

RESPONSE TO COUNCIL QUESTIONS RE: 1/25/22 AGENDA

Agenda Item 3C Action on Whether to Accept a Formal Recommendation from the Task Force on Diversity, Equity, and Inclusion Regarding the City's Model for Electing its Chief of Police (Deferred from December 14, 2021)

Council Questions:

1. Q: Did the DEITF subcommittee meet in public to decide on writing the letter? Otherwise it seems to be a Brown Act Violation. Members of Council subcommittees of 3 have no non-public discussions of items—meaning I never talk with other committee members about items on the governance and ethics committee agenda.

A: Subcommittee meetings of the Task Force are not conducted as Brown Act meetings because they do not involve a quorum of the Task force. By contrast, Council subcommittees are often noticed under the Brown Act as a policy matter, not as a strict matter of strict compliance with Brown Act requirements, in order to invite and promote public participation in the subcommittee meeting (such as, for example, the CVRA apology letter subcommittee). That said, the merits of the letter were not discussed at a public meeting of the full task force – only whether to advance the letter to the City Council. The Task Force did acknowledge that it had not met on the contents of the letter, given that it was not on the Task Force's Meeting Agenda, but voted to submit it directly to the City Council.

2. Q: Did the DEITF letter ever come up for discussion at a public meeting of the entire DEITF

A: No, the letter was not ever agendized for full Task Force discussion. The contents or elements of the letter were not discussed at a public meeting of the Task Force because item was not properly Brown Act noticed for discussion and, instead, a discussion was focused on whether or not such a letter would even fall within the scope of the task force's work, and how/if they could advance the letter to the Council for consideration. However, the Task Force did receive a copy in their 11/8/2021 packet per the request of the Chair and as it is a public document.

3. Q: It seems that the issue is that the letter may sway voters which is a no-no. Can the council discuss any of the problems or merits of an elected COP or should the discussion be limited to the process that was used by the DEITF? Like for example, that Santa Clara is the only City in California with an elected COP. We don't want to be accused of swaying the voters ourselves and getting in trouble with the FPPC. It would be important to me for CAO to outline boundaries of discussion before this item is discussed.

A: To be entirely frank, this is precisely the grey area issue City staff brought up with the task force at their meeting. The task force did not receive the advice well and claimed in rather vehement terms that staff was attempting to hinder the work of the task force. If the Council has the opportunity, City staff suggests watching the [video](#) of the November 8th meeting.

It is a grey area because Gov Code 54964 prohibits the use of public funds (including staff time and resources) to advocate for a particular position on a ballot measure, but this item is not yet a ballot measure. Therefore, technically the Government Code bar is not yet triggered in terms of disallowing the task force from working on this. However, staff provided the task force with the advice that this item was likely to come up for policy discussion and action at the Council's policy setting and/or regular meetings, in terms of placing it on the ballot and, therefore, they were advised to hold off on any such discussion in deference to the Council's discussion of the item. To be clear, it is not *legally*

prohibited for them at this point, but generally is not viewed as a best practice. For the bounds of Council's discussion, please note that it is often the case that prior to placement of an item on the ballot for the voters' consideration, the legislative body will have a robust discussion of the item (such as with tax or bond measures). This is not a violation of the Gov Code when it is done prior to the vote to place it on the ballot. This is logical since as the decision makers you have to weigh and discuss the pros and cons of various policy matters, especially and including those that are on the ballot. Once the item is on the ballot, though, we cannot use public resources to advocate for any particular outcome. As already stated, given that this is a grey area of the law, and with future City Council action pending for the purpose of whether to submit this item to the voters, the City Manager requests that she be held harmless for any potential FPPC allegations and/or complaints, as she made very clear that the actions could result in undue influence on voters, premature action on the part of the policy/legislative body, and because there have been various complaints issues to the FPPC about political matters (none of which have been successful against the City Administration because of this type of due diligence).