CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: SUNSHINE REFORM TASK FORCE

FROM: Eva Terrazas

SUBJECT: Comparison Matrix on Structure, Enforcement and Costs

DATE: May 31, 2007

In September 2006, staff conducted a survey of five Bay Area local governments (San Francisco, Milpitas, Oakland, Contra Costa, and Benicia) to gather information on administrative structure, enforcement, and costs related to the implementation of a Sunshine Ordinance.

Most cities provided useful information in the areas mentioned above. Gloria Young, Clerk of the Board in San Francisco who also addressed the Task Force in Fall 2006, provided budgets for the past six fiscal years to staff the S.F. Sunshine Ordinance Task Force.

The most significant findings of the survey are summarized below:

Structure

1. Each city has established a task force to fulfill the functions or oversee enforcement of a Sunshine Ordinance, with a few exceptions. The City of Milpitas Open Government Ordinance calls for the establishment of a Task Force; however, the City Council Open Government Subcommittee currently operates in the place of the Open Government Commission. In the case of the County of Contra Costa, the Better Government Task Force no longer exists due to a lack of interest from participants.

2. The City of San Francisco and the City of Oakland have on-going budgets to support the work of the Task Force. San Francisco's FY '07 annual operating budget is approximately $17,000, and the City of Oakland's on-going annual budget is $250,000.

3. Only the City of Oakland's Public Ethics Ordinance (PEC) call for specific staff positions to assist the Commission fulfill its functions and duties (Executive Director and Executive Assistant) and includes overseeing campaign finance laws, council salaries and complaints, and complaints arising out of the Sunshine Ordinance.

Enforcement

1 In most instances, enforcement procedures have been delegated to the Task Force or Commission. According to the responses from most cities, this has been the most difficult section of the ordinance to implement due to a lack of consensus on the enforcement procedures, the number of items to monitor, and the resolution of complaints filed with the commission.

Other

1 When asked whether the program was rolled out in phases or all at once, most cities responded that it was rolled out at once. Half of the responses revealed that it would have been helpful to have phased implementation in order to assist city workers adjust to the new rules.

2 When asked to describe unintended consequences, the City of Oakland noted confusion with the 10-day agenda posting and distribution, and the "supplemental agenda" that is provided 72 hours prior to the meeting. It confuses residents and provides an additional burden on the City Clerk's office.

3. When asked to comment on lessons learned and significant issues, the City of Oakland stressed training, while the County of Contra Costa noted concern with the waiver of privilege of certain documents. The City of Benicia responded that while all requirements are met to comply with the ordinance, resident's occasional charge the City with not meeting the "spirit" of noticing, particularly when an important topic is scheduled to be discussed by the City Council, resulting in re-noticing the meeting.

Attached is a matrix of the questions submitted by staff and the responses from the various local governments.

If you have any questions, please feel free to call Eva Terrazas at 408.795.1809.

Comparison of Structure, Enforcement, and Implementation Costs of a Sunshine Ordinance

STRUCTURE	SAN FRANCISCO	MILPITAS	OAKLAND	CONTRA COSTA	BENICIA
How long has the Sunshine Ordinance Task Force or Open Government Commission been in existence?		The City Council Open Government Subcommittee has been operating for a year (2005).	The PEC (Public Ethics Commission) has operated since 1996 and deals with – among other things – campaign finance laws, council salaries and complaints arising out of the Sunshine Ordinance.	The Contra Costa Better Government Task Force existed when ordinance first enacted in 1995 but meetings were very infrequent and the Task Force disbanded due to lack of interest.	The Benicia Open Government Commission (OGC) has been operating about 1 year.
Who provides Legal Counsel to Task Force: CAO or outside counsel? If outside legal counsel, yearly costs to the City? Role of the Counsel?		The City Attorney's Office of Milpitas is staffed entirely by outside counsel through a contract with the law firm of Meyers Nave. The [Council] 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 the 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.	The CAO is counsel to the PEC. The attorney assigned to the PEC has an ethical wall from the rest of the office. If any conflict arises, the office has an agreement with the San Francisco City Attorney's Office to use one of their deputies and vice versa.	Ordinance required County Counsel to serve as legal advisor to the task force.	The CAO is counsel to the OGC, except when a complaint is made against the attorney.
What is the yearly operating costs?	FY 06-07 $17,411 FY 05-06 $43,070 (Staff and Task Force) FY 04-05 $114,752 FY 03-04 $114,732 FY 02-03 $123,774 FY 01-02 $131,765	Yearly operating costs are minimal; primarily attorney time spent staffing the City Council Open Government Subcommittee meetings. A rough estimate is approximately $500.00 per month in legal bills.	Yearly budget approximately $250,000.	No new staff – work was re-distributed.	No exact figures on costs but staff is spending more time than originally budgeted.
Who Administers the Task Force/Commission?		The City Clerk is the City's administrator to the City Council Open Government Subcommittee.	Executive Director of the PEC and an executive assistant administers the PRC.	Task Force disbanded due to lack of interest.	The CAO and the CMO's office staff the OGC; the City Clerk's Office is not involved.
Please describe the structure of the Committee/Commission.		Two City Council members compose the City Council Open Government Subcommittee, until a Commission is appointed. The Commission will consist of 5 members, appointed by the City Council.	The PEC is comprised of 7 members – 3 are appointed by the Mayor and ratified by the Council and 4 are selected by the PEC at large. Terms are staggered and each Commissioner serves one 3-year term.	Ordinance established Better Government Task Force consisting of nine voting members appointed by the Board of Supervisors. Designated seats were assigned for the nine member Task Force.	The OGC is comprised of 5 members and the Chair rotates annually. Term of service is 2 years.
What is the Task Force/Commission meeting schedule?		The City Council Open Government Subcommittee meets once a month.	The PEC meets once a month and various subcommittees meet once a month.	No schedule.	The OGC was originally scheduled to meet quarterly but has been meeting monthly.

