CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES & OPEN GOVERNMENT COMMITTEE

FROM: Les White
Rick Doyle
Lee Price

SUBJECT: REED REFORMS

DATE: January 26, 2007

RECOMMENDATION

(a) Accept staff's report on the Reed Reforms and direction to staff to proceed as outlined in the attached matrix.

(b) Provide clarification to staff on Reed Reforms:
   (1) Reed Reform #1, Ask the voters to revise the Charter to make it easier to recall the Mayor and Councilmembers for a violation of the Charter or the Oath of Office.
   (2) Reed Reform # 5, Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.
   (3) Reed Reform #8, Disclose all offers made to City unions for pay or benefit increases when the offers are made.
   (4) Reed Reform #26, Hold regular public hearings on ethical issues around the state so we can learn from our mistakes and the mistakes of others.

(c) Provide direction regarding exceptions outlined in this report, for Reed Reform #5, Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.

(d) Request that this report be considered by the City Council on February 6, 2007.

OUTCOME

Currently, there are several initiatives that relate to open government:

- Reed Reforms (Attachment A);
- 14 Sunshine Reforms referred to staff for implementation in June 2006 (Attachment B); and,
- Sunshine Reform Task Force (SRTF) work plan.

This report provides a status report on the Reed Reforms and, where relevant, links the Reform to ongoing and/or previously directed initiatives. This report also identifies where staff seeks clarification on initiatives in order to proceed with implementation.

HONORABLE MAYOR & CITY COUNCIL
Subject: Reed Reforms
January 26, 2007

BACKGROUND

Mayor Reed's report on the Reed Reforms directed staff to return to Council with information on:

(1) Reforms that can be implemented without additional resources and/or with minor modifications to current work processes;
(2) Reforms that require coordination with /referral to Task Forces, Boards/Commissions, and/or further review and Council action, with specific information on Reforms that may have budget implications, along with related timelines for implementation.

This report responds to that direction and the additional referrals made during the City Council discussion of the Reed Reforms.

Additionally, the SRTF is in process of deliberating various open government initiatives and has not yet issued final recommendations for the City Council to consider.

ANALYSIS

The attached matrix provides staff's comments on all 34 Reed Reforms. In short, there are 23 open referrals and 11 are complete. It is important to note that several are currently under review by the SRTF and the City Council will receive final recommendations for its consideration by June 2006.

After further review of the Reed Reforms, there are 4 Reforms that require additional Council discussion and direction so that staff can proceed with implementation.

Reed Reform #1, Ask the voters to revise the Charter to make it easier to recall the Mayor and Councilmembers for a violation of the Charter or the Oath of Office.

The Charter requires a recall petition to be signed by 12% of: (1) the registered voters of the City, in the case of a recall of the Mayor; or (2) the applicable Council District, in the case of a recall of a Councilmember.

Staff has conducted a survey of some other jurisdictions and has found that the recall requirements are as follows:

- San Francisco: 10% of registered voters
- Los Angeles: 15% of registered voters
- Oakland: 12% voters voting in the last election
- State of California: 12% of the voters voting in the last election

There are no grounds for recall specified in the City's Charter, as this power rests solely within the discretion of the electors of the City.

Council Clarification: Staff needs clarification as to whether this proposal is intended to create a two-tiered recall system, making it easier to recall an elected official on the specific grounds of violation of the Charter or Oath of Office. That could create ambiguity, because there would need to be some method of determining whether the lower threshold is triggered. Last, reducing the number of signatures required for a petition for recall, results in the recall process being easier.

Reed Reform # 5, Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.

In response to Council's request on January 9, 2007, staff has provided a recommendation of exceptions for release of staff memos 10 days in advance of Council consideration. Additionally, this topic will be discussed by the SRTF in February.

