



City of Alameda

Staff Report

File Number:2015-2034

City Council

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

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. (City Attorney 2310)

To: Honorable Mayor and Members of the City Council

From: Janet C. Kern, City Attorney

Re: 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

BACKGROUND

In 2012, after nearly a year's study and the involvement of numerous residents, the City Council adopted what is called the City's "Sunshine Ordinance", codified in Chapters 2-91 and 2-92 of the Municipal Code. As set forth in the Ordinance, it was developed to codify the City's public policy concerning public participation in the deliberation of the City's elected and advisory bodies; supplement the state law (the Ralph M. Brown Act and Public Records Act (the Brown Act)) concerning open government; and demonstrate the Council's commitment to an open, democratic and transparent City government. Its goal is to ensure that residents have timely access to information, opportunities to address elected and advisory bodies prior to decisions being made and provide easy and timely access to public records. The Ordinance also established an Open Government Commission (Commission) to oversee and enforce the Ordinance, including the authority to impose fines for violations. The Ordinance requires that employees and officials who are required to file statements of economic interests affirm annually that they have read the Ordinance and that they receive training on the Ordinance, to be provided by the City Attorney's Office.

As the Sunshine Ordinance requires, in June 2014 the City Attorney's Office conducted two training sessions on the Ordinance. Both sessions were taped and the City Clerk's Office retained the earlier one for those elected and appointed officials, and City employees, who were unable to attend the training sessions or who were elected/appointed/hired after the training sessions were conducted. Having spent considerable time reviewing the substance of the Ordinance in preparation for the

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

training, the City Attorney's Office saw some room for clarification of and improvement to the Ordinance. Accordingly, the City Attorney's Office prepared draft amendments to the Ordinance and presented those amendments to the Open Government Commission in October 2014, February 2015 and March 2015.

For the most part, the Commission agreed with the revisions to the Ordinance and recommended that the City Council consider and adopt the revisions. The proposed Ordinance revisions are attached for Council's consideration and include the redlined changes to the existing Ordinance. To assist the Council, where sections have been moved, where material has been added to or deleted from the Ordinance, or where staff is recommending Council adopt language somewhat different than what the Commission has recommended, staff has presented in [brackets] a brief explanation as to the move, addition or deletion, or changes from the Commission's recommendations. Moreover, the more substantive changes to the Ordinance are discussed below.

DISCUSSION

1. Use of Electronic Communication Devices. Currently, there is a subsection in the Ordinance's "Findings" (section 2-90.2 (f)) that provides that it is not in the public's interest to have private communications occur between decisions makers and a limited number of individuals and therefore at public meetings, cell phones and other electronic communications including email, text and instant messaging shall be turned off during public meetings.

Staff had two concerns with this. First, this provision is in the "Findings" section in the Ordinance and hence easy to overlook; staff believes it should be in a "substantive" section of the Ordinance rather than in the Findings. Second, because the City is trying to go paperless, most elected and appointed officials use City issued or personal iPads to access agenda materials. iPads, of course, can be used to send email, texts, instant messaging and the like. It seemed to staff that this provision, in addition to being moved, should attempt to address this apparent conflict. Accordingly, staff moved the provision to a new Section 2-91.4 (h) and added "The use of electronic communication devices, other than for the purpose of a member's accessing agenda materials that are on a member's iPad or laptop computer shall be prohibited during meetings."

The Commission, however, felt that this subsection as drafted was too narrow and did not reflect today's technological reality that elected and appointed officials should be able to use their personal smart phones or iPads during a meeting to access information relevant to the subject matter then under discussion but should not be allowed to use such devices to send or receive information to/from inappropriate sources, such as third parties. For example, an official may want to access electronically a portion of the City's Municipal Code, even though such portion is not part of the agenda materials. The Ordinance, both in its current form and as staff had revised it, would not allow that.

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

Staff continues to recommend the language as originally proposed. If the additional language recommended by the Commission were adopted, there would no longer be a bright line rule as to what is/is not permitted and members of the public may question what information elected and appointed officials are in fact receiving and/or sending when it comes to their use of electronic communication devices at public meetings.

2. The Definition of Meeting and Policy Body. The Commission expressed concern that the definition of “meeting” under the Sunshine Ordinance was different than that under the Brown Act. The Commission was also concerned that the Sunshine Ordinance uses the term “Policy Body” to mean elected and advisory bodies but the Brown Act uses the term “legislative bodies” to embrace both elected and appointed officials. In both instances, the Commission was concerned that the differences could lead to confusion. For example, the Ordinance in Section 2-91.1 (b)(1), defines meeting, in part, to mean “a congregation of a majority of the members of a policy body at the same time and place.” The Brown Act, on the other hand, in Gov. Code, section 54952.2 (a), defines meeting to mean “any congregation of a majority of the members of the legislative body at the same time and location, including teleconference locations as permitted under Section 54953, to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the legislative body. Moreover, the definition of “Policy Body” under the Ordinance (Section 2-91.1 (d)) is essentially the same as “Legislative Body” under the Brown Act. Gov. Code, Section 54952.

After discussion, the Commission was satisfied there was no compelling reason to revise the definition of “meeting” or “policy body” under the Ordinance to track the definitions in the Brown Act. The Commission, however, recommended language be added to the Ordinance to reflect that the definitions were the same except where the definition, in the case of a “meeting” (more restrictive) or, in the case of “policy body” (broader definition), the more restrictive (as related to meetings) or the more broad (as related to policy bodies) would apply. For example, under the Ordinance, Section 2-91.1 (b)(4)(C), a majority of the policy body may not attend a social, recreational or ceremonial meeting conducted in a venue, such as a restaurant, where public access is permitted, only if consideration is provided. The Brown Act has no such prohibition. Staff has added the clarifying language to the definitions of meeting and policy body.

