

**RESOLUTION NO. 74414**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (1) APPROVING (A) THE SUNSHINE REFORM TASK FORCE'S RECOMMENDATIONS ON PUBLIC MEETINGS AND CLOSED SESSION, AS AMENDED BY THE RULES AND OPEN GOVERNMENT COMMITTEE AND (B) STAFF'S RECOMMENDATIONS ON THE DEFINITIONS OF AGENDA AND PUBLIC REVIEW FILE; AND (2) DIRECTING STAFF TO PROCEED WITH IMPLEMENTATION ON A PILOT BASIS**

**WHEREAS**, in May 2007, the Sunshine Reform Task Force (SRTF) issued its Phase I Report and Recommendations on: (1) Public Meetings; (2) Closed Sessions; and (3) Public Information and Outreach; and

**WHEREAS**, the Rules and Open Government Committee (Rules Committee) reviewed and discussed the SRTF's Phase I recommendations, staff's preliminary response and the Mayor's recommendations in May and June 2007, and directed staff to seek additional input from entities impacted by the Public Meetings recommendations; and

**WHEREAS**, staff solicited additional input on the Public Meetings provisions from the many boards, committees and commissions and outside organizations that would be impacted by the recommendations; and

**WHEREAS**, from October 2007 through April 2008, the Rules Committee reviewed the remaining SRTF Phase I recommendations on the following topics: Terminology and Definitions of Categories of Impacted Entities; Public Meeting Requirements; Requirements for Non-Governmental Bodies; and Closed Session Requirements; and

**WHEREAS**, the Rules Committee considered current practices and heard testimony from the affected entities, City staff, and Task Force members; and

**WHEREAS**, as needed, the Rules Committee directed staff to conduct additional analysis; and

**WHEREAS**, the Rules Committee made recommendations to the City Council on the remaining SRTF Phase I recommendations.

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The term "Decision-Making Bodies" means those bodies created by either the City Charter or the City Council that, among other functions, powers and duties, receive evidence and make final decisions about matters that cannot be appealed to another City body.
2. The term "City Boards, Committees and Commissions" means those bodies created by either the City Charter or the City Council except for the Decision-Making Bodies.
3. The term "Agenda" means a list of information about a meeting, including the identity of the body conducting the meeting, the time and location of the meeting, a meaningful description of each item of business to be transacted or discussed at the meeting and the proposed action for each item. When a Decision-Making Body is conducting a hearing at which it will make a decision based on evidence presented at the hearing, the proposed action should not be listed on the agenda.
4. The agendas for the City Council and Board of the San Jose Redevelopment Agency, City Council Committees, Decision-Making Bodies and City Boards, Committees and Commissions will be posted on line. The agendas for the City Council and Board of the San Jose Redevelopment Agency, City Council

Committees and City Boards, Committees and Commissions that are posted on line will also contain a link to all of the documents referenced or distributed to members of the body. Decision-Making Bodies, however, are not obligated to post on line any documents presented at the time of the evidentiary hearing.

5. The definition of "Agenda Packet", as set forth in Attachment A and incorporated herein by reference, is approved.
6. The definition of "Other Advisory Entity", as set forth in Attachment B and incorporated herein by reference, is approved.
7. The Public Meetings requirements for the City Council and Board of Directors of the San Jose Redevelopment Agency, City Council Committees, Decision-Making Bodies, City Boards, Committees and Commissions and Other Advisory Entities, as set forth in Attachments C and D and incorporated herein by reference, are approved.
8. Public Review Files for the Council, Redevelopment Agency, Council Committees, Decision-Making Bodies, and City Boards, Committees and Commissions will be maintained by and located in the individual departments that support each respective body. Since the Clerk's Office is a central point for City records, the Clerk's Office will maintain a directory of the location of the public files in the City organization.
9. The Closed Session requirements, as adopted by the Council on April 8, 2008, and set forth in City Council Resolution No. 74312, are approved for the Civil Service Commission, Deferred Compensation Advisory Committee, Elections Commission, Federated Employees Retirement Board, Police and

Fire Retirement Board and San Jose Arena Authority, with the following two exceptions:

- a. None of these entities should file an amicus brief independent of the City Council or Board of Directors of the San Jose Redevelopment Agency.
  - b. Although these entities must obtain open session approval of closed session decisions on real estate negotiations, the approval may be given at an open meeting of a subcommittee of the entity.
10. Direction to real estate negotiators given by the City Council or Board of the Redevelopment Agency in closed session will be recorded only for the purpose of preparing and releasing a redacted transcript upon request if a Brown Act violation has been alleged. Redacted transcripts will be released within 30 days of the request.
11. Staff is directed to proceed with implementation of the provisions listed in this Resolution as follows:
- a. Staff is directed to conduct training sessions for those entities affected by the Public Meetings and Closed Session provisions approved by the Council from approximately July through September 2008.
  - b. Staff is directed to phase in implementation from approximately October through December 2008.
  - c. The pilot year will begin January 2009.