Implementation of this Reform should acknowledge that any new procedure and/or policy regarding this requirement shall include a provision specifying that actions taken by the Council that may not be in compliance with these timelines will not be rendered void. The proposed exceptions are:

1. Planning Commission action where there was no significant change to the project description;
2. Contract Bid Awards or procurement contracts where the initial memo was distributed to the City Council on time;
3. Supplemental memos where additional information has been received after the initial memo was released, granting Council the opportunity to receive the information and determine whether to hold the hearing or defer the matter;
4. Emergency items that may need to be added to the agenda in the event of a health and safety issue that needs immediate Council action;
5. Grant application memos where the Administration needs Council authority to submit applications and grant deadlines do not allow conformance with the 10 day requirement;
6. Council Committee minutes and, as already acted on by Rules & Open Government Committee on January 17, 2007, Council Committee packets, which will be distributed 7 days in advance of a meeting;
7. Items where Council action is required to satisfy legal deadline; and,
8. Items heard by a Council Committee that require full Council action (commonly referred to as "one week turnaround to Council").

The list of exceptions will be verbally noted for the Rules & Open Government Committee each week so that it can make the final determination on the disposition of the item. It is important to note, that approximately 98% of staff reports are distributed 10 days before Council consideration. The majority of items falling within the remaining 2% fall within the exceptions noted above.

Council Clarification: In June 2006, the City Council directed staff to:

(a) Provide 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 (Public Information Reform #4)

(b) 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 (Public Information Reform #11).

In response to the above directives, staff established several Council Agenda procedures that result in distribution of staff memos 14 days in advance of Council consideration and a Rules Committee process for requiring a 2/3 majority vote of the Council if an item falls within the above two categories and is not distributed on time. Over the past months, staff has distributed 14 days in advance staff memos for items that are over $1 million or of significant public interest. Staff needs clarification on whether the City Council, with a 2/3rds vote, should be able to hear items of significant public interest if the staff report has not been distributed 14 days in advance of the meeting. Also, it is important to note that the Sunshine Reform Task Force may make recommendations on the release of staff memos or provide input on the list of exceptions.

Reed Reform #8, Disclose all offers made to city unions for pay or benefit increases when the offers are made.

Council Clarification: This reform is currently under consideration by the Sunshine Reform Task Force. The Task Force is expected to provide a recommendation to the City Council in February 2007.

Staff seeks clarification on whether to require that the Council memo that contains the summary of the Tentative Agreement be released at least 10 days prior to the Council meeting. It is important to note, that at the time that Council takes action on the Tentative Agreement that the final Bargaining Agreement is not published because subsequent to Council action the final contract is drafted and finalized (which can take several months).

Staff seeks additional consideration from Council as to whether this item should be evaluated as an exception to the above "10 day rule." This exception would allow a memo to be released at least 5 days prior to the Council meeting if approved by the Rules & Open Government Committee (or the Council).

Staff would like Council confirmation that any deadline for release of the Council memo not be linked to ratification by the union membership, as each union has it own timeline/process for ratification.

Reed Reform #26, Hold regular public hearings on ethical issues around the state so we can learn from our mistakes and the mistakes of others.

Council Clarification: Staff would like to obtain more information about the proposed structure, discussion topics, etc. to respond to this directive. Staff's recommendation is that the Rules & Open Government Committee provide direction.

HONORABLE MAYOR & CITY COUNCIL
Subject: Reed Reforms
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PUBLIC OUTREACH/INTEREST

☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

No public outreach was done to complete this report. These initiatives are being discussed in various public forums.

COORDINATION

This memorandum was coordinated with the various departments noted in the attached matrix.

CEQA

Not a Project.