3. Policy Body Members Submitting Comments When Not Present at the Meeting. The Sunshine Ordinance, in Section 2-91.6, provides that persons who are unable to attend the public meeting or hearing may submit written comments and those comments will be brought to the attention of those conducting the meeting. An issue came up at an advisory board meeting as to whether a member of such body who was unable to attend a meeting may nevertheless submit written comments about matters that the board would consider at that meeting. Staff’s sense is that should not be permitted but could point to no ordinance or policy to prohibit it.

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

Staff analogizes the situation to a board member who has disqualifying financial conflict of interest. In that case, the member must not only remove him/herself from the dais when the item is under discussion but also must not attempt in any way to influence the other decision makers, e.g., by addressing the board at the meeting (unless the member's own business or property is affected.) Moreover, since a board member should make a decision only after considering all of the comments of the public, the staff and other board members, for the absent board member to express his/her views in written comments to the board before considering all of the comments of the public, staff and other board members, could call into question the fairness of the process.

Staff therefore revised Section 2-91.6 to prohibit an absent policy body member from submitting written comments to the policy body regarding the subject of the meeting or hearing except when the absent member's own business or property is affected.

4. Public Comments by Members of Policy Bodies. The Ordinance, in Section 2-91.17, states that every member of a policy body retains the full constitutional rights of a citizen to comment publicly on governmental actions, including those of the policy body on which the member sits and that policy bodies shall not sanction or deprive members from expressing their views. Staff was concerned that this might lead to advisory bodies, as a whole, taking formal action, such as writing letters to an outside organization, that contradicts a policy or position that the City Council had adopted. Staff also wanted to clarify that while advisory policy body members retain First Amendment rights, since the City's Charter provides a City Council majority may remove any member from that policy body (Charter Section 10-9), Section 2-91.17 was not intended to create any new private cause of action should a member be removed.

The Commission questioned why this section was even in the Ordinance but ultimately agreed it should remain, along with the staff added language stating that the section should not be construed to create a cause of action by a member of an advisory board removed by the City Council. The Commission did recommend that the sentence prohibiting advisory bodies from taking formal action that would contradict adopted Council policy, be deleted. Because it seems to staff to be incongruous for a subordinate body to draft a letter to an outside organization that contradicts a position or policy that the elected representatives have adopted, staff recommends the sentence remain.

5. Opinions of Public Concern. Somewhat akin to Section 2-91.17 discussed above, Section 2-92.6 provides that City employees and advisory board members shall not be disciplined or discouraged from expressing personal opinions on matters of public concern so long as the opinion does not purport to represent the opinion of "the City", the employee's department or the member's board. As staff understands it, the purpose of this section is to not penalize public employees and appointed officials from expressing personal opinions when those matters are of "public concern" so long as it is clear such opinion does not represent that of

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

the City, the employee's department or the appointed official's appointed body. The problem with the section as written is that, in part, it merges the employees and advisory board members, although different standards apply to each. Another problem is that the line is not always bright under what circumstances a public employee may exercise his or her opinion about a matter of "public concern" and still have First Amendment protection from being disciplined. While leaving the section largely intact, staff has separated the employees from the advisory board members and has in very general terms tried to provide guidance as to when First Amendment protection applies to statements made by public employees.

The Commission was of the opinion that this entire section should be deleted from the Ordinance in that, as to advisory board members, the issue was sufficiently addressed in Section 2-91.17 and, as to public employees, the issue should be addressed in personnel rules rather than in the Sunshine Ordinance. If, however, the section were to remain in the Ordinance, the Commission recommended it be moved from Chapter 2-92 (which concerns access to public records) to Chapter 2-91 (public access to meetings) and follow Section 2-91.17.

Staff does not disagree that there is conceptual overlap between Section 2-91.17 and this section but this section is more specific in its efforts not to discourage public employees or advisory body members from expressing themselves on matters of public concern with the express caveat that the section is not intended to provide rights to public employees or to advisory body members beyond those recognized by law or agreement. Accordingly, staff recommends that the section, as revised, remain in the Ordinance but be moved to Section 2-91.18.

6. Declaration by and Training Requirements for Form 700 Filers. The Ordinance currently requires those public officials and employees who are required to file FPPC Form 700 not only to declare under penalty of perjury that they have read the Sunshine Ordinance but also to attend an annual training on the Ordinance. Given that typically there will be few, if any, substantive changes to the Ordinance on an annual basis, and given that officials and employees must declare annually that they have read the Ordinance, it seems that annual training on the Ordinance is not necessary. This is supported by the fact that since the adoption of the Ordinance, there have been no formal complaints filed concerning violations of the Ordinance. Staff therefore recommends that the training be provided every third year with the caveat that new employees and newly elected or appointed officials be required to review the tape of the training (the most recent of which was in May 2014) within six months of their appointment or election. The Commission agreed with that recommendation.

FINANCIAL IMPACT

Adoption of this Ordinance should have no impact on the City's General Fund.

City Council

Agenda Date: 10/6/2015

File Type: Regular Agenda Item

Agenda Number: 6-C

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

This draft ordinance amends the Municipal Code. Its intent is to strengthen and clarify the City's goal to have its government be transparent and to ensure public access to meetings and public records.

ENVIRONMENTAL REVIEW

Adopting this ordinance is not subject to environmental review in that it is not a "project" for purposes of the California Environmental Quality Act (CEQA). The ordinance is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment. CEQA Guidelines, section 15378 subd. (b)(5).

