

## **SUNSHINE REFORM TASK FORCE MEETING MINUTES**

**Thursday, October 4, 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 (arrived at 8:10 p.m.), 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; Nanci Williams, San José/Silicon Valley Chamber of Commerce Karl Hoffower, Citizens Commission on Human Rights.

**Absent:** Virginia Holtz, Willow Glen Neighborhood Assoc.; Bobbie Fischler, League of Women Voters; Mary Ann Ruiz, Parks and Recreation Commission; Judy Nadler, Markkula Center for Applied Ethics.

**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 September 20, 2007 Meeting Minutes**

**Upon a motion by Bob Brownstein, seconded by Ken Podgorsek, the Task Force unanimously approved the September 20, 2007 meeting minutes with one abstention, Nanci Williams (absent 9/20/07).**

### **II. Comments from the Chair**

Chair Rast noted that the subcommittees are making progress with their proposals.

### **III. Review of the Meeting Material**

Staff provided an overview of the documents for the meeting. In addition, staff reported on the following:

- During the Rules and Open Government Committee meeting on 10/3/07, the City Attorney requested deferral of his report on taping Closed Sessions. This discussion will continue at their next meeting on 10/31/07 (no earlier than 2:30 p.m.).
- The Rules Committee also approved their schedule for reviewing the remaining Phase I Provisions with their discussion beginning on Wednesday, October 17, 2007.
- Staff noted copies of an informational memo recently distributed to the City Council regarding the implementation of the Phase I Report, 10/3/07 would be provided to the Task Force by e-mail.

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#### **IV. Master Calendaring – Demonstration of the Master Calendar**

Howard Yeilding (Information Technology Department) and Dottie Disher (Office of the City Clerk) demonstrated the City's new "Master Calendar," a website that includes posted agendas for City boards, commissions, and committee meetings held at City Hall. The Master Calendar will be accessible online beginning Wednesday, October 10, 2007 at 3:00 p.m.

#### **V. Law Enforcement Public Records (con't from 9/20/07)**

Bert Robinson presented an overview of the September 20, 2007 Task Force meeting pertaining to law enforcement records. Mr. Robinson noted the Public Records Subcommittee recognized challenges with their initial recommendations and made modifications to these proposals at its meeting on October 1, 2007. Mr. Robinson summarized the following changes:

- Delete Section 5.1.1.020C as it is written.
- The Public Records Subcommittee and the San Jose Police Department (SJPD) will develop a definition or substitution for "closed investigation" under Section 5.1.1.020B(1).
- Devise language that allows the identity of adult witnesses to be redacted unless the witness consents to the release of his/her name.
- Provide language that allows for the redaction of names of individuals mentioned in police reports that are the subject of unsubstantiated allegations.
- Develop language that permits the SJPD to withhold information about a victim that would be invasive to the victim's privacy, unless the victim consents to the release of his/her name. In addition, allow for names of victims of certain crimes to remain confidential.

Task Force discussion followed and there was agreement in the following areas:

- When the Phase II Report is finalized, there needs to be a comparison between the subcommittee proposals and California Public Records Act (CPRA); and include an explanation of CPRA 6254f and how the subcommittee improved upon it.
- There needs to be a better definition of "investigatory records." Language should clarify that the purpose of releasing any particular record is to help the public determine if law enforcement is doing its job appropriately, as opposed to the unwarranted invasion of privacy.
- Need to have language and direction that ensures a certain degree of protection to the witness and/or victim, particular for victims of certain crimes i.e.: sexual assault.

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#### Public Comments:

*Jen Adler, YWCA Rape Crisis Counselor, expressed concern that victims of sexual assault would be hesitant to report a crime if the record was meant to be released, even if their names would be redacted from the report.*

*Patrick Donovan, YWCA Rape Crisis Counselor, concurred.*

*Bill Lawrence recommended that the SJPD stop covering up information and offered a personal example to the Task Force.*

*Darlene Wallach stated that the SJPD has not been held accountable for wrongful arrests. Ms. Wallach also announced that she will provide the Task Force written comments on Sections 5.1.1.030 and 5.1.1.040.*

*Sanjeev Bery, ACLU, declared his concern about arrests without conviction. In addition, he also supports the Task Force's efforts in protecting privacy.*

*Colleen Molesky stated that police brutality is common in San José. Ms. Molesky also offered personal examples of police brutality.*

*Joann McCracken, District Attorney's Office, recommended that the Task Force delay voting on the subcommittee proposal until it has fully decided upon the exceptions and received sufficient input from the Police Department and from the District Attorney's Office.*

*Antonio Guerro, Mayor's Liaison to the Task Force, asked for clarification on Sections 5.1.1.030C and 5.1.1.030D.*

*An unidentified speaker mentioned a personal incident and asked the Task Force to create a list of protected rights.*

**Upon a motion by Bert Robinson, seconded by Karl Hoffower, the Task Force unanimously agreed to accept the following in concept:**

- **Approve Section 5.1.1.010A(1-2).**
- **Approve Section 5.1.1.020B.**
- **Delete "or investigatory records" from the first paragraph of Section 5.1.1.030.**
- **Direct the attorneys to draft language reflecting modifications proposed by the subcommittee.**
- **Add language to 5.1.1.010 to reference Penal Code sections that provide for certain exemptions, unless the information furthers the investigation or protects public safety.**
- **Add language to 5.1.1.030 that references Penal Code sections that provide for protecting the victim's name, to the extent permitted by law.**

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- **Approve Sections 5.1.1.020A and 5.1.1.020C (only for police reports).**
- **Expand 5.1.1.030G to give the SJPD a “clear category” for ensuring the confidentiality of witnesses and informants.**
- **Exempt secret investigatory techniques or practices in Section 5.1.1.020.**

Staff announced that recommendations to the Public Records Subcommittee are due 10/9/07 by 5:00 p.m.

#### **VI. Administration and Accountability – Update on Subcommittee Proposals**

Task Force member Ken Podgorsek presented the progress of the Administration and Accountability Subcommittee and discussed their preliminary recommendations.

Staff asked that the subcommittee research the effect on Council as it relates to 10-day agenda posting and posting of meeting minutes.

#### **VII. Review Status on Original 22 Sunshine Reform Referrals**

Staff provided a brief summary of the original 22 Sunshine Reform Referrals. Staff also announced that Reform Referral #7, *Post the City Council Policy Manual Online*, has been executed.

#### **VIII. Upcoming Agenda & Work Plan**

- A. The Task Force agreed to agendize presentations by the following Subcommittees for the October 18, 2007 meeting:
  - 1. Technology Subcommittee
  - 2. Ethics and Conduct Subcommittee
  - 3. Administration and Accountability Subcommittee
- B. The Task Force agreed to agendize a presentation by the Public Records Subcommittee for the November 1, 2007 meeting.
- C. The Task Force agreed to agendize a presentation by the Administration and Accountability Subcommittee for the November 15, 2007 meeting.

#### **IX. Public Comment**

*Public Comment: Unidentified San José resident described his taser experience to the Task Force.*

**Upon a motion by Ken Podgorsek, seconded by Bob Brownstein, the Task Force adjourned the meeting at 8:55 p.m.**