

TO:

Honorable Mayor and Members of the City Council

FROM:

David N. Carmany, City Manager

SUBJECT:

Report from the Ad Hoc Open Government Subcommittee Seeking City Council Direction on Remaining Open Government Initiatives; Authorization for the City Manager to Adopt the Public Records Act Protocol; and Direction on Future Open Governmental Initiatives.

DISCUSS, AUTHORIZE ADOPTION, AND PROVIDE DIRECTION

RECOMMENDATION:

Staff recommends that the City Council:

1. Review Remaining Open Government Initiatives considered by the Ad Hoc Subcommittee.
2. Authorize the City Manager to adopt the Public Records Protocol.
3. Provide Direction as to Future Open Government Initiatives.

FISCAL IMPLICATIONS:

There are no fiscal implications with the recommended action at this time.

BACKGROUND:

The Ad Hoc Open Government Subcommittee was formed in June 2011 to discuss and consider and make recommendations to the City Council regarding open government initiatives. Its two members have been Mayor Lesser and Mayor Pro Tem Howorth. Since its formation, the Ad Hoc Subcommittee has held eight publicly noticed meetings to receive public input, establish goals, create a "vision statement," and develop initiatives to improve openness and transparency in City government. Each meeting was videotaped and archived and is available for viewing on the City website. Open Government Initiatives considered by the Ad Hoc Subcommittee were compiled for ease of reference on a Matrix (Attachment 1).

The public has provided many helpful suggestions to the work of the Ad Hoc Subcommittee and been an active partner in developing open government initiatives. For instance, members of the public have suggested listing upcoming meetings at the end of each agenda (Matrix Item No. 4), allowing the City Council to pull Consent items first (Matrix Item No. 14), and have the City Manager to report on conferences/travel of senior staff (Matrix Item No. 17).

Prior to the formation of the Ad Hoc Subcommittee the City entered into a settlement agreement in March 2011 with the late Richard McKee regarding litigation he commenced alleging violations of the state Brown Act and the California Public Records

Act (“the Act”). Among the settlement agreement provisions is a requirement for the City Manager to develop and adopt a protocol (“Protocol”) for responding to requests for public records which complies with the Act. While the settlement agreement delegates responsibility for developing a Protocol to the City Manager, it was included as an Item on the Matrix for review and public input (Matrix Item No. 19).

On January 3, 2012, the Ad Hoc Subcommittee provided City Council with an update on its development of open government initiatives. The City Council discussed each item on the Matrix and provided the Ad Hoc Subcommittee with direction on certain items but requested it return regarding other items which would require policy direction from the entire City Council.

The Ad Hoc Subcommittee subsequently conducted three public meetings to review items on the Matrix, provide direction to City staff, and determine which items should return to City Council. The Protocol was presented at public meetings on July 19, 2012, and August 30, 2012. At those meetings there was discussion of revisions to the Protocol and whether the City should consider broader open government initiatives known as "Sunshine Ordinances."

On March 12, 2013, the Ad Hoc Subcommittee met to review the status of outstanding items on the Matrix, the Protocol, and how to proceed. Most items listed on the Matrix have now been implemented. For example, the City does now list upcoming meeting on each agenda, agenda posting boards have been color coded to allow for easier identification of meeting agendas for different commissions and meeting bodies, the 15-minute cumulative limit on Audience Participation was removed, etc. Several items identified on the Matrix as “implemented” are nevertheless “ongoing,” such as training City staff (Item Nos. 3, 28) and implementing Grancius software and hardware (Items Nos. 22, 23, 24, and 25).

The Ad Hoc Subcommittee believes it is appropriate to return to the City Council at this time for (1) Direction on remaining open government initiatives, (2) Authorization for the City Manager to adopt the Protocol, and (3) Direction on future open governmental initiatives. The Ad Hoc Subcommittee is an advisory body with a limited purpose to review certain open government initiations on the Matrix and make recommendations to City Council. In addition, the arrival of new City Council members suggests a need for the full Council to provide direction on any new initiatives.

DISCUSSION:

1. Remaining Open Government Initiatives

The Matrix developed by the Ad Hoc Subcommittee with public input contains a total of 28 items. As stated above, almost all Matrix items have been implemented but the items below have policy implications requiring direction from City Council.

a) Limitations on Special Meetings (Matrix Item No. 2)

Pursuant to the Brown Act, a legislative body (e.g., City Council) can hold three types of meetings: regular, special or emergency.

Almost all City Council meetings are “regular” meetings. A “regular” meeting is one that occurs on a legislative body’s established meeting day and time. Agendas for a regular meeting must be publicly posted 72 hours in advance of the meeting in a place that is freely accessible to the public and contain a brief general description of each item of business to be transacted or discussed at the meeting. Regular meetings can be adjourned to other days, times or places.