RECOMMENDATION

Introduce an 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.

Respectfully submitted,
Janet Kern, City Attorney

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Redline Changes to the Sunshine Ordinance
2. Current Sunshine Ordinance
3. Open Government Commission Minutes from October 6, 2014, February 2, 2015
and March 30, 2015

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

“2-90.2. Findings

The City Council finds as follows:

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

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

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

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

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

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

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

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

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

“2-91.1. Definitions

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

(Subsection (a), no change.)

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

(Paragraphs 1-4), no change.)

[The Commission recommended that the Brown Act definition of “meeting” be included in the definition section of the Ordinance but because the definition of “meeting” under the Ordinance is more restrictive, for example, the Ordinance prohibits social, recreational or ceremonial meetings at

accommodations, such as restaurants, where public access is possible only if persons must make a purchase, that point needed to be expressed.

(c) "Passive meeting body" shall mean:

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

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

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

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

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

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

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

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

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

"2-91.2 Passive Meetings.

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

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

- (1) Such ~~meetings~~gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the ~~meeting~~gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the ~~meeting~~gathering shall be accessible to such inquirers as a public record.
- (2) Such ~~meeting~~gathering need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
- (3) Such ~~meetings~~gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion,

entertain such questions or comments from members of the public~~spectators~~ as may be relevant to the business of the meeting~~gathering~~.

~~(4) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a nongovernmental advisor to, a member of a policy body, the Mayor, the City Manager, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City of Alameda. [This subsection is either duplicative (section 2-91.1 (b)(4)(C)) or more descriptive of a "passive meeting body" that has been defined in section 2-91.1 (c); hence it is being deleted.]~~

~~(4) Passive meeting bodies~~Gatherings defined in subdivision (4) may hold closed sessions under circumstances allowed by Article.

~~(5) Gatherings defined in subdivision (4) may hold closed sessions under circumstances allowed by this Article (b) Any entity performing a function delegated by the City shall abide by subsection (a).~~

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

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

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

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

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

- e) Meetings of passive meeting bodies as specified in Section 2-91.2 ~~(a)1-(d)(4)~~ of this article shall be preceded by notice delivered personally or by mail, e-mail, facsimile as reasonably requested by at least four weekdays before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the ~~passive meeting~~advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that ~~passive meeting~~advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than posting of an agenda pursuant to Section 2-91.5 if this article in the place used by the policy body which it advises, is required.

- (f) Special meetings of any policy body, including ~~passive meeting~~advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each

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

(Subsection (g), no change.)

(h) The use of electronic communication devices, such as cell phones or I-pads, that are capable of sending or receiving e-mail, texts, instant messages, etc., during meetings may lead to the public's perception that a member is receiving information relative to the subject matter at hand that other members and the public are not receiving, which is inimical to good government and transparency. The use of electronic communication devices, other than for the purpose of a member's accessing agenda materials that are on a member's I-pad or lap top computer, shall be prohibited during meetings. [Portions of this section were moved from Section 2-90.2 (f). The Commission recommended the second sentence read "The use of electronic communications devices, other than for the purpose of a member's accessing agenda materials that are on a member's I-pad or lap top computer or accessing information available on the internet, shall be prohibited during meetings." For the reasons set forth in the staff report, staff recommends that the "or accessing information available on the internet" not be included.

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

"2-91.6 Public Notice Requirements.

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

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

(Subsection (d), no change.)

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

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

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

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

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed for at least ten years. The City shall make such audio or video recording available via livestreaming, as well as archived in digital form at a centralized location on the City's website within seventy-two hours of the date of such meeting or hearing and for a period of at least ten years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above.

(1) At a minimum, the City shall provide video coverage of the following meetings:

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

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

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

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

"2-91.17 Public Comment by Members of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of governmental actions, including those of the policy body of which he or she is a member, except as provided in Section 2-91-6 (e). Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with perceived inconsistency of non-public discussions. In that

Section 10-9 of the City Charter provides that a City Council majority may remove any member of an appointed policy body, nothing provided herein is intended to prohibit the City Council from removing a member of an appointed policy body from that policy body, nor shall it be construed to provide rights to appointed policy body members beyond those recognized by law or to create any new private cause of action. Appointed policy bodies, moreover, may not take formal action nor undertake activity, such as writing a letter to outside agencies or organizations, that contradicts a policy or a position that the City Council has adopted or expressed.” [This is new material to clarify that although appointed officials may comment on issues of public concern, they serve at the pleasure of the City Council. In addition, for consistency, appointed bodies should not take public positions that contradicts Council policy. The Commission recommended the last sentence, “Appointed policy bodies, moreover, may not take formal action nor undertake activity, such as writing a letter to outside agencies or organizations, that contradicts a policy or position that the City Council has adopted or expressed.” be deleted. For the reasons in the staff report, staff recommends this sentence remain in the Ordinance in spite of differing from the Open Government Commission recommendation.]

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

“2-91.18 Opinions on Matters of Public Concern.

Public employees ~~and City board, commission or committee members~~ shall not be discouraged from or disciplined for ~~the expressing~~ on of their personal opinions on any matter of public concern but a public employee’s statement made under the employee’s official duties does not insulate the employee from discipline while not on duty; ~~Appointed Policy Body members shall not be discouraged from expressing personal opinions on any matter of public concern~~ so long as the opinion is not represented as that of the City, ~~the member’s Policy Body or any other Policy Body, department, board, commission or committee a~~ and does not materially misrepresent the position of the City, the member’s Policy Body or any other Policy Body. department, board, commission or committee’s position. Nothing in this section shall be construed to provide rights to public employees or to appointed Policy Body members beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary or other adverse action. [This section, as revised, has been moved from Section 2-92.6 because its placement makes more sense in this part of the Ordinance. The section has been revised to differentiate between public employees and appointed policy board members because different standards apply as to adverse action that may be taken against a public employee concerning statements on matters of public concern. The Commission has recommended that this section be deleted in its entirety from the Ordinance. For the reasons stated in the staff report, staff recommends the section, as revised, remain in the Ordinance in spite of differing from the Open Government Commission recommendation.]

