RULES AGENDA: 06-06-07
ITEM #:I2

Memorandum

TO: Rules and Open Government Committee

FROM: Mayor Chuck Reed

SUBJECT: **SUNSHINE REFORM TASK FORCE REPORT RECOMMENDATIONS**

DATE: June 5, 2007

APPROVED: Chuck Reed **DATE:** 6/5/07

I strongly support the overwhelming majority of the recommendations in the Sunshine Reform Task Force (SRTF) Phase 1 Report. The work done by the task force members is exceptional and they are to be commended for providing a great service to the community.

Given the merit of their report, I would like to have many of their recommendations implemented prior to the July recess. Specifically, I would like to bring the majority of Section 3 and Section 4 of the Report to the Council on June 26th. Section 2 Public Meetings should be agendized for the Rules Committee later in June for a discussion on policy, ancillary and nongovernmental bodies and then referred back to the administration to work with the various stakeholders and partners on the issue of definitions and report back to the SRTF and the Rules Committee in August.

I will be in Washington, D.C. on City business next Wednesday, June 6th and will not be able to attend the Rules Committee meeting. As a result, I respectfully submit my comments and recommendations on Section 4 Public Information and Outreach and Section 3 Closed Meetings.

1. **COMMENTS AND RECOMMENDATION SECTION 4 PUBLIC INFORMATION AND OUTREACH**

   A. 4.1D – Modify the first sentence to be consistent with the City's municipal code and recent court decisions. Under the release of Oral Information, comments by city employees must be consistent with case law and adhere to the City's municipal code. Public employees, under the mantle of free speech, are not entitled to make remarks, for example, that are sexist, homophobic or racist.
   B. 4.1D – Add to the second sentence the following sentence, "City employees shall follow the protocol outlined in City Policy 6.1.1 entitled Public Records Policy and Procedure which affirms the public's right to access City records and sets forth the procedures that facilitate accessibility of information to members of the public." The City's policies regarding the release of public records are intended to aid the general public, including the media, when they make a request for public information.

C. 4.2A – Insert the phrase "if indicated by the policy body" so the text reads: "…the previous 30 days, or if indicated by the policy body, likely to be calendared within the next 30 days. The insertion of the phrase, "if indicated by the policy body" eliminates the requirement that the City Clerk's office has to make a decision about every piece of correspondence she receives from a policy body about what is likely to be calendared in the next 30 days.

D. 4.3A – Exempt from calendar disclosure those meetings of the police chief that may compromise police investigations, pose security concerns or deter community involvement. The exemption from disclosure of these three types of meetings is meant to enable the chief to fully perform his duties without the release of sensitive information.

E. 4.3A – Exempt from disclosure senior staff meetings dealing with personnel matters. I am recommending these types of meetings be exempted as the employee's right to privacy must be maintained.

F. 4.4A – Delete this section. Insert the following, "The City Clerk will post on the City's website a direct link to the disclosure forms that the City's lobbyists file with the appropriate federal and/or state agencies." The requirement for the filing of City reports with the clerk by the City's paid lobbyists is unnecessary as they already file voluminous reports to State and Federal agencies about their lobbying activity. These extensive reports – the City's lobbyist in Washington files a 12,000 page report semi-annually – already contain the majority of information the SRTF report requests. The clerk should, however, have links on the City's webpage to these reports to ensure the general public has easy access.

G. 4.4B – Delete this section. Lobbyists under the employment of the City should be banned from raising money for the San Jose Mayor and City Council Members or candidates for these offices. The Sunshine Reform Ordinance should specify that the City include in its contracts with lobbyists that they are prohibited from fundraising for the Mayor, City Council and all City Officials.

H. 4.4C – Add the following sentence at the end of the paragraph, "The lobbyist may receive an exemption from this policy via approval of the Rules and Open Government Committee." The recommendation to not support any lobbying effort relative to restricting access to records is certainly reasonable but given how obscure riders can be attached to federal legislation some degree of flexibility is necessary. Consequently, I support the report's recommendation but think that if in the unlikely event that a situation arises described in the previous sentence, the city can seek an exception by securing approval of the Rules Committee.

2. COMMENTS AND RECOMMENDATIONS ON SECTION 3 CLOSED MEETINGS

A. 3.2A – Approve the recording of closed sessions for the City Council and the Redevelopment Agency. Taping should begin immediately upon City Council approval and tapes be released once the need for confidentially has passed. Recordings, however, should not be released until a certification process and appeals process has been approved by the Council. I recommend that we direct staff to reach out to the other six entities that can hold closed sessions for the purpose of explaining how recording closed sessions will work and to solicit their comments. There is a

considerable amount of confusion about the specifics of this program and recommend that City meet with members of the bodies to explain the program and to answer their questions before proceeding with recording.

B. 3.2B – Delay any action on certification until the SRTF makes additional recommendations. Before approving a certification process for the taping of minutes in executive session, it is important to understand the appeals process in the event someone wants to challenge the City's decision on not releasing the tapes.
C. 3.3C – Delay any action on 3.3C until the City Attorney explains the differences between the terms "potential use of property" and "proposed development." The language in 3.3C appears to be inconsistent and I would like clarification from the task force or the attorney.
D. 3.6A 1 – In the third sentence substitute "be disclosed publicly" for "be disclosed to any person upon inquiry."
E. 3.6A 2.b – Delete the phrase "and upon inquiry by any person." Under item 3.6A 1 and 3.6A 2b the city should broaden disclosure by routinely releasing information about settlements and not wait until there is a specific request.
F. 3.6A 4 – Delete "otherwise affect the employment status." This phrase is too vague.
G. 3.7 Delete entire section until SRTF makes its final recommendations.