

SUNSHINE REFORM TASK FORCE MEETING MINUTES

**Thursday, September 20, 2007
6:00pm – 9:00pm**

City Hall Council Chambers

Present: Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorsek, United Neighborhoods of SCC; Virginia Holtz, Willow Glen Neighborhood Assoc.; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Bobbie Fischler, League of Women Voters; Dan Pulcrano, Silicon Valley Leadership Group; Bob Brownstein, South Bay Labor Council; Bert Robinson, San José Mercury News; Edward Davis, Orrick Law Firm (Legal Counsel); Brenda Otey, At Large-Representative; Trixie Johnson, Former Councilmember; Dave Zenker, Falls Creek Neighborhood Association.

Absent: Nanci Williams, San José/Silicon Valley Chamber of Commerce; Mary Ann Ruiz, Parks and Recreation Commission; Karl Hoffower, Citizens Commission on Human Rights; Judy Nadler, Markkula Center for Applied Ethics.

Staff: Dottie Disher, Office of the City Clerk; Lisa Herrick, Senior Deputy City Attorney; Sheila Tucker, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency.

I. Approval of the August 16, 2007 Meeting Minutes

Upon a motion by Bobbie Fischler, seconded by Virginia Holtz, the Task Force unanimously approved the August 16, 2007 meeting minutes.

II. Comments from the Chair

Chair Rast urged the Task Force and members of the public to approach tonight's discussion on law enforcement public records with an objective view, and if there is an objection to the recommendations by the public records subcommittee to provide alternatives.

III. SRTF's Phase I Report and Recommendations

A. Update on 8/21/07 & 8/28/07 Council Action on SRTF's Phase I Recommendations

Staff announced that on August 21, 2007, the City Council approved the Sunshine Reform Task Force (SRTF) Phase I Report and Recommendations for the Public Information provisions and Closed Session provisions for the City Council and the Board of the Redevelopment Agency (RDA) *only*, with the exception of the provision to audio record closed session. The City Council also directed staff to

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proceed with implementation on a pilot basis. Staff is working to develop the policies and procedures necessary to implement the provisions that were approved and will begin implementing initiatives over the next month with full implementation anticipated to begin in October 2007. With regards to audio recording closed session, the Rules and Open Government Committee (Rules Committee) discussed the issue further at its August 29, 2007 meeting with the intention of trying to provide staff and the SRTF with some direction on the issue and asked the Attorney's Office to return with some additional analysis on when it would be anticipated that information could be released, and what types of information may need to be redacted for the various topics that are permitted to be discussed in closed session to further facilitate the Rules Committee discussion.

Staff also reported that on August 28, 2007 the City Council voted to incorporate all of the SRTF recommendations into the Council Adopted Cost Benefit Analysis Pilot Program.

B. Update on Outreach to Boards, Committees and Commissions on Public Meetings Provisions

The Rules Committee also deferred approval of the Public Meetings provisions and Closed Session provisions for bodies other than the Council and RDA, to allow staff the opportunity to solicit feedback from the potentially affected entities and to report back to the Rules and Open Government Committee. Staff reported that written comments from the City's Boards, Commissions, and external partners had passed with approximately thirty entities submitting comments to staff. Staff will present a work plan to the Rules Committee at their October 3, 2007 meeting that will outline a schedule throughout October for the Committee to consider the remaining provisions of the Phase I work plan.

IV. Law Enforcement Public Records

A. Overview of Public Records Subcommittee

Task Force member Bert Robinson presented the recommendations of the Public Records Subcommittee for law enforcement records including the following topics:

1. Types of police records that should be made public.
2. State law requirements pertaining to police reports.
3. Examples of records that should be prohibited (i.e., cases connected to juveniles, domestic violence, etc.).
4. Records the San José Police Department (SJPD) must produce and timing of implementation.

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B. Staff Issues/Concerns & Organizational Impacts

City Manager Debra Figone provided the opening remarks to a staff presentation by Captain Gary Kirby on the San Jose Police Department's (SJPD) response to the Public Records Subcommittee recommendations. Police Chief Rob Davis and Captain Kirby's remarks focused on four key areas:

1. Safety of crime victims and witnesses.
2. Ability of the police to solve crimes.
3. Wrongly accused persons and persons not charged.
4. Operational impacts/constraints.