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

“2-92.2 Responsibilities of Staff.

- (a) ~~The City Manager shall ensure that staff is trained regarding their obligations under this Ordinance.~~ The City Clerk shall be the City Custodian of Records and the City Manager shall designate a Custodian of Records for the Police Department. The City Clerk shall also designate in each department/office a Department Custodian of Records who shall ensure that all department staff who have contact with the public are prepared to provide written

and oral information to the public. [The deleted sentence has been moved to a new section 2-90.3.]

(Subsection (b), no change.)

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

(d) When a member of the public submits a request for information to any ~~employee~~paid or elected ~~official~~agent of the City, that ~~employee or elected official~~agent shall respond to said request within three (3) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt (except for unusual circumstances as described in subsection (c) above), of such referral. Requests submitted in person, via telephone or via e-mail or through the City website are considered requests.

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

(Subsection (f), no change.)

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

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

~~2-92.3 Responsibilities of the Mayor~~

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

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

""2-92.4 Notices and Posting of Information.

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

City Charter

Alameda Municipal Code

General Plan and Area Plans

Zoning Ordinance

Landmarks Preservation Ordinance

Sunshine Ordinance

Citizen's Guide to Public Information

Records Index

Records Retention Schedule

Council Rules of Procedure

Conflict of Interest Code

Statements of Economic Interest *

Executive Management Work Plans *

Capital Improvement Plans *

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

Budgets *

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

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

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

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

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

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

“2-92.5 Public Records Index.

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

(Subsection (b), no change.)

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

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

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

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

~~Public employees and City board, commission, or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the City, department, board, commission or committee and does not materially misrepresent the City, . Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. [This section, as revised, has been moved to a new section 2-91.18.]~~

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

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

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

of transmittal is included in the communications file and the reports, studies or analyses are readily available for review.

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

“2-92.13 Fees for Copying.

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

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

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

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

~~“2-92.15 Requests Made By Email:~~

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

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

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

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

ARTICLE VIII. - SUNSHINE ORDINANCE

2.90 - INTRODUCTION.

This sunshine ordinance has been developed to codify the City of Alameda's public policy concerning participation in the deliberations of the City's legislative bodies and to clarify and supplement the Ralph M. Brown Act and the California Public Records Act and expanding its application and effectiveness to local governments. It is an affirmation of good government; and a continued commitment to open and democratic procedures. It is an effort to expand our citizens' knowledge, participation and trust. As procedures of government change and evolve, so also must the laws designed to guarantee the process remains visible. In addition, this ordinance will establish a mechanism for enforcement.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2.90.1 - Goal.

An informed public is essential to democracy. It is the goal of the ordinance codified in this article to ensure that the citizens of Alameda have timely access to information, opportunities to address the various legislative bodies prior to decisions being made, and easy and timely access to all public records.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-90.2 - Findings.

The Alameda City Council finds as follows:

- a. It is government's duty to serve the public, reaching its decisions in full view of the public, except as provided elsewhere in this article.
- b. Elected City officials, commissions, boards, advisory bodies, task forces and other agencies of the City exist to conduct the people's business. This article is intended to assure that the deliberations of these bodies and the City's operations are in full view of the public.
- c. It is the City's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.
- d. The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to a democracy, and with very few exceptions, which this article will clarify, that right supersedes any other policy interest government officials may use to prevent public access to information. In those rare and unusual circumstances where the business of government may be conducted behind closed doors, those circumstances must be carefully and narrowly defined to prevent any abuse.
- e. This article is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the City of Alameda can be fully informed and thereby retain control over the instruments of local government in their city.
- f. In furtherance of these findings, as it is not in the public's interest to have private communications occur between decision-makers and a limited number of individuals, and in order to assure that all citizens have equal access to their government at public meetings, cell phones and other means of electronic communications including email, text, instant imaging, etc., shall be turned off during public meetings.

- g. As adopted, it is the intention of this article that members of the City Council who sit on separate boards and commissions, such as, but not limited to the ARRA and CIC, will adopt these rules and requirements for each of those bodies.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91 - PUBLIC ACCESS TO MEETINGS.

2-91.1 - Definitions.

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

- a. "City" shall mean the City of Alameda.
- b. "Meeting" shall mean any of the following:
 - 1. A congregation of a majority of the members of a policy body at the same time and place;
 - 2. A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 - 3. Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
 - 4. "Meeting" shall not include any of the following:
 - (a) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (b) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
 - (c) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.
- c. "Passive meeting body" shall mean:
 - 1. Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

2. Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited;
3. "Passive meeting body" shall not include a committee that consists solely of employees of the City of Alameda created by the initiative of a member of a policy body, the Mayor, or a department head;
- d. "Policy Body" shall mean:
 1. The Alameda City Council;
 2. Any other board enumerated in the Charter of the City of Alameda;
 3. Any board, commission, committee, or other body created by ordinance or resolution of the City Council;
 4. Any committee or body, created by the initiative of a policy body;
 5. Any standing committee of a policy body irrespective of its composition.
 6. "Policy Body" shall not include a committee which consists solely of employees of the City of Alameda, unless such committee was established by Charter or by ordinance or resolution of the City Council.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.2 - Passive Meetings.

