

Councilmember Daysog stated staff should be able to take the time to let Council know if different funding is being contemplated; discussion about a new approach is not necessary; suggested Vice Mayor Matarrese work with staff on his idea and return to the Council.

Vice Mayor Matarrese stated he is not the expert; Council hires experts to address the issues; he just wants to be prepared.

Councilmember Daysog stated the approach would be the same in the event the Fire Department does not get the SAFER grant in 2 years; special discussion on how to deal with uncertainty is not needed.

Mayor Spencer concurred with Councilmembers Daysog and Oddie; stated there is already a process; perhaps Council could hear from staff by 2017; it is premature to prioritize the matter.

Councilmember Ezzy Ashcraft stated that she did not mean to say prioritize the issue; she just meant staff could look into the matter; celebration is in order for receiving the grant; to Vice Mayor Matarrese's point, it is good to not be complacent.

Mayor Spencer stated there is no consensus to follow Vice Mayor Matarrese's request.

(15-590) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Various Sections of Article VIII (Sunshine Ordinance) in Chapter II (Administration) and Adding New Sections 2-90.3, 2-90.4 and 2-91.18 Concerning Local Standards to Ensure Public Access to Public Meetings and Public Records. Not introduced.

The Assistant City Attorney gave a Power Point presentation.

In response to Mayor Spencer's inquiry regarding Section 2-91.6(e), the Assistant City Attorney stated no matter how information is characterized, it can be seen as being more persuasive than other information and that member would not have the benefit of hearing what other members or the public have to say about the item; it would be premature to venture whether it is information or an opinion without being present or able to digest and respond to the information.

Councilmember Oddie stated the member is not present and not voting, which is the highest level of influence a policy body member has; inquired how it would be different than any other member of the public.

The Assistant City Attorney responded the policy is more restrictive than what currently exists; stated the concern is that it seems inappropriate for a board member to provide information without having the benefit of hearing all the information; the information or any additional information may have come to light may change members' opinion; the information or opinion expressed by the non-present member may get more weight than

a member of the public; it is up to the Council to decide which, if any, of the amendments should be included.

Mayor Spencer inquired whom does a member of the policy body share information with if they have information separate from an opinion and cannot attend the meeting.

The Assistant City Attorney responded under the proposal, the member may share information or have conversation with someone other than the body which is considering the matter; their information or conversation would not be part of the public record upon which the decision would be presumably made.

The City Attorney stated the non-present member could call an employee who staffs the policy body to share a factual situation; the staff member could provide the information to the entire body.

In response to Councilmember Oddie's inquiry, the City Attorney stated Councilmembers do not have proxies; the problem is opening the door for confusion; additional weight is given to a member of a body addressing fellow members than a member of the public; a member's obligation is to present, listening and debating, not to "phone it in."

Mayor Spencer stated that she did not believe that was the question.

Councilmember Daysog inquired whether the policy refers specifically to information being shared during meetings, to which the Assistant City Attorney responded in the affirmative.

In response to Councilmember Oddie's inquiry, the Assistant City Attorney stated it is certainly possible that a member who is not going to be present at a meeting could give his or her comments to a third party without indicating the source of the information; the third party could read the information at the podium before the body; the rest of the body would not know the source of the information so it could be transmitted that way; the concept is that the information would not be specifically from the absent member and therefore would not carry the same weight.

Councilmember Oddie inquired whether the issue is an existing problem.

The City Attorney responded that she is aware of one problem when a Planning Board member was told they could not submit comments if they were going to be absent from the meeting.

The Assistant City Attorney stated his office advised the department that submitting comments and being absent was not prohibited at the time; the City Attorney's office broached the matter to the Open Government Commission (OGC) as to whether it is a good or bad policy, thus the issue is before Council tonight.

Councilmember Daysog inquired whether the policy regarding “public comments by policy body members” is in the context of public meetings, to which the Assistant City Attorney responded in the affirmative; stated the policy would prohibit XYZ advisory body from adopting a resolution that contradicts a policy or position that the City Council has adopted.

Councilmember Oddie inquired whether the issue has happened.

The Assistant City Attorney responded in the affirmative; stated the context behind the policy is related to an incident involving an East Bay Regional Park District (EBRPD) issue; the Council took a position on the issue and an advisory body felt that another course of action was more appropriate; the advisory body submitted a letter that was in direct contravention to the City Council position.

Vice Mayor Matarrese stated an advisory body cannot advise if they are not allowed to disagree with, or advise, the Council.

The Assistant City Attorney stated the advisory body presenting recommendations and advising the Council about why they disagree is different than the advisory body taking action to directly contradict a Council action.

