

City of Richmond
History and Culture Commission
Thursday, July 25, 2019
3:00 PM to 4:30pm
Location: Virginia Museum of Fine Arts

AGENDA

- 1. **(30 Minutes)** Establish Work Plan.....Commission
- 2. **(45 Minutes)** City Attorney, Freedom of Information Act Training (FOIA).....City Attorney
- 3. **(15 minutes)** Revisit Work Plan & Quarterly Report Discussion.....Commission

Started at 3:05

In Attendance: Free, Maurice, Bill, Melanie, Ben Ragsdale (new member – replacement for the VUU person), Kim Chen, Paula Sailor-Robinson came around 4:00

1 visitor

Discussion of work plan and flow of meetings and need of city personnel support

Duties of city person

- Keep the minutes
- Make sure the clerk had the minutes
- Work with chair to put agendas together
- Handle research requests from commission
- Send email invites to meetings and public notice
- If we get public info requests that person might be the clearing house
 - Needs to be coordinated through mayor’s office and press secretary

Ad (for city person) is running in this Sunday's newspaper (Kim thinks) – likely a 2 week application period – takes 2 weeks in the HR process – then however long it takes to interview and hire – likely 2 months out or maybe further

Bill – Can this committee have say in the interview process/selection committee?

Maurice – they are usually assigned from the staff.

Kim – Has not seen commission members involved in the hiring process.

Bill – It might be helpful due to the nature of the work.

Kim – Will ask and see if it's possible

Bill – Wants to ask mayor if it's possible to sit on a committee or have some input

Kim – Has not seen the job description for this person. Does not know how much time of that job is allocated to this committee. Does not know what other responsibilities are in the job description.

Ben – Is the job traditionally a clerical one?

Kim – It could be, but it depends upon how it is written. The person on the committee for architectural review is required to meet particular professional criteria. It depends upon how the job is written.

Free – We were interested in having the person express things to the community.

Kim – that will all go through the mayor's office and press secretary's office

Free – Interested in the person conveying the sentiment of the commission because they will be the public face. Wants it to be person who greets the public well. We will make a request.

Free - As far as the workplan is concerned –

Maurice – the substantive discussion was at the library of what we want to do. Interested in learning about how we tackle the hard problems.

Bill – If we go back to the original guidance of the mayor, his priority for this commission was Shockoe Bottom

Kim – And recommendations to implement the Monument Ave recommendations.

Bill – Mayor said Shockoe Bottom – He has pressed the mayor on this several times.

Extended discussion of the Shockoe Alliance meeting on July 17 – several of us were there.

Kim – within the web site, there are tabs for different projects.

Bill – who is in charge of the plan

Kim – Marissa

Free – Let me tell you what I have experienced – Saw people who showed up for the Baseball park and African Burial Ground – They said they were glad to see her – They said that they were hearing stuff that had already been discussed. They thought the map was not as complete as what they would like.

Bill – This was echoed by multiple people

Kim – History and culture are the most important things from the various groups – want to move beyond specific ideas

Free – Black community is concerned with the small area development plan – all the way to Dock St, to Rocketts Landing, etc the language becomes a trust building point of opportunity. Need to define what a small area plan is. It seems antithetical use of terminology. People came to the meeting and did not realize what Shockoe Alliance is.

Maurice – Eye-opening to see the scope of what is being addressed – geographically

Free – Another opportunity for trust-building in the community. It's all about trust building. Us having a lexicon to define key terms can be helpful. Nobody thought they were there to discuss transportation, parking, etc. Said they need directional signage to let them know how to get to the burial ground. When she said several million dollar parking plan. People are not realizing that these issues...relate. Suggests that we create opportunities to meet committees that are really interested in the committees and then they can specialize. She has less concern for the things that are included in the whole of Shockoe, rather than the micro-area.

Maurice – Sounds like there is an inventory of events and sites. Those are to be important education points as well as markers. None of that was clear that it exists. They were not a part of the discussion. They were not available there.

Kim – At first meeting, there was a lot of discussion of historic events, timeline, etc.

Free – On that site that you mentioned?

