

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING VARIOUS SECTIONS OF ARTICLE VIII (SUNSHINE ORDINANCE) OF CHAPTER II (ADMINISTRATION) AND ADDING NEW SECTIONS 2-91.3, 2-91.4 AND 2-91.18, CONCERNING LOCAL STANDARDS TO ENSURE PUBLIC ACCESS TO PUBLIC MEETINGS AND PUBLIC RECORDS

BE IT ORDAINED by the Council of the City of Alameda as follows:

Section 1. Section 2-90.2 of the Alameda Municipal Code is hereby amended as follows:

“2.90-2. Findings

The City Council finds as follows:

(Subsections (a)-(e), no change.)

~~(f) In furtherance of these findings, as it is not in the public’s interest to have private communications occur between decision makers and a limited number of individuals, and in order to assure that all citizens have equal access to their government at all public meetings, cell phones and other means of electronic communications including email, text, instant imaging, etc. shall be turned off during public meetings.~~ **[this subsection, as revised, has been moved to section 2-91.4 (h).]**

(Subsection (g), no change but reletter to (f).”

Section 2. New Sections 2-90.3 and 2-90.4 are added to the Alameda Municipal Code to read as follows:

“2-90.3 Responsibilities of the City Manager [this section has been moved without change from a portion of section 2-92.2 (a).]

The City Manager shall ensure that City staff is trained regarding their obligations under this Ordinance.

2-90.4 Responsibilities of the Mayor [this section has been moved without change from section 2-92.3]

If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video streaming and transmission capabilities. The event shall be noticed, recorded, free to the public and open to all. The report shall include a report on the previous year’s complaints, if any, concerning the Ordinance, how they were resolved, and a summary of any actions taken or pending related to provisions of this Ordinance.”

Section 3. Section 2-91.1 of the Alameda Municipal Code is hereby amended as follows:

“2-91.1. Definitions

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(Subsection (a), no change.)

(b) "Meeting" shall mean any of the following and shall have the same meaning as defined in Section 54952.2 of the California Government Code unless the definition in this subsection is more restrictive in which case the more restrictive definition shall apply:

(Paragraphs 1-4), no change.)

[The Commission recommended that the Brown Act definition of "meeting" be included in the definition section of the Ordinance but because the definition of "meeting" under the Ordinance is more restrictive, for example, the Ordinance prohibits social, recreational or ceremonial meetings at accommodations, such as restaurants, where public access is possible only if persons must make a purchase, that point needed to be expressed.]

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a single member of a policy body, including the Mayor, or a department head;

(2) ~~Social, recreation or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.~~ **[This does not describe a "body" but is defined in Section 2-91.1 (b)(4)(C) as not a "meeting".]**

~~(3)~~ "Passive meeting body" shall not include a committee that consists solely of employees of the City of Alameda created by the initiative of a single member of a policy body, including the Mayor, or a department head.

(d) "Policy Body" shall mean the following and have the same meaning as "legislative body" is defined in Section 54952 of the California Government Code unless the definition in this subsection applies to a broader range of boards, commissions, committees or other bodies:

(Paragraphs (1), (2) and (3), no change.)

(4) Any committee or body, created by the initiative of a policy body as a whole;

(Paragraphs (5) and (6), no change.)"

[Because "Policy Body" as defined in the Ordinance largely parallels the definition of "legislative body" in the Brown Act, the Commission recommended the Brown Act definition be referenced in the Ordinance.]

Section 4. Section 2-91.2 of the Alameda Municipal Code is hereby amended as follows:

"2-91.2 Passive Meetings.

(a) A passive meeting shall mean meetings as defined in Section 2-91.1 (b)(4) (B) and (C) and meetings of a passive meeting body as defined in Section 2-91.1 (c)

~~(b)~~ (b) All gatherings of passive meetings bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(1) Such meetingsgatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the meetinggathering shall be

disclosed upon inquiry by a member of the public, and any agenda actually prepared for the ~~meetinggathering~~ shall be accessible to such inquirers as a public record.

- (2) Such ~~meetinggathering~~ need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
- (3) Such ~~meetingsgatherings~~ of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from ~~members of the public~~~~spectators~~ as may be relevant to the business of the ~~meetinggathering~~.
- ~~(4) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a nongovernmental advisor to, a member of a policy body, the Mayor, the City Manager, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City of Alameda. [This subsection is either duplicative (section 2-91.1 (b)(4)(C)) or more descriptive of a "passive meeting body" that has been defined in section 2-91.1 (c); hence it is being deleted.]~~
- ~~(4) Passive meeting bodies~~Gatherings defined in subdivision (4) may hold closed sessions under circumstances allowed by Article.

~~(5)~~

~~(c)~~ ~~(c)~~-Any entity performing a function delegated by the City shall abide by subsection ~~(ba)~~."