The City Attorney outlined the of Neptune Point example; stated Council had made a decision regarding the issue and the City was in litigation with EBRPD; the Recreation and Park Commission decided to opine on what Council should do differently.

Vice Mayor Matarrese stated the language in the ordinance prohibits any action by an advisory board, including giving advice.

The Assistant City Attorney stated the language could be tailored to be more specific; the intent was not to curtail advisory boards’ abilities.

In response to Councilmember Oddie’s inquiry, the City Attorney stated the Recreation and Park Commission wrote a letter to the Council about the EBRPD issue.

Mayor Spencer inquired whether the policy regarding City employees and “opinions of public concern” is included in the employee handbook, to which the Assistant City Attorney responded in the negative; stated the policy is not strongly expressed in the employee handbook but there may be some general language in the handbook or in Memorandums of Understanding.

In response to Mayor Spencer’s inquiry, the City Clerk stated anyone in the City’s conflict of interest code, including Councilmembers, employees and board and commission members, are required to read the Sunshine Ordinance annually.

Councilmember Oddie stated public employees and advisory board members are different; inquired who would be considered an advisory board member, to which the

Assistant City Attorney responded an advisory board member is anyone the Council appoints to the particular board.

Councilmember Oddie stated the point of being on an advisory board is to express personal opinion on matters of public concern.

The Assistant City Attorney concurred with Councilmember Oddie; stated the difficulty arises when the statements might be construed as the member representing the City, or the advisory board's position, and not his or her own personal opinion.

Councilmember Daysog inquired whether an advisory board member should make a declaration that his or her position is of a personal nature and not reflective of the board on which they serve when speaking before Council, to which the Assistant City Attorney responded in the affirmative; stated it would be ideal.

Councilmember Ezzy Ashcraft inquired how a provision regarding the expanded use of electronic devices would be monitored and enforced.

The Assistant City Attorney responded the provision would be based on an honor system; stated it would be assumed that the Council, and other governing bodies, would honor the provision if the Council establishes it; policing the activity would be unnecessary; complaints of violations could be filed with the OGC.

Mayor Spencer inquired whether a calculator could be used, to which the Assistant City Attorney responded in the negative.

In response to Mayor Spencer's inquiry, the Assistant City Attorney stated Google Maps could not be viewed if the map was not included in the agenda item.

Expressed concern over the 15 day timeline in Section 2-93.2 and timelines in general, including RRAC timelines: John Klein, Alameda.

Stated that he was speaking on behalf of the OGC; outlined the two items where the Commission differed from staff; expressed his personal position regarding use of electronic devices; submitted information: Paul Foreman, OGC and Alameda resident.

Mayor Spencer suggested addressing each item separately.

#### Use of Electronic Devices at Meetings:

Vice Mayor Matarrese stated the prohibition of non-public communication and private discussion should be clarified; he is fine with having limited to access to materials already posted and distributed to the public.

Councilmember Ezzy Ashcraft concurred with Vice Mayor Matarrese; stated that she is not comfortable with the expansion of restricting the use of electronic devices at

meetings; the public is entitled to know what Council bases votes on; she would not support the ability to pull up information at the meeting with no advance notice to the public; the Brown Act still governs what Council does.

Mayor Spencer stated her recollection was that the Commission did have a recommendation that staff is now contradicting.

Councilmember Oddie stated page two of the staff report describes the Commission's recommendation; that he is inclined to support the Commission's recommendation; communicating with each other using devices is inappropriate, but Council should be allowed to research information and keep phones on in case of family emergency.

Councilmember Daysog concurred with Councilmember Oddie; stated his main concern is the inability to use calculators, an Excel spreadsheet is a calculator.

Mayor Spencer concurred with Councilmembers Oddie and Daysog; stated that she disagrees with having to use notes in hardcopy which is contrary to being green; Council should be able to access calculators, emails, and notes; she supports the Commission's recommendation that communication with each other via devices should be prohibited.

Councilmember Ezzy Ashcraft concurred with Councilmember Daysog; inquired what limitation language he was considering.

Councilmember Daysog responded that he does not have specific language but was impressed with Mr. Foreman's letter because it satisfies Occam's Razor, the things that are most parsimonious are probably better.

Councilmember Ezzy Ashcraft stated texts from family about emergencies should be allowed; she would like the City Attorney to weigh in on accessing information that the public would not have access to on which the Council might be basing decisions.

Mayor Spencer inquired how retrieving information from a tablet differs from printing out the same information in hard copy to reference during a meeting.

The Assistant City Attorney stated if there is Council consensus, that language needs to be clarified, rather than wordsmithing tonight, Council can make comments, the matter will return to the OGC.