12. Staff is directed to return in January 2009 with an update on all of the "Sunshine" pilot programs, including the on-going cost benefit analysis pilot.

ADOPTED this 10<sup>th</sup> day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,  
NGUYEN, PYLE, WILLIAMS, REED.

NOES: OLIVERIO.

ABSENT: CONSTANT.

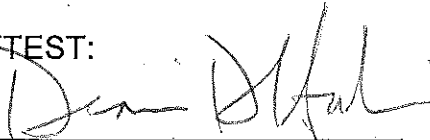
DISQUALIFIED: NONE.



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CHUCK REED  
Mayor

ATTEST:



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LEE PRICE, MMC  
City Clerk

### Definition of Agenda Packet

- A. "Agenda packet" means agendas of meetings and any other documents that have been or are intended to be distributed to a body that is subject to the Brown Act in connection with a matter anticipated for discussion or consideration at a public meeting.
- B. The agenda packet distributed with the agenda must include:
1. Any memorandum pertaining to a matter to be considered at the meeting (with 9 exceptions listed in Section E).
  2. Any contract in substantially final form.
  3. Any ordinance, except those relating to an appropriation, in substantially final form.
  4. Any resolution, except those relating to appropriation-related funding sources or giving authority to negotiate and/or execute contracts, in substantially final form.
  5. The report of any outside consultant pertaining to a matter to be considered at the meeting.
- C. Any document provided to a body that is subject to the Brown Act must be included in the agenda packet that is available for public inspection and copying in the Office of the City Clerk during usual business hours. If a document distributed or intended to be distributed in connection with a matter on the agenda is less than fifteen pages, it may also be available on the City's website.
- D. The agenda packet need not include:
1. Any material exempt from public disclosure under this chapter;
  2. Presentation and/or discussion materials including handouts used at a meeting of the body.
- E. The following documents need NOT be distributed on the agenda packet but will be distributed as soon as possible.
- a. The following staff memos:
    - i. Planning Commission action where there was no significant change to the project description provided in the exhibit memo;
    - ii. Contract Bid Awards or procurement contracts where the initial memo was already distributed;

- iii. Supplemental memos where additional information has been received after the initial memo was released;
  - iv. Emergency items that may need to be added to the agenda to preserve public welfare (i.e., health, safety and financial matters) and that need immediate Council action;
  - v. Grant application memos where the Administration needs Council authority to submit applications and grant deadlines do not allow conformance with the 10-day requirement;
  - vi. Council Committee minutes and Council Committee packets, which will be distributed 7 days in advance of a meeting;
  - vii. Items where Council action is required to satisfy a legal deadline;
  - viii. Items heard by a Council Committee that require full Council action such as:
    - 1. Emergency repair funding;
    - 2. Appointments to boards, commissions, committees and other bodies when a timely appointment is needed;
    - 3. Approval of the City's position on legislation, if a timely response is necessary; and
    - 4. Implementation of arbitration decisions and approval of tentative labor agreements.
  - ix. Reports regarding the second reading of an ordinance, provided that no substantial/material changes have been made from the first reading of a proposed ordinance.
- b. Memos prepared by members of the body for which agenda is being distributed.

**PRACTICE POINTER:** To the extent possible, every page of a draft document should state that the document is a draft and advise any person seeking a final version of the document to contact the City Clerk's Office at a particular phone number and/or email address. In addition, every Agenda should note that documents attached to or referenced in the Agenda may not be final documents and that final documents may be obtained by contacting the City Clerk's Office at a particular phone number and/or email address.

OTHER ADVISORY ENTITIES  
DEFINITIONS

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**Group 1: Subject to the Brown Act**

- Standing Committees of Boards, Commissions and Advisory Committees
- Committees comprised of Council staff that represent a majority of City Council offices

**Group 2: Required to be Open to the Public and Not Subject to the Brown Act**

An entity falls into Group 2 if it meets either of the following:

- It is created by and to advise, solely on matters concerning the conduct of the public's business, the Mayor, the Mayor's Chief of Staff or Budget and Policy Director, a Councilmember, a Council Appointee, or any member of a Board, Commission or Advisory Committee. This definition is not intended to include groups that advise elected officials solely on political or campaign related matters.

OR

- It grants or advises any group subject to the Brown Act about grants of City or RDA funds of \$200K or more per fiscal year to a non-City organization

**Group 3: NOT Required to be Open to the Public and Not Subject to the Brown Act**

An entity falls into Group 3 if it meets either of the following:

- It is formed or used for specific or immediate problems and not intended to meet for more than 6 months; OR
- Its meetings include discussion about private or non-public information, where the *public interest served by **NOT** disclosing the information* clearly outweighs the public interest served by disclosure of the information.



