

August 3, 2020

Members of the Open Government Commission of the City of Alameda;

During the last Open Government Commission meeting I found myself in a position of trying to cover a somewhat complicated argument in the limited time available to me. And while I understand that time limits are necessary I must admit that I find it less than satisfying to try to cover some topics with a series of sound bites which, when taken as separate statements, often lead to misinterpretation by the listener. The argument is then further degraded by one's not being permitted to respond to the misinterpretation.

This is just a fact of life when we govern through public "debates" as we do here and probably in most local governments. I accept this as a necessary "evil". Even so, it seems unnecessarily arbitrary to set a two or three minute limit when there may be only three or four would be speakers, and especially when there is only one member of the public in attendance and wishing to speak. Having said that, I would like to explain my statements addressing what I consider to be an inappropriate invoking of the Urgency Ordinance that was used to legitimize the Council's precipitous and poorly studied gifting of City funds to a select group of business owners and its subsequent use to allow two short noticed special meetings to be called to address policing issues and racism issues, respectively.

I believe the comment that drew the Chair's delayed response to my comment was that I suggested that the nature of dangers inherent in our current coronavirus situation is not consistent with what I would consider to be the type of urgent matter defined in the Ordinance, to wit: ". . .the actual or threatened existence of **conditions of disaster** or of **extreme peril to the safety of persons and property** within this jurisdiction . . . requiring the combined forces of other political subdivisions to combat." (emphasis added). As I indicated above, I found myself using a sound bite that time did not permit me to explain or elaborate on.

Let me start by acknowledging that I believe that the Pandemic is a very serious issue, which depending on the speakers' or writers' purpose in referring to it, might be referred to as a *crisis*, a *disaster*, a *catastrophe*, etc. Suffice it to say that I personally consider the Urgency Ordinance to be requiring the existence of a condition such as an earthquake, significant flood, or conflagration that would require "...the combined forces of other political subdivisions to combat." Let me stipulate that I believe that reasonable people might interpret the Ordinance to include the Pandemic as a qualifying trigger even though it is not a sudden or emergent event posing imminent danger to life and/or property. So, please, let's not dwell on how the definitions contained in Urgency Ordinance should be interpreted.

Let's, instead, examine the resulting actions and decisions that were allowed to be taken precipitously and on short notice during a special meeting, the timing of which would otherwise constitute a violation of the Sunshine Ordinance had the Urgency Ordinance not been invoked.

The powers that be at City Hall evidently determined that they had to take action with minimal public awareness and participation, and doing so would require a Special meeting of the Council as it would allow for a shortened notification period consistent with the Sunshine Ordinance. And, unfortunately, this seems to have become a favored technique for limiting public oversight as we also saw in the case of the Special Meeting held on June 17th to address the Police *emergency* and the Special Meeting held on July 14th to address the racial public health emergency, both of which I'll get to in a moment.

As the Committee has been involved in the process of clarifying the requirements related to assigning items to a Special Meeting in preference to assigning them to a Regular Meeting agenda, I believe you would, for the most part, agree that the item should be of sufficiently urgent nature and/or require such undivided attention to the single topic that the calling of a Special Meeting might be justified.

For purposes of this discussion only, I'll stipulate to the argument that the scheduling of any specific Special Meeting held under cover of the Urgency Ordinance can be legitimately justified.

The question then becomes one of how the action taken could reasonably be expected to mitigate the danger to life and property that is the sine quo non for any event to qualify for truncation of the normally required notification process as an emergency under the Urgency Ordinance.

I submit that the giving away of public funds to a select group of business owners which was the apparent purpose and which was the outcome of the Special Meeting held on April 21, 2020, could not possibly be interpreted by any reasonable person to be an action that could or would mitigate dangers, even in the unlikely event that a qualifying danger(s) could be identified, to life and/or property that could reasonably be expected to result from the Covid-19 pandemic.

I would argue that even if you choose to accept what I consider to be a very questionable argument that invoking the Urgency Ordinance in response to the Covid-19 pandemic can be justified, I don't see how any reasonable person could argue that the action taken by the Council during the April 21st Special Meeting could in any manner be relevant to the danger proffered as justification for the declaration of emergency which was made to allow shortening of the notification time required by the Sunshine Ordinance which then resulted in the virtual elimination of public oversight and participation in the decision making process that resulted in the gifting of \$600,000 of public funds.

In a similar fashion, the Urgency Ordinance was invoked to allow for a Special Meeting that resulted in what many members of the public view as poorly developed and precipitously promulgated solutions to the declared policing emergency which, for what it's worth, was, and continues to be acknowledged as a chronic issue that warrants urgent attention and which merits much more discussion and deliberation before reasonable solutions can be put forward.

Certain members of the Council responded to the Public Health Crises related to Racism by declaring it to be an *emergency*, as many other jurisdictions across the nation have done. And even though many would argue, and I believe, correctly, that the issue would be more appropriately defined as a Crisis versus an Emergency, I can accept the latter, however, if only because it calls more attention to the need for urgent attention and development of remedies. Unfortunately, those Councilmembers used “*Emergency*” to permit them to draft and present a resolution preceded by a long list of irrelevant *Whereases* as they did with their two previous emergencies.

What is particularly concerning to me is that the City Attorney’s office went along with these apparent abuses of the Urgency Ordinance in that they failed to point out, let alone stipulate, that the decisions reached during the emergently called special meetings had to result in actions that would result in mitigation of the emergent dangers proffered to justify the invoking of the Ordinance. Remember that they had access to, if not actual input as to the language of, at least a first draft of the resolutions that would be introduced during the special meetings.

I don’t know what action, if any, you might decide to take, let alone if the City Council and/or the City Attorney’s office will allow you to take, but it seems very clear to me that the Sunshine Ordinance is being abused by members of the City Council and that the City Attorney’s office appears to be turning a blind eye to this behavior. Let me also remind you how quickly the newly hired City Attorney acted, presumably on his own initiative, to hobble the Open Government Commission vis-à-vis its authority and ability to have meaningful responses to perceived mistakes on the part of the Council.

Respectfully,

Jay Garfinkle

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Subject: [EXTERNAL] Special Meeting Amendment
Date: Monday, August 3, 2020 4:26:07 PM

Dear OGC Members and Staff:

I am very pleased with the proposed ordinance that you will be considering tonight, except for one clause that goes far beyond what I drafted. The objectional language is as follows"

" Where a special meeting is called on an urgent matter beyond the control of the City, the presiding officer of any of the above bodies, or the City Manager, may call such a special meeting with seven days' notice or in a manner required or permitted by an applicable statute or similar law, regulation, or order"

The language that I had suggested on this subject was as follows:

"Notwithstanding the above, in the event of an urgent matter beyond the control of the City, the presiding officer of any of the above bodies, or the City Manager may call a special meeting with as much notice as possible to each member of the body and the public, given the exigencies of the matter."

My proposal was to require a 12 days-notice for all special meetings except urgent meetings. If a meeting qualifies as urgent there should be no specified notice period, the notice being determined by the "exigencies of the matter". Seven days-notice in some instances might be much to long for action on an emergency to be delayed.

Paul S Foreman