

SUNSHINE REFORM TASK FORCE MEETING MINUTES

**Thursday, October 18, 2007
6:00pm – 9:00pm**

City Hall, Wing Rooms 118-119

Present: Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorsek, United Neighborhoods of SCC; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; 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; Karl Hoffower, Citizens Commission on Human Rights; Virginia Holtz, Willow Glen Neighborhood Assoc.; Judy Nadler, Markkula Center for Applied Ethics; Mary Ann Ruiz, Parks and Recreation Commission

Absent: Bobbie Fischler, League of Women Voters; Nanci Williams, San José/Silicon Valley Chamber of Commerce.

Staff: Lee Price, City Clerk; Dottie Disher, Office of the City Clerk; Lisa Herrick, Senior Deputy City Attorney; Tom Manheim, Office of the City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency.

I. Approval of the October 4, 2007 Meeting Minutes

Upon a motion by Ed Rast, seconded by Ken Podgorsek, the Task Force approved the October 4, 2007 meeting minutes with one abstention, Virginia Holtz (absent 10/04/07), as amended to note Karl Hoffower abstained from approving the 9/20/07 meeting minutes.

II. Comments from the Chair

Chair Rast noted that the subcommittees are making progress with their proposals, and anticipates that the Subcommittees will complete their work by the end of the calendar year to early January 2008.

Staff introduced Troy Gavin who will be taking over for Patricia Nicandro as administrative support for the Sunshine Reform Task Force.

III. Review of the Meeting Material

Staff provided an overview of the documents for the meeting. Staff noted that on October 17, 2007, the Rules and Open Government Committee deferred the review of the remaining provisions of the Sunshine Reform Task Force's Phase I Report and Recommendations for 1 week. The new schedule is as follows:

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- A. Wednesday, October 24, 2007; not before 3 p.m.
- B. Wednesday, October 31, 2007; not before 2:30 p.m.
- C. Wednesday, November 7, 2007; not before 2:30 p.m.

IV. Administration & Accountability Subcommittee Recommendations

Task Force member Ken Podgorsek presented an overview of the Administration and Accountability Subcommittee's recommendations. The Task Force provided the following comments and suggestions on the Subcommittee's recommendations.

A. Section 8.1. Purpose and Intent – no comments or recommendations were provided.

B. Section 8.2. Open Government Officer

- 1. Virginia Holtz suggested that staff look at the cost of implementing the recommendations.
- 2. Karl Hoffower noted the Open Government Officer position does not appear to be a fulltime position; Section 8.3 B.3. should make that clear.
- 3. Ed Davis commented the Subcommittee's proposal is too complicated, expensive, that it will be easier to go directly to Superior Court, and suggested the Subcommittee look at a simpler process. Mr. Davis supported the notion of a legal evaluator but suggested the Task Force should be practical about the cost. Mr. Davis also noted that a dedicated staff person for Sunshine who is hired and responsible to the Commission, as opposed to the City Manager, may be a more viable option.
- 4. Trixie Johnson noted concerns about discretion and security issues associated with auditing the closed session tapes, and suggested the Committee consider the role of an ombudsman.
- 5. Mr. Davis suggested a public official should certify whether closed session tapes should or should not be released, and that decision could be appealed to the City Council.

C. Section 8.3. Open Government Commission

- 1. Ken Podgorsek acknowledged a term limit for Commission members would be added.
- 2. Trixie Johnson suggested the Subcommittee clarify that the Open Government Officer would be responsible for preparing reports to the City Council evaluating and monitoring compliance with the Sunshine Ordinance (Section 8.3.B.3.), as opposed to the Commission.
- 3. City Clerk Lee Price noted how difficult it is to recruit attorney representatives for City Commissions.

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D. Section 8.4. Investigations

1. Bert Robinson questioned whether the Task Force considered an Attorney within the Attorney's Office with a prescribed ethical wall between the Sunshine Commission and the Attorney's Office (similar to the structure of other Sunshine Ordinances), as opposed to an outside evaluator.
2. Virginia Holtz suggested that language be added to allow the Commission, or the Commission members to bring forward complaints.

