

SUNSHINE REFORM TASK FORCE MEETING MINUTES

**Saturday, November 18, 2006
9:00am – 5:00pm**

City Hall W-118

Present: Ed Rast, Strong Neighborhoods Initiative PAC; Ken Podgorsek, United Neighborhoods of SCC, Bobbie Fischler, League of Women Voters; Virginia Holtz, Willow Glen Neighborhood Assoc.; Joan Rivas-Cosby, Five Wounds/Brookwood Terrace Neighborhood Advisory Committee; Margie Matthews, Former Councilmember; Karl Hoffower, Citizens Commission on Human Rights; Brenda Otey, At-Large Representative; Dan Pulcrano, Silicon Valley Leadership Group; Phaedra Ellis-Lamkins, South Bay Labor Council; Susan Goldberg, San Jose Mercury News; Dave Zenker, Falls Creek Neighborhood Association; Edward Davis, Orrick Law Firm (Legal Counsel).

Absent: Nanci Williams, San Jose/Silicon Valley Chamber of Commerce.

Staff: Lisa Herrick, Senior Deputy City Attorney; Rosa Tsongtaatarii, Deputy City Attorney; Rick Doyle, City Attorney; Dan McFadden, Interim Deputy City Manager; Eva Terrazas, Office of the City Manager/Redevelopment Agency; Sheila Tucker, Office of the City Manager.

I. Comments from Mayor-Elect Chuck Reed

Mayor Elect Chuck Reed opened the meeting thanking the Sunshine Reform Task Force for their efforts. The Mayor Elect's remarks to the Task Force emphasized the following:

- Address the City Council on Open Government in January 2007.
- Complete work expeditiously and responsibly without compromising the Task Force's work.
- Provide input on a policy level and defer to staff to draft and implement the ordinance.
- Implement and enforce the ordinance.

II. Review of Meeting Material

Staff provided an overview of the packets and documents distributed for the meeting and noted the meeting binders for the November 30, 2006, Study Session were also available today.

III. Update on 22 Council Reform Referrals

The Task Force reviewed the status of the 14 reforms referred to staff for implementation and provided the following recommendations:

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1. Public Information Reform #4 - A detailed accounting of all City contracts and expenditures of \$1 million or more shall be made available to the City Council and public, on-line, no later than 2 weeks prior to being heard. Otherwise, a 2/3 majority vote of the Council would be required to hear an item that was received less than 2 weeks prior to the hearing.

Task Force member Bob Brownstein proposed enhanced reporting in the following areas: 1) cost benefit analysis (effect on tax revenue, fiscal opportunity lost i.e., where could funds be used if not going to the subsidy, statement on impact of city services and impact on neighborhoods e.g., noise, transportation, etc.); 2) economic effects e.g., net job impact of a subsidized project (jobs gained vs. jobs lost), net housing impact, and; 3) accountability e.g., what is the future schedule of reports to determine if project meeting its goals. It was further recommended that a 30 day notice be provided for consideration of a major public subsidy.

Task Force recommendation: The public notice period should be extended, public participation broadened e.g., committees, study sessions, etc., and enhanced information should be provided for large subsidies. The Task Force will discuss this reform further and provide recommendations in their report to Council in January 2007, pending the outcome of the study session and any further Council direction.

2. Public Information Reform #7 - Disclose statistical information on complaints received through the Fraud and Audit Hotline, excluding names and any other confidential information. This information should be reported to the Council.

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

3. Public Information Reform #8 - Require Council member and appointee Fair Political Practices Commission Statements of Economic Interest (FPPC Form 700) filings (after redacting personal contact information) and Conflict of Interest declarations to be posted and indexed online, including all conflicts outside of the City of San José's jurisdiction.

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

4. Public Information Reform #9 - Any Council member or board/commission member claiming a conflict of interest on a vote must publicly disclose the basis of the claim by filing a conflict of interest declaration with the City Attorney and City Clerk 24 hours prior to start of the council meeting at which the item will be heard.

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Task Force recommendation: The Task Force endorsed staff's approach to implementation, however recommends that the City address enforcement e.g., what are the penalties for non-disclosure of conflicts of interests.

5. Public Information Reform #10 - Disclose the calendars of the Mayor and Councilmembers quarterly, redacted for personal information.

Task Force Recommendation:

Upon the motion of Susan Goldberg, seconded David Zenker, the Task Force recommended (Ken Podgorsek dissenting):

- A. *Disclosure of calendars to be changed from quarterly to every three days (3 day release of the previous 3 days - every Monday and Thursday recommended)*
- B. *On-line posting include the previous quarter (3 months)*
- C. *"Personal/private information" be defined as proposed by staff, as amended to include an exemption for the City Attorney's attorney/client privilege.*
- D. *Disclosure be broadened to include (in addition to the Mayor and City Council) Department Heads, City Manager, City Attorney, City Auditor, and the Mayor's Chief of Staff and Budget/Policy Director.*

Action Item: Staff will update the implementation matrix to note the Task Force has discussed calendar disclosure and has made recommended changes to current practice.