- a. All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.
 1. Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.
 2. Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
 3. Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.
 4. Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Manager, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City of Alameda.
 5. Gatherings defined in subdivision 4 may hold closed sessions under circumstances allowed by this article.
- b. Any entity performing a function delegated by the City shall abide by subsection a.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.3 - Meetings to be Open and Public; Application of Brown Act.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.4 - Conduct of business; time and place for meetings.

- a. Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.
- b. Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City of Alameda or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City of Alameda.
- c. If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.
- d. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.
- e. Meetings of passive meeting bodies as specified in Section 2-91.1d.4 of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least four (4) weekdays before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 2-91.5 of this article in the place used by the policy body which it advises, is required.
- f. Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least seven (7) days before the time of such meeting as specified in the notice, with the exception of any urgent matter beyond the control of the City. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting.

- g. If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 2-91.5c, and mailed notice if sufficient time permits.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.5 - Agenda Requirements; Regular Meetings.

- a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. These time requirements shall apply to posting on the internet.
- b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda or, if such documents are of more than one (1) page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- c. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.
- d. All agendas shall be posted on the City's website and the City's cable channel and available at the Alameda Public Library. Complete agenda packets for each body shall be posted on the City's website to the extent fiscally and technologically feasible and shall be available for review at the Alameda Public Library and at the City Clerk's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.
- e. All documents material to an agenda item must accompany the agenda.
- f. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- g. Notwithstanding subdivision d., the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
 - 1. Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
 - 2. Upon a good faith, reasonable determination by a two-thirds (2/3) vote of the body, or, if less than two-thirds (2/3) of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision a.

The item was on an agenda posted pursuant to subdivision a. for a prior meeting of the body occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

- h. Each policy body shall ensure that agendas for regular and special meetings are made available upon request to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.
- i. Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION.

- j. The Council Agenda will limit ceremonial presentations and proclamations to no more than fifteen (15) minutes. If more time is needed, other arrangements should be made.
- k. Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Open Government Commission. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.6 - Public Notice Requirements.

- a. Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.
- b. The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.
- c. If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.
- d. The City shall maintain an email notification list in order to allow any individual to sign up to automatically receive meeting agendas, updates on projects, notification of issues that impact entire neighborhoods.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.7 - Agenda Disclosures; Closed Sessions.

- a. In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

1. With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

Applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

2. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property:

Person(s) negotiating:

Under negotiation:

Price or Terms of payment or Both.

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

3. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation (check one):

As defendant (legal action being brought against the City or its agent or official)

As plaintiff (City initiating legal action)

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of

process upon one (1) or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one (1) instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As plaintiff City Initiating legal action" or "As defendant legal action being initiated against City's spaces or both as appropriate.

4. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

5. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (specify by name)

Discussion will concern: (Specify closed session description used by joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives)

6. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Number of employees affected:

Employee Actions must always be listed under one of the Public Employee agenda items and must list the affected employee.

7. With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH LABOR NEGOTIATORS

Name and title of City's negotiator:

Organization(s) representing:

Executive Management

Police Officers

Police Nonsworn

Firefighters

International Brotherhood of Electrical Workers (IBEW)

Management and Confidential Employees Association

Alameda City Employees Association

Unrepresented Employee: (specify title of unrepresented employee)

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.8 - Additional Requirements for Closed Sessions.

- a. Minutes of all closed sessions of any policy body covered by this article, with the exception of closed sessions on Charter Officer performance shall be taken by the City Clerk or designee. The City Attorney shall semi-annually make a determination of whether any closed session minutes should continue to be exempt from disclosure, based on whether disclosure would be detrimental to the City, and shall provide a report to Council.
- b. Each agenda item for a policy body covered by this article that involves existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this article that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed, unless the City Attorney determines that lifting the exemption from disclosure would be detrimental to the City.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.9 - Agendas and Related Materials; Public Records.

- a. Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this article.
- b. Records which are subject to disclosure under subdivision a. and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- c. Records which are subject to disclosure under subdivision a. and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.
- d. Records which are subject to disclosure under subdivision a. and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.
- e. A policy body may charge the direct cost of duplication for a copy of a public record prepared for consideration at a public meeting. There shall be no charge for providing digital versions of documents (for example, PDFs).

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.10 - Closed Sessions; Permitted Topics.

All information is public, though a policy body may, but is not required to, hold closed sessions:

- a. With an applicant and applicant's attorney, if any, when a policy body determines it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, and consistent with the requirements of Government Code Section 54956.7.
- b.

With its negotiator prior to the purchase, sale, exchange or lease of real property by or for the City to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

- c. Based on advice of the City Attorney, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:
 - 1. An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or
 - 2. A point has been reached where, in the opinion of the policy body on the advice of the City Attorney, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.
 - 3. A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.
- d. To discuss a claim for liability or losses consistent with Government Code Section 54956.95.
- e. Based on the advice of the City Attorney, receive, discuss, and take action concerning information obtained in a closed session of a joint powers agency, consistent with Government Code Section 54956.96.
- f. With the Attorney General, district attorney, City Attorney, or chief of police, or their respective deputies, or a security consultant or a security operations manager on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.
- g. To consider the appointment, employment, evaluation of performance, discipline, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.
- h. With the City's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation, consistent with Government Code Section 54957.6.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.11 - Statement of Reasons for Closed Sessions.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only

those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 2-91.7 of this article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 2-91.7 of this article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 2-91.7 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.12 - Disclosure of Closed Session Discussions and Actions.