Kim – Yes, and all the post-it notes. All the analysis of all the comments. 2 different things

1.- the planning process – history is paramount – that is the lens through which everything is looked at

2.-What happens on this corner –

The focus of the meeting was trying to be that we know we are going to interpret the history and culture. This process paid for by the Rose Fellowship and City of Richmond. The national trust is paying for the economic development plan. That will feed in to this plan. The plans for the heritage site (Smith Group) will feed in to this plan.

Free – The optics can be affected by what we put on the website. If we make sure that on the front of our website has maps – we need to stay focused on h&c, not parking lots.

Kim – the focus of the planning process is the other things that need to happen in S.B., to come to see it. How do we move them around? Where do they park? When you walk out of the museum what is there to do? That is what this planning process is about.

Free – I understand where you're coming from, but that is not the optics. Polarizing things going on now about historical resources where we're discussing developer plans.

Kim – Intent of this plan is to make a framework where h&c is the paramount thing we're talking about. So when developer A says, I want to build a 30 story hotel on this property – ok if you're going to build this hotel, you need to do archaeology, you can have 10, you have to have parking, you have to have elements of history.

Maurice – I came in to this process – observed that lots of people were there who were invested in the history of Shockoe Bottom. There was more to the planning process than many people realized. Until today, developers have been adept at finding ways to do what they want to do without regard to concerns for cultural groups, specifically in S.B. So, the people were ...got a sense of a bit of desperation for this process to figure out how the city structures might be able to put brakes on to or potentially partner with the on-rush of developers.

Kim – that is the end goal of this plan.

Bill – Introduction was not clear. Nothing on the map about Jewish History. That's what you have to have for it to be believable. Felt like a technical meeting without any soul. Without any preamble. Need that context. We need to make sure that what happens around this site, we have to stop this

discussion because otherwise the developers will take over it for us. Afraid that we're going to futz around and not act. We need to make sure that the area is protected within the larger plan.

Kim – Happy to take this back to Kimley Horn. We have had extended discussions about these things, understands the disconnect.

Free – Used the map as the context at her table. Looked at the areas.

Workplan

Trust building (ongoing)

1. Shockoe Bottom
 - a. Can we make our thoughts known to S.A.?
 - b. Someone from S.A. will come to us.

2. Monument Ave

@ the same time, a Dissemination Plan – perhaps follow Monument Ave commission's blueprint.

Bill – this commission will review the parts of S.A. plan that relate to H&C should be brought to this Commission

Kim – Plan is that the mayor is going to come and present in a more formalized manner – his intent for this commission. Send comments to her and she will get them along to the consultants

Haskell Brown – deputy city attorney – trying to roll on through! FOIA training – giving us a slightly abbreviated training that they give to the boards and commissions.

The VAFOIA – required by act for all public bodies. IN 1-2 years VA will provide training online.

General purpose of FOIA - unless a public body exercises....(I can't type fast enough....)

Liberally construed – If a judge can read a law that requires or does not require disclosure, she has to choose the way that requires disclosure

Key term – Public body – the H&C Commission – any board or public body supported by public funds(I can't type fast enough....)

Each time we form a sub-committee, that is a public body.

FOIA is in two main parts – records & meetings.

Records – Administrative regulation used by the city. Has not changed much in last 15 years. Basically its purpose is to aid city employees in following FOIA. Whoever the presiding officer is, they should appoint a FOIA officer (designated FOIA representative). City's website calls it FOIA officer. That person needs to familiarize themselves with FOIA – has a process for handling requests, receive all requests and act as point of contact. Who would be the FOIA officer – likely the city staff person – maybe in planning? That person has access to other FOIA Officers, they will consult with lawyers, etc. What is a public record – any writing or recording in any format in the transaction of public business(I can't type fast enough....)- email, handwritten notes, typed

notes, drafts (don't have to keep them beyond the time you need them, but if you have them, you have to give them)

State law requires that you retain records in regard to public bodies.

Any citizen in VA can request, newspapers, radio & TV stations broadcasting into the commonwealth.

Can it be independent media? Not clear – FOIA is looking in to this.

Bottom line is that you have to use some judgment. If you get a request from someone in MD, how hard is it for them to find someone in VA to make a request for them.

Maintain a form for requests? Might be important.

How do you use a form – can ask them to fill it out, but cannot require it. Good to have a record of what they are asking for.

I want a record – this is making a FOIA request. Don't have to use the words "FOIA request." Only public records are open to FOIA.