Section 5. Section 2-91.4 of the Alameda Municipal Code is hereby amended as follows"

"2-91.4 Conduct of Business; Time and Place for Meetings; Use of Electronic Communication Devices.

- (a) Each policy body, ~~except for advisory bodies,~~ shall, ~~and passive meeting bodies may,~~ establish by resolution or motion the time and place for holding regular meetings. [Apparently the original intent of this subsection was that appointed, i.e., advisory, bodies, would not need to adopt a resolution as to the time and place of regular meetings, however, all advisory bodies have done so. Accordingly, it is only passive meeting bodies that are being excluded from this requirement.]

(Subsections (b), (c) and (d), no change.)

- e) Meetings of passive meeting bodies as specified in Section 2-91.2 ~~(a)1-(d)(4)~~ of this article shall be preceded by notice delivered personally or by mail, e-mail, facsimile as reasonably requested by at least four weekdays before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the ~~passive meeting~~~~advisory~~ body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that ~~passive meeting~~~~advisory~~ body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than posting of an agenda

pursuant to Section 2-91.5 if this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including passive meeting~~advisory~~ bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such ~~policy~~ body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described herein ~~(e)~~ at least seven (7) days before the time of such meeting as specified in the notice, with the exception of any urgent matter beyond the control of the City. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body ~~or commission~~ a written waiver of notice. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the ~~policy~~ body except that the ~~policy~~ body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting.

(Subsection (g), no change.)

(h) The use of electronic communication devices, such as cell phones or I-pads, that are capable of sending or receiving e-mail, texts, instant messages, etc., during meetings may lead to the public's perception that a member is receiving information relative to the subject matter at hand that other members and the public are not receiving, which is inimical to good government and transparency. In the context of purely legislative matters where the policy body is considering matters of general application, the use of electronic communication devices for sending or receiving e-mails, texts, instant messages, etc. is strongly discouraged. In the context of quasi-judicial matters, where the policy body is applying regulations to particular facts and all communications to and between members must be shared with each other and the public, the use of electronic devices, other than for the purpose of a member's accessing agenda materials that are on a member's I-pad or lap top computer, is prohibited during meetings. Notwithstanding the above, policy body members may use their electronic communication devices during meetings for purposes unrelated to the item then under consideration, such as referring to a calendar, using a calculator or communicating with a family member about an item unrelated to City business.[Portions of this section were moved from Section 2-90.2 (f). The City Council expressed the view that the existing and proposed language that would prohibit the use of electronic devices at meetings was too restrictive and directed staff to revise this section. Staff has divided the use of electronic devices into three parts. When a policy body is considering a legislative matter, the use of electronic communication devices is strongly discouraged. When a policy body is considering a quasi-judicial matter, the use of such devices is prohibited. Finally, such devices may be used at any time during meetings for innocuous purposes such as using a calculator or communicating with a family member about an item unrelated to City business..

Section 6. Section 2-91.6 of the Alameda Municipal Code is hereby amended as follows:

“2-91.6 Public Notice Requirements.

~~No change to subsections (a), (b), (c) or (d)(Subsections (a) and (b), no change.)~~

~~(c)——If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.~~

~~(Subsection (d), no change.)~~

Staff and the Commission had recommended that a new subsection (e) set forth below should be added to this section. City Council disagreed and directed that the subsection not be included.

e) No member of a policy body who is unable to attend a public meeting or hearing may submit written comments regarding the subject of the meeting or hearing when that member’s policy body is conducting the meeting or hearing, unless that member would be disqualified from participating in the decision due to a financial conflict of interest .

Section 7. Section 2-91.14 of the Alameda Municipal Code is hereby amended as follows:

“2-91.14 Video and Audio Recording, Filming and Still Photography.

(Subsections (a) and (b), no change.)

~~(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Where, due to the nature of the item or items under discussion, the City policy body, agency or department determines that it is in the best interest of the public to conduct its regular meeting, special meeting or hearing open to the public in or at a facility within the City but other than in a City Hall hearing room, such meeting or hearing will be audio and video recorded but the meeting or hearing may not be available via livestreaming. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed for at least ten years. When the meeting or hearing is held in a City Hall hearing room, tThe City shall make such audio or video recording available via livestreaming. ; All audio and video recordings will be as well as archived in digital form at a centralized location on the City’s website within seventy-two hours of the date of such meeting or hearing and for a period of at least ten years after the date of the meeting of hearing. Inspection of any such recording shall also be provided without charge on an~~

appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

- (1) At a minimum, the City shall provide video coverage of the following meetings:
 1. City Council and all bodies associated with its members including:
 - a. Alameda Reuse and Redevelopment Authority (ARRA)
 - b. Successor Agency to the Community Improvement Commission (CIC)
 - c. Alameda Public Finance Authority (APFA)
 - d. Housing Authority Board of Commissioners (HABOC)

(Subparagraphs 2, 3, 4, 5, 6 and 7, no change.)