E. Section 8.5. Subpoena Power - no comments or recommendations were provided.

F. Section 8.6. Enforcement

1. Section 8.6.010. Requests for Public Records
 - a. The general consensus of the Task Force is that the process is too cumbersome and should be simplified and streamlined.
 - b. Bert Robinson suggested that the Subcommittee eliminate unnecessary steps, plot out the timeline for each step and include deadlines, and provide opportunities to short-cut the process if desired based on the time-sensitive nature of the issue.
2. Section 8.6.020. Public and Closed Session Meetings
 - a. Bert Robinson suggested that the Subcommittee consider the enforcement action taken when there is an alleged violation of a serial meeting.
 - b. Virginia Holtz recommended that the Subcommittee consider requiring the Open Government Officer to audit a *random sampling* of the Closed Session tapes to determine if there is a violation of the Brown Act. Mary Ann Ruiz expressed similar concerns related to the time spent and expertise needed to monitor closed session recordings and further recommended that the Subcommittee revisit the issue.
 - c. Karl Hoffower suggested that the Task Force consider an approach similar to Mayor Reed's recommendation to record closed session for the purpose of determining at a later time if there is a violation of the Brown Act; if challenged, the tapes would be reviewed by a judge to review the tapes and make a final determination. Dave Zenker supported Mr. Hoffower's recommendations.
 - d. City Clerk Lee Price recommended that the Subcommittee provide alternatives in case the City Council agenda packet is not posted pursuant to the noticing requirements of the Sunshine Ordinance. Lee Price will provide some suggested language to the Subcommittee.

The Administration and Accountability Subcommittee will revise its recommendations based on the input received and return to the Task Force on November 15, 2007 with alternatives for the Task Force to consider. Any additional comments or recommendations should be submitted to Eva Terrazas by Friday October 19, no later than 3:00 p.m.

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V. Ethics & Conduct Subcommittee Recommendations

Judy Nadler presented an overview of the Ethics and Conduct Subcommittee's recommendations. The Task Force provided the following comments and suggestions on the Subcommittee's recommendations.

- A. Section 7.1. Intent - no comments or recommendations were provided.
- B. Section 7.2. Disclosure - no comments or recommendations were provided.
- C. Section 7.3. Conflicts of Interest
 - 1. City Clerk Lee Price noted the City Council recently took action to phase out office-holder accounts. If it is the Task Force's intent to include campaign accounts in this provision it should be clarified.
 - 2. Bob Brownstein recommended the Subcommittee more clearly define a "conflict of interest."
- D. Section 7.4. Codes of Conduct and Ethics Statements
 - 1. Tom Manheim suggested removing the word "must" in Section 7.4.B., which requires a statement about the City's ethical standards to appear in a prominent place on all City materials, whether printed, electronic or posted on the City's website.
 - 2. Karl Hoffower suggested the Subcommittee more clearly define the term "material" in Section 7.4.B., e.g., does it include business cards?
 - 3. Ken Podgorsek suggested removing the term "all," from Section 7.4.B, and replacing with the term "appropriate."
 - 4. Virginia Holtz suggested the Subcommittee clarify the word "volunteer" in Section 7.4.A. Bob Brownstein suggested the Subcommittee remove the term "volunteer," or add a sentence that indicates volunteers often engage in activities that benefit themselves and the City.
- E. Section 7.5. Annual Review and Re-Adoption
 - 1. Ken Podgorsek suggested the Subcommittee consider a different term than "re-adoption." What if the Council does not re-adopt?
 - 2. Karl Hoffower recommended using "reaffirm" instead of "re-adopt."
- F. Section 7.6. Ethics Education
 - Ed Rast provided the following recommendations: 1) the City Manager should be responsible for developing the code of conduct and ethics statement, 2) identify the deadline for developing the code of conduct, 3) define who is responsible for ethics education, and 4) consider referencing the Sunshine Reform Task Force's Code of Conduct.

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VI. Technology Subcommittee Recommendations

Dan Pulcrano presented an overview of the Technology Subcommittee recommendations. The Task Force provided the following comments and suggestions on the sections of the Subcommittee's recommendations.

- A. Virginia Holtz recommended including the Planning Department in the ticketing system.
- B. Judy Nadler recommended that the Subcommittee also keep the human interface in mind in improving the search capabilities of the City's web-site.
- C. Bob Brownstein recommended that the Subcommittee evaluate the City's search engine with the goal of first identifying the highest level documents in a search.
- D. Virginia Holtz recommended removing the term "must" throughout the recommendations, and replacing with the term "should or will," so that the recommendations are more positive.
- E. Dan Pulcrano noted the technology section should be a recommendation but not part of an ordinance as technology changes so quickly that an ordinance would become outdated.
- F. Mary Ann Ruiz and Ken Podgorsek supported the concept of implementing a searchable database of previous Council votes.

VII. Upcoming Agenda & Work Plan

- A. The Task Force will agendize a presentation by the Public Records Subcommittee for the November 1, 2007 meeting. The Task Force will also discuss its meeting schedule for the remainder of the calendar year and consider extending the schedule beyond December 2007.
- B. The Task Force will agendize the Administration and Accountability Subcommittee, Ethics and Conduct Subcommittee, and the Technology Subcommittee for the November 15, 2007 meeting.

VIII. Open Forum

No Public Comments

Upon a motion by Ken Podgorsek, seconded by Ed Rast, the Task Force adjourned the meeting at 9:15 p.m.