Councilmember Oddie stated that he would like to incorporate Mr. Foreman's suggestions.

The Assistant City Attorney stated staff could wordsmith the language to accomplish what the Council would like to do.

Vice Mayor Matarrese stated that he would like the OGC to consider guiding language, not prohibitive language; he would still like clarification that everyone is starting from a common place.

Mayor Spencer stated that she and Vice Mayor Matarrese are referring to the same thing; the starting point is the agenda and Council packet.

Policy body members submitting comments when not present at the meeting:

In response to Councilmember Oddie's inquiry, the Assistant City Attorney stated the policy is for information only, the Commission is not recommending substantive changes.

Councilmember Daysog stated that he likes the staff recommendation; if members want to participate, they should be present at the meeting.

Councilmember Oddie stated that he has a problem with having people check their right to speak at the door just because they are a member of a policy body.

Vice Mayor Matarrese stated it is a constitutional right to vote.

Councilmember Ezzy Ashcraft inquired whether case law speaks to the matter, to which the Assistant City Attorney responded in the negative; stated it is just a policy issue.

Councilmember Daysog stated the policy is practical; members present at meetings have the right to vote and express their opinion; if a member does not show up for a controversial item, it is not fair to insert his or her opinion for the public record and not vote.

Councilmember Oddie stated on the flip side, an opinion from a member with financial conflict should not be heard; otherwise, it is a free speech issue; free speech rights should not have to be checked at the door.

Councilmember Ezzy Ashcraft stated a couple of concepts are being mixed into one provision; a conflict is a conflict under any circumstances.

Mayor Spencer concurred with Councilmember Oddie and Vice Mayor Matarrese; stated that she does not want to quash someone's first amendment right.

The Assistant City Attorney stated the explanation indicates that a person who has a conflict of interest which would cause them to recuse themselves during a meeting has an exception which allows the person to come off the dais and address the Commission; the same exception would apply to a member in the same situation that was not present.

Mayor Spencer stated staff should work on the language and bring it back; the majority of Council agrees that assuming there is no conflict of interest and the person just happens to not be able to attend the meeting, they can submit their comments to be considered.

The Assistant City Attorney stated the current language creates an exception as to when the person could submit comments; the question is whether Council feels it is appropriate for a board member as a general principle, to be able to submit comments even if that board member cannot attend; if it is ok to submit comments, then the section does not need to be rewritten and can be deleted.

Mayor Spencer noted the consensus is to delete the section.

Public comment by policy body members:

Vice Mayor Matarrese stated the Council could remove any member of a board, and staff could provide City policy to the member during deliberations; the OGC recommendation should stand; he does not think there should be prohibition.

In response to Councilmember Ezzy Ashcraft's inquiry, the City Attorney stated the Recreation and Park letter to the Council regarding the EBRPD was publicly available; the EBRPD had the ability to see the letter.

The Interim Assistant City Manager clarified that the letter went directly to the Council and was not distributed to EBRPD individual members.

Councilmember Ezzy Ashcraft stated that she is reluctant to craft a provision which focuses on one instance that cannot be recalled clearly; in the case of litigation, things that would undermine the Council's position should not be done; there will be a variety of differing opinions; she concurred with Vice Mayor Matarrese that the Council always has the prerogative to remove a board or Commission member; stated there should be language clear enough for when the line is crossed.

Vice Mayor Matarrese stated the situation that was described was a legitimate difference of opinion, the policy seems to be trying to squash that.

In response to Councilmember Ezzy Ashcraft's inquiry, Vice Mayor Matarrese stated he does not think the policy should be part of the Sunshine Ordinance; the policy is part of the handbook for new Commissioners and should be removed.

Councilmember Oddie stated sending letters to outside organizations which undermine the Council's policy or position in litigation is inappropriate, but advisory bodies should be allowed to send letters directly to the Council with their opinions; the Council should have the ultimate decision regarding policy making.

Councilmember Daysog stated language that sets ground rules is necessary; members of policy bodies are there to vet a range of issues and submit recommendations to Council; Council makes the final decision; Council direction cannot be undermined by further contribution from the bodies that state otherwise; members should be clear regarding what is their personal view and what is the official City position.

Mayor Spencer stated that she concurs with Vice Mayor Matarrese; she is concerned about limiting free speech and the body's ability to do their job; she would want to hear from advisory boards; decisions get reviewed and changed when advisory bodies provide input.

Councilmember Oddie stated that he does not want to restrict bodies from saying something; the bodies should have the right to write a letter to Council.