(Paragraphs (2) and (3), no change.)”

[From time to time, a policy body, such as the City Council, may determine that it needs to conduct a meeting at a facility within the City that is larger than the Council chambers in order to accommodate the residents of the City. Such facilities, however, may not be set up such that the meeting can be live streamed. Under those circumstances, the meeting will be audio and video recorded but not available via live streaming but will be available within 72 on the City’s website.]

Section 8. Section 2.91-17 of the Alameda Municipal Code is hereby amended as follows:

“2.91-17 Public Comment by Members of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of governmental actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with perceived inconsistency of non-public discussions. In that Section 10-9 of the City Charter provides that a City Council majority may remove any member of an appointed policy body, nothing provided herein is intended to prohibit the City Council from removing a member of an appointed policy body from that policy body, nor shall it be construed to provide rights to appointed policy body members beyond those recognized by law or to create any new private cause of action. ” [This is new material to clarify that although appointed officials may comment on issues of public concern, they serve at the pleasure of the City Council. Previously, staff had also recommended (but the Commission had not) that this section be amended to provide ,-“Appointed policy bodies, moreover, may not take formal action nor undertake activity, such as writing a letter to outside agencies or organizations, that contradicts a policy or position that the City Council has adopted or expressed.” The City Council agreed with the Commission and directed that sentence be deleted.]

Section 9. ~~Section 2-91.18 is added to the Alameda Municipal Code to read as follows:~~

[This was a new section moved from Section 2-92.6 and revised to differentiate between public employees and appointed officials. The City Council directed this section and Section 2-92.6 be deleted in that matters concerning disciplining public employees for their personal opinions should not be in the Sunshine Ordinance and matters concerning the personal opinions by appointed officials were already addressed in section 2-91.17.]

~~“_____Public employees and City board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the City, department, board, commission or committee and does not materially misrepresent the City, department, board, commission or committee’s position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.~~

Section 10. Section 2-92.2 of the Alameda Municipal Code is hereby amended as follows:

“2-92.2 Responsibilities of Staff.

- (a) ~~The City Manager shall ensure that staff is trained regarding their obligations under this Ordinance.~~ The City Clerk shall be the City Custodian of Records and the City Manager shall designate a Custodian of Records for the Police Department. The City Clerk shall also designate in each department/office a Department Custodian of Records who shall ensure that all department staff who have contact with the public are prepared to provide written and oral information to the public. [The deleted sentence has been moved to a new section 2-90.3.]

(Subsection (b), no change.)

- c) Every ‘Custodian of Records’ shall, as soon as possible, and within ten (10) days following receipt of a request for a Public Record, comply with such request. In unusual circumstances, the time limit prescribed by this subsection may be extended by written notice by the Custodian of Records to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched provided that no notice shall specify a date that would result in an extension for more than 14 days. The term “unusual circumstances” means those circumstances set forth in State Government Code, section 6253 subdivision (c). If a Custodian of Records believes the record requested is exempt from disclosure, he/she shall state in writing the express provisions of law that justify withholding the record. [this new material is consistent with the Public Records Act and provides flexibility to staff’s responding to Public Records Act requests when the requests require more than 10 days to provide a response.]

- (d) ~~When a member of the public submits a request for information to any paid or elected agent of the City, that agent shall respond to said request within three (3) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral. Requests submitted in person, via telephone or via e-mail or through the City website are considered requests.~~ [Subsection (c) reflects the Public Records Act’s requirements for responding to requests for public records and subsection (d) as written adds little value to the requester. Moreover, because

sometimes requests are received by elected officials or others who may not be aware of the short time frame currently set forth in the subsection by which it must be explained how, when and by whom the information will be provided, City Council thought that it could pose a trap for the unwary. Accordingly, the first sentence of this subsection is recommended to be deleted.]

(e) Nothing in this Section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communications between members of the public, staff and members of ~~Policy~~Legislative Bodies.

(Subsection (f), no change.)

(g) Record requests made by email must be acknowledged with an email response to the sender.” [This subsection has been moved from section 2-92.15]

Section 11. Section 2-92.3 of the Alameda Municipal Code is deleted:

~~2-92.3 Responsibilities of the Mayor~~

~~—If the Mayor delivers a State of the City address, it shall be given in a disabled accessible venue with audio and video streaming and transmission capabilities. The event shall be noticed, recorded, free to the public and open to all. The address shall include a report of the previous year’s Sunshine complaints, how they were resolved and a summary of any actions taken or pending related to provisions of this Ordinance. [This section has been moved to a new section 2-90.4.]~~

Section 12. Section 2-92.4 of the Alameda Municipal Code is amended as follows:

“”2-92.4 Notices and Posting of Information.

