

CONSENT CALENDAR July 16, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Public Calendars

### **RECOMMENDATION:**

Refer to the City Manager and the Open Government Commission (OGC) for study the concept, as well as the feasibility, of requiring the calendars of City Councilmembers to be made public insofar that they relate to business, and request that the City Manager and OGC return to Council with a recommendation.

#### **BACKGROUND:**

Open Government is essential to ensure the integrity and accountability of legislative bodies that "conduct the people's business." The City of Berkeley is committed to those goals, and is among the few Cities that have so-called "Sunshine Ordinances" (local ordinances that expand California's open government laws, such as the Public Records Act and the Brown Act). The City of San Jose has a comparable "Sunshine Ordinance," but it includes a simple, yet useful "public calendar" component that requires certain officials to publish their calendars online.

The public calendars of San Jose officials only include City-related appointments, regular City Council meetings, public events, speaking engagements, meeting with developers, consultants, lobbyists, and meetings with subcommittees. Calendar entries must include the names, titles and affiliated organization(s), and a general statement of the issue of applicable appointments.

Additionally, the public calendar does provide necessary exemptions for the following: (1) personal appointments, (2) information protected by the attorney-client privilege (3) Information about attorney work product (4) Information about City staff recruitment (5) Information about a personnel issue (6) Information about corporate recruiting and retention, (7) Information about criminal investigations and security, (8) Information about whistle-blowers, (9) Information about those who may fear retaliation, and (10) Information that is otherwise prohibited from disclosure.

The disclosure of the calendars of elected officials provides an additional and crucial layer of transparency that enables the public to better judge the performance of their representatives and the manner in which they conduct the "people's business."

## **FINANCIAL IMPLICATIONS:**

Unknown; some staff time required...

# CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

#### Attachments:

1. "Ex-Santa Clara County Supervisor Shirakawa's scandal reveals lack of basic sunshine provisions" *San Jose Mercury News* May, 2013..

# Ex-Santa Clara County Supervisor Shirakawa's scandal reveals lack of basic sunshine provisions

By Tracy Seipel

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Posted: 05/27/2013 05:57:00 PM PDT

SAN JOSE -- If the June 4 special election to replace the disgraced former Santa Clara County Supervisor George Shirakawa Jr. is a reminder of anything, it's that Shirakawa's unethical ways thrived in the dark -- and some basic county "sunshine" provisions might have alerted someone's attention.

It would have helped, some say, if the supervisors and their chiefs of staff were required to publish their weekly appointment calendars online for the public to view. That's been a mainstay for years at San Jose City Hall, just a few miles down the road.

So has a mandated online registry for lobbyists that requires extensive disclosure requirements every three months as they seek to influence city policy.

Yet until Shirakawa's downfall, neither idea has gained much traction at the county, although the Board of Supervisors includes two former San Jose City Council members, Ken Yeager and Dave Cortese, who served on the council when other city officials' backroom deals ignited these and other San Jose reforms

At a supervisors' committee meeting Tuesday, six years after San Jose enacted its online calendar policy for elected officials, their chiefs of staff and council appointees, both Yeager and Cortese are expected to recommend the board do the same for just the supervisors and send it to the full board to vote as early as next month.

The County Counsel's office is recommending that calendars of other county officials, including the district attorney, sheriff and assessor, be made available at the discretion of those officials.

Yet the county's delay in acting, especially with two board members familiar with the issue, perplexes people like Judy Nadler, a former mayor who is a government ethics expert at Santa Clara University.

"Certainly I question why it hasn't happened in the county because it was successfully implemented in the city, and I believe it's a best practice," Nadler said. "This should not be a difficult decision."

With the \$1 million cost to stage the election in the county's poorest district, it's been an expensive one.

"It would have been helpful for his (Shrikawa's) constituents to know what he was -- or was not - doing on their behalf," said candidate Teresa Alvarado, who is running on a platform to improve county government transparency, public access and oversight, including putting county elected officials' calendars online and establishing a lobbyist registration.

The issues aren't new to Cindy Chavez, Alvarado's chief rival in the supervisor race, who said she backs both measures. "I support all of that because I did it" when she was San Jose's vice mayor, Chavez said, citing her membership on the city's ethics task force in 2004.

By March 2006, along with three other councilwomen, Chavez announced a list of "sunshine reforms" to improve city government following controversies including an \$11.25 million garbage contract amendment that critics said the council acted on without adequate public notice or information. But in April, a month after announcing those reforms, Chavez was criticized in the press when internal emails revealed that she'd kept secret her role in a proposed \$4 million taxpayer subsidy for a Grand Prix auto race -- a vote that was rushed to the council a few months earlier with only one day's public notice.

At the county, not everyone is a fan of possibly publishing their calendars online.

Supervisor Joe Simitian is against the idea, saying it will "inhibit my ability to be an effective advocate." Essentially, he doesn't believe he should have to share his calendar when anyone opposed to his policies -- including special interest groups -- don't have to share their calendars with him.

Supervisor Mike Wasserman said he has no problem with the proposal.

Cortese, who raised the issues of online public calendars a few days before Shirakawa's March 1 arrest for misusing taxpayer and campaign funds, insisted the idea was unrelated to his plan to run for San Jose mayor in 2014.

Both he and Yeager attribute the delay in dealing with the matter to few people asking for their calendars. Since his 2008 election to the board, Cortese said, "it seems folks who request them have been content with the way we've been providing them upon request."

Nadler said that's no excuse for not posting them online. "A lot of people may not be aware that this is the kind of information they have access to," she said. "It's information that belongs to the public," Nadler said, because it helps constituents understand how their representatives are spending their time.

As for an online lobbyist registry modeled after San Jose's, Cortese said "that is the next thing we should look at." Wasserman and Simitian said they also would support the idea.

Yeager, in fact, chaired San Jose's ethics task force responsible for crafting the city's lobbyist regulations in 2004. Yet, since his election as supervisor in 2006, he and the board have relied on a 1996 county ordinance that fails to address much beyond basic disclosure by lobbyists who must identify themselves on a speaker card before they address the board. And even that, said County Executive Jeff Smith, isn't always happening.

"A lobbyist registration is a good idea," said Smith, who added that it's up to the supervisors to enact any changes.

Both Yeager and Cortese told the Mercury News that while they saw the need for such an online lobbyist registration in San Jose, it's different at the county.

"I would be hard-pressed to come up with a list of people who had lobbied me in the six years on the board," Yeager said, particularly around land use, which is more prevalent at the city. "A lot of the lobbyists at the cities have to do with land use, and again, we don't do land use in the county -- I should say, never in my district."

Nadler is unconvinced, noting that "many of the same people who come to San Jose to lobby come to the county with many of the same issues." In fact, Yeager is now leading the county's Civic Center master plan effort to develop the site of the former San Jose City Hall and surrounding acres, which has already attracted developers' input. And he and Cortese are moving forward in committee discussions over the future of the 150-acre Santa Clara County fairgrounds in District 2, a major land use effort they expect to work on with whomever is elected to replace Shirakawa.

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