

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - OCTOBER 6, 2014 - - - 7:00 P.M.

[Note: Revisions made by Commissioner Dieter and approved by the Commission at the February 2, 2015 meeting are reflected in bold and by strikethrough.]

Chair Cambra convened the meeting at 7:03 p.m.

ROLL CALL - Present: Commissioners Spanier, Tuazon, and Chair Cambra – 3.

Absent: Commissioner Aguilar and Wong – 2.

ORAL COMMUNICATIONS, NON-AGENDA

None.

AGENDA ITEMS

3-A. Approve the October 7, 2013 Meeting Minutes. Continued.

In response to Chair Cambra, City Clerk **Weisiger** stated the minutes could be continued to the next meeting.

3-B. Consider potential revisions to the City's Sunshine Ordinance.

Chair Cambra stated two commissioners are missing and the commission membership might change after the election; inquired whether the matter should be addressed.

Commissioner Spanier stated the potential revisions seemed to be housekeeping; suggested the Commission review the list and ~~decide about~~ **table** any controversial items.

Commissioner Tuazon inquired whether five members need to be present, to which Chair Cambra responded the three members present represent a quorum.

Interim Assistant City Attorney **Roush** gave a brief presentation **about some housekeeping and substantive changes to the Sunshine Ordinance were needed and to ask for direction to send to the City Council.**

In response to Chair Cambra's inquiry about numbering issues, the Interim Assistant City Attorney stated that he was using the on-line version, which differed.

The City Clerk stated the City's codifiers made an error, which is being corrected.

The Interim Assistant City Attorney clarified the numbers.

Chair Cambra inquired whether the numbering has been corrected, to which the City Clerk responded in the affirmative.

Chair Cambra suggested each item in the staff report be addressed individually; noted Section 2-91.1.d defines policy body, but policy body is referred to before the definition.

The Interim Assistant City Attorney stated clarification could be done.

In response to Chair Cambra's inquiry regarding Section 2-91.1.c. defining occasion, the City Clerk stated the definition is to address what is not a meeting.

Chair Cambra stated "passive meeting body" should be a definition of the people that make up the body, not the event; suggested ceremonial occasions be addressed under the meeting section.

The Interim Assistant City Attorney responded the matter could be clarified **to include advisory committee or advisory body**.

The City Clerk stated the definition ties into Section 2-91.2; noted the definition attempts to capture what is noticed and not noticed, **does not require an agenda**.

Chair Cambra stated the intent is understood, but the Section should be moved.

The City Clerk stated Section 2-91.2 would also have to be revised; "passive meeting body" is social and does not require an agenda.

The Interim Assistant City Attorney stated staff could work on the language; reviewed the first item in the staff report: use of electronic devices.

In response to Commissioner Spanier's inquiry, the City Clerk stated the Council uses iPads to view the packet.

Chair Cambra inquired whether a phone call could be made and whether the iPads have internet access, to which the City Clerk responded the iPads do have internet access and could be used to text or email.

Chair Cambra inquired whether the internet access could be disabled.

The City Clerk responded the packet is on the internet and one Councilmember uses a computer.

Commissioner Tuazon inquired whether a phone call could be made, to which Chair Cambra responded the device could be used to email and text.

The City Clerk noted the application uses a wireless signal to view the packet unless the Councilmember has downloaded the packet prior to the meeting.

The Interim Assistant City Attorney stated if the requirement is moved to the substantive part of the Ordinance, the assumption has to be that the officials are going to abide by it; there would be consequences for not following the requirement; suggested moving the section and staff could come up with appropriate language.

In response to Chair Cambra's inquiry whether a vote is needed, the Interim Assistant City Attorney stated only direction is needed; a redline version of the ordinance would be brought to the Commission at the February meeting.

The Interim Assistant City Attorney reviewed the second item in the staff report: passive meeting bodies.

Chair Cambra stated passive meeting body is defined as an advisory committee; suggested changing the term passive meeting body to advisory committee.

Commissioner Spanier stated changing it to advisory committee is very clear.

Chair Cambra stated there might be confusion when a policy body has a passive meeting; inquired whether the Council tour of the estuary was a passive meeting.

The City Clerk responded in the negative; stated the meeting was noticed; a passive meeting would be when the body is invited to a non-City event and the majority are present but no City business is discussed.

Chair Cambra inquired whether said type of events are covered under Section 2-91.1.b.4.C, to which the Interim Assistant City Attorney responded in the affirmative; noted advisory committee is the more commonly used term; stated all references would have to be changed and a better definition could be done; **the City Clerk said the only future references to the advisory committee were on pages 4 and 5 so it would be easy to correct.**

The Interim Assistant City Attorney outlined the third item: gatherings.

Chair Cambra stated the term "gathering" might have been used in order to not call social events a meeting; noted the Ordinance was created cutting and pasting multiple ordinances together.

The Interim Assistant City Attorney stated staff would review the matter; reviewed changing "spectators" to "members of the public;" inquired whether a passive meeting body would ever meet in closed session.

Chair Cambra provided an example from his previous work at a city **where he was once called into a closed session to provide legal advice to an advisory body.**

The Interim Assistant City Attorney stated the language should remain; noted Item 4 from the staff report would be covered by addressing passive meeting bodies; reviewed Item 5: commissioners submitting written comments when absent.

Commissioner Spanier stated that she does not think doing so is a good idea; the written comments could backfire or be awkward because the member is not present to respond to questions or contentious issues; that she does not know whether there is a legal issue.

Commission Tuazon concurred; stated the comments could not be challenged or questioned if the person is absent.

Chair Cambra requested a review of the deliberative process required before rendering a decision.

The Interim Assistant City Attorney stated the deliberative process drove his analysis; a decision maker is supposed to hear the comments of other members and the public; stated the member could be pre-judging the issue and other board members might give the comments more weight than those submitted by a member of the public; he suggests having a rule that says not being able to attend is like having a financial conflict of interest and participation is not allowed.

Chair Cambra outlined a lawsuit that he recalled from law school.

The Interim Assistant City Attorney outlined the issue of first amendment rights versus violating due process; noted the member could request the item be continued to another date; **if you are not present and have not requested a teleconference, written comments are not entered into the record.**

The City Clerk noted teleconferencing is another option.

In response to Chair Cambra's inquiry regarding agreeing with the staff recommendation, the Commission concurred.

The Interim Assistant City Attorney reviewed Items 6: retention of video recordings.

The City Clerk provided background **in regards to length of time audio recordings must be retained; and that we have the capacity so that we keep everything and starting in [August] 2006, everything has been posted on line.**

Chair Cambra stated the ordinance says keep it permanently in one spot and keep it 10 years in another spot; inquired whether the records retention policy requires keeping anything forever.

The City Clerk responded some records are permanent, such as City Council minutes.

Commissioner Spanier inquired whether only the Council videos would be retained.

The City Clerk responded all videos are retained, including tonight's meeting, and the meetings of the Planning Board and Recreation and Parks Commission.

Commissioner Spanier inquired whether there is a way to prioritize what is kept.

The City Clerk responded the current contract does not limit the number of videos which can be kept.

Chair Cambra stated the matter could be deferred if there is no financial or storage burden.

The Interim Assistant City Attorney concurred; state the matter could be brought back if it becomes an issue; reviewed Item 7: public testimony on an item after being heard by a subcommittee; **the [Interim Assistant] City Attorney explained that as written the public could not comment on items after being heard by a subcommittee.**

Chair Cambra provided an example of a Council subcommittee.

Commissioner Spanier stated that she can see how the public would be not be happy with the restriction.

In response to Chair Cambra's inquiry about the subcommittee reporting back to the Council, the City Clerk stated the matter was prior to the Sunshine Ordinance; public comment was allowed when the subcommittee reported back to the Council.

Commissioner Spanier expressed concern that the matter might seem like a backroom deal.

The Interim Assistant City Attorney stated the exception is rarely going to be applied; stated the language should be made clear **so that the public can speak.**

The Commission concurred.

The Interim Assistant City Attorney noted Item 8 addresses an absent member commenting, which has already been resolved.

Regarding Staff Report Item 9: public information requests, Chair Cambra inquired whether the City has a timeframe to respond that the request has been received and there is another timeframe to actually provide the information.

The City Clerk responded the Public Records Act includes the requirement mentioned; the Sunshine Ordinance adopted stricter, faster timelines; stated response is to be

provided within ~~ten days~~ **a few days**; there are times the City cannot respond within 10 days.

Chair Cambra stated Section 2-92.2 c requires completion within 10 days; Section 2-92.2.d requires response in three days; there is no mechanism for extending the deadline in Section 2-92.2.c.

The Interim Assistant City Attorney stated the phrase “paid or elected agent” seems unclear.

Chair Cambra provided the example of a resident speaking to someone with apparent authority; stated the language makes asking a Councilmember the same as telling staff.

The Interim Assistant City Attorney suggested the word agent be changed to employee.

The Commission concurred with changing the word.

Chair Cambra inquired whether the Commission would like to include language in case the City cannot comply with a 10 day request.

The Interim Assistant City Attorney stated there has to be some rule of reason when there is a voluminous request; language tracking the Public Records Act could be used to allow for reasonable extension within a specified timeframe.

Chair Cambra stated perhaps the term “unreasonable delay” sufficiently protects the City.

The Interim Assistant City Attorney stated staff could come up with language; stated regarding Item 10, “legislative body” should be changed to “policy body” to be made consistent; reviewed Item 11: moving the State of the City Address.

Chair Cambra stated the issue was included in the ordinance to give public notice.

Commissioner Spanier stated the suggestion is to move the requirement **of the State of the City Address** to a different Section of the Ordinance.

The Interim Assistant City Attorney stated staff would review the matter to see where it belongs.

Chair Cambra concurred staff should review the matter to see if there is a better place.

The Interim Assistant City Attorney noted Item 12 regarding posting documents on the website for four years could be addressed when storage becomes an issue.

Chair Cambra stated having the City documents on the website seems appropriate.

The City Clerk noted “four years” ~~could~~ **should** be removed because the documents listed would always be posted on the website.

The Interim Assistant City Attorney stated Item 13 is regarding expressing personal opinions while not on duty; that he was not sure if the item was of concern when the ordinance was drafted; provided an example of union members on duty being given leave to participate in collective bargaining.

Chair Cambra stated that he thought the requirement applies to employees on a break, for example.

The Interim Assistant City Attorney stated the Section has not been an issue and could be left alone.

Commissioner Spanier provided an example of working for a corporation **not releasing information to the media**.

The Interim Assistant City Attorney outlined public interest versus complaining about the work environment.

The Commission concurred with leaving the Section as is.

The Interim Assistant City Attorney stated Item 14 language could be easily cleaned up.

The Commission concurred.

The Interim Assistant City Attorney stated Item 15 on Environmental Impact Reports (EIR) could be moved to another Section of the Ordinance.

Chair Cambra stated that he was not sure whether the requirement was to allow access to the document or to allow people to save on copy costs.

The Interim Assistant City Attorney stated most EIRs are posted on the City’s website; that he could review the matter and determine if it should be moved.

The City Clerk noted the language could be moved to Section 2-94.2.

The Interim Assistant City Attorney stated Item 16 stated Section 2-92.15 should be moved to Section 2-92.2.

The Commission concurred.

The Interim Assistant City Attorney stated Item 17 would change requiring the training to every three years instead of every year; the training is videotaped; new employees can watch the video; absent major revisions to the ordinance, training could be done every three years.

In response to Chair Cambra's inquiry regarding live training, the Interim Assistant City Attorney stated the training session took one hour; live training allows an opportunity to ask questions; rather than mandating annual training, three years seems adequate.