Legislative bodies can also hold a “special” meeting at a time or place other than the time and place established for regular meetings. For special meetings, the “call and notice” of the meeting and the agenda must be posted at least 24 hours prior to the meeting. Under the Brown Act, the Mayor or a majority of the legislative body may call a special meeting at any time.

It is rare for cities to adopt limits on the use of such meetings. For almost all cities, the calling of a special meeting is unusual. Most cities do not conduct regular and general city business at special meetings. Special meetings are typically utilized in the case of scheduling conflicts with the regular meeting dates, when there is an urgent need or some other legal reason to take action before the next regular council meeting or if there is a need to devote an entire meeting to a specific topic or agenda item.

The adoption of policies or ordinances placing restrictions on special meetings limits the flexibility provided in the Brown Act for calling special meetings. Also, the City Attorney’s office does not recommend any policy that could hamper its ability to meet litigation deadlines or limit its negotiation position. It believes City Council and future City Councils should maintain the flexibility provided in the Brown Act to hold special meetings. For example, if the City Council desired to start a regular meeting earlier and did not adjourn to that earlier meeting time, the new start time for its regular meeting would have to be noticed as a “special meeting.” Adopting restrictions on special meetings would limit the Council’s ability to do. The Ad Hoc Subcommittee recommends that the Council consider the following options. Both options acknowledge that for some matters - litigation, urgent items, etc. – only a 24-hour notice (in full compliance with the Brown Act) will be possible.

City Council options:

1. Direct the City Clerk to provide at least a one week notice for workshops, budget study sessions, strategic plan meetings and other special meetings whenever practical.
2. Direct the City Attorney to draft an ordinance for City Council consideration to require no less than 72 hours’ notice of workshops, study sessions, budget study sessions and strategic plan meetings.

b) Format of City Council Minutes: Action or Summary? (Matrix Item No. 8)

Minutes of City Council meetings are required by Government Code Section 36814 and 40801. In addition, the City’s Municipal Code provides that the City Clerk “shall be charged with keeping an accurate record of the proceedings of the City Council” [MBMC Section 2.08.150]. Accordingly, minutes serve as the official legislative record of City Council meetings and are intended to be a written account of the actions taken on the

items presented at a meeting. State law, however, does not address the format of minutes.

There are several styles of minutes. Industry standards describe the formats as action minutes, summary minutes or verbatim/semi-verbatim minutes. Regardless of the format, minutes must be accurate, clear and state the action taken. Action minutes can be described as minutes with very little narrative, if any, included with motions and votes listed in the record. Summary minutes provide some City Council and staff comments as well as notations on members of the public who speak on agenda items. Verbatim/semi-verbatim minutes include detail of each agenda item listed but also discussion on each agenda item.

Cities throughout the state use various styles of minutes. The City Clerk's Association of California informed us that best practices dictate the use of "action" minutes for several reasons. First, the duty of the minutes-taker is to record the action taken by the legislative body. Minutes are not meant to be a transcript of the meeting. Action meetings record what occurs. Second, the general rule of transcription is for every hour of meeting time, there should be at least three hours allocated for transcription. Action minutes reduce the amount of staff time spent in transcribing the minutes especially if the minutes are heavily detailed and/or verbatim. Third, narrative on the dialogue that occurs during a meeting can lead to issues related to the interpretation of comments. Action minutes eliminate a discussion about "who said what" or the comment, "I meant to say" , Minutes are not a transcript of the meeting and with the advent of technology, the video is available if there is a desire to view and hear a full recounting of an item or the meeting.

Residents who favor summary minutes state that such minutes provide a fuller account of comments by residents and policymakers and assist facilitating research on legislative intent. However, summary minutes will impact staff resources and be more expensive.

The format of minutes is a matter of preference or policy by the City Council. Consistent with industry standard, the City Clerk utilizes action minutes for City Council meetings. Certain City commissions use summary minutes based on long standing practice.

Recommendation:

Continue the City's practice of action minutes. In the alternative, if the City Council desires to provide summary minutes, direct the City Manager to create a budget request for further discussion during this year's budget study sessions.

c) Public Input on Staff Reports prior to Publication (Matrix Item No. 18)

Item No. 18 explores the concept of whether members of the public should provide written input to City staff for incorporation into the final staff report. No city presently allows for input in this fashion and staff does not recommend such a policy. There should, however, be a discussion of how to provide broader opportunities for the public to participate. Certain issues may lend themselves to alerting stakeholders in advance of City Council discussion of the item. For example, with regard to Sand Dune Park, the City Council directed staff to seek public input with regard to park operations before a decision was

made. Another example was the Six-Man volleyball tournament where staff solicited input from stakeholders with respect to the event. Another way to include public input is to include a section in staff reports where staff can inform the public and City Council as to stakeholder input and comments.