- a. After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.
- b. A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:
 1. *Real Property Negotiations.* Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision b. of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.
 2. *Litigation.* Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervener or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.
 3. *Employee Actions.* Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal,

unless the City Attorney determines that disclosure would be detrimental to the City. "Dismissal" within the meaning of this article includes any termination of employment at the will of the employer rather than of the employee, however characterized.

4. *Collective Bargaining.* Any collectively bargained agreement shall be made publicly available at least fifteen (15) calendar days before the meeting of the policy body to which the agreement is to be reported. At a City Council meeting no less than thirty (30) days before the initiation of bargaining of a new or extended collectively bargained agreement, the City Manager shall report the initiation of bargaining and the collectively bargained agreement shall be publicly made available.
- c. Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.
- d. A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.
- e. The City Attorney's office shall prepare and present on the City Council Consent Calendar, a list of documents which have been determined to be public after previously being determined to be unavailable to the public. This list shall be presented at least semi-annually and available on the City's website.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.13 - Barriers to Attendance Prohibited.

- a. No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the City Council, a board or commission enumerated in the City Charter or Municipal Code, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.
- b. Each board and commission enumerated in the Charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least forty-eight (48) hours before the meeting, except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week.
- c. Each board and commission enumerated in the Charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.
- d.

Each board and commission enumerated in the City Charter or Municipal Code shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

- e. The City Council shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable Alameda residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the City Clerk at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The unavailability of a translator shall not affect the ability of the City Council or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the City Council shall, as soon as possible thereafter, review the provisions of this subsection.
- f. Meetings of public bodies shall adjourn no later than 11:00 p.m., unless the meeting is extended by a majority vote of the body.
 - 1. If the body extends three (3) meetings in a row past 11:00 p.m., the body shall also be required, as a part of the motion to extend the meeting, to increase the number of regular meetings of the council, board or commission in order to accomplish the business before the body before 11:00 p.m.
 - 2. No new items will begin after 10:30 p.m. unless a supermajority of the body votes to allow the items to be heard. Nominations, announcements, and Council communications may continue to be heard after 10:30 p.m. whether or not a supermajority of the body has voted to extend the meeting.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

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

- a. Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.
- b. Each board and commission enumerated in the Charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City.
- c. Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording

available via livestreaming, as well as archived in digital form at a centralized location on the City's website within seventy-two (72) hours of the date of the meeting or hearing and for a period of at least ten (10) years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection c. shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection b. above.

1. At a minimum, the City shall provide video coverage of the following meetings:
 - (a) City Council and all bodies associated with its members including:
 - (1) Alameda Reuse and Redevelopment Authority (ARRA),
 - (2) Community Improvement Commission (CIC),
 - (3) Alameda Public Finance Authority (APFA),
 - (4) Housing Authority Board of Commissioners (HABOC);
 - (b) Planning Board;
 - (c) Transportation Commission (TC);
 - (d) Economic Development Commission (EDC);
 - (e) Historic Advisory Board (HAB);
 - (f) Recreation and Park Commission;
 - (g) Open Government Commission.
2. All video of these meetings will be posted on the City's website for easy public access.
3. Meetings that are held in locations where video is not possible, will be recorded in a digital audio format and made available in the same internet archive as videos for the appropriate body.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.15 - Public Testimony.

- a. Every agenda for regular meetings shall provide, before undertaking regular business and again at the end of the meeting, an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 2-91.5e of this article. The Council agenda shall provide up to fifteen (15) minutes for this use. However, in the situation of the City Council, the agenda does not have to provide an opportunity for members of the public to address the Council on any item that has been considered by a subcommittee comprised only of Councilmembers at a public meeting, unless the item has been substantially changed since the subcommittee heard the item. The City Council shall have the authority to determine whether the item has been substantially changed.
 1. If the number of speakers interested in speaking under "Public Comment/Non-Agendized Items" exceeds the 15-minute period, additional time will be made available at the end of the meeting.
 2. In the instance where more speakers than can be accommodated within fifteen (15) minutes have signed up to speak, the City Clerk's office will randomly select the order in which speakers will be chosen to speak at the beginning of the meeting.

b.

Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have fifteen (15) minutes to present their case. The spokesperson for the proponent(s) shall have five (5) minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.

- c. A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision b. of this section.
- d. To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.
- e. All staff reports, presentations, comments from parties with a direct connection to the agenda item, and council questions will be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues before the board, commission or council.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.16 - Minutes.

The clerk or secretary of each board and commission enumerated in the Charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than one hundred fifty (150) words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten (10) working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten (10) working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-91.17 - Public Comment by Members of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or

appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this article.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92 - PUBLIC INFORMATION.

2-92.1 - Release of Documentary Public Information.

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.2 - Responsibilities of Staff.

- a. The City Manager shall ensure that staff is trained regarding their obligations under this article. The City Clerk shall be the City Custodian of Records and the City Manager shall designate a Custodian of Records for the Police Department. The City Clerk shall also designate in each department/office a Departmental Custodian of Records who shall ensure that all department staff who have contact with the public are prepared to provide written and oral information to the public.
- b. The City Clerk "City Custodian of Records" shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The Custodian of Records of the Police Department shall during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The custodians may establish reasonable limits to ensure orderly functioning of the office and protect records from theft or damage.
- c. Every "Custodian of Records" shall, as soon as possible and within ten (10) days following receipt of a request for a Public Record, comply with such request. If a Custodian of Records believes the record requested is exempt from disclosure, he/she shall state in writing the express provisions of law that justify withholding the record.
- d. When a member of the public submits a request for information to any paid or elected agent of the City, that agent shall respond to said request within three (3) business days by providing the information or explaining how, when, and by whom the information will be provided, and who shall then have the responsibility of responding within ten (10) days of receipt of such referral. Requests submitted in person, via telephone, or via email or through the City website are considered requests.
- e. Nothing in this section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communication between members of the public, staff, and members of Legislative Bodies.
- f. While not required, a written request is recommended in order to create a paper trail for the convenience and reference of the requestor.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.3 - Responsibilities of the Mayor.