In response to Commissioner Spanier's inquiry, the Interim Assistant City Attorney responded the live training could be done every three years and new hires could watch the video.

The Commission concurred.

ORAL COMMUNICATIONS, NON-AGENDA

Bill Smith, **on behalf of** Renewed Hope Housing Advocates, stated the Rent Review Advisory Committee (RRAC) agenda does not have public comment; in the Spring, he suggested publicizing what the RRAC does; nothing has happened; the City Attorney told the RRAC not to do anything for a while; the RRAC does not have term limits; asked the Open Government Commission to review RRAC proceedings; stated the RRAC is effective at its core function; however, not enough people know about the function.

COMMISSIONER COMMUNICATIONS

None.

ADJOURNMENT

There being no further business, Chair Cambra adjourned the meeting at 8:14 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - FEBRUARY 2, 2015 - - - 7:00 P.M.

The City Clerk convened the meeting at 7:00 p.m.

ROLL CALL - Present: Commissioners Bonta, Dieter, Foreman, Tuazon, and Chair Aguilar – 5.

Absent: None.

ORAL COMMUNICATIONS, NON-AGENDA

None.

AGENDA ITEMS

3-A. Select Chair and Vice Chair

Commissioner Dieter requested an explanation of the responsibilities of the Chair and Vice Chair.

City Clerk Weisiger stated the Chair runs the meetings and the Vice Chair would run the meetings in the Chair's absence.

Commissioner Dieter inquired whether it [the Chair and Vice Chair responsibility] is only at the meetings, to which the City Clerk responded in the affirmative.

Commissioner Tuazon suggested that the Chair and Vice Chair be the representatives appointed by the Mayor and Vice Mayor.

Commissioner Foreman noted that he was appointed by the Mayor; inquired who was appointed by the Vice Mayor.

Commissioner Dieter responded that she was appointed by the Vice Mayor.

Commissioner Bonta inquired how long Commissioner Aguilar has served on the Commission, to which Commissioner Aguilar responded one year.

Commissioner Bonta inquired how long others have served, to which Commissioners Foreman and Dieter noted they were newly appointed.

Commissioner Bonta stated that she would like to have Commissioner Aguilar serve as the Chair.

Commissioner Dieter inquired whether the Commissioners suggested are interested in serving as the Chair.

Commissioner Aguilar and Foreman both responded that they are interested.

Commissioner Dieter stated that she would be fine with being the Vice Chair.

Commissioner Bonta moved approval of selecting Commissioner Aguilar as the Chair.

Commissioner Tuazon seconded the motion since Commissioner Aguilar is more experienced.

On the call for the question, the motion carried by unanimous voice vote – 5.

Commissioner Dieter moved approval of selecting Commissioner Foreman as the Vice Chair since he was appointed by the Mayor.

Commissioner Tuozon seconded the motion, which carried by unanimous voice vote – 5.

3-B. Approve the October 7, 2013 and the October 6, 2014 Meeting Minutes

The City Clerk noted that she asked Commissioners to view videos in order to weigh in [on the minutes] since there was change in the majority [of the Commission membership]; stated hopefully, at least three members are prepared to vote on the minutes.

Vice Chair Foreman inquired whether everyone read the minutes and watched the video, to which the Commissioners responded in the affirmative.

Commissioner Dieter stated that she finds it disturbing for the Open Government Commission that one of the meetings was two years old; the Commission should not let that happen; that she hopes this Commission tries to approve the minutes at the consecutive meeting immediately following; plus, if it is close to an election cycle, she would not mind having a special meeting just to approve the minutes so that the next Commissioners that take our place are not faced with trying to understand the intent behind other people and what they were saying to approve the minutes.

The City Clerk stated unfortunately the meeting last February ended up being canceled due to lack of a quorum; for the October meeting, two members ended up being absent and Commissioner Tuazon was new; staff did not anticipate that [absences] and did not request members to view [the video] ahead of time; apologized for the circumstance; stated that she appreciated the suggestion to hold a special meeting to approve the minutes in the future.

Commissioner Dieter stated that she has changes according the video she watched; she would like the minutes to reflect who the members were in terms of the City Clerk and Assistant City Attorney so the Commission would know the names of who was

present; the minutes do not reflect that [staff names]; under Item 3-B: Status Update of the Public Records Index, it says: "The Assistant City Clerk gave a brief presentation;" she thinks the minutes should stand on their own and a person should not be forced to have to go look at a video to understand what took place at a meeting; she thinks the minutes should say what was said and should say something to the effect of: "The Assistant City Clerk gave a brief presentation that stated that Alameda follows Berkeley's Index; it has two parts; everything will be kept for five years at a minimum;" this is what was said; and [it should say:] "disclosure will be added at a later date and will go to Council for approval;" that way no one is forced to have to go look at the video.

The City Clerk suggested that she modify the minutes and bring them back to the Commission at the following meeting; she could capture the presentation, then, the Commissioners could read the minutes ahead of time.

Commissioner Dieter stated if there are not enough changes, perhaps the minutes can be approved tonight.

Vice Chair Foreman moved approval of the minutes as corrected.

Commissioner Dieter stated that she is not finished; the very last line says: "The Assistant City Manager noted that Alameda's schedule is in line with other cities;" that she suggests deleting the following clause: "the key distinction is that Alameda has decided to increase the minimum retention to five years instead of two years required by law;" actually, the [Assistant] City Manager talked about various requirements; some are two years, some are three years, and some are ten years, so she thinks it is unnecessary to include that [clause]; it is confusing; unless staff wants to change it to say: "two or three years or other time frames as required by law;" those are the only two changes she has for that meeting [October 7, 2013].

Vice Chair Foreman moved approval of the minutes as corrected.

Chair Aguilar seconded the motion, which carried by unanimous voice vote - 5.

Following Agenda Item 3-C being called, Commissioner Dieter stated the Commission still needs to approve the minutes of the next meeting [October 6, 2014].

The City Clerk and Chair Aguilar stated both sets were approved.

Commissioner Dieter stated the Commission has approved the first set of minutes [October 7, 2013]; for the second set of meeting minutes [October 6, 2014], [she has] the same issue; it [the minutes] starts off by saying: "The Assistant City Clerk gave a brief presentation" but does not say what the [Assistant] City Clerk said, so the only way a person from the public would know would be to watch the video; that she thinks the meeting minutes should reflect what was said; suggested adding the statement: "The Assistant City Clerk gave a brief presentation, which included that titles go through an approval process in various departments, then it goes to the City Attorney's Office, then

it goes to the City Manager's Office, and, if by chance a title is legislative, it goes through only the City Attorney's office and it does not get changed; if by chance, a legislative title is unclear, then a clarifying sentence will be added so that the public will understand the agenda meeting."

The City Clerk inquired which set of minutes Commissioner Dieter is addressing; noted that she is having trouble finding it [the section being revised].

Chair Aguilar inquired what page.

Commissioner Dieter responded page 2; stated it says Item 3-C Discussion and Comment on City Council Titles.

The City Clerk stated the minutes being addressed are the October 7, 2013 set.

Commissioner Dieter concurred; stated trying to decipher the minutes is very confusing; stated that she is still on the same set [October 7, 2013]; stated [the minutes state:] "The Assistant City Attorney summarized a section of the Sunshine Ordinance" but it does not say what the [Assistant] City Attorney said, so the Commission should add: "stated that a meaningful description of the item should be included in plain English;" that way someone does not have to look at the video to find out what the [Assistant] City Attorney said; on the next page, there was a public speaker; it is a little unclear in these minutes that it was a public speaker; it is underlined; she [the public speaker] actually said: "that she felt the lawyer catch phrases, such as relating thereto and with respect thereto, are not needed; they should not be used;" considering there was only one speaker, the Commission might as well get that [comment] right; that [comment] was by Jane Sullwold; on the next page at the top, it says: "Commissioner Aguilar pointed out that non-legislative agenda items are already required, having a caption on non-legislative items would be redundant; it is the legislative titles that have less flexibility;" the [Assistant] City Attorney actually said that ["it is the legislative titles that have less flexibility"], not Commissioner Aguilar; that those are her suggested changes for the October 7, 2013 meeting.

Commissioner Bonta and Vice Chair Foreman noted the [October 7, 2013] minutes were already approved.

Commissioner Dieter stated that was a mistake.

Commissioner Tuazon stated [the minutes should be approved] as correct.

Chair Aguilar stated the minutes continue to be approved as corrected.

Vice Chair Foreman inquired whether Commissioner Dieter has something for the next meeting [October 6, 2014], to which Commissioner Dieter responded in the affirmative.

Commissioner Dieter inquired whether no one else had any suggested changes [to the October 7, 2013 minutes], to which Chair Aguilar responded in the negative.

Commissioner Dieter stated in the next one [the October 6, 2014 minutes] on page 5 under 3-B [Consider potential revisions to the City's Sunshine Ordinance], the paragraph says: "Commissioner Spanier stated that potential revisions seemed to be housekeeping; suggested the Commission review the list and decide about controversial items;" actually, what Commissioner Spanier said was: "to table controversial items for the next Commissioners;" delete the words "decide about" and make it "table;" down a couple of paragraphs it says: "The Interim Assistant City Attorney gave a brief presentation;" again it does not say what the presentation was; she suggests adding a few words to explain what that [the presentation] was: "gave a brief presentation about some housekeeping and substantive changes to the Sunshine Ordinance were needed and to ask for direction to send to the City Council;" down near the bottom of the page it says: "The Interim Assistant City Attorney responded the matter could be clarified;" that she thinks the Commission needs to clarify that sentence and add to the end of it: "to include advisory committee or advisory body;" stated that she is not trying to be petty; she is just trying to shed some sunshine on the minutes for the public; she thinks it is really important for this body to lead by example; the next to the last paragraph "and not noticed" could include: "does not require an agenda;" that she is going to let a few things go; on the top of page 7 the last part of the end of the second paragraph, she thinks what needs to be added is: "the City Clerk said the only future references to the advisory committee were on pages 4 and 5, so it would be easy to correct;" longer [farther] down under Item 3 it says: "The Interim Assistant City Attorney stated the language should remain;" it is unclear about what language; that she watched the video about three times and could not quite figure that [statement] out; but what happened before that [statement] was [former Chair] Cambra talked about an example from his previous work when he worked for another city where he was once called into a closed session to later give legal advice to an advisory committee; "Chair Cambra provided an example from his previous work at a city" does not tell the public any context; she thought it might be important to add that: "where he was once called into a closed session to later give legal advice to an advisory committee;" she is willing to let this [language which reads: "The Interim Assistant City Attorney stated the language should remain"] stand for the ease of reference for the Commission; the Commission can still approve it [the October 6, 2014 minutes] even though it is unclear to her; it is fine, but she wanted to at least add why [former Chair] Cambra provided that example; otherwise just delete the entire thing altogether; on page 8, the first sentence needs to continue so that it is clear to the public what was actually decided upon; it ends by saying: "noted the member could request the item be continued to another date;" then, what should be added is: "if you are not present and have not requested a teleconference, written comments are not entered into the record;" that is what was decided but it was omitted from the minutes; down under Item 6, it says: "The City Clerk provided background;" it does not say what background; for the purpose of making it easy on the public, she would like to add: "in regards to length of time audio recordings must be retained; and that we have the capacity so that we keep everything and starting in [August] 2006, everything has been posted online;" that [statement] was the