for Les White
CITY MANAGER

Richard Doyle
CITY ATTORNEY

Lee Price
CITY CLERK

REED REFORMS-SUNSHINE TASK FORCE RECOMMENDATION

January 2007

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
CHARTER CHANGES					
1. Ask the voters to revise the Charter to make it easier to recall the Mayor and Councilmembers for a violation of the Charter or the Oath of Office.	Rick Doyle	**Open**	Refer to City Attorney for analysis of how San Jose compares to State of California and report back to Council.		The Charter requires a recall petition to be signed by 12% of (1) the registered voters of the City, in the case of a recall of the Mayor; or (2) the applicable Council District, in the case of a recall of a Councilmember. Staff has conducted a survey of some other jurisdictions and have found that the recall requirements are as follows: San Francisco: 10% of registered voters Los Angeles: 15% of registered voters Oakland: 12% voters voting in the last election State of California: 12% of the voters voting in the last election There are no grounds for recall specified in the City's Charter, as this power rests solely within the discretion of the electors of the City. Staff needs clarification as to whether this proposal is intended to create a two tiered recall system, making it easier to recall an elected official on the specific grounds of violation of the Charter or Oath of Office. That could create ambiguity, because there would need to be some method of determining whether the lower threshold is triggered. Last, reducing the number of signatures required for a petition for recall, the recall process will be easier.
OATH OF OFFICE CHANGES					
2. Revise the Oath of Office to include a pledge to follow the Charter.	Rick Doyle	**Complete**	The Oath of Office is specified in the State Constitution.		The City Attorney's Office has issued a legal opinion on this matter and it is attached (Attachment C).
3. Revise the Oath of Office to include a pledge to put "service above self" and an honor code: "No lying. No cheating. No stealing."	Rick Doyle	**Complete**	The Oath of Office is specified in the State Constitution.		The City Attorney's Office has issued a legal opinion on this matter and it is attached (Attachment C).
SUNSHINE ORDINANCE CHANGES					
4. Adopt a Sunshine Ordinance that will make it easier for the public to know their rights and easier for the public to find out what the city is doing.	Rick Doyle/Lee Price/Dan McFadden, et al.	**Open**	SRTF to continue working on.	The Task Force accepted the reform proposal and will provide additional recommendations as part of the Task Force's overall work plan.	Referred to SRTF, final recommendations pending by June 2007. The primary work of the SRTF is to draft a Sunshine Reform Ordinance. The SRTF recommendations for the conduct of public meetings, public information, and public records will propose new requirments to make it easier for the public to know their rights and easier for the public to find out what the City is doing.

Attachment A

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
5. Prohibit late staff memos so that the public can have a greater opportunity to respond to proposals and fully participate in the debate.	Nadine Nader/Lee Price/Rick Doyle	**Open**	Direct staff to publish all staff reports at least 10 days before the Council meeting. Council requested staff to return with exceptions for complying with this requirement.	The Task Force accepted the reform proposal and will provide additional recommendations as part of the Task Force's overall work plan. The Task Force has discussed this item and preliminary recommends: 1. Require staff reports and other supporting documents to be posted 5 calendar days prior to the date action is taken on the item, or defer the item. 2. Require council memorandums to be signed by no more than two councilmembers and posted 3 calendar days prior to the date action is taken on the item.	Implementation of this Reform should acknowledge that any new procedure and/or policy regarding this requirement shall include a provision specifying that actions taken by the Council that may not be in compliance with these timelines will not be rendered void. The SRTF may issue recommendations to the City Council or additional input based on the exceptions listed below. Staff proposes the following exceptions: 1. Planning Commission action where there was no significant change to the project description; 2. Contract Bid Awards or procurement contracts where the initial memo was distributed to the City Council on time; 3. Supplemental memos where additional information has been received after the initial memo was released, granting Council the opportunity to receive the information and determine whether to hold the hearing or defer the matter; 4. Emergency items that may need to be added to the agenda in the event of a health and safety issue that needs immediate Council action; 5. Grant application memos where the Administration needs Council authority to submit applications and grant deadlines do not allow conformance with the 10 day requirement; 6. Council Committee minutes and, as already acted on by Rules & Open Government Committee on January 17, 2007, Council Committee packets, which will be distributed 7 days in advance of a meeting; 7. Items where Council action is required to satisfy legal deadline; and, 8. Items heard by a Council Committee that require full Council action (commonly referred to as "one week turnaround to Council").
6. Require the Mayor and Councilmembers to disclose material facts before the Council takes action.	Rick Doyle	**Complete**	Completed as part of Council Policy 0-32 (April 2006).	The Task Force supports in concept recent revisions to the City's process for disclosing and sharing material facts and conflicts of interest. On April 25, 2006, the City Council approved the Disclosure and Sharing of Material Facts Policy No. 0-32 which requires the Mayor and Councilmembers to publicly share substantive information that is relevant to a matter under consideration by the Council. Additionally, on November 21, 2006, the Council approved the Declaration of Conflict of Interest Policy which requires disclosure of the conflicts of interest at least 24 hours in advance of a Council or Board/Commission meeting. The Task Force recommends that the City evaluate enforcement actions for the conflict of interest policy and will provide additional recommendations as part of the Task Force's overall work plan.	SRTF is reviewing enforcement mechanisms. This policy would currently be enforced by Council through its Censure Policy. This Reform is related to Council's previous directive: 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 filling a conflict of interest declaration with the City Attorney and City Clerk 24 hours priori to start of the Council meeting at which the item will be heard.