C. Clarifying Questions from the SRTF

The following questions/comments were posed by the Task Force:

1. Bob Brownstein inquired about the language in Section 5.1.1.020C. Mr. Brownstein suggested that Item C regarding the provision, "prospect of the prosecution is likely," be stricken from Section 5.1.1020.
2. SRTF Legal Counsel Ed Davis noted the provision "prospect of the prosecution is likely" is problematic and recommended modifying the language in Section 5.1.1.020C.
3. Trixie Johnson commented that there may be unintended consequences of the language used in 5.1.1.020C (i.e., the SJPD may decide never to close a case).
4. Ken Podgorsek questioned the SJPD's objections to releasing statistical reports. Mr. Podgorsek also asked in what timeframe the SJPD can produce an analysis of statistical reports.
5. Chair Rast clarified that the proposals provided by the Public Records subcommittee would not preempt the California Public Records Act (CPRA); the proposals would merely be an extension of the CPRA.
6. Bob Brownstein expressed concern over cases based on false accusations (i.e., did the subcommittee consider not releasing accusations that never lead to an arrest?).
7. Trixie Johnson questioned the redaction of electronic records.
8. Ken Podgorsek expressed concern over privacy issues, especially over false cases. Mr. Podgorsek commented that there needs to be a balance in having openness in government and a need for respecting other's privacy.
9. Dan Pulcrano asked if the SJPD is willing to allow the redaction of any witness once juveniles are removed from a report.
10. SRTF Legal Counsel Ed Davis stated that there needs to be specification of interest when it comes to ensuring the protection of witnesses, victims, and privacy.

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11. Brenda Otey questioned under what criteria does the SJPD designate a case as closed. Ms. Otey also asked the SJPD if they identified any unintended consequences found in the proposal that they have not revealed.

D. Public Comment on Subcommittee Recommendations

Speaking in favor of the Public Record Subcommittee proposals:

1. Bill Lawrence, San José resident
2. Jamie Rodriguez, San José resident
3. Kathleen Krenek, Next Door Solutions
4. Gene Castilk, San José resident
5. James Chadwick, Mercury News
6. Jeff Moore, NAACP
7. Mark Scholsberg, ACLU
8. Noreen Ann Salinas, San José Resident
9. Aram James, Coalition of Justice
10. Mark Petersen-Perez, Palo Alto Resident
11. Brenna Silverstein, Mental Health Advocacy Project
12. Brad Imamura, San José resident
13. Jon Pedigo, St. Julie Billiard Parish
14. Darlene Wallach, San José resident
15. Norma Callender, NAACP
16. Donna Wallach, San José resident

Speaking in opposition to the Public Records Subcommittee proposals:

1. Joann McCracken, District Attorney's Office
2. Dr. Keri McClain, YWCA
3. Sandy Davis, YWCA
4. Bob Sippel, San José Resident
5. Robert Bailey, San José Resident
6. Kathleen Flynn, San José Resident
7. Scott Vermeer, Santa Clara County Police Chiefs Association
8. Perla Flores, Community Solutions
9. Christian Hemmingway, San José resident
10. Kristina Cunningham, Santa Clara County

Taking a neutral stance to the Public Records Subcommittee proposals:

1. William Eskew, San José resident

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V. Upcoming Agenda & Work Plan

The Task Force agreed to agendize the following for the October 4, 2007 meeting:

1. Master Calendar Demonstration
2. Continue discussion on Law Enforcement Records
3. 20 minute update from the Administration & Accountability Subcommittee

The Task Force agreed to agendize the following for the October 18, 2007 meeting:

1. Presentation by the Administration & Accountability Subcommittee
2. Presentation by the Ethics Subcommittee
3. Presentation by the Technology Subcommittee

VI. Open Forum

No comments were made during open forum.

Upon a motion by Ken Podgorsek, seconded by Bob Brownstein, the Task Force adjourned the meeting at 8:42 p.m.