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

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.4 - Notices and Posting of Information.

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

City Charter;

Alameda Municipal Code;

Building Code;

General Plan and Area Plans;

Zoning Ordinance;

Landmarks Preservation Ordinance;

Sunshine Ordinance;

Citizen's Guide to Public Information;

Records Index;

Records Retention Schedule;

Council Rules of Procedure;

Conflict of Interest Code;

Statements of Economic Interest;

Executive Management Work Plans;

Capital Improvement Plans;

Agendas and Minutes of the Meetings of all Legislative Bodies;

Budgets.

- b. At a minimum, within six (6) months after enactment of this article, each Legislative Body shall have posted on the City's website all current meeting Agendas, minutes, and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each Legislative Body shall make reasonable efforts to ensure that its portion of the City's website is updated on at least a weekly basis.
- c. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA),

shall be posted on the City's website and made available at designated City offices with copies available for borrowing by the public at each Alameda public library.

- d. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.
- e. 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 databases to ensure consistency, equity, timing, and extent of noticing for meetings and other matters of public interest.
- f. Right to notice regarding matters that may impact the physical environment shall be equivalent for residential and commercial tenants and property owners.
- g. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for meetings on said projects.
- h. *Online Public Records Repository.* The City shall maintain an online repository of public documents on a publicly accessible website. The repository will allow the public to download any document in the repository in its entirety.
 - 1. Documents in the repository shall be searchable at a minimum by title, date, author(s), and related City department(s).
 - 2. Public documents should routinely be published to the public records repository by default. Documents are not required to be added to the repository where it would be cost prohibitive to do so.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.5 - Public Records Index.

- a. The City shall maintain a Public Records Index that identifies types of records maintained by departments and offices, including those of elected officials and Legislative Bodies. The index shall be available to the public and organized under a uniform reference system that permits a general understanding of the types of records maintained, in which offices and departments, and for what periods of retention. The index shall be sufficient to aid the public in making a focused inquiry regarding public records. The index shall be posted on the City's website and available in written form in the City Clerk's office and in each Alameda public library.
- b. The index shall classify each type of record as either:
 - 1. "Open," meaning accessible to the public without exception and subject to immediate disclosure;
 - 2. "Partially open," meaning possibly containing some exempt content, such that review is required;
 - or
 - 3. "Has been determined exempt" meaning that disclosure of the document may be restricted by State or Federal law. Each classification of a record as "partially open" or "exempt" shall identify the specific legal authority relied upon in assigning that classification.
- c. The City Clerk Custodian of Records shall be responsible for preparing and maintaining the index. He/she shall report on the progress of developing the index to the Commission on at least a quarterly basis until it is completed, which shall be no later than twelve (12) months from the enactment of the ordinance codified in this article. In identifying the types of records to be maintained, each

department, office, Legislative Body, and public official is encouraged to solicit public participation in developing a meaningful Records Index. The completed index shall be reviewed by the Open Government Commission and submitted for approval by the City Council.

- d. The Index shall be periodically reviewed by staff and Open Government Commission for accuracy and completeness.
- e. A list of any change in the Index shall be noted on the City's website.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.6 - Opinions on Matters of Public Concern.

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

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

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

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

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.8 - Non-Exempt Public Information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

- a. *Drafts and Memoranda.* No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.
- b.

Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

- c. *Personnel Information.* None of the following shall be exempt from disclosure under Government Code Section 6254(c):
 - 1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:
 - (a) Sex, age and ethnic group;
 - (b) Years of graduate and undergraduate study, degree(s) and major or discipline;
 - (c) Years of employment in the private and/or public sector;
 - (d) Other non-identifying particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.
 - 2. The job description of every employment classification.
 - 3. Any adopted memorandum of understanding between the City and a recognized employee organization.
 - 4. Individual employee salaries.
- d. *Law Enforcement Information.*
 - 1. The Alameda Police Department and its Custodian of Records shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Redacted law enforcement information may include:
 - (a) The names of juvenile witnesses or suspects;
 - (b) Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
 - (c) The identity of a confidential source;
 - (d) Secret investigative techniques or procedures;
 - (e) Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation;
 - (f) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely; or
 - (g) Any information required by State or federal law is to be kept confidential.

The Alameda Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

- e. *Contracts, Bids and Proposals.* Contracts, contract bids, responses to requests for proposals and all other records of communications between the City and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.
- f. *Budgets and Other Financial Information.* The following shall not be exempt from disclosure:
 - 1. Any proposed or adopted budget for the City, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, or their standing committees.
 - 2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.9 - Disclosure Requests.

- a. A Custodian of Records shall make good faith efforts to comply within a shortened timeframe that has been reasonably justified by a records requester by the facts of his or her situation, e.g. the requester needs the documents for a hearing scheduled the next day. A request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than ten (10) business days unless the requestor is advised in writing within three (3) business days that additional time is needed to determine whether:
 - 1. The request seeks disclosable public records or information;
 - 2. The requested records are in the possession of the department processing the request;
 - 3. The requested records are stored in a location outside of the department;
 - 4. The requested records likely comprise a voluminous amount of separate and distinct writings;
 - 5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.
- b. Additional time shall not be permitted to delay a routine or readily answerable request.
- c. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but may be advised that providing such information may help the City assist the person finding all documents responsive to their request.
- d. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection a. of this section shall be sent to the requestor if an address has been provided.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.10 - Immediate Disclosure Request.

