

Agenda Date: 8/13/2013

TO:

Honorable Mayor and Members of the City Council

FROM:

David N. Carmany, City Manager

SUBJECT:

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

RECEIVE PUBLIC INPUT, DISCUSS, AND TAKE ACTION ON OPEN GOVERNMENT INITIATIVES

RECOMMENDATION:

Staff recommends that the City Council:

1. Provide direction on the Remaining Open Government Initiatives
2. Authorize the City Manager to Adopt the Public Records Protocol
3. Provide Direction on the Forum for Considering Future Open Governmental Initiatives.

FISCAL IMPLICATIONS:

There are no fiscal implications with the recommended actions.

BACKGROUND:

The Ad Hoc Open Government Subcommittee ("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 Open Government 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.

The May 21, 2013 City Council Agenda Staff Report, attached as Attachment 1, describes the various Open Government Initiatives the subcommittee has explored since 2011. The initiatives were compiled for ease of reference on a "Matrix," which is attached as Attachment 2. The Matrix lists 28 open government initiatives, six of which are outstanding and require direction by the City Council.

The City Council received public input on the six remaining initiatives of the Open Government Ad Hoc Subcommittee and began discussion of the initiatives at its July 2, 2013 meeting. At the conclusion of the discussion, Council directed the item be placed on the agenda of the July 16, 2013 meeting to provide the public with an additional opportunity for public input before the City Council takes action on the remaining issues.

What follows below are summaries of the six remaining open government issues and recommendations by City staff for public comment and direction by the City Council:

1. Special Meetings (Matrix Item No. 2)

The state Brown Act requires that the City provide not less than 24 hours' notice of special meetings by the City Council.

Issue: Should the City provide an additional notice period beyond the requirements of the Brown Act in advance of City Council special meetings?

Recommendation: Continue to comply with the Brown Act. In addition, direct the City Clerk to provide at least one week notice for City Council workshops, budget study sessions, and strategic plan meetings whenever staff is aware of such meetings in advance.

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

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.

There are several styles of minutes including action minutes, summary minutes and verbatim/semi-verbatim minutes. As explained more fully in Attachment 1, City staff and the City Clerk's Association of California recommend action minutes. Every City Council meeting is recorded and archived and each set of minutes contain a reference and link to the video with the following statement, "For video of meeting, click on the following link."

Issue: Should the City Clerk take action minutes or summary minutes as a record of City Council meetings?

Recommendation: Continue the City's practice of using action minutes for City Council meetings.

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

Residents have requested an opportunity to provide input on City Staff Reports prior to publication. See discussion in Attachment 1.

Issue: Should residents be provided with an opportunity to comment on or supplement City Staff Reports prior to their publication?

Recommendation: Direct City staff to explore additional opportunities for public outreach and input prior to finalizing staff report and direct the City Clerk to distribute correspondence from the public prior to Council meetings so Council members may consider such input prior to making a decision.

4. Public Records Act Protocol (Matrix Item 20)

The California Public Records Act is a State law that establishes and guides the public's right to access records concerning the conduct of the people's business. In March 2011, the City entered into a settlement agreement with the late Richard McKee (the "McKee Settlement Agreement") regarding litigation he filed against the City seeking relief for alleged violations of the Brown Act and the Public Records Act. A copy of the McKee Settlement Agreement is attached as Attachment 3.

Section 1a(iv) of the McKee Settlement Agreement provides for the City Manager to "develop and adopt a protocol for responding to requests for public records which complies with the Public Records Act." In accordance with that provision, the City Manager developed a "Public Records Act Protocol ("Protocol") consistent with the Public Records Act which is attached as Attachment 4. While the Protocol has been developed and its guidelines are being followed by City staff, it has not been formally adopted. It was discussed by the Ad Hoc Open Government Subcommittee and the City Manager has deferred its adoption until the subcommittee's recommendations were considered by the City Council.

Staff also developed a Public Records Act Request Log ("Log") attached as Attachment 5, which the City Clerk has used since July 2012 to track City Public Records requests.

Issue: Should the City Manager adopt the Public Records Act Protocol and Public Records Act Log ?

Recommendation. Direct the City Manager to adopt the Public Records Act Protocol and Public Records Act Log.

5. Direction on Future Open Government Initiatives

An outstanding question is whether new open government initiatives should be developed by an ad hoc subcommittee of the City Council or the full City Council. The work of the Ad Hoc Open Government Subcommittee over the past two years raised the profile of open government initiatives and the adoption of various recommendations, but the City staff member and legal counsel who supported much of its work are no longer affiliated with the City. In the absence of City staff to develop new initiatives, biannual City Council Strategic Plan meetings provide a forum for exploring new open government initiatives.

The City is deeply committed to serving the public and increasing public participation. Regardless of the forum selected, City staff will continue to explore and identify additional opportunities for public participation and greater transparency for consideration by the City Council. For example, City staff members are developing a public engagement manual as a guide for staff to be presented to City Council at an upcoming meeting.

Issue: Should open government initiatives be developed by City staff for discussion at City Council Strategic Plan sessions or through a City Council ad hoc subcommittee?

Recommendation. Continue to encourage broad public engagement in community decision-making and develop open government initiatives at future City Council Strategic Plan meetings.

6. 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)

This item is addressed in the meeting management staff report.

For ease of reference, the March 12, 2013 Ad Hoc Open Government Subcommittee agenda, staff reports and attachments that were attached to the May 21, 2013 City Council agenda report are attached as Attachment 6.

CONCLUSION:

Staff recommends that the City Council:

1. Provide direction on the Remaining Open Government Initiatives
2. Authorize the City Manager to Adopt the Public Records Protocol
3. Provide Direction on the Forum for Considering Future Open Governmental Initiatives.

Attachments:

1. May 21, 2013 City Council Agenda Report from the Ad Hoc Open Government Subcommittee
2. Open Government Initiatives Matrix
3. McKee Settlement Agreement
4. Public Records Act Protocol
5. Public Records Act Log
6. March 12, 2013 Ad Hoc Open Government Subcommittee Agenda, Staff Reports and Attachments