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**To:** [Marilyn Ezzy Ashcraft](#); [Malia Vella](#); [John Knox White](#); [Tony Daysog](#); [Trish Spencer](#)  
**Cc:** [Eric Levitt](#); [Yibin Shen](#); [Lara Weisiger](#)  
**Subject:** [EXTERNAL] March 30 Council Meeting Item 9-F Spencer Referral- Staff Analysis of Brown Act Application to Commissions and Committees  
**Date:** Tuesday, March 30, 2021 8:58:28 AM

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# ACT

## Alameda Citizens Task Force

Vigilance, Truth, Civility

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March 30, 2021

Dear Mayor Ashcraft and Vice-Mayor Vella and Council Members Knox-White, Daysog and Spencer:

ACT supports Council Member Spencer's referral above and broadens it as follows. The evident conflict between Sec. 2-91.1 (d) (6) of our Sunshine Ordinance and the Brown Act at Government Code Sec. 54952 (b) has created real confusion as to when ad hoc committees will be directed to abide by the Brown Act and as to when committees consisting solely of City employees are created by the formal action of City Council.

Sec. 54952 (b) of the Brown Act states that a "legislative body" subject to the Act includes, "A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body."

Section 2-91.1 (d) of the Sunshine Ordinance states:

"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:"

However, Section 2-91.1 (d) (6) states:

" 'Policy Body' shall not include an ad hoc committee or 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."

The contradiction between the Brown Act and the Ordinance could not be starker. The Brown Act applies to all committees created by a legislative body. It does not exempt ad hoc committees or employee committees. It also includes committees created by City Council "formal action" (such as a motion), not just those created by Charter or resolution.

In February, a complaint to the OGC was filed against the Recreation and Park Commission

concerning the failure of the Jackson Park Renaming Committee's to abide by the Brown Act. It asserted that the Executive Director of the RCP erred in relying upon the ad hoc exception in the Sunshine Ordinance Sec. 2-91.1 (d) (6) because it conflicts with the Brown Act. At the March 1 hearing on the complaint, the RPC did not defend on the basis of the exception, tacitly admitting that the Committee should have abided by the Brown Act, but alleging subsequent action which substantially complied with the Act or cured its violation.

If Section 2-91.1 (d) (6) did not authorize exempting the Committee from the Brown Act and conflicts with the Act both as to ad hoc committees and employee committees, the question must be answered as to the justification, if any, for this section remaining in the Ordinance. The City must stop "shadow boxing" this issue and address it directly and publicly.

Sincerely,

Alameda Citizens Task Force

Gretchen Lipow, President