background the City Clerk provided; down closer to the end of the page [it states:] “reviewed Item 7: public testimony on an item after being heard by a subcommittee,” she thinks this should be added: “the [Interim Assistant] City Attorney explained that as written the public could not comment on items after being heard by a subcommittee,” that is why it was being brought before the Commission; he [the Interim Assistant City Attorney] did not think there was a reason to have that [sentence in Section 2-91.15a included]; that it should be repealed; at the top of page 9 the end of the first sentence [reads]: “stated the language should be made clear” [that she would like to add:] “so that the public can speak,” “stated the language should be made clear” does not say what language; again, you [the public] would have to watch the video to figure out what language and it goes back to what was said previously about advisory committee meetings so the public can speak; down to about the fifth paragraph [it reads:] “The City Clerk responded the Public Records Act includes the requirement mentioned; the Sunshine Ordinance adopted stricter, faster timelines; stated response is to be provided within” [the language should read:] “a few days”, not “ten days;” delete “ten days” and put “a few days;” [the minutes continue:] “but there are times the City cannot respond within ten days;” the City Clerk probably knows exactly what she meant by that [statement]; the City provides a response to whoever is requesting the record, but the City has ten days in which to respond; the next page second line [states:] “Commissioner Spanier stated that the suggestion is to move the requirement to a different Section of the Ordinance” does not say what requirement; [she would like to] add the words: “of the State of the City Address;” [the language should read:] “move the requirement of the State of the City Address to a different Section of the Ordinance;” down to about the sixth paragraph [it says:] “The City Clerk noted “four years” could be removed”; [should be changed to:] “The City Clerk noted “four years” should be removed” not “could be removed;” a few more lines down [states]: “Commissioner Spanier provided an example of working for a cooperation [corporation]” but it does not say anything about the example, so that example is not releasing information to the media, so that [“not releasing information to the media”] can be added to the end of the sentence; on page 11 under Oral Communications Non-Agenda, a member of the public spoke, Bill Smith; she thinks it should say: “on behalf of Renewed Hope Housing Advocates” unless everybody understood that; those are all of her suggested changes.

Vice Chair Foreman moved approval of the October 6, 2014 minutes as corrected.

Chair Aguilar seconded the motion, which carried by unanimous voice vote – 5.

3-C. Potential revisions to the City’s Sunshine Ordinance

Assistant City Attorney Roush stated that he reviewed the Sunshine Ordinance to give the most recent training and came across a number of items that he thought could be improved upon; he found items in conflict; he brought the matter to the Commission in October 2014; the Commission gave direction and he put together the staff report outlining the substantive changes; he can walk through the changes with the Commission; given the membership changes, the Commission could have the matter come back later or address it tonight.

Vice Chair Foreman stated that he spent a lot of time on the matter today; the whole construct of the ordinance bothers him; he became really embroiled in the Sunshine Ordinance when he was working on the Mayor's campaign and the Del Monte development; he finds the ordinance to be very confusing and in some cases contradictory, which the Assistant City Attorney pointed out in past meeting videos; the basic law is the State law, which sets the minimum standards; the only thing the City of Alameda can do is expand public access; questioned why the approach is basically restating the entire Government Code in the Municipal Code; stated if he had worked on the ordinance when it was created, he would have suggested an ordinance to supplement the [State] sunshine code, not completely restate it; a person has to read both when doing research as he had to do; his suggestion would make it [the City's Sunshine Ordinance] much shorter; that he would publish the Government Code on the City's website and this [City Sunshine Ordinance] would be a supplement; in the notice area, one expansion is going from a three day notice to a 12 day notice; almost everything else is repetition of what is already in the Government Code; that [his proposal for a shorter ordinance] is one approach; the other approach is to do what has been done; using the City existing ordinance in its current form needs to use the same language [as the Government Code]; for instance, the word "policy body" does not appear in the Government Code; the closest synonym for "policy body" is "legislative body;" if State law, which provides the minimum standards, uses the term "legislative body," Alameda should not be using the word "policy body" because it leads one to the conclusion that they are two separate things and they are not; it would be very difficult even for an accomplished lawyer to try to figure out some of these inconsistencies; another example would be "passive body;" there is no terminology "passive body" in the Government Code; that he understands why it is in the City's ordinance because the City is expanding public access, which the City has a right to do; "passive bodies" have some obligations of notice, not to the same level as legislative or policy bodies; he would not call them "passive bodies;" he would call them "non-legislative bodies;" a body is either a legislative body which is covered by the State law or a non-legislative body, which is not covered by State law; the City is expanding the [State] law; where it [the City's ordinance] really gets complicated is in the notice section using the terms "advisory body" and "passive body" interchangeably; the references keep changing and they are two different things; "advisory bodies" are subject to the Sunshine Ordinance and the State law; non-passive bodies are not; it boils down to two things: 1) it would be his preference to basically start all over again with the ordinance and have it only supplementary; you talk about simplicity, this [City ordinance] is not simple; one has to be a lawyer to understand it; the last law that should need a lawyer to understand should be the Sunshine [Ordinance]; if that approach does not sit well, at least use the same language in the State law; do not create something that is not there.

The Assistant City Attorney stated that he was present when the ordinance was going through a year-long process; he would defer to the City Clerk who may have more background information; he does not disagree with what Vice Chair Foreman said in terms of having essentially different terms being used for the same thing; if the Commission feels it would be a better approach to have either a simpler ordinance or at

least have the ordinance track what is in State law, the Commission can make a recommendation to go to the Council and get said direction.

The City Clerk stated that she could provide a little background; the year-long process was comprised of a group just like the Open Government, one member put on by each Councilmember; the group reviewed various sunshine ordinances from other cities and complied them together at public meetings with public input; a piecemeal approach was used; the group liked some things from some cities and liked some things from other cities, which was used to come up with an ordinance specifically catered for Alameda; language could be different because it could have possibly been cut and pasted from different cities; the group was supposed to create the Ordinance in three meetings, but ended up meeting 11 times; then, they finalized the Ordinance and sent it to Council; the process was lengthy.

Vice Chair Foreman inquired whether that is pretty much in place, to which the City Clerk responded in the affirmative; stated that [process] is how the Ordinance was established.

Vice Chair Foreman stated it might be difficult to switch horses now, but the matter should at least keep that in mind going through the Ordinance; for one more example, State law defines “meeting;” Alameda’s law defines “meeting;” there is really no difference between the two, but the same language is not used; if there is no difference, the City should use exactly the same language, not a paraphrase; changing the language creates risk; that he understands if the Commission wants to remain on the current track and just try to be consistent with State law; the Ordinance has been through a process; the Commission cannot very well turn it upside down.

The Assistant City Attorney stated if the Commission’s direction is to see that the language in the Ordinance tracks what is in State law to the extent possible, staff can do that; the matter could be brought back to the Commission; the task is a doable task, but will take a little time.

Chair Aguilar stated the problem for her is that she does not know it well enough to know whether the distinctions are substantive and big differences; somebody would need to go through the Ordinance piece by piece to know that; stated she could not give said direction.

Vice Chair Foreman stated that he spent a few hours on it; someone would have to look at each section and see if there are any real differences; if there are no real differences, the exact language of the State law should be used so as not to confuse it; if there is a difference, then point that out and try to use the same terminology throughout; how “policy body” got in the Ordinance is beyond him.

Commissioner Bonta inquired whether the requirement of the local ordinance is that it does not controvert the [Government] Code, to which the Assistant City Attorney responded in the affirmative; stated it can allow for additional transparency; for example,

if the State law says the agenda has to be posted 72 hours before the meeting, the local ordinance, even with a Charter City, probably could not say it only has to be 48 hours; on the other hand, it could have 12 days rather, than three days for Council and 7 days for commissions.

Commissioner Bonta stated it is likely that a lot of these analogs that were created, such as the use of policy bodies in the ordinance, are largely driven by the fact that the local government bodies are groupings working together at the City level; stated that she would be inclined to not undo the work of an open process and the year of work to come to this Ordinance; the work would be undone by thinking that the State code language could just be slapped on; that she agrees that there are some areas where the ordinance could have some clarification; the idea of a policy body was probably generated because the City is a local government.

Vice Chair Foreman stated the State law is written for local government; it is not written for the State legislator; it is written almost exclusively for local government; that he does not know why policy body was put in there; when you read policy body and you read legislative body it is exactly the same thing.

The Assistant City Attorney stated that he can speculate that the thought might have when you read legislative bodies many people might think that is simply the City Council because Council makes final decision as opposed to a policy body which might sound broader to a layperson; he does not know if that would enter the equation or not; that he can see how that could have played a part in coming up with that term rather than legislative body; that is just a guess on his part, but it sounds logical that may have been part of the reasoning process.

Vice Chair Foreman stated the Commission can just go through the Ordinance piece by piece and vote.

Commissioner Bonta inquired whether staff recommends reviewing the Ordinance or tabling the questions until the Commission has had a clear opportunity for review.

The Assistant City Attorney responded his concern is that three people have just been appointed; Commissioner Tuazon has only been on the Commission a short while; that he did not know whether ample time had been provided to allow the Commission to digest the relatively few changes staff is recommending; if more time is needed, a special meeting could be set up in March or April to bring back the matter along with any other items that the Commission might feel would be appropriate to consider; if the Commission feels comfortable considering the matter tonight, that is fine too; staff would always bring back further amendments if the Commissions so desires.

Commissioner Dieter stated that she spent hours on the staff report; she would like to go over what is before the Commission; what works, what does not work, what needs to come back and go from there; then, the Commission can always expand what is discussed at the next meeting if that sounds reasonable.

Commissioner Tuazon stated that sounds reasonable.

Vice Chair Foreman stated the Commission can just work from the red lines.

Commission Dieter stated the Commission can just go down [the redline]; inquired whether anybody has input under findings or if the Commission is okay with the findings the way that it has been edited.

Vice Chair Foreman stated that he is okay with it.

Commissioner Dieter stated that she is okay with the first section.

The Assistant City Attorney stated [on Section 1] staff is not deleting the section entirely from the ordinance; that he simply moved it to a substantive section where he thought it made more sense.

Vice Chair Foreman stated the Commission will talk about that when the section is addressed.

Chair Aguilar inquired whether having the Assistant City Attorney identify the changes would be easier, to which the Assistant City Attorney responded he can walk through the red line; stated for Section 1 on Findings, the concept was that the matter seemed to be more of a substantive issue rather than a finding; he moved the Section to Section 2-91.4(h); similarly, Section 2 on Responsibility of the City Manager and Mayor were in other portions of the Ordinance but having the Sections standalone made more sense.

Chair Aguilar inquired whether there are any comments on Section 2, to which Commissioner Dieter responded in the negative; stated this is exactly what was decided upon by the former Commissioners; it was achieved and clear.

The Assistant City Attorney stated Section 3 on Definition of Passive Meeting Body, described more of a passive meeting itself, not a body, so the Section was deleted.

Vice Chair Foreman stated that he has a comment on Section 2-91.1; suggested Subsection B be revised to quote the Government Code definition of a meeting word for word; stated the definition should be word for word and in the same order, unless the term meeting is being expanded and broader than the Government Code; otherwise, the City is bound by a definition in the State Code and bound by a slightly different definition in this Code; it does not jive in his mind.

Commissioner Dieter stated that she has not read the State Code and does not know the difference between the State Code and the Ordinance; she is assuming Vice Chair Foreman has done so and it is pretty much the same thing.

Vice Chair Foreman moved approval of directing the [Assistant] City Attorney to review the definition of meeting in Section 2-91.1(B); if he determines it to be identical to the Government Code Section, he use the Government Code language; if he believes it not to be identical, he make whatever edits he believes are appropriate.

Chair Aguilar inquired whether the motion is to have the changes come back to the Commission for approval, to which Vice Chair Foreman concurred.

Commissioner Dieter stated the direction is fine with her.

On the call for the question, the motion carried by unanimous voice vote – 5.

