

Sunshine Reform Task Force
Phase I Report and Recommendations, Public Meeting Provisions

Ancillary Body Feedback, 10/18/07

Provisions	Barriers to Implementation
Section 1. Definitions	
1.3 Ancillary Body	<p>None of the changes to the current process presents a true obstacle or barrier to implementation. Everything is achievable, and reasonable. (Kim Shunk, Citizens Corp Council)</p> <p>No comments (School Pedestrian Advisory Board)</p>
"Ancillary body" means:	
A. Committees or other bodies created by and to serve as an advisor to a member of a policy body, the Mayor, a City Councilmember, the Mayor's Chief of Staff, the Mayor's Budget and Policy Director, a Council appointee or a Department Head.	<p>The Five Year Housing Investment Plan Task Force (FYHTF) should not be considered an ancillary body as part of the Sunshine Reforms being considered. The FYHTF is convened once every 5 years for a few meetings (in 2007, the Task Force only met 5 times). The group was informal and was only convened for the one time purpose of providing input and sharing ideas with staff regarding the City's housing policies in preparation of the City's Five Year Housing Investment Plan.</p> <p>Also, this body only serves in an advisory role to the Department Head. Ultimately, the Mayor and City Council review and adopt the Five-Year Housing Investment Plan at a regular City Council meeting, which is already subject to the recommendations being made by the Sunshine Reform Task Force. (Leslye Krutko, Director of Housing)</p> <p>Edits suggested to clarify definition (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p>
B. Committees comprised of City Council staff that together represent a quorum of the City Council.	

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<p><u>C. Any body that grants or advises a policy body or Department Head about grants to a non-City organization where the aggregate amount of funds granted totals more than \$200,000 in City or San José Redevelopment Agency funds per City fiscal year.</u></p>	<p>Can we see some examples of this type of ancillary body? It appears that grant review panels for grant programs fall within this category – including if the panel is established by city staff and would not otherwise be covered by the brown act. Does this include community meetings to discuss SNI projects? Do these include consultants who may assist in the development of SNI neighborhood top ten lists? Does the “aggregate amount of funds granted” mean the aggregate amount granted to a single non-City organization exceeds \$200,000? There are bodies that recommend grants to multiple non-City organizations wherein the aggregate amount of all grants totals more than \$200,000, but individual grants to each non-City organization do not. (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p>
<p><u>D. Ancillary body does not include any committee or body that consists solely of City staff.</u></p>	
2. Public Meetings	
2.3 Notice and Agenda Requirements	
2.3.020 Ancillary Bodies	
A. Regular Meetings	Meetings are not held regularly. (IPA for IPA Advisory Committee)
1. Agenda Posting	
<p>a. Each ancillary body must designate a location to post notices and agendas required by this ordinance. At a minimum, each ancillary body must post notices and agendas at a place that is freely accessible to members of the public 24 hours per day and on the City's website.</p>	<p>At the July 31, 2007 outreach meeting, it was confirmed that the Retirement Boards' website, which is linked to the City's website, satisfies the website element of this proposal. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)</p>
<p>b. At least 4 calendar days before a regular meeting, an ancillary policy body must post an agenda for the</p>	<p>Correction to text (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p>

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meeting.	<p>This requirement could have an adverse effect on the trust fund investments. The Boards frequently have no control over situations that may require prompt action to protect the trust assets.</p> <p>The Boards recommend that the recommendation include a provision for amending an agenda subject only to the Brown Act requirements for emergencies and in situations that would affect cases involving risks to retirement fund assets. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)</p>
2. Staff Reports and Councilmember Reports	
a. All staff reports and other supporting documents related to the items on the agenda for a regular meeting – including any item of business to be transacted or discussed for an expenditure of \$1 million or more – must be posted on the City's website at least 4 calendar days before a regular meeting.	<p>Is the threshold a single expenditure of \$1 million or the total of multiple expenditures exceeding \$1 million? (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p> <p>Because Board committees meet on a monthly and/or quarterly basis, in those cases where the additional information is submitted or received by staff, the submittal may necessitate additional staff analysis. This requirement could have an adverse effect on investment decisions where circumstances change subsequent to the initial report. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)</p>
b. In the event that supplemental staff reports and other supplemental documents related to items on the	<p>Is there any relaxation for emergencies policy bodies or if the City may miss a funding deadline? (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p>

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agenda for a regular meeting are not posted on the City's website at least 2 calendar days before the regular meeting, the item will be deferred.	This requirement raises the same concerns as are expressed above with respect to proposed section 2.3.020(A)(2)(a). Because the committees meet on a monthly and/or quarterly basis, as opposed to a weekly basis, a deferral of an item for a month/quarter could result in an inability to take action in a timely manner. The Boards request an exemption from this provision. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)
c. Councilmember reports, which may be signed by no more than two Councilmembers, must be posted on the City's website at least 2 calendar days before a regular meeting.	
3. Documents distributed by members of the public.	
Documents related to an item on an agenda that are distributed by a member of the public during discussion of the item at a meeting must be made available for public inspection immediately or as soon thereafter as is practicable. No documents from City staff or Councilmembers may be distributed any later than set forth in Section 2.3.020(A)(2).	The Boards request an exemption from this requirement. The Boards have no control over situations that may require additional staff analysis at the last minute to enable Board committees to propose responses to changes in investment markets. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)
B. Special Meetings	
1. A presiding officer of an ancillary body or a majority of members of an ancillary body may call a special meeting with 24 hours notice.	Less formal group, no presiding officer as a member, IPA is presiding officer. (IPA for IPA Advisory Committee)