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
7. Require the Mayor and Councilmembers to disclose any political favors or other consideration they are to get in exchange for their votes.	Rick Doyle/Lee Price	**Complete**	Completed as part of Council Policy 0-32 (April 2006).	Same as above	SRTF is reviewing enforcement mechanisms. This policy would currently be enforced by Council through its Censure Policy. This Reform is related to Council's previous directive: 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 filling a conflict of interest declaration with the City Attorney and City Clerk 24 hours priori to start of the Council meeting at which the iden will be heard.
8. Disclose all offers made to city unions for pay or benefit increases when the offers are made.	Alex Gurza/Les White/Rick Doyle	**Open**	Direct staff to publish agreements with bargaining units not less than 10 days before Council hearing.	Defer action pending further analysis and discussion in regard to the California Meyers-Milias-Brown Act. The SRTF's draft provisions for Closed Sessions recommends disclosure after ratified.	This reform is currently under consideration by the Sunshine Reform Task Force. The Task Force is expected to provide a recommendation to the City Council in February 2007. Staff seeks clarification on whether to require that the Council memo that contains the summary of the Tentative Agreement be released at least 10 days prior to the Council meeting. It is important to note, that at the time that Council takes action on the Tentative Agreement that the final Bargaining Agreement is not published because subsequent to Council action the final contract is drafted and finalized (which can take several months). Staff seeks additional consideration from Council as to whether this item should be evaluated as an exception to the above "10 day rule." This exception would allow a memo to be released at least 5 days prior to the Council meeting if approved by the Rules & Open Government Committee (or the Council). Staff would like Council confirmation that any deadline for release of the Council memo not be linked to ratification by the union membership, as each union has it own timeline/process for ratification.
9. Disclose the names of people serving on advisory committees.	Lee Price	**Open**	Direct staff to implement now.	Accept the reform proposal and recommend proceeding with implementation.	All Boards and Commission members are listed on the City's website, specifically the Office of the City Clerk's home page. Additionally, the SRTF will be recommending a definition of an "ancillary body" and, upon Council action, staff will begin posting onto the City's website the individuals serving on an ancillary body, as defined.

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
10. Make broader disclosures of what the Council does in closed sessions.	Rick Doyle	**Open**	Move closed session reports to the beginning of the meeting instead of at the end. SRTF to make further recommendations.	Accept the reform proposal and provide additional recommendations as part of the Task Force's overall work plan. Also see #17 below.	On January 18, 2007, the Task Force preliminarily discussed Closed Session 1. Agenda Disclosures, 2. Public Employee Performance Discipline as it relates to Council Appointees, and 3. Real Estate negotiations. Staff was directed to return with additional information and clarifying language on item 1. and 2. On Real Estate negotiations, the Task Force recommended: (1) Clarify that Closed Session regarding real estate negotiations may not address any subjects other than instructions from the City Council to its negotiators regarding the price and terms of payment with an understanding that price includes a discusssion on potential use of property. (2) Require that policy bodies identify the properties at issue and any development plans regarding the property in open session. Proposed development of property is subject to CEQA requirements. (3) Require public disclosure of all proposed agreements, after the agreements are negotiated, but before the deal is approved in a public vote. Codify 10 day requirement for purchase <$1M, 14 days for purchase>$1 M. The Sunshine Reform Task Force will m February 2007.
11. Prohibit closed door meetings for city task forces, commissions and committees.	Lee Price/Rick Doyle/Dept. Directors	**Open**	SRTF to continue working on.	The Task Force is currently reviewing the list of (seven) bodies that are authorized to conduct closed sessions and will provide additional recommendations as part of the Task Force's overall work plan.	Referred to the SRTF with a schedule TBD.
12. Post notices for meetings of committees, boards, commissions and advisory bodies online on one page.	Lee Price/Dotti Disher/Tom Manheim/Randy Murphy	**Open**	Direct staff to implement as much as feasible.SRTF to continue to work.	Accept the reform proposal and recommend proceeding with implementation. Additional recommendations may be submitted upon consideration of the technology section of the Task Force's work plan.	This directive wil be integrated into the SRTF direction to establish a Master City Calendar. This Reform relates to Council direction: Public Information #2, Establish a single City of San Jose Master Online Calendar where all city activities, events and meetings of committees, boards, commissions and advisory bodies and events are posted. The schedule for implementation is Spring 2007.
13. Disclose the salaries of all city employees by position.	Rick Doyle, Alex Gurza, Mark Danaj, Scott Johnson	**Open**	Direct staff to determine feasibility of doing so without revealing personal information.	The Task Force voted to defer action pending further analysis and discussion, and the outcome of lawsuit regarding a similar matter.	The City can and does release the pay ranges of all City classifications. Releasing information that can be linked to an individual employee raises employee privacy concerns and would need to be discussed with the bargaining units. Since there is currently litigation on this matter, staff recommends waiting until the legal issues are resolved before moving forward with this item.
14. Disclose records of city employees disciplinary actions to the extent allowed by state law.	Rick Doyle, Alex Gurza, Mark Danaj	**Open**	SRTF to continue working on. Direct staff to provide alternatives for Council to consider.	The Task Force accepted the reform proposal and will provide additional recommendations as part of the Task Force's overall work plan. The SRTF is scheduled to begin deliberating Public Records in February 2007.	The SRTF continues to work on this referral. Additionally, disciplinary actions are considered part of an employee confidentiality and privacy. Even if information was released without names, the identity of the employee may easily be ascertained based on the facts of the disciplinary action. Staff recommends that disciplinary actions continue to be treated as confidential personnel matters.