Vice Chair Foreman stated his opinion is that the term passive meeting body, wherever it occurs in the Ordinance, be changed to non-legislative body.

Commissioner Dieter stated before the Commission goes there [addresses said change], the former Commissioners had a long discussion on the matter at the previous meeting; everyone had a problem with the word “passive body” and “passive meeting body;” what was agreed upon was that it would be changed to something that everyone would understand: advisory committee or advisory body.

Vice Chair Foreman stated that he recalls that; the problem with it is that advisory bodies formed by the Council as a whole, by ordinance or an official Council action, are not passive meeting bodies as defined in the document; advisory bodies are subject to the Sunshine Ordinance just as much as City Council with a few minor exceptions; the word “advisory” cannot be used interchangeably with passive or non-legislative; most advisory bodies, such as the Open Government Commission, are not passive bodies; Commissioner Dieter is right the discussion did occur; that he is suggesting using the word “non-legislative.”

Commissioner Dieter inquired the difference between a policy body and an advisory body.

The Assistant City Attorney responded the difficulty is that as defined, advisory bodies, such as the Planning Board, Open Government Commission or Recreation and Park Commission, are advisory commissions and are also policy bodies [under the Sunshine Ordinance] or are legislative bodies under the Government Code; to address Vice Chair Foreman’s concern, he tried to limit passive meeting bodies to just one category of things: an advisory committee created by a single member of a policy body, including the Mayor or a department head; that is the only body that would qualify as a passing meeting body; taking out the section subsection would limit the number.

Vice Chair Foreman stated that he does not see a need for adding Item 3; a committee that exists solely of City employees would fall under Item 1; inquired whether Item 3 is needed and differs from Item 1.

The Assistant City Attorney stated that he would surmise the thought was whenever a committee of only City employees met, it would not be subject to the requirements for passive meeting bodies.

Vice Chair Foreman stated that he is not hung up on non-legislative; it is fine if other Commissioners want to leave passive meeting body, which is not in State law at all.

In response to Commissioner Dieter's inquiry about the Assistant City Attorney not following the previous Commission's suggestion to use advisory, the Assistant City Attorney stated the concern was using the term "advisory" would get confused with the term "policy bodies" which are advisory bodies under the Government Code; that he thought it would be better to leave the terminology as is even if it is somewhat odd; the definition is not going to apply to many committees.

Commissioner Dieter stated that she is okay with the Section.

Vice Chair Foreman stated there is still Section D.

The Assistant City Attorney stated he added "as a whole" to make it clear and less ambiguous; read the Section.

Vice Chair Foreman stated that his personal problem with Section D is that he would love to see the word "policy body" removed; things governed by State law are being addressed; the State law calls them legislative bodies and the City is calling the exact same thing a policy body; one is talking Spanish and the other is talking Greek; the same subject is being addressed but different labels are being given.

Commissioner Dieter inquired whether the Commission could table the term until getting through the redline.

Vice Chair Foreman responded in the affirmative; stated the Assistant City Attorney can make a note of it and decide what he wants to do with it.

Chair Aguilar inquired whether the Assistant City Attorney could take a look at it to see if policy body and legislative body are the same, to which the Assistant City Attorney responded if the Commission's direction is to make amendments to the Ordinance to have legislative body appear instead of policy body, staff can do that.

Vice Chair Foreman inquired what is the Assistant City Attorney's opinion, to which the Assistant City Attorney responded his only reticence is that from a year-long process, a group of citizens decided that policy body better fits the Ordinance than legislative body; that he does not have a strong feeling one way or the other; how to define it is a policy call.

Chair Aguilar inquired whether there are meeting minutes for the committee that created the Ordinance which might shed some light on the matter, to which the City Clerk responded the minutes were action minutes and were not detailed.

Chair Aguilar inquired whether the minutes will not necessarily be that helpful as to why certain things were followed, to which the City Clerk responded that she does not know if policy body was heavily discussed; it might have just been the wording that was in that section of what [City] the Task Force was cutting and pasting from; she can research the history.

Commissioner Dieter stated before moving on to the next section, at the last meeting [former] Chair Cambra noted that policy body is being defined at a later time then when it is used and suggested moving that definition up under definitions; that she still thinks that is a good idea.

Vice Chair Foreman stated it is under definitions.

Commissioner Dieter stated the Assistant City Attorney indicated alphabetical order is the reason for where the definition is; the term is used numerous times before defining it; there was talk about just not paying attention to alphabetical order; maybe that definition should be moved to B rather than keeping it D.

Vice Chair Foreman inquired where it is used before the Section, to which the Assistant City Attorney responded in the definition of meeting under Section 2-91.1, the term policy body shows up there and a number of different places and that was a little bit of a concern but it is the definition section.

Vice Chair Foreman stated ordinarily definitions are put in alphabetical order because if someone is researching it, they are going to have a hard time finding it if it is not in alphabetical order.

Chair Aguilar stated that she agrees that it needs to stay in alphabetical order; even if it is above, someone would look in the definitions to see if it is defined.

Commissioner Dieter stated other than that, she is fine with that section; the Commission can move onto the next one called passive meetings.

The Assistant City Attorney stated Section 4 on Section 2-91.2 on Passive Meetings now references where the definition section shows up, rather than writing out what a meeting means; the word “gatherings” has been deleted and changed to meetings; the changes to the Section are fairly innocuous.

Chair Aguilar stated the section is clearer.

The Assistant City Attorney stated Section 2-91.4 on Conduct of Business is where the term “advisory bodies” shows up; the term is not defined; the intent was policy bodies

must do something and passive meeting bodies may do something in terms of conducting business.

Vice Chair Foreman stated that he has a problem with that; the State Code uses the term “advisory bodies” in the Section that matches this; what the State Code basically says is that the City Council has to have regular meetings, but advisory bodies, such as the Planning Board, do not have to have regular meetings; then, it goes on to talk about how their [board/commission] meetings shall be considered like regular meetings; the Ordinance takes from a Section that has nothing to do with passive meeting bodies; advisory bodies cannot be removed because unless the intent is to broaden the State law to say that not just City Council but advisory bodies also have to give all these notices, then there is nothing wrong with taking out “except for advisory bodies” if that is the intent.

Chair Aguilar inquired whether policy bodies as defined in the Ordinance include advisory bodies, to which Vice Chair Foreman responded in the affirmative.

The Assistant City Attorney stated to address Vice Chair Foreman’s concern, perhaps the intent was the City Council must have regular meetings that advisory bodies as used in the Government Code do not; if that is the intent, staff would have to indicate that it is only the City Council that must do this and other policy bodies do not; that wordsmithing can be done if that is where the Commission wants to go with not requiring all bodies, other than City Council, to establish a time and place for holding regular meetings.

Vice Chair Foreman stated he gets the impression the intent was to mimic State law, except when you get over to F, which really starts getting confusing; F says special meetings of any policy body, including advisory bodies, that may choose to establish regular meeting times may be called at any time by the presiding officer; then, it goes back to passive meeting bodies.

The Assistant City Attorney stated that he is not clear whether the intent was advisory bodies referred to passive meeting bodies or whether the intent was to refer to passive meeting bodies, such as the Planning Board, Open Government Commission and Recreation and Park Commission; that he is not certain of the intent.

Commissioner Dieter stated there would not be any problems if they were called boards and commissions.

Chair Aguilar inquired whether there was not a definition for advisory bodies, which is why it was being taken out, to which the Assistant City Attorney responded in the affirmative; stated there was not a definition of advisory body.

Vice Chair Foreman stated the problem is that there are two different kinds of advisory bodies; there are advisory bodies that are established by formal action of the Council, which come under the State law and there are advisory bodies that are appointed by

one Councilmember that do not; the matter has been clarified; E also jumps around and addresses advisory bodies; that he does not know how passive body got mixed in with advisory body because they are two different things; they are two different things even in the context of the section.

Chair Aguilar questioned whether defining advisory bodies would clarify the matter; stated passive meeting bodies have now been defined.

Vice Chair Foreman inquired whether advisory bodies formed by Council follow all these rules, such as the 12 day rule, to which the City Clerk responded they have a seven day rule; the Council is the only one with the 12 day [publication rule], all of the rest have 7 [day publication requirements].

Vice Chair Foreman inquired whether that is written in the Sunshine Ordinance, to which the City Clerk responded in the affirmative.

In response to Vice Chair Foreman's inquiry where is the 12 and 7 day rule, the Assistant City Attorney stated said Section was not changed.

Commissioner Dieter stated it is in F.

Vice Chair Foreman inquired where is the 7 days for the advisory board, to which the Assistant City Attorney responded probably in one of the sections that is not being changed.

The City Clerk stated it is in Section 2-91.5 on agenda requirements for regular meetings in the Sunshine Ordinance; there was no change, so it is not in the red line.

Vice Chair Foreman inquired whether all the bodies have regular meetings, to which the City Clerk responded in the affirmative.

Vice Chair Foreman stated the fact of the matter is that they have all chosen to have regular meetings.

The City Clerk stated all standing boards and commissions, such as the Open Government Commission and Planning Board, have regular meeting dates that they have established.

Vice Chair Foreman inquired whether there is no commission appointed by formal action that is appointed by the Council that does not have regular meetings, to which the City Clerk responded it could happen; the deadline is the same for special or regular meetings of boards and commissions; it is [always] 7 days; it does not matter if it is a regular or special meeting.

Vice Chair Foreman stated in effect, the way the City treats advisory bodies the same as the City Council with regard to having regular meetings; they do have regular

meetings; they are required to have regular meetings even though the Sunshine Ordinance says they are not; they have chosen to do it; that he is wondering if the Section should just be taken out altogether; leave the deletion so even advisory bodies have to have regular meetings.

The Assistant City Attorney stated that is what he was trying to do; all advisory bodies seem to have regular meeting dates; so it seemed de facto that is what was going on.

Commissioner Bonta inquired whether there is a big difference between shall versus must.

Vice Chair Foreman responded shall is mandatory by law and really means the same as must.

The Assistant City Attorney stated that he is simply trying to indicate that passive meeting bodies would not have to follow the same requirement.

Vice Chair Foreman stated maybe the way to write it is to scratch out advisory bodies; inquired whether the Assistant City Attorney has already taken advisory body out of this altogether, to which the Assistant City Attorney responded in the affirmative.

Vice Chair Foreman stated that makes sense and means any commission or committee created by formal action has to have regular meetings and follow these rules; for passive meeting bodies, it is optional; that he is okay with it if everybody else is; he is not sure that it was intended originally, but it makes sense in practice.

Chair Aguilar inquired whether everyone agrees and there were no objections.

The Assistant City Attorney stated Section H on Use of Electronic Communication Devices was moved down from the findings.

Vice Chair Foreman stated that he does not like it; his argument with it is not legalistic; this is the modern age; the Section is to stop secret meetings during a meeting by text or email; all this stuff is done in secret whether it is done in front of the public; you have to catch somebody doing it; it is a violation for more than two people to have a discussion.

The City Clerk stated that she could provide some background information; the Section was very important to the Sunshine Task Force; the intent was to prohibit communication, not within the members themselves, but from somebody outside who did not want to get up and publically state their opinion from influencing the decision during the public process; the concept was to keep from communications, not just amongst themselves, but from private influences.

Vice Chair Foreman stated his concern was making them shut it down all together; if he is in a meeting and he has a question such as what the Del Monte project looks like, he

could look up overhead Google view or if there is a State Code provision that might affect the decision, questioned why he should not be able to reference something on his iPad; that he wishes the Section was written in a way that does not require shutting it down and simply tells you certain things that you cannot do that would be a violation; some of them [Councilmembers] have computers; questioned whether members never refer to their computers for anything on an agenda.

