



Memorandum

TO: CITY COUNCIL
FROM: Mayor Sam Liccardo
SUBJECT: BIENNIAL ETHICS REVIEW
DATE: December 6, 2022

APPROVED:

DATE: 12/6/22

RECOMMENDATIONS

Pursuant to San Jose Charter Section 608, I make the following biennial recommendation for “amendments or changes to the Code of Ethics and its implementing ordinances to the City Council”; specifically that the Council direct the City Attorney and City Manager to:

1. Bring to Council any proposed changes in City ordinances, rules, protocols and processes—including the integration of proposed technology solutions—to better facilitate the production of documents, audio, and video under the Public Records Act and similar transparency laws, to:
 - a. Address the rapidly growing volume of Public Record Act requests to the City, in a manner that will
 - i. Reduce fiscal burden on taxpayers (and concomitant workload on City staff);
 - ii. Reduce delay of record production and improve responsiveness;
 - iii. Reduce errors in failing to turn over relevant records.
 - b. Identify voluntary protocols that can lawfully encourage media and other entities to better focus their PRA requests to satisfy their (& the public’s) need for information without overburdening understaffed City records offices seeking to comply with voluminous, “fishing expedition” re-productions of audio, video, and paper records. Consider also legislative advocacy—in concert with the League of California Cities and the Big City Mayors’ coalition—to enable mechanisms that will curtail abuse of well-intentioned PRA requirements.
 - c. Given the rapidly growing inventory and cost of digital records and data, review record destruction policies under City Policy 6.1.5, and return to Council for a public discussion about the appropriate policy, and the best approaches to ensure compliance.

2. On the Brown Act, without creating any additional standing committees under Cal. Govt Code Section 54952(b),
 - a. Clearly define the appropriate duration of five-councilmember “groups” formed to avoid Brown Act violations, presumably based on the recency of the Council vote on the matter. Clarify the City’s interpretation of the letter and spirit of the law, and to avoid rigid interpretations that make future discussions of policy matters unreasonably difficult.
 - b. Clearly define the scope of issues, such that a Council vote on a large, umbrella issue (e.g. Climate Smart, the City’s affordable housing strategy, or Measure T) will not forevermore preclude communication outside a Brown Act group on a very specific implementation of that strategy.

DISCUSSION

Over the last couple of years, we’ve seen substantial controversy within the media over the City’s responses to the Public Record Act (PRA) requests generated by those media outlets. The number and volume of PRA requests has skyrocketed in recent years, increasing the burden on staff in multiple departments, particularly the Police Department, the City Clerk, the Mayor’s Office, and the City Manager’s Office.

The City must always fully and properly comply with disclosure laws, in the interests of accountability and transparency to the public. The public does not know, however, the extent to which their dollars and resources are devoted to merely responding to those many requests. In the last three years, City expenditures to fund staff to respond to voluminous and frequent PRA responses have doubled to approximately \$2 million annually. Changes in state law have wholly imposed these cost burdens on local governments, and the elimination of the prohibition on unfunded mandates exacerbates this problem.

In particular, SB1421, requiring disclosure of enumerated instances of police dishonesty or sexual offenses, has driven a portion of this surge in expenditures. To address the voluminous video, audio, digital, and paper records of the 202 events which could arguably fall within SB1421’s ambit since 1999, the City was required to dedicate 11 full-time employees to respond to PRA’s, and “rehired” another 8 retirees for this work. In addition to that staffing allocation, other departments have reassigned another 15 employees to temporarily assist the Records Team in addressing the imminent need, making a total of 36 employees who spend all or part of their day in the effort.

It’s easy enough to say, “well, that’s the City’s problem.” Yet in a world of limited budgets, that’s also the community’s problem.

Simply, there are trade-offs in how we deploy human resources. With the most thinly-staffed City Hall of any major U.S. city, every individual consumed with this work is not providing other valued services to our community—services that the public rightfully expects and deserves. We must fulfill our obligations to transparency and public accountability without undermining response to the many urgent issues needing our attention—such as homelessness, crime, blight, or emergency medical response.

Technology may help, as we've encouraged the Police Department to utilize software that can help with the reproduction of the enormous volume of body-worn camera video, with the redactions required by law to avoid privacy violations.

It may also help for the City to develop voluntary protocols with local media organizations to better triage or focus requests that serve the media's purpose without engaging City staff in unnecessary wheel-spinning. We have experienced too many situations where hundreds of hours of City staff time are expended on requests that could easily be narrowed with clearer focus. My office routinely fields and responds to requests from one media outlet for "all emails" and "all texts" for a duration of 6 months or more at a time. In another instance, some two months after City staff produced a multi-foot tower of documents responsive to a reporter's request, the reporter still hadn't bothered to pick up the documents. Much of this waste could be avoided with better communication.

We hope that by elevating this to the attention of top management and the Council may help to find better approaches to satisfy the many competing demands on scarce City staff time and still satisfy the legal and moral imperative of transparency.