Public Comment: James Chadwick noted that the effect of requiring more openness is that you create an incentive for evasion. Mr. Chadwick further stated that the definitions will be critical to determine what goes on the calendar, and it will be important that it include a requirement that calendars be kept.

6. Public Information Reform #11 - Establish criteria that can be used by the Rules Committee to determine if an item is of "significant public interest" and requires additional notification or public outreach consistent with definitions and procedures outlined in City Council Policy 6-30 "Public Outreach Policy for Pending Land Use and Development Proposals."

Task Force recommendation: The Task Force deferred this reform for further discussion.

7. Public Information Reform #12 - Post the City Council Policy Manual online.

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

8. Neighborhood Participation Reform #2 - Provide an annual city-wide budget briefing followed by 4 budget hearings throughout San José, in order to encourage greater

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community contribution to established City priorities. Appropriate consideration shall be made to ensure that meetings are accessible to the residents of San José in relation to the time, date, and location of the hearings.

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

9. Neighborhood Participation Reform #3 - Require the City Council and Redevelopment Agency to hold Public Priority Setting Hearings in the beginning of odd years to coincide with City Council member appointments to standing committees.

Task Force recommendation: The Task Force endorsed staff's approach to implementation. Additional information was requested on this referral at a later time.

10. Neighborhood Participation Reform #4 - Require notification to City commissions when items originating in the commission are being heard by the Council.

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

11. Neighborhood Participation Reform #5 - Expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group or Community Association Designees" (City Council Policy 6-30) or those subject to an eminent domain action, clarify the speaking time allowed to a representative from an advisory commissions, and create a strategy to address recently identified challenges to public participation for those with disabilities.

Task Force recommendation: The Task Force supports the concept of expanded speaking times but has concerns about fairness to all groups.

12. Government Accountability Reform #3 - City Manager and Department Staff Reports for expenditures of \$1 million or more and "Significant Public Interest" agenda items shall provide the following: (a). a new section entitled, "Policy Alternative Recommendations" that lists all the viable city staff options that have been discussed, but were not recommended by the City Manager or Department staff: (b). a brief description of the reasons the alternative was rejected, (c). a cost-benefit analysis and economic impact report to include, but not limited to, the following: how the expenditure aligns with and affects the City's policy goals, fiscal priorities, long term strategy, and economic development goals and priorities.

Task Force recommendation: See discussion and recommendation above, Public Information Reform #4.

13. Government Accountability Reform #4 - Require every Staff memo to have a City staff contact for public questions.

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Task Force recommendation: The Task Force endorsed staff's approach to implementation.

14. Public Information Reform #2 - Establish a single City of San Jose's Master Online Calendar where all city activities, events and meetings of committees, boards, commissions and advisory bodies and events are posted (Public Information Reform #2).

Task Force recommendation: The Task Force endorsed staff's approach to implementation.

IV. Task Force Resignations

1. With the recent resignation of Dave Roberson, the City Clerk will return to the original pool of nominees and randomly draw another Board and Commission representative.
2. Based on current policy for filling vacant seat, it was determined that Task Force member Phaedra Ellis Lamkins would need to formally resign and nominate Bob Brownstein to fill the South Bay Labor Council seat. Mr. Brownstein would also need to undergo a conflict of interest review prior to become a full voting member. The Task Force agreed to defer any vote on any issue of "significant controversy" until the conflict review had been completed.

Action Item: Staff will initiate a conflict of interest review for Bob Brownstein.

V. Discussion on *Public Meetings* Category

Upon the motion of Dan Pulcrano, seconded by Virginia Holtz, the Task Force agreed to amend the draft revisions to the "public meeting" definitions as follows

1. Definitions
 - A. Agenda - The definition for agenda was approved as recommended with a note to add "to facilitate public participation in the deliberative process" to the preamble.
 - B. Agenda Packet – The definition for agenda packet was amended as follows:
 - i. Amend provision A as follows: "Any contract terms, agreement, letter of intent or memorandum of understanding, including any amendment or modification thereto, that are submitted to the Policy Body for approval."
 - ii. Strike "as soon as it becomes final," in Provision B.
 - iii. Strike "as soon as it becomes final," in Provision C.
 - iv. Amend provision E to note if a document distributed or intended to be distributed in connection with a matter on the agenda is more than **15** pages, it

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- must be made for public inspection and copying at a location indicated on the agenda during normal office hours and **available on the City's web-site.**
- v. Add to the definition of agenda packet that "any document provided to the policy body should be included in the agenda packet."