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2.3.030 Additional Agenda Requirements	
<p>Every agenda must identify the policy body or ancillary body conducting the meeting, specify the time and location of the meeting, contain a meaningful description of each item of business to be transacted or discussed at the meeting and specify the proposed action for each item or state that the item is for discussion only. If an exception to a significant standing City policy is at issue, the policy should be listed in the agenda description. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood language and must identify all documents that will be provided to the body in connection with an agenda item.</p>	<p>Board committees confront complex issues. It is not always possible to specify on a committee agenda any "proposed" action. The eventual action taken by a Board committee often arises during the course of the discussion at the meeting. To restrict a Board committee to action proposed on the agenda would seriously impair its operations. The Boards recommend that when a committee is to adopt a recommendation, the item be noted on the committee agenda as a recommendation item (as opposed to an item for discussion only).</p> <p>Board committees consider a significant number of documents at each meeting. Identifying them in the agenda would be significantly burdensome and would not appear to advance significantly the public's ability to be informed and to participate in the discussion of the item. In addition, it is impossible to identify all documents that "will be provided" unless members of the public and Plan participants are to be precluded from submitting documents at the meeting. In addition, this requirement would be unwieldy and confusing when listing large packets such as quarterly investment reports. The Boards request that they be exempted from the requirement to list all documents. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)</p>
2.5 Access to Meeting Facilities	
<p>Meetings of policy bodies and ancillary bodies must be open and public and all persons must be permitted to attend any meeting. Meetings of policy bodies and ancillary bodies must also be held in facilities that (1) are accessible to disabled persons and comply the Americans with Disabilities Act of 1990, as may be amended; (2) do not discriminate on the basis</p>	<p>From time to time, the Real Estate Committees and the Investment Committees of the Boards require discussions which are either proprietary or involve legal discussions which must be in closed session until after the purchase is made. For this reason, the Boards request to be exempted from this provision. (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration</p>

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of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, ethnicity, or national origin; and (3) allow members of the public to be present without making a payment or purchase.	of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)
2.6 Recording Meetings	
A. Any person attending a meeting of a policy body or ancillary body may record the proceeding with an audio or video recorder or a still or motion picture camera, or broadcast the proceeding, unless or until the body makes a finding that the recording creates noise, illumination or obstruction of view that constitutes an unreasonable and persistent disruption of the proceeding.	
2.7 Public Comment and Testimony	
A. Any person attending an open meeting of a policy body or ancillary body must be provided an opportunity to directly address the body, during the body's consideration of the item and during the open forum session, on any item of interest to the public that is within the body's subject matter jurisdiction. If the open meeting is a special meeting, any member of the public may comment on the items on the agenda.	Opening the IPAAC meetings to the public would be problematic because the forum would become a defacto "civilian review board." Complainants could attend and speak about complaints during public comment. This would enable IPAAC members to hear police misconduct issues, which is NOT within their mission and could be a violation of police officers' confidentiality rights around misconduct issues. (IPA for IPA Advisory Committee)
B. To facilitate public input, the policy body or ancillary body may adopt reasonable rules including, but not limited to, time allocated for public testimony on particular issues and for each individual speaker. Any group of two or more persons that wishes to make a public comment where one other member of the group yields his or her time must be permitted to speak for a	I assume that nothing is intended to reduce the right that the public would have for notice and participation in a meeting under the Brown Act? (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)

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maximum of four (4) minutes. Time limits must be applied uniformly to all members of the public.	
2.9 Minutes	
2.9.020 Ancillary body	
For each open meeting, an ancillary body must either prepare minutes stating the action taken by the body including the vote of each member or record the meeting with an audio recorder.	<p>Aren't all of the meetings supposed to be open? (Barbara Jordan, Deputy City Attorney; Irene Ray, Division Manager OCA; reviewed by Sharon Gustafson, Arts Commission Chair)</p> <p>The IPAAC does not take formal action. (IPA for IPA Advisory Committee)</p>
2.10 Public Comment by Members of Policy Body or Ancillary Body	
A. Any member of a policy body or ancillary body may comment publicly on the policies, procedures, programs, or services of the City, or of acts or omissions of the body. A policy body or ancillary body must not sanction, reprove or deprive members of their right to speak freely.	Because of rules around public comment, we could not constrict members of the public from speaking about police misconduct issues. (IPA for IPA Advisory Committee)
B. No member of a policy body or ancillary body may release specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications.	<p>If statements are made during public comment it would be difficult to restrict members of the IPAAC from speaking about complaints reported. (IPA for IPA Advisory Committee)</p> <p>The Boards recommend that "or legal" be added after "factual". (Thomas J Webster, Deputy Director of Retirement Services; Russell Richeda, Conflicts Counsel; Susan Devencenzi, Senior Deputy City Attorney; Boards of Administration of the Police and Fire Department Retirement Plan and of the Federated City Employees' Retirement System)</p>