Services Department Deputy Director, offered some clarification on the entities listed in Section A.2a. Ms. Zientek explained that most of these entities are privately held companies that do not hold public board meetings; i.e., Browning-Ferris located in Texas; therefore, it is illogical to open their meetings.

Dean Munroe clarified that the Arena Authority is a policy body and therefore should be removed from the list/

Upon a motion by Bob Brownstein, seconded by Ken Podgorsek, the Task Force amended the language in Section A.1 to read: “the contractor operates or fully maintains a community center or City facility with a value over \$5M, excluding leased facilities.” In addition, the Task Force accepted the amended language in Section A.1 and language in A.2a as pilot projects and after the first year the City will review Section A.2b in concept.

Action Item: Legal Counsel will make the necessary adjustments to Section A.2b.

Upon a motion by Ken Podgorsek, seconded by Virginia Holtz, the Task Force adopted the Public Meeting Subcommittee recommendations for Sections B-E identified below in concept (Margie Matthews opposed, Mary Ann and Bobbie absent

- B. Every City contract and RFP or RFQ will indicate clearly whether the contractor will be subject to Sunshine requirements and fully describe those requirements. Existing contracts will not be covered until they are renewed (if the contract includes options, Sunshine requirements must be incorporated within 3 years) or amended at which time Sunshine requirements will be incorporated as specified. If a contract expires in more than 3 years, the contractor should be encouraged to agree to amend the contract to include the Sunshine requirements for no additional consideration.
- C. Every contractor subject to Sunshine requirements must be assigned to a policy body to which the contractor will submit the reports described in Section D. When a contractor has more than one contract which, in the aggregate totals the amount of the City Manager’s contract authority set forth in Section 4.04.020(A)(3)(c), the City must assign the contractor to one primary policy body and consolidate the reports from that contractor for presentation to that policy body.
- D. Sunshine requirements to be included in contracts include the following:
 - 1. The contractor will provide written reports to the policy body indicating compliance with contract requirements annually;

Sunshine Reform Task Force

Meeting Minutes

May 3, 2007

Page 4

2. The contractor will provide supplemental written reports to the policy body whenever it takes an action denoted in the contract as “Sunshine Policy Issue” as described in Section E.
 3. Upon a determination by the Policy Body that the report on a Sunshine Policy Issue requires public discussion, the contractor must attend a public meeting of the Policy Body to present the reasons for its action and answer questions.
- E. Sunshine requirements to be included in contracts must define appropriate Sunshine Policy Issues for that service. Sunshine Policy Issues should include the following types of actions, tailored to the specific nature of the service provided by the NGB:
1. Changes in revenue or expenditures that would affect the NGB’s status as a going-concern;
 2. Changes in levels of service of a type and scale that affects the performance of the contract in a substantial manner;
 3. Changes in allocation of service to different areas or populations that affects the performance of the contract in a substantial manner;
 4. Changes in the number or qualifications of staff that jeopardize the ability of the NGB to fulfill the obligations of the contract;
 5. Changes in activities that maintain or preserve public facilities and/or property of a type or scale sufficient to impede public use of those facilities or to jeopardize the physical integrity of the facility;
 6. Actions that place the City or public at risk of financial loss, property damage, or personal injury beyond those risks normally associated with responsible delivery of the contracted service.
- B. Overlap of Non-governmental Body Definition and Policy Body Definition & Clarification on Bodies Consisting Solely of City Staff

A lengthy discussion ensued regarding page 6, 1.15 Policy Body, Section E2. Task Force member Bob Brownstein expressed concern about the language used in this section; he stated that there is no logic to it.

Public Comment: Dean Munro, Mayor’s Liaison to the Task Force, asked for clarification on the motion made by Bob Brownstein. Mr. Munro believes it would be difficult for a group like the Arena Authority not to have public meetings. He added that Team San Jose initiates policy and should be considered separately from others on the list.

Sunshine Reform Task Force

Meeting Minutes

May 3, 2007

Page 5

A motion was made by Bob Brownstein to delete Section E2. Motion failed (4 in favor, 6 opposed).

Upon a motion by Karl Hoffower, seconded by Susan Goldberg, the Task Force agreed to add an additional provision if a body meets the criteria for more than one type of body, the definition and requirements that would result in greater public access will apply to that body. (Bob and Ken opposed)/

C. Definition of Public Subsidy, Proposed public Subsidy Discussion, Bob Brownstein, 4/27/07

Upon a motion by Ken, seconded by Bobbie, the Task Force asked staff to include an exclusion for meetings that consist solely of staff. (Margie absent).

Task Force member Bob Brownstein facilitated this discussion. The Task Force made the following modifications to Bob Brownstein's definition of public subsidy:

- Change definition to read: "A public subsidy is a *provision* by the City or the RDA to a private entity for purposes beneficial to the public, such as the operation of a business or event within San José, but for which the City or RDA do not directly *or indirectly* receive goods or services *or public benefits* in return for that expenditure."
- The item "Loans at below market interest rates or loan guarantees" should exclude the affordable housing program.
- Under "Forms of public subsidies include", change the last item to read: "Capital improvements to a public facility operated *and maintained* by the private entity..." Scott Johnson asked Bob Brownstein to confirm that affordable housing projects funded by bonds are excluded. Mr. Brownstein confirmed in the positive.

Action Item: Bob Brownstein will work with staff on the definition of public subsidy.

Public Comment: Dean Munro, Mayor's Liaison to the Task Force, asked the Task Force to consider including the following concept in the last item regarding capital improvements – "money is generated by the operation of the building that funds the capital improvements."

VI. Discussion and Comment on the SRTF's Draft Phase I Report and Recommendations

The Task Force will provide all comments on the Phase 1 Report and Recommendations to Sheila Tucker by Wednesday, May 9, 2007. Task Force members were asked not to copy other Task Force members to avoid potential violations of the brown Act.

Sunshine Reform Task Force

Meeting Minutes

May 3, 2007

Page 6

VII. Role of the Enforcement Committee

This item was not discussed.

VIII. Upcoming Agenda and Work Plan

The Task Force will discuss following items at the next meeting (5/17/07):

- Definition of a public subsidy
- Discussion and approval of the SRTF's Draft Phase I Report and Recommendations
- Role of the Enforcement Committee

IX. Public Comment

The Task Force adjourned the May 3, 2007 meeting at 9:08 p.m.