Commissioner Tuazon stated this is about sending and receiving email or texts.

Commissioner Bonta stated Vice Chair Foreman is responding to this second sentence, which says: "the use of electronic communication devices other than the purpose of a member accessing agenda material."

Vice Chair Foreman stated "use of electronic material other than the purpose of a member accessing agenda materials shall be prohibited during meetings" is what he does not like; there should be a little more leeway; it should not be limited to just agenda items.

Commissioner Bonta stated the thing trying to be prevented is specific communications; that she agrees with Vice Chair Foreman.

Vice Chair Foreman stated there are so many things on the Internet that could be helpful to any Councilmember; saying what members cannot do would make sense.

The Assistant City Attorney stated the concern would be that if a person is using a cell phone at all, how is the public going to know whether it is being used to access a State Code or if it is being used it to get information from an outside source.

Vice Chair Foreman inquired how the public is going to know that he does not call Mayor Spencer, Vice Mayor Matarrese and Councilmember Ezzy Ashcraft and get them together on a conference call; you have to catch someone; that he does not see how they would know that any more than they would know what is being viewed on a computer.

Chair Aguilar stated Councilmembers are given all the [agenda] information ahead of time and do not have to look things up at the meeting.

Vice Chair Foreman stated a question could arise during a meeting; that he might want to look up a City record that is already on the website that is not on the agenda; his opinion is it is a little too restrictive.

Commissioner Dieter stated that she does not know what they were thinking exactly; perhaps at a City Council meeting, a consultant might speak; then, a member of the audience at that moment might email the Councilmember to say ask the person this and say this.

Vice Chair Foreman stated a Councilmember cannot respond to that; that he has no problem with prohibiting that.

Commissioner Dieter inquired whether what Vice Chair Foreman is saying is that he does not like the fact that the member cannot access material.

Vice Chair Foreman responded they cannot access any material other than agenda material; stated Councilmember Daysog has a computer up at every meeting; no one knows what he is looking at; the law has been in effect, not that he is not accusing Councilmember Daysog of anything.

The City Clerk stated the Section does not just apply to the Council, it applies to all boards and commissions.

Vice Chair Foreman stated it seems that language can be written that says a device cannot be used to communicate to another member of the board about any meeting subject or to receive any communications; language can be drafted; something can be drafted about what members are prohibited from doing with electronic devices.

Commissioner Dieter stated Vice Chair Foreman's proposal is to delete the last sentence and include what, to which Vice Chair Foreman responded it is going to take some drafting; that he cannot sit here and draft it by himself.

The Assistant City Attorney stated essentially what he is hearing, if this is the direction of the Commission, is that the second sentence would essentially largely track what is in that first sentence; the first sentence states the rule; the second sentence states the prohibition; that he could add language about communication with other policy board members as well as members of the public to avoid a Brown Act issue as well as the outside information; that would be more restrictive than what the second sentence reads; it can be written that way if it is the Commission's direction.

Vice Chair Foreman inquired whether the Assistant City Attorney would draft something that the Commission could review, to which the Assistant City Attorney responded in the affirmative; stated the Commission seems okay with certain things and some other things will be brought back; if the Commission wants to review the language, staff can provide a draft.

Chair Aguilar stated that would be good.

Vice Chair Foreman stated the suggestion is fine with him.

The Assistant City Attorney stated Section 6 on Public Notice Requirements was discussed at the last Commission meeting; if a member of a policy body is unable to attend a meeting at which an item is going to be discussed, the Section would prohibit the absent member from submitting written comments to be read into the record at that meeting; the former Commission thought that was a good idea so it has been added.

The Commissioners expressed support.

The Assistant City Attorney stated Section 7 on Video Recording has been revised to add “for at least 10 years” to put the requirement in writing; the City Clerk indicated that videos are probably held longer.

Commissioner Dieter stated the previous Commissioners thought that the reference to years should be left out altogether because it is not an issue; the matter could be brought back if it ever becomes an issue; suggested leaving out the references to the time frame at all because it is not a storage issue; questioned why even raise a flag that after 10 years maybe the City will get rid of it.

Commissioner Bonta stated the issue was that there was unlimited storage capacity but there could be other reasons.

Commissioner Dieter stated the City Clerk indicated everything is kept and capacity is not an issue.

Commissioner Bonta stated adding a timeframe makes sense to give guidance about what the limitations should be; there might be a different driver beyond storage capacity.

Commissioner Dieter inquired how would the public know if they want to look at something over 10 years ago that the City might have decided to get rid of that information because the Sunshine Ordinance says that the City only had to keep it for at least 10 years.

Commissioner Bonta responded that is exactly what the City would want; stated the City would want the public to have some indication about the requirements to store the information for at least 10 years; the fact that there is information beyond that available perhaps is another articulation; it does not make it lower.

Commissioner Dieter inquired what is the purpose of including it, to which the Assistant City Attorney responded that he recalled that there was a 10 year period.

The City Clerk stated 10 years was included and is being expanded to at least 10 years because the City is going beyond it; “at least” was clearing up that it was going to go beyond; right now, the City currently has nine years of video posted on the web; starting next year, the City will probably be going beyond [10 years].

Commissioner Dieter inquired if something happened 12 years ago, will the public think it is no longer around until they ask the City Clerk, to which the City Clerk responded this section only pertains to videos; stated the prior videos are VHS, which are old and deteriorating; there is going to be a point where they are not going to play anymore; the Council direction in the past was to retain the VHS, but they are not being archived; 2006 is when the City started having video available on the web.

Commissioner Dieter stated this is for the old VHS because for the new videos, the City has a contract with no limit; the City could keep videos for 40 or 50 years.

The City Clerk stated the way technology and capacity are increasing, she would assume that the City would be able to keep that up; at this point, the City does not have 10 years, but videos would be kept up once the City goes past the 10 years.

Vice Chair Foreman stated he is okay with leaving it the way it has been changed.

The Assistant City Attorney stated the other part of Section 7 is that with the dissolving of redevelopment agencies, the Community Improvement Commission is now the Successor Agency to the Community Improvement Commission; a technicality in terms of the name of that particular policy body.

Commissioner Dieter stated there are two references in the Sunshine Ordinance to the Alameda Reuse and Redevelopment Authority (ARRA) which has been disbanded; the City does not even have that anymore.

The Assistant City Attorney stated he asked the Community Development Director about whether that should stay and she suggested that it stay in there.

Commissioner Bonta stated if the City is keeping videos from the prior 10 years, the ARRA did exist at that time; this is to make sure that the City keeps the ARRA videos.

The Assistant City Attorney stated Section 8 on Public Comment by Members of the Policy Body has some language added at the end to make it clear that while members of policy bodies certainly have the right to voice their opinion, it is not intended to prohibit the City Council from removing members if the Council feels the member has gone beyond their assigned duties.

Vice Chair Foreman stated that he is not sure why it is in there; if it is a constitutional right, it is a constitutional right; questioned why does it have to be codified; stated what bothers him about it is there are certain things that City Council members cannot comment on as a matter of law if Councilmembers are playing a judicial role; for instance the rules of procedure state that if there is a public hearing on a matter, such as a development plan, Section 1-C prohibits a Councilmember from discussing or commenting on a public hearing issue outside of a Council meeting; certain proceedings are considered to be judicial in nature and Councilmembers are not allowed to make comments until they vote.

Commissioner Dieter inquired whether Vice Chair Foreman is commenting on the addition or the entire provision, to which Vice Chair Foreman responded the entire provision; stated because Councilmembers do not have a full constitution right to comment on these things if Council is going to be making a judicial type of decision; during the campaign, certain candidates said they could not comment on a matter

because it is a judicial matter that they would have to act on; that was wrong because there is an exception that if you are in a campaign, you can comment; but if you are not in a campaign, you cannot comment because you would be disqualifying yourself from making the decision; stated that he does not know why this language is included or needed; stated that he does not need the Code to tell him that he has a constitutional right to say what he wants to say; in this particular case, it may lead a Councilmember to believe that they can make a comment on a zoning matter when they are specifically prohibited from doing so.

Commissioner Dieter stated it makes no sense to say that the Council can remove a member; that she is not sure why that is in the Sunshine Ordinance; they also cannot write a letter that contradicts a policy.

Vice Chair Foreman inquired why it is in the Sunshine Ordinance.

Commissioner Dieter concurred; stated the entire Section could be removed; particularly the addition; otherwise it should include that members of the City Council can be removed by referendum and address how they could be removed.

Commissioner Bonta stated the general structure is that the City Council appoints other policy bodies that serve at the pleasure of the Mayor and Council; it might be ill placed; Council does have the ability to remove members of a policy body.

Vice Chair Foreman stated that does make sense but he does not know why it is in the Sunshine Ordinance.

Commissioner Dieter inquired what does the section have to do with accessing government, to which the Assistant City Attorney responded he thought that revising the ordinance that members of policy bodies can make public comment, it should be clear some right was not being created that would prevent the City Council from removing a member; then, the person could turn around and sue the City under some right that has been now created in the Ordinance; the addition is a protective measure; Vice Chair Foreman makes a good point that the statement is probably broader than what it really says; the intent was to make sure a person still has a right as a citizen to make comments, but it is not quite as black and white as the language would suggest.

Commissioner Dieter inquired whether the City Charter includes that Council can remove a member of an appointed body, to which the Assistant City Attorney responded that he does not recall it being included.

Commissioner Dieter inquired if it is not in the City Charter why is it in the Sunshine Ordinance, to which the Assistant City Attorney responded the ordinance indicates that policy body members have a right to comment on governmental actions; that would not necessarily preclude a majority of the City Council from being able to remove them; that he does not want the Ordinance giving a person a right to sue the City on the grounds that they were illegally removed.

Vice Chair Foreman suggested that the Commission take the position that the matter is outside of its jurisdiction and refer it back to the City Council; this is not a public access issue.

Commissioner Dieter concurred.

Vice Chair Foreman stated it has to do with Council's power to go over agencies they create; it has nothing to do with sunshine.

Councilmember Dieter stated if that is a motion, she seconds it.

Vice Chair Foreman stated that is a motion.

Commissioner Bonta inquired whether Vice Chair Foreman is referring to the second or third clause, to which Vice Chair Foreman responded that he is referring to the whole section; stated it is not wrong, it is misplaced; it is outside of the Commission's purview.

Commissioner Bonta stated every policy body member retaining the constitutional right to comment publically has relevance to how a member of a policy body might continue to speak in public; having something in full transparency and openly available that members are able to speak their mind, which is the intent, is a helpful thing to have in the Sunshine Ordinance.

Commissioner Dieter suggested a compromise: leaving in the first part of the provision that was already there that goes with sunshine; the addition added by staff does not belong in the Sunshine Ordinance and actually causes problems.

Commissioner Bonta stated the intent is that the City would not have any future liability from exercising its right to remove members.

Commissioner Dieter stated that should go somewhere else, such as the City Charter.

Commissioner Bonta stated reading the section, people would understand they would be able to speak their mind even sitting on a policy body; after choosing to speak their mind, if the City removed the member, it would not be because they choose to speak their mind; there is a relationship; that she would recommend the language be redrafted.

Vice Chair Foreman concurred the language needs to be redrafted; stated that he is worried about the first line; if the Planning Board has to approve a development plan, the burden of proof is on the developer; it is something that is supposed to be determined after the hearing and is not something that can be prejudged; if a member of the Planning Board is quoted in the paper a week before the meeting saying: "the plan is lousy and I am not going to vote for it;" that is illegal; yet the Ordinance is saying the member has a full constitutional right to do it; somehow it has to be redrafted; it could be

redrafted pretty easily to say that members cannot comment on items they are going to make a judicial decision on.

