

Memorandum

TO: SUNSHINE REFORM TASK
FORCE

FROM: Dan McFadden

SUBJECT: Research on Comparison of Enforcement
Programs and Implementation Costs

DATE: November 17, 2006

Enclosed you will find information on enforcement programs, implementation costs, and structure for the City of Milpitas as it relates to implementation of the Open Government Commission. Staff has also distributed the questionnaire to the remaining four local governments the Sunshine Reform Task Force is analyzing as part of their deliberations. They include: San Francisco, Oakland, Contra Costa, and Benicia. Staff expects to provide the City Council with similar information on these cities at the November 30, 2006, study session.



Dan McFadden
Deputy City Manager

For more information contact: Dan McFadden, Deputy City Manager, Office of the City Manager at (408) 535-8120.

Sunshine Ordinance

Research on Comparison of Enforcement Programs, Implementation Costs, and Structure

ISSUE	MILPITAS
<p>1. Enforcement:</p> <ul style="list-style-type: none"> ▪ How is the ordinance enforced? <ul style="list-style-type: none"> ○ Task Force or City Admin? ○ If City Admin – yearly costs? 	<ul style="list-style-type: none"> - The Milpitas Open Government Ordinance is enforced by City administrators and the City Council Open Government Subcommittee, which is currently operating in the place of the Open Government Commission. - Administrative Costs have never been quantified. Most requirements of the ordinance were folded into the regular duties of City staff, so there haven't been significant administrative or enforcement costs to report.
<p>2. If a <i>Sunshine Ordinance Task Force /Open Government Commission</i>:</p> <ul style="list-style-type: none"> ▪ How long operating? ▪ Yearly Operating Costs ▪ Responsibility for Administration ▪ Structure of Commission/Task Force/Term? <p>Meeting frequency?</p>	<ul style="list-style-type: none"> - The City Council Open Government Subcommittee has been operating for a year. - Yearly operating costs are minimal; primarily attorney time spent staffing the City Council Open Government Subcommittee meetings. A rough estimate would be approximately \$500.00 a month in legal bills to staff the Open Government Subcommittee. - The City Clerk is the City's administrator to the City Council Open Government Subcommittee. - Two City Council members compose the City Council Open Government Subcommittee, until a Commission is appointed. The Commission consists of 5 members, appointed by the City Council. - The City Council Open Government Subcommittee meets once a month.
<p>3. Legal Counsel to Task Force:</p> <ul style="list-style-type: none"> ▪ CAO or outside counsel? ▪ If outside legal counsel, yearly costs to the City? ▪ Role of the Counsel? 	<ul style="list-style-type: none"> - The City Attorney's Office of Milpitas staffed entirely by outside counsel through a contract with the law firm of Meyers Nave. The Subcommittee has designated to it an attorney from within the City Attorney's Office who is experienced in public-law access matters. The attorney serves as the legal advisor to the Subcommittee and an ethical wall is maintained between that attorney's work on behalf of the Subcommittee and the rest of the attorneys in the City Attorney's Office and any persons or City offices that may have a conflict of interest with regard to matters being handled by that attorney.

Sunshine Ordinance

Research on Comparison of Enforcement Programs, Implementation Costs, and Structure

	<p>- Yearly legal costs have been low so far. Approximately \$6000 a year.</p>
<p>4. Ordinance Implementation:</p> <ul style="list-style-type: none"> ▪ Additional staffing costs? ▪ Training Costs (yearly or one-time?) ▪ Software Costs? ▪ Public Records Requests <ul style="list-style-type: none"> ○ (% increase in P.R. requests since adoption of ordinance) ○ (% increase in costs associated with P.R. requests) ○ Software needs? 	<p>As stated above, implementation of the Open Government Ordinance's requirements are folded into the regular day-to-day duties and activities of City employees. The primary materials costs have been purchases of cassette and VHS tapes to keep recordings of meetings and closed sessions for as long as mechanically possible. The ordinance requires the recordings of meetings to be kept for an indefinite amount of time, so the storage costs, especially in electronic mediums could be significant, but remain unpurchased until a feasible technology solution is developed.</p> <p>- Training is yearly and costs approximately \$1,000.00 to \$1,500.00, consisting primarily of attorney time to prepare for and provide the training. The City Attorney's Office developed a training video that is provided to all of Milpitas' other commissions, committees, task forces, boards and policy bodies in lieu of the live training that is provided exclusively for the City Council and Planning Commission.</p> <p>- There has been no discernible increase in Public Records Requests since the implementation of the ordinance.</p>
<p>5. Cases</p> <p>%s of types, resolution, kinds of penalties employed</p>	<p>None</p>
<p>6. Litigation:</p> <ul style="list-style-type: none"> ▪ % increase of cases brought forward related to provisions in ordinance? ▪ Cost to the city? 	<p>None</p>
<p>7. Future amendments to ordinance:</p> <ul style="list-style-type: none"> ▪ Cost to the city? 	<p>An amendment was recently approved to require lobbyist reporting. Legal time to draft the ordinance was approximately \$1000 to \$1500 to research and draft the ordinance amendment and forms.</p>
<p>8. Reporting:</p> <ul style="list-style-type: none"> ▪ Type of information reported; ▪ Schedule/frequency of reports to 	<p>The new lobbyist registration form will go into effect January 1, 2007. In addition, the City Clerk is required to report to the City Council</p>

Sunshine Ordinance

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Council/Administration; public access to report.	once a year regarding public records request appeals. There were no appeals to report.
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9. Can you tell us if the program was rolled out at once or in phases?

The program was rolled out all at once.

10. Please describe any unintended consequences?

None available to describe or report.

11. Lessons learned/significant issues?

Prior to the passage of the Open Government Ordinance, Milpitas's government was already pretty open and complied with State law. The Open Government Ordinance enhanced State law requirements regarding the Brown Act and Public Records Act, and in some cases restricted the City's ability to exempt from disclosure documents that arguably could have been designated as exempt by staff or counsel. However, no public records act request issues have surfaced to cause even mild concern. The City is very responsive to requests.

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