## Attachment C

### Matrix of Public Meeting Requirements

Meeting Requirements	Council and SJRA	Council Committees	Decision-Making Bodies (Quasi-Judicial)	Boards, Committees Commissions	Other Advisory Entities
1. Agenda Posting (Regular Meeting)	10 days; exceptions may be requested from Rules if within Brown Act	7 days in advance; 5 days for Rules	7 days* amended agendas allowed if within Brown Act	7 days	3 days
2. Staff Reports	10 days; exceptions may be requested from Rules if within Brown Act	7 days in advance; 5 days for Rules	7 days	7 days	No posting requirement
3. Staff Reports Expenditures of \$1M or More	14 days; exceptions may be requested from Rules if within 10 days	7 days in advance; 5 days for Rules	NA	7 days	NA
4. Cost Benefit of Public Subsidy (\$1M or More)	Info Memo 28 days; Staff Reports 14 days	7 days in advance; 5 days for Rules	NA	7 days	NA
5. Supplemental Staff Reports	Informational Anytime; Substantive Changes: Exceptions may be requested from Rules if within Brown Act	Informational Anytime; Substantive Changes: Committee may hear and act on the item or defer it	When necessary, presented at the Evidentiary Hearing	Informational Anytime; Substantive Changes: Committee may hear and act on the item or defer it	No posting requirement
6. Memos from Member(s) of the Body	Multiple signatures 4 days Single signatures anytime but discouraged if ≤ 4 days	Multiple signatures 4 days Single signatures anytime but discouraged if ≤ 4 days	NA	Multiple signatures 4 days Single signatures anytime but discouraged if ≤ 4 days	No distribution deadline
7. Agenda Posting (Special Meeting)	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	4 days, unless 2/3 of the members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	24 hours
8. Recording	Video record and maintain for 2 years	Video record and maintain for 2 years	Video record Planning Commission; audio record all others	Audio record and maintain for 2 years	May audio record but not required
9. Public Testimony	At Chair's discretion; May make allowance for high interest items	At Chair's discretion; May make allowance for high interest items	At Chair's discretion; May make allowance for high interest items	At Chair's discretion; May make allowance for high interest items	At Chair's discretion; May make allowance for high interest items
10. Minutes	Synopsis posted by next meeting; Action Minutes ASAP	Action Minutes posted 5 days before meeting at which Council will hear Committee's report; if not posted in time, report will be deferred.	Action Minutes; Post within 10 days of holding meeting	Action Minutes; Post within 10 days of holding meeting	No requirement

\*Not required to specify "Recommended Action" on agendas or list all documents for each item.

## Regular and Special Meetings

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### Agenda – Regular Meetings – Council and Board of the Redevelopment Agency

- At least 10 calendar days before a regular meeting, the City Clerk must post an agenda for the meeting.
- No later than 6 days before a regular meeting, the Rules and Open Government Committee may permit substantive changes to the agenda.
- No later than 3 days before a regular meeting, the City Clerk may post an amended agenda to make administrative, non-substantive changes to the agenda.
- After an amended agenda has been posted, the City Clerk, in consultation with the Mayor, City Attorney, City Manager and/or Executive Director of the San Jose Redevelopment Agency, may add an item to the Agenda under Orders of the Day. The added item must be posted along with the agenda and amended agenda with an explanation as to why the item is being added. The Council may consider the item only when it makes 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 present, that the item must be resolved at that meeting.

### Agenda – Regular Meetings – Council Committees

- At least 7 calendar days before a regular Council Committee meeting (except for the Rules and Open Government Committee, which requires 5 calendar days before a regular meeting), the City Clerk must post an agenda for the meeting.
- No later than 3 days before a regular meeting, the City Clerk may post an amended agenda to make administrative, non-substantive changes to the agenda.

### Agenda – Regular Meetings – City Boards, Commissions, Committees and Task Forces

- At least 7 calendar days before a regular meeting of any City Board, Commission, Committee or Task Force, staff must post an agenda for the meeting.
- No later than 3 days before a regular meeting, staff may post an amended agenda to make administrative, non-substantive changes to the agenda.

Agenda – Regular Meetings – Decision Making Bodies

- At least 7 calendar days before a regular meeting, staff must post an agenda for the meeting.
- No later than 3 days before a regular meeting, staff may post an amended agenda to (1) make administrative, non-substantive changes to the agenda; and (2) add any item that needs action where the need for action came to the attention of the body after the regular agenda was posted.

Agenda – Special Meetings – All Bodies

- A presiding officer or a majority of the members of the body may call a special meeting with 4 calendar days notice.
- A special meeting is permitted on less than 4 days notice but with at least 24 hours notice only when the members of the body make 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 present, that an issue has arisen that must be resolved in less than 4 days.