Recommendation:

Do not adopt a policy on this item and recommend that additional opportunities for public input be explored.

d. Agenda Structure and Process, Sticking to the Agenda, City Council Meeting Consent Calendar Content, Follow-up of Items requested to be placed on the Agenda of a Future Meeting to Ensure Items are Brought Back (Matrix Item Nos. 9, 13, 15)

These Items will be addressed at a future meeting when the City Council revisits its resolution establishing rules of order for City Council meetings. In addition, “sticking to the agenda” was addressed at the City Council teambuilding exercise on March 21, 2013.

The City Manager has also assigned staff to make a list of items that come up during a meeting that need follow-up and/or need to be placed on a future agenda. Those lists will be reviewed at the department head meetings immediately following the City Council meetings to ensure that it is placed on the future agenda list, tracked and a staff person assigned to the item for appropriate follow-up.

2. Public Records Act Protocol (Matrix Item 20)

The California Public Records Act (“Act”) is the State law that establishes and guides the public’s right to access records concerning the conduct of the people’s business. In accordance with the McKee settlement agreement of March 2011, staff prepared a “Public Records Act Protocol (“Protocol”) consistent with the Act. Staff has also developed a Public Records Act Request Log (“Log”) which it has used since July 2012 to track City Public Records requests.

The purpose of the Protocol is to affirm in writing the public’s right to access City Public Records and to set forth the procedures by which they are made available to the public in accordance with the Act. City staff receives requests for City Public Records frequently. Responding promptly and appropriately is an important aspect of the City’s open government process.

The McKee settlement agreement delegated to the City Manager the authority to develop and adopt the Protocol. However, the Ad Hoc Subcommittee listed the development of a Protocol on the Matrix (Item No. 20), and reviewed it at three Ad Hoc Subcommittee meetings. The Ad Hoc Subcommittee and members of the public provided staff with helpful input on the Log, such as adding a column to indicate the date staff completes a City Public Records Act request and including additional narrative information to explain where there are gaps in producing responsive records.

Recommendation:

Review and adopt the Public Records Act Protocol and Public Records Act Log.

3. Direction on Future Open Government Initiatives

The City is deeply committed to serving the public and increasing their participation. The City has implemented numerous open government initiatives and the process of identifying how city government operates in an open and transparent manner is ongoing. As an example, to further this commitment and provide continuous staff training and improvement, the City will be developing a public engagement manual which will serve as a record of methods and practices currently in use and be a guide for staff going forward. The City will continue to explore and identify additional opportunities and bring them to the City Council for consideration.

Additionally, several residents suggested to the Ad Hoc Subcommittee that the City consider adopting a “Sunshine Ordinance.”

In California, the Brown Act is California’s sunshine law. The Brown Act’s key provision is its requirement that “all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” The remaining provisions work together to ensure transparency in government. In the context of open government, transparency means that citizens must be able to “see through” the workings of local government. The Brown Act, the Public Records Act and to some extent the Political Reform Act ensure that the workings of local government are transparent and provide for a means for the public to participate in government.

A sunshine ordinance takes a sunshine law (i.e., the Brown Act) and expands upon it to create new local laws regarding public meetings and, in some versions, access to public records. Terms of sunshine acts adopted by or proposed for California cities vary widely. Common provisions in sunshine ordinances include extending open meeting requirements to more situations (i.e. additional meeting bodies, types of meetings, etc.), requiring earlier access to meeting materials (earlier agenda postings), expedited schedules for producing public records, etc. Included in Attachment 2 are an August 30, 2012, report and a March 12, 2013, report that address sunshine ordinances in more detail and provide a general overview of sunshine ordinances that have been adopted by various cities in California.

Recommendation

Direct the City Manager to continue to follow best practices that encourage broad public engagement in community decision-making and open and transparent government, and explore additional initiatives. In addition, revisit these issues at the next Strategic Plan meeting, scheduled for July 10, 2013.

CONCLUSION:

Staff recommends that the City Council take action on the recommendations of the Ad Hoc Subcommittee and provide direction as appropriate.

Attachments:

1. Open Government Initiatives Matrix
2. March 12, 2013, Ad Hoc Open Government Subcommittee Agenda, Staff Reports and Attachments
3. Public Records Act Protocol
4. Public Records Act Log