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
15. Disclose actions taken on complaints received about fraud and abuse.	Rick Doyle, Alex Gurza, Jerry Silva	**Complete**	Direct staff to provide alternatives for Council to consider along the lines of annual report on the Fraud and Abuse Hotline.	Accept the reform proposal. The Task Force supports recent revisions to its reporting on complaints received through the Fraud and Audit Hotline.	This Reform has been addressed and is complete. A report in response to issues raised by Council, during the Fraud & Audit Line Annual Report, will be issued at the end of January. The City will continue to issues annually a "Fraud & Audit Line Annual Report." This Reform is related to Council's previous direction: 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.
16. Disclose appraisals used in the purchase or condemnation of property after the terms are agreed to.	Rick Doyle/Katy Allen	**Open**	Direct staff to return to Council with ways to implement.	Accept the reform proposal and recommend proceeding with implementation.	The current practice in eminent domain litigation is to disclose appraisals as required by law. This means that the original appraisal done at the time of the good faith offer is always disclosed. If a later appraisal is done for litigation purposes, disclosure of the later appraisal depends on at what point in the litigation process settlement is reached. If more than one later appraisal has been done, only the appraisal more beneficial to the City is disclosed. A full copy of the appraisal commissioned by the City is presented to the property owner as an attachment to the City's written Offer To Purchase. Real Estate staff provides full copies of appraisals it commissions for acquisition of property whenever requested subsequent to acquisition of property in accordance with City procedures in response to Public Records requests. Past appraisals utilized for property acquisition are indexed in the Real Estate closed files inventory and are available as noted. Other than to the property owner and/or their designated representative Real Estate does not make appraisals available in response to public inquiries prior to completion of acquisition. Public Records Act - California Government Code Section 6254 states "nothing in this chapter shall be constructed to require disclosure of records that are any of the following: " Subsection "h" of that Section notes "The contents of real estate appraisals ...made for or by...[a] local agency relative to the acquisition of property ...until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision."
17. Record all Council closed session meetings electronically and make the information available after the reason for secrecy has passed.	Rick Doyle, Alex Gurza	**Open**	Mayor referred reform to SRTF and postponed implementation until all matters have been resolved.	The Task Force has discussed this reform and the general consensus is to audio record closed sessions and to consider the use of third party review to evaluate the release of information.	Referred to the SRTF. In addition, discussions with the City's labor negotiator often occur in Closed Session. These discussions are confidential and include formulation of negotiation strategy and parameters. These discussions must remain confidential during the negotiations. The resulting labor contracts must be approved by the Council in open session and ratified by the union membership. However, the Closed Session discussions must remain confidential even after a labor contract is settled since labor strategy carries over from one contract to the other not only with the same union but with different unions. For example, the City may plan to propose the same item to every bargaining unit and thus even if contract is settled, the same item will be raised in subsequent negotiatons with other unions. Since the reason for confidentially of labor strategy never passes, Staff recommends that an exception be made for any decision to electronically record Closed Sessions.