In response to Councilmember Ezzy Ashcraft's inquiry, Councilmember Daysog stated an advisory board member who expresses an opinion to Council or another entity on a subject ought to be clear as to the Council's position and if the person is expressing a personal opinion on the subject.

Councilmember Ezzy Ashcraft stated the letter was written from the advisory body as a whole.

Councilmember Daysog stated expression from the body as a whole countermands the Council's position and should not be encouraged; individuals can express their personal opinions separately, once Council has made a decision, it stands.

Councilmember Oddie stated anyone should be able to complain to the Council.

Vice Mayor Matarrese stated a body sending letters as representative of the City's position should be prohibited.

Councilmember Daysog stated the simple test is determining whether the expressed opinion is from an individual or from the body as a whole and the extent of representing the City's position.

Mayor Spencer summarized the policy; inquired whether the Council agrees.

Councilmember Ezzy Ashcraft stated the policy should go back to the drafters for clarification.

Councilmember Oddie stated the Council should be open, and should not stifle any criticism; letters that are on letterhead and seem to be representative of the City is inappropriate.

The Interim City Manager stated internal dialogue is okay, external dialogue is problematic.



Mayor Spencer stated the policy body could send a letter to Council as opposed to a third party.

The City Attorney clarified it is not within the authority of the advisory body to critique the final decisions of the City Council unless asked by Council; Council is the final policy maker and the advisory body should not reagendaize the item; there is a distinction between individuals and the body as a whole.

Mayor Spencer stated staff will come back with revised language based on Council comments.

#### Opinions of public concern:

In response to Mayor Spencer's inquiry, the City Attorney stated the issue is tied into what was already discussed; unless there are additional thoughts, staff will return with revised language.

Councilmember Ezzy Ashcraft inquired why public employees and appointed officials are included in the same provision.

The Assistant City Attorney responded the section merged public employees and public officials; staff's intent was to separate the two so different standards are applicable to both; the OGC felt neither was necessary; the section is somewhat redundant to the previous section which only addressed members of the policy body.

In response to Councilmember Ezzy Ashcraft, the Assistant City Attorney stated there is case law which attempts to define the line in terms of what a public employee can or cannot do; the OGC recommends deleting the section regarding public employees to be handled under disciplinary matters elsewhere.

Mayor Spencer stated the consensus is to delete the section.

#### Responsibilities of Staff:

In response to Mayor Spencer's inquiry, the Assistant City Attorney stated the language in Subsection (d) of Section 2-92.2 would be revised to indicate the response does not come from the elected official and would come from staff designated to respond to public records requests.

In response to Councilmember Ezzy Ashcraft's inquiry, the Assistant City Attorney stated references to public officials in Subsection (d) would be removed and replaced with a more appropriate person to respond to public records act requests.

Mayor Spencer stated the responsibility of the elected official is to forward the inquiry to designated staff.

Vice Mayor Matarrese requested the OGC review timing to make sure a reasonable amount of days is allowed; stated there is a requirement in Section 2-93.6 which almost implies that there is constant monitoring of violations; he would like the OGC's thoughts on the annual report.

#### Training Requirements:

Mayor Spencer stated Council is okay with the recommendation on training requirements.

Councilmember Oddie stated there should be a deadline regarding filing complaints.

Mayor Spencer inquired whether the 15 day deadline should be expanded.

Vice Mayor Matarrese stated he would like the Commissions' view; the 15 day deadline is pretty tight; a longer period could be considered.

Councilmember Oddie stated reviewing the ordinance is the OGC's role; he would not give direction that the ordinance should be changed.

Mayor Spencer stated she is comfortable with expanding the deadline.

Councilmember Ezzy Ashcraft stated that she would like to hear what the OGC thinks; the Council should try not to manage the OGC.

Mayor Spencer stated Council comments will be shared with the OGC and return with recommendations.

Councilmember Daysog stated the Sunshine Ordinance was a game changer in Alameda, improving public dialogue and input.

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(15-591) Mayor Spencer stated a motion is required to consider the remaining items: the wetlands mitigation bank [paragraph no. 15 -592 ], the development strategy for the Enterprise District [paragraph no. 15 -593 ], a lease with CSI [paragraph no. 15 -594 ], and a lease with Power Engineering [paragraph no. 15 -595 ]; inquired which items need to be addressed tonight.

The Interim City Manager responded the leases with CSI and Power Engineering [paragraph nos. 15-594 and 15-595 ] need to be done; staff would like to do the development strategy for the Enterprise District [paragraph no. 15 -592 ]; the wetlands mitigation bank [paragraph no. 15 -593 ] could be moved.

Mayor Spencer noted there is a speaker on the wetlands mitigation bank and the speaker was already asked to return before.