

31 August 2006

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Sunshine Reforms Task Force
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

Dear Task Force Members,

I introduced myself at your first meeting in June. As a strong advocate of Sunshine and having served on San Francisco's Sunshine Ordinance for 3 ½ years, these recommendations are based on my experience establishing open-government guidelines.

- At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.
- 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 brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- The agenda shall specify the time and location of the regular meeting and shall be posted *at the main public library, in the branch libraries and* in a location that is freely accessible to members of the public. The requirement that a policy body post copies of its agendas at the branch libraries is satisfied if the branch library has a computer accessible to the public upon which members of the public may access the City's website to search for agendas of meetings of City policy bodies.
- No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
 - Notwithstanding subdivision , the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
 - Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
 - Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted.
 - The item was on an agenda posted for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

- Agendas of meetings, meeting packets, or documents created by a department, and any other documents on file with the clerk or secretary of the policy body, in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public for inspection and copying at the office of the policy body at least 48 hours before the hearing and be available to the public in sufficient quantities at the hearing commensurate with the anticipated number of people attending the hearing. If any document being acted upon by the policy body at a meeting is not available at least 48 hours before the meeting and a member of the policy body requests that the matter be continued, the policy body must continue the item to a time not less than 48 hours after the document was made available. Nothing in this subsection shall prohibit the policy body from amending a document at a meeting. The materials that are distributed at the hearing shall be of such a quality that a person with 20/20 vision would have no difficulty reading them. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
- All policy bodies shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Jose hearing impaired residents, or those with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the policy body at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The policy body shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the policy body may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the policy body may employ professional translators. The unavailability of a translator shall not affect the ability of the policy body or its committees to deliberate or vote upon any matter presented to them. In any calendar year, if the cost to the City for providing translator services under this subsection exceeds \$20,000, the City Council shall, as soon as possible thereafter, review the provisions of this subsection.
- The Mayor, City Attorney, Members of the City Council, The City Administrator and every department head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that 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. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date.
- The Mayor, City Attorney, Members of the City Council, The City Administrator and all department heads shall maintain and, preserve consistent with City records retention policies, all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports, ordinances, resolutions, and motions and shall disclose all such records upon request, when such items are not confidential as required by law.
- All policy bodies shall audio record each regular and special meeting. Video recordings are ideal but not required. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed and shall be retained for at least ten years, or permanently where technologically and economically feasible. The City shall retain these recordings digitally and make them available via the internet on the City's website. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.

Requests shall be made through the department, board, commission, task force, or committee whose meeting is recorded. The City Administrator shall assist policy bodies in carrying out their duties under this subsection.

Sunshine Task Force Establishment:

- There is hereby established a task force to be known as the Sunshine Task Force consisting of eleven voting members appointed. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government.
Seat 1: Journalist, submitted by Society of Professional Journalists
Seat 2: Attorney, submitted by Society of Professional Journalists
Seat 3: Journalist, submitted by a racial/ethnic/sexual orientation minority owned news organization. U.S. Citizenship shall not be a requirement for this seat.
Seat 4: Attorney, Submitted by Santa Clara Bar Association, shall have a background in law as it relates to government ethics and shall have a background in public information and public meetings. Shall not be an employee of the City of San Jose during appointment.
Seat 5: Member of Public, Experienced in Consumer Advocacy, submitted by a Consumer Advocacy organization.
Seat 6: Member of Public, Submitted by Santa Clara County Civil Grand Jury.
Seat 7: Member of Public, Submitted by the League of Women Voters
Seat 8: Member of Public, Submitted by neighborhood organizations, Demonstrated interest in citizen access and participation in local government.
Seat 9: City Council nomination, Demonstrated interest in citizen access and participation in local government
Seat 10: City Council nomination, Demonstrated interest in citizen access and participation in local government
Seat 11: City Council nomination, Demonstrated interest in citizen access and participation in local government and shall have a disability as defined by the Federal Americans with Disability Act.

Each City Council member shall nominate one candidate for seats 9 or 10, collectively, and each City Council member shall nominate one candidate for seat 11. Duplicate names shall not be accepted for any seat(s).

The Clerk shall make appointments for all remaining seats and in the event there is more than one (1) qualified nominee for a specific seat or seats, the appointee shall be chosen by lottery performed by the City Clerk, at a publicly noticed time and location. Appointees shall only be rejected by a vote of 9 members of the City Council

The Mayor or his or her designee, The City Clerk or his or her designee and a designated youth representative from the Youth Commission shall serve as non-voting members of the body who may participate in discussions and make advisory recommendations to the body.

The Sunshine Task Force shall, at its request, have assigned to it an independent attorney from who is not employed with a city or county agency, who is experienced in public-access law matters. This attorney shall serve solely as a legal advisor and advocate to the Task Force and due process will be maintained in the matters handled by the attorney.

No voting member may serve two consecutive full terms on the body. A term of a member shall be three (3) years. Upon the first meeting, the City Clerk shall conduct a lottery for the purposes of staggering terms. With 4 seats expiring 1 year after selection, 4 seats expiring 2 years after selection and 3 seats with a regular full term. No person may serve more than two three-year terms as a member of the Commission, provided that persons appointed to fill a vacancy for an unexpired term with less than eighteen months remaining or appointed to an initial term of two or fewer years shall be eligible to be appointed to one additional three-year term. Any term served before the effective date of this Section shall not count toward a member's term limit. Any person

who completes two (2) successive three year terms as a Commissioner shall be eligible for reappointment six years after the expiration of his or her term. Notwithstanding any provisions of this Section or any other section of the Charter to the contrary, the respective terms of office of the members of the Task Force who shall hold office on the first day of February, 2007, shall expire at 12 o'clock noon on said date, and the eleven persons appointed as members of the Commission as provided in this Section shall succeed to said offices on said first day of February, 2007, at 12 o'clock noon; provided that if any appointing authority has not made a new appointment by such date, the sitting member shall continue to serve until replaced by the new appointee.

The Task Force shall advise the City Council and provide information to other City departments on appropriate ways in which to implement this chapter. The Task Force shall develop appropriate goals to ensure practical and timely implementation of open-government guidelines. The Task Force shall propose to the City Council further guidelines and recommendations to improve public access. The Task Force shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance of open-government policies and related California laws by the City, its Department Heads, Policy Bodies and agencies thereof.

The Task Force shall conduct administrative hearings on complaints made by members of the public for alleged violations of the public meeting or public records provisions, violations of the State Public Records Act, or the State Brown Act governing public meetings. The Task Force may issue Orders of Determination following the hearing on a particular complaint. An Order of Determination finding a violation of the above state laws shall be evidence of such violation in any other administrative or judicial proceeding. In the event that the Task Force Commission issues an Order of Determination finding that any entity violated open-government provisions in handling public meetings or release of public records, the Task Force may require that entity to schedule at its next regularly scheduled meeting the Order of Determination for its discussion and response.

Unless otherwise prohibited by state law or other existing local ordinance, the Task Force may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmation, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the Task Force's duties or exercise of its powers.

In the event the Task Force finds a serious violation of the open-government provisions, the Task Force by a 2/3 vote of the entire body may seek outside counsel to prosecute the violations in the Civil Courts to the extent permitted.

Please accept these recommendations and if you have any questions, please contact me.

Sincerely,

David Parker
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