When you get a FOIA request, you have 5 working days to respond – provide

1. Here you go – give them the records – all of them
2. You don't get any records bc there is a law or exemption – you have to cite that exemption and law and why you're withholding it
3. You get some of the records, but not all bc they are exempt
4. The requested records could not be found or do not exist. When you give this response and if you think someone else has them, you need to say who might have the record that you want – give them contact information
5. It's not practically possible to provide the records or determine if they are available within 5 days. You get an additional 7 work days – for a total of 12 work days. Usually if there's a huge volume to be searched or need to go to a warehouse. Or, to determine if they are available – if you have to go through 42,000 emails. You have to specify what makes it impossible within that time.

Always needs to be in writing. Always specify what is being withheld and state the statute that allows that.

You get a FOIA request – Does not matter how the request comes (can come to any email).

Respond to requestor – I'm copying the FOIA officer to coordinate the commission's response.

1. Gather records
 - a. Make a record of what you're providing. Have some way of knowing what you provided.
2. Identify records they think are exempt.
 - a. If you think something should be withheld, go to the lawyer's office. Likely Neil Gibson in the City Attorney's Office.

If you're still working on it, you have to release it. If it's not public, you have to check with the Attorney's Office. Give them at least 2 working days – only send them the records that you have a question about.

Charging for Requests – In general, there may be reasonable charges in accessing, duplicating, requests. Not a money-making venture. Money goes to city treasury and has to be actual costs. In some costs, the citizen may ask you to estimate the amount of charge in advance. Some ask for FOIA for free. Haskell recommends that we charge. If the record is already on the Internet or at the library – tell them where it is and how to get it. If it's not available, then the FO would estimate the

cost for the person doing the work of gathering the records. This is based on the person's actual city salary, not the fringe benefits. Cost of time, duplication (copies – can't charge more than Kinko's bc you cannot make a profit). Any actual cost of mailing or delivering. Send estimate in writing to them. If the estimate is greater than \$200, you can ask for a deposit. Requestor does not have to pay in person – they will be sent to collections if they don't pay within 10 days. If they fail to pay on last request, you don't have to respond to the next request. Means, did not pay for 30 days after billing.

When you produce records electronically, the information is contained in a database, that is a record. Don't have to organize it for them or create a database and format it for them. Do not have to create new records, only produce existing ones. If they ask for it in a particular format and you have it that way, then produce it that way. But if it does not exist, you don't have to put it in the format that they want.

Exemptions

Personnel records

Attorney-client privilege

Attorney work product (if you're being sued and defending lawyers ???)

Records that are provided for closed meetings

Software

Cost estimates for real property that you're voting on

Personal contact information – Someone under FOIA can request notice of meetings and they give their address for this purpose. You don't have to give up this information from this individual.

Negotiating or awarding contracts

Human resource investigations

Auditor reports

Zoning complaints

Economic development projects

Pre-qualifications to bid

Utility account information

Working papers for the mayor – look at number of people who have access to it

Meeting

3 or more members of public body that group has the purpose of discussing or transacting the business of the public body.

Open meeting (don't have to keep the door open),

closed meeting (only permitted under certain circumstances – often very similar to records exemptions) – maybe used for personnel matters,

discussion of disposition or acquisition of real estate,

personal issues that are not public information,

new business or expansion of business,

consultation with legal council if it could adversely affect a case

security

award of public contracts

In open meeting, you have to have a motion to have a closed meeting and you have to cite the specific exemption and why that lets you have a closed meeting. In general, motion has to be set forth in the minutes. Once you're in the meeting you have to stay on topic. If you go in to talk about legal advice, you can only discuss that. Can't vote during closed meeting. Any actual action has to be in an open meeting. Can have non-members of public body attend (attorney or someone else if they are determined to be necessary).

If a committee is holding a closed meeting

At end of closed meeting, you have to come back out to an open meeting and certify that only things that were lawful were discussed and only things identified in the motion. If you cannot certify that it stayed on topic, you have to explain why in the open meeting.

Electronic meeting – quorum is not physically in the same place – conference calls phoning in – email – zoom, Skype, etc. Emails should all be blind copied so that you don't hit reply all. It can become a "meeting." They recommend that all communication is directed to one person. That person summarizes this for a group. You put yourself in the to line and then you bcc everyone else- this way you don't have an electronic meeting.