- a. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, and including public records requests, within the past calendar year, or (2) public records that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.
- b. An immediate disclosure request shall be satisfied no later than three (3) business days unless the requestor is advised in writing within two (2) business days that additional time is needed because of the volume of records sought.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.11 - Withholding Restrictions.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted or withheld information or documents shall be explained in writing.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.12 - Justification for Withholding.

Any withholding of information shall be justified, in writing, as follows:

- a. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- b. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- c. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.13 - Fees for Copying.

- a. No fee shall be charged for making public records available for inspection.
- b. No fee shall be charged for a single copy of a current meeting agenda.
- c. A fee may be charged for non-digital copies of:
 1. Single or multiple copies of past meeting agendas or any agenda-related materials;
 2. Multiple copies of a current meeting agenda; and
 3. Any other public record copied in response to a specific request.
- d. The City may, rather than making copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.
- e. All drafts or final environmental impact reports and environmental impact statements shall be posted either on the City's website or on the consultant's website.
- f.

In addition to the copies routinely required for City official or staff use, the City shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to twenty (20) copies of documents such as environmental impact reports. These copies will be provided on a first-come, first-serve basis at no cost to members of the public. The City Manager or designee shall determine if and how many extra copies will be required on a case by case basis.

- g. If records requested are available or can be made available in electronic format, they will be provided as such at no cost. Electronic documents will be delivered via email or by posting on the City website. Requests for documents in their original electronic format will be respected unless cost-prohibitive to fully redact.
- h. All fees permitted under this section shall be determined and specified in the City of Alameda master fee schedule, as amended. When the cost of writing a receipt and collecting the fees required under this section would exceed the cost of the copies, the copying fee may be waived. The master fee schedule shall note the maximum amount that may be waived.
- i. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with state law.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.14 - Website Information.

Each department shall make an effort to ensure its portion of the City's website is kept current. Each department shall also post public documents that are of interest to a wide number of the public.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.15 - Requests Made by Email.

Records requests made by email must be acknowledged with an e-mail reply to the sender.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.16 - Policy Regarding Purchase and Use of Computer Systems.

- a. It is the policy of the City to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.
- b. Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:
 - 1. Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
 - 2. Implementing a system that permits paper reproduction of electronic copies of records.
- c. Nothing in this section shall be interpreted to require the City to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-92.17 - Policy Regarding Electronic Formats.

- a. Electronic formats used to represent public documents should be chosen so they are easily accessible to the public.
 1. Electronic documents will be published in a machine-processable format so that the public can sort, search, and transform the information to meet their needs. For example, text documents must be delivered such that the text itself is machine-processable and can be searched or processed by text-to-speech software. Documents originally in handwritten form are exempt from this requirement.
 2. Except in the case where the City can cite a significant overriding consideration, electronic formats shall be chosen such that they can be viewed on a variety of mainstream computing platforms using freely available software. Electronic formats susceptible to obsolescence and patent licensing restrictions and formats dependent on a single operating system or proprietary software program shall not be used.

Care must be taken with any electronic documents that have redactions. Some document formats retain a history of changes made, so while some content may appear to be deleted from a document it may be recoverable. Staff who perform redactions are responsible for understanding the implications of the document formats they are using and ensuring that redacted information is completely removed from the document.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93 - ENFORCEMENT PROVISIONS.

2-93.1 - Primary Regulatory and Enforcement Body.

The primary regulatory and enforcement body of the Sunshine Ordinance shall be the Open Government Commission formed pursuant to Section 2-22 (Open Government Commission) of Article II (Boards and Commissions).

(Ord. No. 3036 N.S., § 1, 11-1-2011; Ord. No. 3042, § 4, 1-3-2012)

2-93.2 - Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance.

- a. A complainant must file a complaint no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance.
- b. Upon filing of an official complaint form (including submittal of all evidence) with the City Clerk's Office, the complainant and the City (as respondent) shall appear at a hearing scheduled no later than thirty (30) business days. During this hearing the Commission will provide the parties with the chance to present evidence and make arguments. The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing.
- c. No complaint will be accepted by the Commission against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.3 - Cure and Correction.

Nothing in this article shall prevent a body from curing or correcting an action. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or

supersede the challenged action after first taking any new public testimony. The time limits of the Brown Act shall not be tolled pending any action to cure an alleged violation of the Sunshine Ordinance.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.4 - Responsibility for Administration.

Only the City Council shall be responsible for the administration and coordination of the provisions of the Alameda Sunshine Ordinance, except to the extent that the City Manager carries out the responsibilities described in Section 2-92.2.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.5 - Department Head Declarations.

All City employees or officials who are required to file FPPC Form 700 shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least annually. Annual training shall be provided by the Alameda City Attorney's Office with the assistance of the Commission.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.6 - Annual Public Report.

The Commission shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of the Ordinance brought to its attention during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof and the location of all records relevant to each petition. With advance notice to City Clerk's Office, the Commission may also request a tally of records requests for statistical or comparative purposes.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.7 - Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

2-93.8 - Penalties.

- a. If the Commission finds a violation of Section 2-91, the Commission may order the action of a body null and void and/or may issue an order to cure or correct. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period.
- b. If the Commission finds a violation of Section 2-92, the Commission may order the City to comply. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period.
- c. Fines shall be used for records retention technology, and/or Sunshine Ordinance training and education.

- d. A person who makes more than two (2) complaints in one (1) 12-month period that are determined by the Commission to be unfounded shall be prohibited from making a complaint for the next five (5) years.

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)

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.