The Assistant City Attorney stated this area of the law is murky; development plan in Alameda are legislative acts, not quasi-judicial, so the judicial rules would not apply; however, for a use permit, which is quasi-judicial, the point is well taken; on the other hand, courts recognize that elected and appointed officials are out in the community; part of being an elected official is listening to the community; the community wants to hear official's opinions on matters; there is a fine line between expressing interest and listening to people, but not showing improper bias; the line can be difficult to draw; drafting something may be difficult, but he will take a stab to try to address the issue more clearly.

Commissioner Dieter requested the Assistant City Attorney to explain the last sentence: appointed policies bodies moreover may not take formal action nor undertake activities such as writing a letter that contradicts a policy or a position that the City Council has adopted or expressed.

The Assistant City Attorney stated that he has seen situations where an advisory body takes formal action, such as writing a letter, that is contradictory to what the City Council has done; it causes the City and City Council some embarrassment; the idea is to put into written form that advisory bodies are not to do that; it is a policy decision; the language can be left or removed; he has seen it cause difficulty for a City Council in the past, so he put it in.

In response to Commissioner Bonta's inquiry, the Assistant City Attorney stated the line is not always bright; a commission can express reservation about a City Council policy or action; however, the commission communicating in a formal way is what this is intended to say should not be done.

Commissioner Dieter inquired whether it has ever happened in Alameda, to which the Assistant City Attorney responded that he does not know if it has happened in Alameda; stated that he is aware of it happening in other jurisdictions.

Commissioner Dieter inquired whether writing a letter means writing a letter to the City Council, to which the Assistant City Attorney responded it would mean writing a letter to an outside agency for example.

Commissioner Dieter stated the language should definitely say "to an outside agency."

The Assistant City Attorney responded the Section is not intended to prevent communication between a commission and the City Council; the language could be clearer.

Vice Chair Foreman stated there should be something somewhere about how to remove people from commissions.

The City Clerk stated by majority [Council] vote.

Vice Chair Foreman stated his compromise would be to leave in the first part and leave out the last part; the particular sentence is not sunshine and has to do with when you can and cannot remove a member from a body.

The City Clerk stated the Section was added to inform a member of a body; since sunshine is about providing information, the Attorney's idea is to put more information out there and inform them if they have not read the other provisions that they could be taken off because they might not be aware.

Vice Chair Foreman stated inform them in the right section of the law; inquired why it would it be here.

The City Clerk responded every board and commission member is required to read the ordinance; they are not required to read the other sections of the law; they are all annually required to read it.

The Assistant City Attorney stated that he would redraft and bring back some language that might be more acceptable to the Commission.

Commissioner Dieter stated out of all of the Sections, this is the one that is being tabled all together; there is a problem with it.

The Assistant City Attorney stated Section 9 the first sentence under 2-92.2 has been moved to the front of the ordinance; in October, the Commission talked about the fact that sometimes the 10 day rule could not always be met and that there are circumstances when additional time is needed; he pulled the language out of the Public Records Act and put it into Subsection C to allow additional time for the custodian of records to respond as long as they gave the reasons for the extensions and the date on which the determination was supposed to be provided.

Commissioner Dieter inquired whether there was a typo with the part that was added in Section D should it say employee "or" elected official rather than "of," to which the Assistant City Attorney responded in the affirmative.

The Assistant City Attorney stated the new Subsection G has been moved up from a different Section; Section 10 on Responsibilities of the Mayor, has been moved to a different section in the front; Section 11 explains what is going to be available on the City's website for a certain period of time and what would be on essentially forever.

Commissioner Dieter stated she had a hard time understanding the additions to Section 2-92.4: documents must be posted on the City's website, but these particular documents may be removed.

The Assistant City Attorney continued the sentence: four years after they are filed or adopted; stated the items may be kept, but it is a matter of whether they should be kept on the City's website all the time; it is not that they would not exist, but they would not be on the City's website.

Commissioner Dieter stated at the last meeting, discussion was that there is no problem with keeping items on the City's website; space is not a problem; questioned whether agendas and minutes would be removed after four years, to which the Assistant City Attorney responded in terms of the website, correct.

Commissioner Dieter inquired why it says agendas and minutes would be removed after four years if there is no capacity problem, to which the Assistant City Attorney responded information would be stale after said length of time.

The City Clerk stated some of the things that would change over time would be the Executive Management Work Plans, Capital Improvement Plans and Environmental Impact Reports (EIR), which are very large and could be removed after the project has been approved and completed; said documents get updated so retaining them for a long period might be harder; agendas and minutes are in a database; maybe agendas and minutes can be removed from the Section.

Vice Chair Foreman noted the Planning Board never post minutes; inquired if it is violation of the Section, to which the City Clerk responded that she would follow up on the matter.

Commissioner Bonta stated there seem to be some things, such as the Alameda Municipal Code, which have the current version, not the prior version for four years past, to which the City Clerk concurred.

Chair Aguilar stated the addition should be added at the bottom [of the Section].

Vice Chair Foreman and the Assistant City Attorney concurred.

The Assistant City Attorney stated the items could be asterisked with an explanation at the bottom; agendas and minutes will not be asterisked; the rest will because they change after four years.

Chair Aguilar inquired whether what would be posted is always going to be the most recent version.

The City Clerks responded in the affirmative; stated the [Municipal] Code, in particular, is always up to date.

Commissioner Tuazon stated that he understands removing from the website; inquired whether the information completely deleted, to which the City Clerk responded in the negative.

Commissioner Tuazon stated it is still stored somewhere, just out of the website.

Commissioner Dieter stated she is glad agendas and minutes are going to be removed; she also has a problem with EIR's, which can take up a lot of space because they are often big; however, when a project is still being built, people may want to go back to that, Alameda Point in particular, which was just passed last year; chances are the City will not move forward with building anything for a couple more years; in four years when the City is getting ready to start with one section, the EIR will already have been removed from the website; it makes more sense to remove it from the City's website once the project is final and has been built out.

The City Clerk stated the Alameda Point EIR would be an exception and would be left up; people are going to be referring to it during all the phases; the Section is addressing the more typical EIR for a smaller project that would be completed within one year.

Commissioner Dieter inquired could the language be that the EIR would be removed [from the website] when the project has been completed, to which the Assistant City Attorney responded staff can get terminology from Community Development to reflect the concept, which is a valid point.

The Assistant City Attorney stated Section 12 on Public Records Index, struck language that was supposed to happen within 12 months from the enactment of the ordinance has been accomplished; there is no reason to keep it in the ordinance any longer; Section 13 on Matters of Public Concern, the attempt was to rework the language without changing the substance; the concern was it was not particularly clear; basically saying that an employee or policy board member can express an opinion as long as it does not materially misrepresent the position of the City or the department or the policy by which a member belongs.

Commissioner Dieter inquired if it is similar to the one that the Commission tabled, to which the Assistant City Attorney responded it is similar but goes to a little different issue; stated if he is speaking as a member of the public but he happens to be on the Planning Board, he can indicate that he is a Planning Board member but he is only speaking on behalf of himself and not the Planning Board; he should not represent that he is representing the Planning Board, which is what this language is intending to address and is fair and accurate.

Vice Chair Foreman stated that he has a little bit of a problem with it; he is conflicted; provided an example from last Council meeting when Karen Lucas spoke about the City trying to make peace with East Bay Regional Park District and suggested the City Manager be disqualified; stated that he can see a public employee making a public statement that he has every right to make but that makes it difficult for the City to perform its business; he not saying this [Ms. Lucas's commenting] is an example.

Commissioner Dieter stated the City Manager might make a statement that does not necessarily represent the City.

Vice Chair Foreman added or the Mayor or a Councilmember or a member of the Planning Board; stated they have a right to state their opinion, but questioned not to be disciplined or reprimanded for it; someone can state any opinion on anything and it can be as out in left field and prejudicial to the City, but if you state it as an individual, not as a member of the body, it is not disciplined; there is case law about statements that can be made and not be disciplined under freedom of speech; however, the language is kind of carte blanche.

The Assistant City Attorney stated similar to the previous section, the issue is very difficult and contentious; the courts bound around about whether or not a person is bringing forth a matter that is of public concern, which one has the right to do, notwithstanding the fact that the person is an employee, versus bringing forth something that is really just complaining about one's job, which the person does not have the right to do in a public forum; he is just trying to clarify the existing language; that is the only purpose of making the amendments; he attempted to work with what was initially adopted rather than trying to write a very nuanced dissertation about when an employee can and cannot be disciplined.

Vice Chair Foreman stated his thoughts would be to not have the Section at all; leave it to the courts to determine in individual situations because the cases are all over the place.

The City Clerk stated the intent of the Sunshine Task Force adding the section was so that employees or board and commission members would not feel like if they had an opinion on a project as an individual, they could not come to a Council meeting [to express the opinion]; people would be getting up as an individual and allowed to still have an opinion on a specific project.

Vice Chair Foreman stated there is no such thing as the Mayor getting up in public and making a statement about a City matter, but saying she is not doing it as Mayor.

The City Clerk noted the language used to say City board, commission or committee, which could be changed back; specifying public employees, boards, commissions or committees excluded the Council in the past; perhaps staff can provide that distinction; stated just because a person on a City board does not want to feel like they are losing their right to come, as an individual, and comment, which is the intent.

The Assistant City Attorney stated the idea is that it would be applicable to public employees and policy bodies, other than the elected officials.

Vice Chair Foreman stated the language he does not like is: "shall not be disciplined for;" "nothing in this section shall be construed to provide rights to public employees or policy board members beyond those recognized by law or agreement or create a new

private cause of action or offense to disciplinary action” is really good language, except it has been negated in the first sentence; the last sentence says an employee can be disciplined and this first sentence says cannot.

Commissioner Bonta stated the first sentence says an employee cannot be disciplined for expression of personal opinions when not materially misrepresenting their position as an employee of the City.

The Assistant City Attorney stated this area of the law is not clear; a person has certain constitutional rights; the idea is that the ordinance should not create additional rights beyond that which is already recognized by law; in other words, the ordinance would not give a separate cause of action if someone expresses an opinion and is disciplined for it; the City does not want the fifth cause of action to be a violation of Section 2-92.6 of the Alameda Municipal Code.

Commissioner Bonta suggested the Section be redrafted perhaps adding the language provides “additional rights” to the last clause.

The Assistant City Attorney stated Section 14 is just housekeeping, clarifying language; Section 15 has been moved to the Section on posting of information; Section 16 has been moved into a previous section dealing with providing records; Section 17 would change the training from every year to every third year; the video is available to anybody elected, appointed or hired.

Commissioner Bonta questioned whether Section 2-92.15 on requests by email stating an email has to be acknowledged by similar communication is limiting; stated there are probably instances when calling would be helpful.

The Assistant City Attorney stated the Section can be made broader; continued that completes [the review] all of the changes which were discussed in October; staff will redraft the ones the Commissions suggested be worked on; if there is anything else the Commission feels needs some fine tuning or wholesale changes, please let staff know.

Vice Chair Foreman inquired when it will be ready; stated there is no hurry but the Commission is going to have to have a special meeting.

The Assistant City Attorney responded sometime in March or April.

Vice Chair Foreman inquired whether the Commission should schedule the meeting.

The City Clerk responded the bylaws set Mondays at 7:00 p.m. as the meeting date; stated March 2nd would require the packet to go out February 23rd, which is a little tight; for April 6th, the Commission would receive the packet on March 30th.

The Assistant City Attorney stated April 6th is doable.