- (a) At a minimum, the following shall be posted on the City’s website and provided in written form in the City Clerk’s Office and at the reference desk of each Alameda public library. These documents must be posted on the City’s Website for a period of at least four (4) years:

City Charter

Alameda Municipal Code

General Plan and Area Plans

Zoning Ordinance

Landmarks Preservation Ordinance

Sunshine Ordinance

Citizen’s Guide to Public Information

Records Index

Records Retention Schedule

Council Rules of Procedure

Conflict of Interest Code

Statements of Economic Interest *

Executive Management Work Plans *

Capital Improvement Plans *

Agendas and Minutes of the Meetings of all ~~Policy~~Legislative Bodies *

Budgets *

Draft and Final Environmental Impact Reports and Environmental Impact Statements (these documents may be posted on the website of the EIR/EIS consultant in lieu of the City's website) ** [This was moved from section 2-92.13 (e).]

- These documents may be removed from the City's Website four years after they are filed or adopted.

** These documents may be removed from the City's Website once the project that relate to the environmental documents has been built out. [The material was marked with an asterisk with an explanation to conform to current practice.]

- (b) ~~At a minimum, within six (6) months after enactment of this Ordinance, E~~each ~~Policy~~Legislative Body shall have posted on the City's website all current meeting Agendas, minutes and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each ~~Policy~~Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is updated on a weekly basis. [The material deleted has been accomplished and hence is no longer necessary.]

(Subsections (c) through (h), no change.)”

Section 13. Section 2-92.5 of the Alameda Municipal Code is amended as follows:

“2.92-5 Public Records Index.

- (a) The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and ~~Policy~~Legislative Bodies. The index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what periods of retention. The Index shall be sufficient to aid the public in making a focused inquiry regarding Public Records. The Index shall be posted on the City's website and available in written form in the City Clerk's office and in each Alameda public library.

(Subsection (b), no change.)

c) The City Clerk Custodian of Records shall be responsible for preparing and maintaining the Index. ~~He/she shall report on the progress of developing the Index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of this Ordinance. In identifying the types of records to be maintained, each department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed Index shall be reviewed by the Open Government Commission and submitted for approval by the City Council. [The material deleted has been accomplished and hence is no longer necessary.]~~

(Subsections (d) and (e), no change.)”

Section 14. Section 2-92.6 of the Alameda Municipal Code is deleted in its entirety:

~~**2-92.6—Opinions on Matters of Public Concern.**~~

~~Public employees and City board, commission, or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the City, department, board, commission or committee and does not materially misrepresent the City, . Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. [This section, at City Council's direction, is being deleted.]~~

Section 15. Section 2-92.7 of the Alameda Municipal Code is amended as follows:

"2-92.7 Public Review File—Policy Body Communications.

Every ~~Policy Commission, Board or other Official~~ Body ~~of the City of Alameda~~ shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the ~~B~~body's duties which the clerk or secretary of such ~~B~~body has distributed to, or sent on behalf of, a quorum of the ~~B~~body concerning a matter that has been placed on the ~~B~~body's agenda within the previous 30 days or is scheduled or requested to be placed on the agenda within the next 30 days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which accompanied by a letter or transmittal need not be included in the communications file; provided that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review.

Section 16. Section 2-92.13 of the Alameda Municipal Code is amended as follows:

"2-92.13 Fees for Copying.

(Subsections (a) through (d), no change.)

~~e) All drafts of final environmental impact reports and environmental impact statements shall be posted either on the City's website or on the consultant's website. [This section has been moved to section 2-92.4 (a).~~

(Subsections (f) through (i), no change, but reletter (e) through (h))."

Section 17. Section 2-92.15 of the Alameda Municipal Code is deleted.

~~"2-92.15 Requests Made By Email.~~

~~Record requests made by email must be acknowledged with an email reply to the sender." [This section has been moved to section 2-92.2 (g).]~~

Section 18. Section 2-93.5 of the Alameda Municipal Code is amended as follows:

" 2-93.5 Declaration by and Training Requirements for Form 700 Filers Department Head Declarations.

All City employees and officials who are required to file FPPC Form 700 shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended, or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least ~~annually every third year, provided newly hired employees and newly elected or appointed officials shall within six months of their hire, election or appointment either attend a training session or review the tape of the most recent training session. Annual training shall be provided by~~ The Alameda City Attorney's Office with the assistance of the Commission ~~shall provide the training, which training session will be taped.~~ **[This section has been revised to require training only every third year, or when a person is hired, elected or appointed.]**

Section 19. This Ordinance shall be in full force and effect from and after the expiration of 30 days from the date of its final passage.

Mayor of the City of Alameda

Attest:

Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2015.

Lara Weisiger, City Clerk

Approved as to form:

Janet C. Kern, City Attorney