Public Comment: James Chadwick spoke on the definition of Agenda Packets. Mr. Chadwick noted: 1) if the City Council is provided a contract that the contract should be included in the agenda packet, 2) the fundamental issue people express frustration over is the timing of disclosure and late disclosures (contracts, council memos, and staff memos), 3) there are hardly any circumstances when information cannot be provided to the public, 4) the public must have documents sufficiently in advance of the meeting in order to have a meaningful opportunity to comment on an item where the City Council will take action, and 5) changing rules allows people to conform their conduct because they know what the rules are, and the process changes to accommodate them.

Mr. Chadwick also noted with respect to labor negotiations that there is already a provision for an emergency meeting, if there will be work stoppage. Mr. Chadwick requested a point of clarification on Dan Pulcrano's definition of documents submitted to the policy body for approval and noted that entire documents posted on-line addresses many people's concerns about access to documents.

VI. Closed Session

- A. City Attorney Rick Doyle provided an overview of staff analysis and key issues related to the conduct of Closed Session.
- B. The Task Force discussed the following:
1. What type of record keeping is needed for closed session?
 2. What mechanism, if any, does the Task Force envision to disclose recordings? The concept of recommending a third party to evaluate whether a closed session recording should be disclosed was suggested.
 3. Broadening disclosures of closed sessions topics e.g., disclosing dismissal of public employees.
 4. Preventing misuse of the Brown Act and potential violations. Automatic disclosure if a violation of the Brown Act. e.g., complaint generation.
 5. Establishing a body to review if a violation of the Brown Act has occurred.
 6. Releasing information when there is no reason to keep the information confidential.
 7. The Task Force's Legal Counsel Ed Davis proposed conducting a pilot program (6 month-1yr), whereby the City Attorney would evaluate closed session topics once concluded and certify whether there is substantial risk to disclose the recordings. If it is determined there is substantial risk the recordings would remain confidential. When the need for confidentiality ceases, the information would be released. If

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someone takes exception to the ruling, the issue would go to a third party for review.

8. There was general consensus among Task Force members on the use of audio to record closed sessions and to employ third party review to determine the need to release closed session recordings.

Upon the motion of Dan Pulcrano, seconded by Dave Zenker, the Task Force agreed to refer the following closed session reforms, proposed by Mayor Elect Chuck Reed, to the City's Legal staff and the Task Force's Legal Counsel to draft the Closed Session Provisions (using Milpitas as a model).

1. *Broaden the disclosure of closed session. Provide more information on what broadening disclosure means.*
2. *Prohibit closed door meetings for Task Force meetings and commission meetings. Recommend returning to evaluate and review the current list of bodies that are allowed to conduct closed sessions.*
3. *Disclose appraisals used in the condemnation of property after the deal is finalized.*
4. *Record all Council closed session meetings electronically and make the information available after the reason of the secrecy has passed. The general consensus of the Task Force was to audio record closed sessions. Further evaluate the use of third party review to release information.*

Public Comment: James Chadwick supported the suggestion of a third party evaluation to determine whether closed session recordings should be disclosed.

VII. November 30, 2006 Joint Council/Sunshine reform Task Force Study Session

The Task Force agreed to:

1. Chair Rast will provide the opening remarks.
2. The Task Force will review their recommendation on reforms referred to staff for implementation.
 - i. Bob Brownstein will present on "Items of Significant Public Interest" (Public Information Reform #4 and Government Accountability 3).
 - ii. Susan Goldberg will discuss recommendations on "Calendaring" (Public Information Reform #10).
3. Set goal of completing public meeting, closed session, and public information by January 31, 2007.
4. Recommend a Sunshine Ordinance
5. Not to discuss enforcement at the Study Session. The issue merited further discussion.

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VIII. Determine Scheduling of December 9, 2006, All-Day Meeting

1. The Task Force will NOT hold an all-day meeting in December but may consider holding another all-day session in January 2007.
2. At the December 7, 2006, meeting, the Task Force will determine whether they have a quorum for the December 21, 2006, meeting.

IX. Upcoming Agenda and Work Plan

1. The Task Force noted the new outline for the “Closed Session” material worked well.
2. The agenda for the December 7, 2006, meeting will include continued discussion on “Public Meetings” beginning with revised definitions and resuming discussion on remaining provisions.
3. A discussion on increasing Sunshine on the City’s budget process will be agendized for January 2007.
4. The discussion on “Closed Session” provisions will resume at the December 21, 2006, meeting.

X. Public Comment

None

The meeting adjourned at 4:55