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
18. Store archive copies of email in a form that will allow for easier public review.	Viyay Sammeta/George Rios/Alex Gurza/Randy Murphy	**Open**	SRTF to continue working on.	Accept the reform proposal and provide additional recommendations as part of the Task Force's overall work plan. The SRTF is scheduled to deliberate Technology in March/April 2007.	Referred to the SRTF with a schedule TBD.
19. Plug loopholes in the campaign financing ordinance that make it possible to contribute unlimited amounts of money in the form of paid campaign workers.	Rick Doyle, Lee Price	**Open**	Forward to the Elections Commission to review as part of an audit of and report on activities of campaign committees during the 2006 elections along with a request to make recommendations for changes in language or enforcement of City ordinance.	Refer the reform proposal to the City's Elections Commission.	Referred to the Elections Commission. The Elections Commission reviewed the referral at its meeting on January 11, 2007.
20. Plug loopholes in the lobbyist ordinance that allow many lobbyists to avoid public disclosure of what they are doing.	Rick Doyle, Lee Price	**Open**	Defer to a later discussion on modifications to the lobbying ordinance.	Refer the reform proposal to the City's Elections Commission.	Referred to the Elections Commission. The Elections Commission reviewed the referral at its meeting on January 11, 2007.
21. Disclose the calendars of the Mayor and Councilmembers.	Randy Murphy, Tom Manheim, Lee Price	**Open**	SRTF to continue working on.	Accept the reform proposal and provide additional recommendations as part of the Task Force's overall work plan. The Task Force has discussed this item and preliminary recommends: 1. Increase frequency of calendar disclosure to every three days (3 day release of the previous 3 days - every Monday and Thursday recommended) 2. On-line posting of calendars to include the previous quarter (3 months) 3. "Personal/private information to include an exemption for the City Attorney's attorney/client privilege. 4. Disclosure to 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.	Referred to the SRTF, pending final recommendations. The Mayor, City Council and City Manager calendars were posted on-line in October 2006 for the time period of July-September 2006. Staff will continue to post these calendars at the end of each quarter. Calendars will exclude personal or social events where no City business is discussed or do not take place at City offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the City. This Reform is related to Council's direction: Public Information Reform #10, Disclose the calendars of the Mayor and Councilmembers quarterly, redacted for personal information (Completed October 2006).
CONDUCT CHANGES					
22. Require staff for Mayor and Councilmembers to sign a Code of Conduct.	Rick Doyle, Lee Price	**Open**	Defer consideration until work on the Employees Values Project has been completed.		The Employees Values Project will be reported to the City Council on January 30.
23. Prohibit Mayor and Councilmember interference with the decisions of City Boards and Commissions.	Rick Doyle, Lee Price, Dept. Directors	**Open**	Direct the City Clerk to report back on the status of the draft policy.		The City Attorney's Office is currently reviewing input received from Boards and Commissions and will prepare a report and draft policy for Rules Committee consideration. The City Attorney's Office anticipates completing this project this quarter.