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IMPLEMENTATION					
Were additional costs/staff required to implement ordinance?		Implementation of the Open Government Ordinance requirements are folding 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.	Ordinance called for hiring of Executive Director and Executive Assistant.	No new staff – work was distributed to existing staff.	No additional staffing costs just a reorganization of current staff's priorities.
Describe initial and yearly training program and cost?		Training is yearly and costs approximately $1,000 to $1,500, 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.	Included in overall yearly budget.	Yearly training occurred for staff and chairs of boards and commissions.	The CMO's conducts training for staff and the Attorney's Office conducts training for the OGC.
Describe additional software costs necessary to implement program?			No additional software costs.	No additional software costs.	Currently no additional software costs; however, staff anticipates future costs related to recording equipment and website.
Describe increase, if any, in Public Records requests?		There has been no discernible increase in Public Records Requests since the implementation of the ordinance.	No significant increase in public records requests.	No increase in Public Records Requests just the speed in which the County must respond.	No increase in Public Records Requests.
Describe increase in costs, if any, due to increases in Public Records requests?					
ENFORCEMENT/REPORTING					
How is the ordinance enforced?		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	The Oakland Sunshine Ordinance is enforced by the Public Ethics Commission.	The Ordinance was enforced by the City Administrator's Office and the Better Government Task Force.	No procedure for enforcement at this time. Staff anticipates various avenues of review including the City Manager's Office, the City Attorney's Office and the Open Government Commission (OGC).
What is the annual cost to enforce?		Administrative costs have never been quantified. Most requirements of the ordinance were folded into the regular duties of City staff, so there have not been significant administrative or enforcement costs to report.	Included in overall yearly budget.	No new staff – work is distributed to existing staff. The new deadlines to produce and post agenda (96 hours before all meetings – even for ad hoc committees) and to produce minutes requires more work for staff.	Not identified.

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STRUCTURE	SAN FRANCISCO	MILPITAS	OAKLAND	CONTRA COSTA	BENICIA
Cases: Percentages of types, resolution and penalties employed?		None	The Executive Director estimates that out of the approximately 20 complaints the PEC receives per year, 10-12 complaints relate to Sunshine.	No additional cases because of ordinance	None
Litigation: Percent increase of cases brought forward related to provisions in the Ordinance?		None	Staff believes the number of cases is low.	No additional litigation because of ordinance	None
Litigation: Cost to the city?					
Cost of future amendments to the Ordinance?		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.	One large amendment occurred at an unspecified cost, while 1-2 small amendments occurred at little cost.	None.	Amendments are made almost monthly to clean up the ordinance.
Reporting: Type of information reported, frequency of reporting; public access to reports?		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 once a year regarding records request appeals. There were no appeals to report.	Reports are distributed as needed	No reports made – mainly because the Task Force is defunct.	Reports are developed when an amendment is before the City Council. Also, OGC is planning to submit an annual report in January 2007.
OTHER					
Was program rolled out in phases or all at once?		The program was rolled out at once.	All at once – although it would have been helpful to get people used to the new rules (noticing meetings, etc.)	All at once.	All at once - lots of lead time between adoption and implementation for training.
Please describe any unintended consequences.		None available to describe or report.	The practical result of the 10 day agenda rule is that there are 2 agendas – the “10 day” agenda and the supplemental agenda (due 72 hours before the meeting). This is difficult for the Clerk’s Office and confusing to the public. A suggestion was made of 5 days for all agendas and agenda packets (so that there would only be one agenda -- with the deadline a compromise b/w 10 days and 72 hours) but the idea was rejected.	Not aware of any.	Not aware of any.
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 Record 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.	Training, training, training some time before implementation! Administrative oversight (i.e. the PEC) is necessary for enforcement but as a practical matter the remedies are not helpful. For public meetings, it may take 6-8 months to resolve a complaint about breach of a public meeting provision. Also, most complaints about PRRs fall into 3 categories: 1. City took too long to produce documents; 2. City didn’t write back in time in response to the PRR; 3. Requestor does not believe that “no records exist.” Much time spent mediating PRR disputes.	The new deadline (96 hours before all meetings – even for ad hoc committees) requires more work for staff to produce and post the agendas and prepare minutes. The waiver of privilege on certain documents is a very serious issue.	Occasionally, when meeting requirements have been met, there have been complaints that the "spirit" of the ordinance was not met (particularly on important topics). As a result, meetings have been re-noticed.