

OPINION

Give open council sessions a chance

By Terry Francke

It's time to let a little sunshine burn off the haze surrounding San Diego City Council closed sessions.

I say this as a visitor to Monday's council meeting, where a short list of open government proposals by Councilmember Donna Frye and Vice Mayor Toni Atkins won four votes — normally a defeat — but also a chance for reconsideration next Monday when they may gain a fifth.

The Frye-Atkins proposals would give San Diegans a brief (60 days) taste of what more information about closed-door deliberations might add to civic clarity.

What they propose seems radical only to those inured to having the public know as little as possible about lawsuits and labor and real property negotiations in which the city is involved. As City Attorney Casey Gwinn conceded Monday, the council's observance of the Brown Act — the state open meetings law governing local agency councils, boards and commissions — has been the minimum sufficient to comply with the law.

Some would say "minimum" overstates the case. The California Court of Appeal, ruling on the use of closed sessions to discuss myriad aspects of the Padres ballpark deal in 1999, found far too much public business packed into those closed-door discussions, which the council argued were properly expansive given the many relevant issues involved. The court, in *Shapiro v. City Council*, stated:

"If we were to accept the City's inter-

pretation of the Brown Act in this respect, we would be turning the Brown Act on its head, by narrowly construing the open meeting requirements and broadly construing the statutory exceptions to it the City Council is attempting to use the Brown Act as a shield against public disclosure of its consideration of important public policy issues, of the type that are inevitably raised whenever such a large public redevelopment real estate based transaction is contemplated."

That decision was handed down two years ago. In recent weeks, insiders Frye and Atkins underscored their impression that nothing has changed by boycotting a closed session they felt all too typically foreclosed public access to public information. Meanwhile, three candidates for city attorney — two of them likewise insiders as members of the city attorney's staff — expressed similar disquiet with the expansive use of closed-door discussions.

As someone who has paid close attention to the Brown Act and its observance throughout the state for 24 years, I can attest that these protests, by those in a position to know, are unprecedented. Mayor Dick Murphy, moreover, is so out of touch with the law that on Monday he ventured he could support a proposal to allow public comment on more closed-session topics — when public comment on any closed-session topic has been permitted under the Brown Act for years.

The core Frye-Atkins proposals amount to no more than this: Before any closed session on litigation, public employee bargaining or real property negotiations, the city attorney or relevant bargaining agent would provide the council and audience with an open-session update on the progress of the matter, reporting only the facts known

to both parties. At that point the public would be allowed to comment and the council would be free to ask questions for its or the public's clarification and if it so chose, to decide that a closed session was not in the best interests of the city.

However unlikely such a decision might be, the process would restore the council to its proper role of responsibility and independent judgment. And once in closed session, the council's speaking on record — confidential until and unless a court-ordered disclosure to document a Brown Act violation — would tend to encourage scrupulous avoidance of improperly secret discussions.

Mayor Murphy said he could not justify the cost of making a record of closed-session discussions. The most serious cost, of course, would not be that of making the record but that of being caught on the record, discussing matters that don't belong in closed session. That's what happened in the Shapiro case, after which closed sessions stopped being recorded.

The mayor also worried about council members blurting out sensitive facts and "waiving" confidentiality while discussing whether to go into closed session. His anxiety seems strained, however, when one considers that only two on the council would be likely to argue against closing the doors in any event, and those two — Frye and Atkins — have managed to protest excessive secrecy repeatedly and emphatically without breathing a word about what was said in closed session. So who can't be trusted to be discreet?

Giving the public as much information as possible: Now that's really thinking outside the black box. A 60-day test seems a modest proposal indeed.

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