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
24. Prohibit Mayor and Councilmember interference with the bidding and RFP process.	Rick Doyle, Lee Price, Scott Johnson	**Complete**	Completed as part of procurement process integrity guidelines. Direct staff put Coun cil related provisions into Council Policy.		On December 6,2005, Council directed the City Manager and City Attorney to implement comprehensive procurement reforms which included revising applicable Municipal Code sections, formulating a Council Policy titled "Procurement and Contract Process Integrity and Conflicts of Interest", and reaching out to various stakeholders about the approved reforms. On December 13, Council directed the City Manager and City Attorney as part of the Biennial Ethics Review to include all elements of the Procurement Process Integrity Guidelines adopted by Council on November 9, 2004 in the aforementioned Council Policy and to apply the policy to all competitive processes.The current practice is that all questions/inquiries must be made through the City's designated contact person. Contact with representative(s) other than the City's designated procurement contact person as listed in this RFP may be grounds for disqualification. Notwithstanding the preceding statement, RFPs also include language as follows: "nothing in this RFP shall prohibit any member of a proposing firm or any persons working for or representing a proposing firm from communicating with any person in the City, including, but not limited to, the City Council, regarding an alleged failure of a City employee to follow the procedures or requirements governing the request for proposals, or any alleged misconduct or impropriety of a City employee related to the request for proposals."
25. Create a certified training program for Mayoral and Councilmember staff to ensure they are fully aware of laws and ethical standards so they can help their bosses follow the law.	Rick Doyle, Lee Price, Deanna Santana	**Open**	Direct staff to implement.		The Administration will use the CIty Council Orientation Sesssions as a model for a certified training program. Several years ago, an informal training program was implemented for Council Assistants and that model will also be integrated into the proposed program. Additionally, the training program created by the City Attorney's Office to comply with the state mandated ethics training for local officials (AB 1234) will be offered specifically for Council and Mayoral assistants. Invitations have been sent for a February 8, 2007 session. Another training will also be scheduled in August. Within 60 days, staff will present to the Rules & Open Government Committee a proposal for a Certified Training Program.
26. Hold regular public hearings on ethical issues around the state so we can learn from our mistakes and the mistakes of others.	Rick Doyle/Les White/Lee Price	**Open**	Direct staff to hold an April Study Session.		Staff would like to obtain more information about the proposed structure, discussion topics, etc. to respond to this directive. Staff's recommendation is that we hold a more detailed discussion at the Rules & Open Government Committee.
27. Revise our Ethics Code to specify that it is unethical for the Mayor and Councilmembers not to follow Council adopted policies without approval of the Council.	Rick Doyle, Lee Price	**Complete**	Included in Code of Ethics 2.01 (April 2006).		See Reed Recommendation.
28. Prohibit the Mayor and Councilmembers from revising draft staff reports without full disclosure.	Rick Doyle, Lee Price	**Complete**	Direct Staff to implement now.		The City Manager has reinforced these previous instructions to the Administration. This directive will be formalized in the to the Administration's "Council Report Writing Manual."
CHANGE TO A COMMUNITY BASED BUDGETING PROCESS					

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
29. Start the budget process with a survey of the public in early January.	Tom Manheim, Nadine Nader, Jennifer Maguire, Mark Linder, Kay Winer	**Complete**	See memo.		See Information Memo dated January 11, 2007. This Reform relates to Council direction: Neighborhood Participation Reform #2, Provide an annual city-wide budget briefing followed by 4 budget hearings thorugout San Jose, in order to encourage greater community contribution to establish City priorities. Appropriate consideration shall be made to ensure that meetings are accessible to the residents of San Jose in relations to the time, date, and location of the hearings and 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.
30. Hold a Conference on Priorities with neighborhood associations in late January.	Tom Manheim, Nadine Nader, Jennifer Maguire, Mark Linder, Kay Winer	**Complete**	See memo.		See Information Memo from Les White, City Manager, dated January 11, 2007 and Reform #29.
31. Have Council hearings in February on New Initiatives and Unfunded Programs (NIUPS) and have the Council specify their spending priorities.	Tom Manheim, Nadine Nader, Jennifer Maguire, Mark Linder, Kay Winer	**Complete**	See memo.		See Information Memo from Les White, City Manager, dated January 11, 2007 and Reform #29.
32. Report the results of items 29-31 in the Mayor's March Budget Message.		**Open**	See memo.		
OTHER CHANGES					
33. Hold monthly hearings on the status of Council's directives to staff.	Council Committees	**Open**	Add to Committee workplans.		This direction will be added to the City Council Committee workplans. Additionally, the new City Administration Projects System (CAPS) tracks all Council referrals as well as department workload. Report out at Committees regarding CAPS began in December 2006.
34. Expand the City Auditor's staff to allow for more performance audits	Jerry Silva	**Open**	Defer action to budget process.		The City Auditor's Office will address this Reform during the budget process.
RECENTLY PROPOSED REFORMS					
35. Amend the municipal code to require elected officials to disclose any meetings previously held with a project's lobbyist and/or representative when the project is heard before the Council.	Rick Doyle, Lee Price	Open			
36. Amend the Municipal code to require lobbyist to disclose to any city officials what their success fees are for project during meetings to discuss the project. Also, require lobbyist to disclose success fees on their quarterly reports.	Rick Doyle, Lee Price	Open			