Commissioner Dieter stated the Commission was provided a full copy of the Sunshine Ordinance; having the complete Sunshine Ordinance include redlines would be easier to follow versus going back and forth; when there is a redline suggested including a notation, such as moved to versus deleted in its entirety; the City Council would also really appreciate knowing what has been deleted and what has just been rearranged.

In response to Commissioner Bonta's inquiry regarding the meeting date, the City Clerk responded the meeting could be held May 4th.

Commissioner Bonta inquired whether the meeting have to be held on the first Monday, to which the City Clerk responded the Council Chambers are available the first Monday; that she could check availability for other dates.

The Commission agreed to hold the next meeting March 30th.

Commissioner Dieter addressed the minutes; inquired whether new agenda items could be on a new line; stated it was extremely difficult to read a new line item at the end of the previous line on the current minutes; if the Commission is discussing a particular Section, have it start on a new line; even the agenda item itself could be listed; in this particular one, there was no explanation for potential revisions; in the future, suggested copying and pasting from the agenda into the minutes so the public would know what the actual agenda item was.

The City Clerk inquired whether Commission Dieter is asking for example: "3-C Potential Revisions to the City Sunshine Ordinance," to which Commissioner Dieter responded in the affirmative.

The City Clerk stated it [the agenda title] is always carried over.

Commissioner Dieter stated on the minutes we just approved they were not there.

The City Clerk responded it was there.

Commissioner Dieter stated that she would show the City Clerk after the meeting.

Vice Chair Foreman inquired how Commissioners can add things to the agenda; inquired who does the agenda.

The City Clerk responded the City Attorney's Office and City Clerk's office staff the Commission and add agenda items; stated if Commissioners have items to bring forward, sometimes they have raised them during Commissioner Communications.

Vice Chair Foreman inquired what if a Commissioner wants to add an item before the agenda goes out, to which the City Clerk responded it could be added under Commissioner Communications; requested an example.

Vice Chair Foreman provided an example: recommend to Council under that the Commission's jurisdiction should be expanded; stated the Commission is called Open Government but the actual grant of authority is Sunshine Ordinance; other aspects of the law pertain to open government and the Commission's role should be expanded.

The City Clerk stated the Commissioners need to provide the item greater than the seven days ahead of [publication] time; that she would indicate that it is coming from the Commissioner so the other Commissioners understand it is not staff generated.

Commissioner Dieter stated it is a little bit more free flowing than the City Council, to which the City Clerk responded the City Council has an extensive Council referral process but the Commission does not have that.

Commissioner Dieter inquired when Commissioners have referrals, should it have a staff report.

The City Clerk responded typically, staff would want to wait to get direction from the whole Commission before putting too much work into the matter; if the rest of the Commission does not agree with going in that direction; stated it is easier for staff to get direction from the whole Commission.

The Assistant City Attorney stated it is similar to a referral; if a Commissioners wants to bring something forward, they would communicate it to the City Clerk; it would then appear under Commissioner Communications; the Commission would have a chance to talk about it because it would be noticed; then if there is support to bring something back, staff would do it; if there is not support, it does not go anywhere.

COMMISSIONER COMMUNICATIONS

None.

ADJOURNMENT

There being no further business, Chair Aguilar adjourned the meeting at 9:25 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.

UNAPPROVED
MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - MARCH 30, 2015 - - - 7:00 P.M.

Chair Aguilar convened the meeting at 7:06 p.m.

ROLL CALL - Present: Commissioners Dieter, Foreman, and Chair Aguilar – 3.

Absent: Commissioners Bonta, Tuazon - 2.

ORAL COMMUNICATIONS, NON-AGENDA

None.

AGENDA ITEMS

3-A. Minutes of the February 2, 2015 Meeting

Chair Aguilar stated there were a couple places in the meeting minutes said Vice Mayor which should say Commissioner and the Sunshine Ordinance should be capitalized, in a few places.

Vice Chair Foreman moved approval of the minutes as amended.

Commissioner Aguilar seconded the motion, which carried by unanimous voice vote - 3.

3-B. Potential Revisions to the Sunshine Ordinance

Assistant City Attorney Roush gave a brief presentation outlining the changes in the redlined version of the Sunshine Ordinance.

Vice Chair Foreman stated that he was the one who raised the issue; he is satisfied with the changes.

Commissioner Dieter thanked the Assistant City Attorney for the layout of the revisions; stated it is easier to follow.

The Assistant City Attorney continued the presentation.

Commissioner Dieter stated that she has problems with Section 2-91.17; the title is: "Public Comment by Members of Policy Bodies;" in general, the Section is not about public comment by policy bodies; it is about individuals, which led her to reread this clause again; she expressed concern at the last meeting and continues to have the same concern; the issue is not a sunshine issue; the role and limitations of boards and commissions is spelled out in the Charter; the last sentence which addresses appointed policy bodies should be deleted.

Vice Chair Foreman concurred; stated the Section should be delete it in its entirety; that he does not need to be told he has a constitutional right to speak out; he does not know why the Section is would be in the Sunshine Ordinance; everyone has the right to speak out as individuals as long as long as speaking for themselves; boards and commissions have the right to speak out as a body even if disagreeing with Council; the only control Council should have is to relieve members of duties; the Section does not add anything.

Chair Aguilar sated the Section is not just indicating member have a constitutional right to speak out; inquired if Vice Chair Foreman wants to remove the entire Section, to which Vice Chair Foreman responded in the affirmative.

Chair Aguilar inquired if Commissioner Dieter want to remove the last sentence, to which Commissioner Dieter responded in the affirmative.

Vice Chair Foreman read the Section; stated if Council disagrees with a Commission on something the only right is what they have in the Charter, to relieve members of duties; that he does not have any idea what the second sentence accomplishes; in the next part simply restates what is in the Charter; he does not see a purpose served by any of it.

Commissioner Dieter stated that she does not mind having everybody know that they can speak out for themselves; she does not have a problem reminding folks that just because they are on a board or commission does not mean they do not have a voice in the community; what she does have a problem with is telling policy bodies that they cannot take a position that contradicts a policy or decision of the City Council, which is the opposite of the intent of Boards and Commissions that exist to advise Council; for instance, if the City Council decides not to implement bus rapid transit on the West End and the Transportation Commission strongly opposes the position, they should have a right to address or send a letter to the City Council; the whole purpose of Boards and Commissions is to advise even if it against what the City Council deems fit.

Vice Chair Foreman stated as a compromise, he would not have any problem with leaving in the first sentence through "Section 2-91-6(e)" and leaving out the next sentence: "Policy bodies shall not sanction, remove or deprive members of the rights;" he does not know what purpose the language serves; he does want to deprive the City Council from criticizing members any more than he wants to deprive any member from criticizing the City Council; he would take the sentence out altogether and leave in the part about the City Charter even though it is just restated; he would take out the sentence prohibiting formal action; stated the first sentence should stay in, the second sentence should be deleted, the third underlined sentence should stay in, and the final sentence should be deleted.

Commissioner Dieter stated she had no problem with the Vice Chair Foreman's recommendation.

Chair Aguilar stated that she is not sure why the second sentence is included; she hesitates because the ordinance has gone through a committee and was accepted by the City Council; she is a hesitant to just start deleting things; stated she does not know that she would necessarily take out the sentences.

In response to Commissioner Dieter's inquiry about the last sentence, Chair Aguilar stated the language is new.

In response to Commissioner Dieter's further inquiry, Chair Aguilar responded the second sentence is being discussed.

Commissioner Dieter stated in order to reach a compromise she does not mind keeping the language in, as long as that last sentence about policy bodies is removed.

Vice Chair Foreman stated that he does not have a problem with said suggestion; the second sentence is meaningless to him; drafters work can be respected; however, he questions why is the ordinance is being reviewed if so much respect is given that the Commission cannot improve it; he respects her view and would agree to keep everything except the new sentence.

Chair Aguilar inquired if the Assistant City Attorney added the sentence for a reason.

The Assistant City Attorney responded in the affirmative; provided an example of the City Council adopting a particular policy and a Commission writing a letter to an outside agency that not necessarily contradicted what the Council had done, but certainly raised an issue; there was some concern expressed at the Council meeting about whether or not Commissions should do so; there is not an adopted Council policy concerning the matter; the Section would address the matter, which does not have to be in the Sunshine Ordinance; the City Council could adopt a standalone policy; the Sunshine Ordinance seems an appropriate place to put it, is not necessarily the only place it has to go; if the Commission feels the matter might be better addressed somewhere else then staff will take that recommendation.

Commissioner Dieter stated raising the matter with Council is a good idea; that she recalls the letter was to the Mayor, not an outside agency; the City Council can address the policy, but she would not want to make it part of the Sunshine Ordinance.

The Assistant City Attorney stated that he drafted the language so it would not apply to a Commission writing to the Council; it is directed to an outside agency or organization.

Chair Aguilar stated that is what it says.

Commissioner Dieter stated the language achieves prohibiting appointed policy bodies from writing letters to outside agencies or organizations that contradicts a Council policy or position, but when broadened other formal actions and activities could be constituted as all different situations.

Vice Chair Foreman suggested taking the suggested position that it is an inappropriate revision to the Sunshine Ordinance.

The Assistant City Attorney stated Council could take up the matter as a separate item; inquired if the approach is acceptable, to which the Commissioners responded in the affirmative.

The Assistant City Attorney continued the presentation.

Vice Chair Foreman stated his position last time about Section 2-92.6 was that it should not be included; the more he reviews it, the stronger he feels that it should not be included; if it is going to be included, it should not be under Section 2-92.6 which has to do with records; it should be moved to Section 2-91.18; he did research on the City employee issue; the term City employee is better; public employee could be somebody who works for the County, federal government or State; a City employee, under case law, can speak out on a matter of public concern other than his/her duties; speaking pursuant to official duties does not allow first amendment protection; provided an example: a Police Officer talking about the new fire station, which is not part of his duties, has protection; however, if what the Officer says is knowingly or recklessly false or if it makes it impossible for him to carry out his duties, he is not protected; inquired whether the interpretation is generally right.

The Assistant City Attorney responded in the affirmative; stated the difficulty is trying to distinguish between is the person speaking within his or her official duties or if the matter is really of public concern; it is a very slippery slope.

Vice Chair Foreman stated it is a very slippery slope, which is why he thinks the Section should not be included; stated there should not be any reference to a City Board, Commission or Committee, which is already covered.

Chair Aguilar noted it does not [have any such reference].

Vice Chair Foreman read the first sentence; provided the argument he would use if he were representing an employee; stated the employee can say anything he/she wants to say and there is nothing the City can do about it; he knows that is not the intent; the information belongs in an employee handbook.

Commissioner Dieter stated the Section does piggyback on the other Section just discussed; roles and responsibilities of policy bodies or City employees do not seem appropriate for a Sunshine Ordinance because the whole purpose of the Sunshine Ordinance is to make government more transparent and give people access to their government; to include what people are not allowed to do it is a fine line; the clause says: "so as long as an opinion does not materially misrepresent the position of the City;" inquired how the clause is tested.

Chair Aguilar responded there is case law.

Commissioner Dieter provided an example of the City Clerk and City Manager giving different information resulting in an employee being fired; stated understanding this part of the Sunshine Ordinance is a little difficult.

Vice Chair Foreman stated it is a balancing act, is very complicated and is based on the individual facts in each case, which is another reason it is a bad idea; he does not have a problem with including the Section for Commission members because they have an absolute unfettered first amendment right subject to only being relieved of their duties; however, employee do not have the same right and he does not want to mislead employees or put the City in a position of giving an employee more rights.

The Assistant City Attorney stated the Commission is really dealing with policy issues; dealing with policy bodies could be moved; the Section on employees can be removed entirely or moved to Section 2-91.