Reed Reform	Lead Staff	Status	Reed Recommendation	SRTF Recommendation	Notes
37. Direct staff to implement a policy of reviewing industrial land conversions once a year and schedule the 2007 review in February or March. Include as part of the review an inventory and evaluation of the conversion of industrial land to housing for the past 24 years.	Paul Krutko, Joe Horwedel	Open			
38. Direct staff to require all projects, activities and events seeking public funding to include an analysis of the measureable benefit to the City. To evaluate if the City's interests were met, an after action report/analysis must be performed at a time determined at approval.	Paul Krutko, Mark Linder	Open			

Attachment B

SUNSHINE REFORMS

REFERRED TO STAFF FORM IMPLEMENTATION (JUNE 2006)

Public Information Reforms

#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.

#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.

#7 – Disclose statistical information on complaints received through the Fraud and Audit Hotline, excluding names and other confidential information. This information should be reported to the Council.

#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 Jose's jurisdiction.

#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.

#10 – Disclose the calendars of the Mayor and Council members quarterly, redacted for personal information.

#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."

#12 – Post the City Council Policy Manual online.

Neighborhood Participation Reforms

#2 – Provide an annual city-wide budget briefing followed by 4 budget hearings throughout San Jose, in order to encourage greater community contribution to established City priorities. Appropriate consideration shall be made to ensure that meetings are accessible to the residents of San Jose in relation to the time, date, and location of the hearings.

#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.

#4 – Require notification to City commissions when items originating in the commission are being heard by the Council.

#5 – Expand the speaking time from 2 minutes to 4 minutes for "Neighborhood Group or Community Associations 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 t public participation for those with disabilities.

Government Accountability Reforms

#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.

#4 – Require every staff memo to have a City staff contact for public questions.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: MAYOR ELECT REED
AND LEE PRICE, CITY CLERK

FROM: RICHARD DOYLE
City Attorney

SUBJECT: **Oath of Office**

DATE: December 15, 2006

BACKGROUND

Mayor Elect Reed has asked our Office for advice about whether the City can revise the Oath of Office taken by City public officials to include a pledge to (1) follow the City Charter; (2) put "service above self"; and (3) to include an honor code of "no lying, cheating or stealing."

ANALYSIS

San Jose City Charter section 903 provides that "[e] ach officer of the City, before entering upon the duties of his office, shall take the oath of office as provided for in the Constitution of this State and shall file the same with the City." The oath is found in Article 20, section 3 of the State Constitution. In addition to stating the oath to be taken, the section goes on to provide as follows:

> "...And no other **oath**, declaration, or test, shall be required as a qualification for any public office or employment. "Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing."

California courts have found that the State Constitutional provision along with similar provisions of the Government Code (California Govt. Code sections 1360-1365) are intended to preempt the field. (*San Francisco Police Officers Assn. v. City and County of San Francisco* (1977) 69 Cal.App.3d 1019.) In other words, the oath prescribed in the California Constitution is the only oath that the City can require its officers to take.

Attachment C

CONCLUSION

The City cannot require City public officials to take an oath other than the oath required by the State Constitution. However, we are not aware of any legal reason why a public official would be prohibited from voluntarily taking an additional oath or an expanded oath -- provided the oath required by the State Constitution is included within the oath taken.

Attached is a sample of additional language that could be added to the pledge consistent with the addition suggested by Mayor Elect Reed.

RICHARD DOYLE
City Attorney

Attachment

cc: Mayor and Councilmembers
Councilmember Elect Sam Liccardo
Councilmember Elect Pete Constant
Les White

ATTACHMENT

Standard Oath

I, Chuck Reed, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

Sample Optional Additional Pledge

[I further pledge to uphold the San Jose Charter; to always place community benefit before personal interest; and to exercise the power of the mayor's office honestly and ethically.]