Vice Chair Foreman moved approval of recommending that this provision be deleted.

Commissioner Dieter inquired how does this clause make government more transparent, to which the Assistant City Attorney responded the City Clerk's recollection was that the Section was included so that employees understand they have the ability to have their voices heard in front of policy bodies without worrying about being disciplined; Commissioners should be to so as well as long as they do not materially misrepresent what their body.

Commissioner Dieter inquired whether when the public sees a Board or Commission member speak, they are not doing anything wrong and it is their right, to which Vice Chair Foreman responded Board members are not being discussed; the discussion is about city employees.

The Assistant City Attorney stated there are two parts to Section 2-92.6: one deals with public employees and the other deals with members of a policy body; there are reasons for including both.

Vice Chair Foreman inquired whether the Assistant City Attorney deleted some of the Section, to which the Assistant City Attorney responded in the affirmative; stated he separated the two.

Chair Aguilar stated the first portion deals with city employees and the second portion deals with policy bodies.

Vice Chair Foreman inquired whether policy bodies are being discussed, to which the Assistant City Attorney responded before, the Section dealt with both employees and advisory policy bodies; stated that he was trying to be true to the previous work but

separate the Sections because different standards apply to employees and policy body members.

Vice Chair Foreman stated if the Section is moved after the Section that covers boards, it is totally confusing; there is one Section on policy bodies and another Section on policy bodies and employees; the Section on policy bodies repeats the previous Section.

Commissioner Dieter stated the matter should be in an employee handbook; as somebody who has gathered signatures for petitions, she has often heard City employees say they cannot sign; there is a misconception that employees do not have the right to speak out; employees should be told what they can and cannot do when they are hired; she understands what Vice Chair Foreman is saying.

Commissioner Dieter stated that she would second the motion as long as the Commission is clear that City employees should be made aware what they can and cannot do when they are hired.

Vice Chair Foreman amended his motion to recommend that the Section be deleted from the Sunshine Ordinance and that the employee handbook include a Section which explains to employees under what circumstances they are allowed to speak out on matters.

Commissioner Dieter seconded the motion.

Chair Aguilar agreed with the motion.

The Assistant City Attorney noted the sentence dealing with appointed policy bodies has already been adequately covered in the previous Section.

On the call for the question, the motion carried by unanimous voice vote – 3. [Absent: Commissioners Bonta and Tuazon – 2.]

The Assistant City Attorney continued the presentation on the definition of meeting.

Vice Chair Foreman discussed the prior Commission unanimous vote on adopting the Brown Act language; stated even though the structure of the ordinance's definition of meeting is different than the structure of the Brown Act, it basically says the same thing; the only real substantive exception being the last sentence of 2-91.1(b)(4)(C), which is more restrictive as to what meetings would not be subject to the Brown Act.

The Assistant City Attorney responded the Section does not specifically track the Brown Act; if anything the Sunshine Ordinance is slightly more restrictive than the Brown Act.

Vice Chair Foreman inquired whether [the Sunshine Ordinance is more restrictive] simply on the issue on you a meeting cannot be held in a place charging admission, to which the Assistant City Attorney responded in the affirmative.

Vice Chair Foreman stated Section 2-91.1(b)(4)(C) is not in the Brown Act; in respect to what Chair Aguilar said about not wanting to turn the language inside out, he would say to use the existing language; at the same time, he is very concerned about using different language because using different language there is always the possibility that some word splitting lawyer is going to say there is a difference; suggested adding a parenthetical after “meeting shall mean anything of the following” which reads: “this definition is intended to be synonymous with meeting as defined in the Brown Act, except for Section 2-91.1(b)(4)(C) which is intended to be more restrictive than the Brown Act.” then it would be crystal clear that the same thing is meant.

The Assistant City Attorney stated the language can be added if it is the direction of the Commission.

Chair Aguilar inquired if it is meant to be synonymous; stated it is very similar

Vice Chair Foreman responded the Assistant City Attorney stated it is synonymous.

The Assistant City Attorney stated the Brown Act covers more things that are not considered meetings; there are a couple of additional items; the fact that the Sunshine Ordinance does not cover everything does not mean the City does not have to observe both the Brown Act and the Sunshine Ordinance, whichever is more restrictive; all the exceptions to meetings are not covered; it is okay to indicate that there is a particular Subsection that, while it intended to paraphrase what is in the Brown Act, is more restrictive; a parenthetical can be added.

Vice Chair Foreman moved that the parenthetical be added at the beginning of the definition of the term meeting.

Commissioner Dieter seconded the motion, which carried by unanimous voice vote - 3

The Assistant City Attorney continued the presentation

Vice Chair Foreman stated he has the same issue with regard to policy body which is in the same Section.

The Assistant City Attorney stated that he assumes Vice Chair would want to add a parenthetical that policy bodies shall mean legislative bodies.

The Vice Chair stated that he would add a parenthetical that the definition of the term policy body tends to be synonymous with the term legislative body in the Brown Act; the purpose is that policy body is thought to be more descriptive.

Chair Aguilar stated she does not have the Brown Act in front of her so she does not know if legislative body and policy body are synonymous.

The Assistant City Attorney responded they are; stated that he is surmising that if the term legislative body had been used, people might be confused that it is just the City Council and not advisory bodies, so policy bodies was used instead; if agreeable to the Commission, a definition of policy bodies could be added because he is not sure if it is defined.

Vice Chair Foreman stated it is defined.

Chair Aguilar stated it is Subsection 2-91.1(b)(3).

Vice Chair Foreman stated all it would say is the term is intended to be synonymous with the term legislative body as defined in the Brown Act; stated using policy bodies was a good idea; all bodies are not legislative bodies; policy bodies is smarter.

Vice Chair Foreman moved approval of the change stated.

Commissioner Dieter seconded the motion, which carried by unanimous voice vote - 3

The Assistant City Attorney inquired whether the Commission wants to make a motion to adopt all the changes, including the changes made tonight; stated an overall motion should be made to take forward to the Council.

Commissioner Dieter moved approval of recommending to City Council the adoption of the changes that have been approved tonight and previously.

Vice Chair Foreman seconded the motion, which carried by unanimous voice vote - 3

COMMISSION COMMUNICATIONS

Commissioner Dieter stated the Commission is supposed to report to the City Council at least once a year in writing on any practical or policy problems encountered; read the Section of the Ordinance; inquired how do the Commission plans on doing so; stated perhaps staff wants to bring back a proposal on how to accomplish doing so; the Commission only meets twice a year; she is not sure if it is possible for the Commission to write an annual report; the Sunshine Ordinance says that the Open Government Commission shall review public notices to ensure that they conform to the requirements of this article and work to improve publicly accessible information; under said clause, the Commission is not only supposed to be a reactive body, but is supposed to be proactive to make sure that government is achieving its goal of transparency; it is up to the Commission to monitor said sorts of things and come back and report if anything could be improved upon; the City Council deserves to know the Commission is doing right and where improvements can be made, which requires the Commissioners to work independently outside of meetings; perhaps the City Attorney can help out; inquired if

Commissioners should raise issues under Communications or do as agenda items; further inquired does it have to be formal or can it be informal; stated it is something for the Commissioners to think about; if the Commission really want to do its job well, Commissioners have to do something while not here sitting at the dais.

In response to Vice Chair Foreman inquiry, Commissioner Dieter stated the Commissioners would look at City Council and Planning Board agendas and see if titles do not meet the muster of what people can understand.

Vice Chair Foreman stated that he understands the suggestion; questioned how do to do so as a Commission; do members take turns reviewing agendas or review them as a group; stated he does not know how to do it; stated the next Council meeting could be assigned to a Commissioner.

Chair Aguilar inquired in perpetuity, to which Commissioner Dieter responded the Ordinance says the Open Government Commission shall review public notices.

Vice Chair Foreman stated that he can see doing it reactivity when a complaint is received from someone who says an item was not properly noticed.

Chair Aguilar stated that is what has been done in the past; when there is a complaint, the Commission addresses it; that she does not know if there has been any formal complaints; one came up and was withdrawn; the Commission has to think about what the Section means because the Commission only meets twice a year; both the bylaws and the Sunshine Ordinance require meeting twice a year.

Commissioner Dieter stated that she did not set up meeting twice a year so she does not know how that happened; the requirement is in the Sunshine Ordinance so the Commission needs to know how to accomplish it; that she tends to look at City Council agendas anyway so for her it is no big deal; however, when all the Commissioners signed on, this is what the Ordinance includes as a duty.

Vice Chair Foreman stated Commissioners can informally review agendas; inquired what a Commissioner would do if an agenda is reviewed and there is a problem.

Commissioner Dieter stated that she does not know; inquired if the matter should be brought back under Communications.

The Assistant City Attorney stated if Commissioners see items which do not provide the kind of information that would be most helpful to the public to understand what is being discussed, the item could be noted to find whether there is a pattern; the Chair could work with the City Clerk and the matter could added as an agenda item; the item could be addressed by the Commission to determine whether or not there is a need to make a recommendation to the Council that there needs to be some direction to clean up the matter; the City Attorney's office strives to make sure that what is on the agenda

translates to the public; Commissioner could review agenda and making notes if there is an issue that needs to be addressed.

Chair Aguilar stated Commissioners should save examples and inform her and the City Clerk to have the matter agendized for the next meeting.

Vice Chair Foreman inquired get what agendized, to which Chair Aguilar responded the issue; whatever the issue is that comes up.

The Assistant City Attorney stated provided an example of half a dozen items occurring between now and December; when Commissioners discover items, they should notify the Chair and the City Clerk to create a running tab and get a scope of the problem.

Chair Aguilar stated is the Commission would see whether there is just one item or several, if it global or something particular; the discussion is just hypothetical.

Commissioner Dieter stated the Ordinance says to work to improve publically accessible information; inquired whether that is another thing or part of this.

Chair Aguilar responded it would be a part of the matter.

Commissioner Dieter stated she talked to the Assistant City Attorney; on the website, when a meeting is canceled giving the reason would be nice, such as lack of a quorum or lack of business; for example, that would be helpful to the public; another issue is it is hard to find Rent Review Advisory Committee agendas on the City website.

Vice Chair Foreman stated maybe said matters ought to be included in the annual report.

Commissioner Dieter stated the Commission has to meet to create the annual report.

Vice Chair Foreman stated the annual report is a good idea.

The Assistant City Attorney stated the Ordinance amendments could be included as part of the annual report; if other items come to Commissioners' attention that should be included in the report, the City Clerk and City Attorney know; a report will be drafted for the Commission to review and make changes or additions; something can be presented in October that can then be put into final form and sent to the City Council.

Vice Chair Foreman inquired if the Commissioners would individually do so, to which the Assistant City Attorney responded in the affirmative; stated the Commission can decide whether or not items should be included in the annual report.

Commissioner Dieter stated the suggestion sounds like a great plan.

The Assistant City Attorney stated staff can put something together and the Commission can review it to decide what to include.

Commissioner Dieter stated there are two clauses in the Sunshine Ordinance that she does not know if it has ever been adhered to or enforced: 1) the City Attorney shall semi-annually make a determination about whether any closed session minutes should continue to be exempt from disclosure based on whether the disclosure would be detrimental to the City; the City Attorney's office shall prepare and present on the City Council Consent Calendar a list of documents which have determined to be public after previously being determined to be unavailable; the Commission should hear whether or not documents have been declassified at the next meeting.

The Assistant City Attorney stated that he would find out and bring back a report.

ADJOURNMENT

There being no further business, Chair Aguilar adjourned the meeting at 9:25 p.m.

Respectfully submitted,

Irma Glidden
Assistant City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.