

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - FEBRUARY 5, 2018 - - - 7:00 P.M.

Chair Dieter convened the meeting at 7:00 p.m.

ROLL CALL - Present: Commissioners Foreman, Henneberry, Little, and
Chair Dieter – 4.

Absent: Commissioner Schwartz – 1.

ORAL COMMUNICATIONS, NON-AGENDA

None.

AGENDA ITEMS

3-A. Minutes of the October 2, 2017 Meeting

Commissioner Henneberry moved approval of the minutes with a comment; noted that he made comments about his experience on the Planning Board prior to the nomination of Chair and Vice Chair; requested the comment be included in the October 2, 2017 minutes.

Vice Chair Little seconded the motion, which carried by the following voice vote: Ayes: Commissioners Henneberry, Little and Chair Dieter - 3. Abstention: Commissioner Foreman – 1. [Absent: Commissioner Schwartz – 1.]

3-B. Presentation on Repairing Alameda's Aging Infrastructure and Related Survey

The Public Information Officer gave a Power Point presentation.

In response to Vice Chair Little's inquiry regarding local funding options, the Public Information Officer stated nothing has been proposed at this point; a question was included in the telephone survey.

Vice Chair Little stated infrastructure improvements are dependent on development; inquired whether there are alternative ideas if development, such as the Del Monte or Alameda Point projects, are not able to acquire funding.

The Public Information Officer responded that she is not sure, but she would ask the Public Works Director and provide a response.

Commissioner Henneberry inquired whether Alameda really has the third oldest park system in the nation, to which the Public Information Officer responded that she is sure it is true; stated the City should have more information about it online, which she would add to the City's website.

Vice Chair Little noted Jean Sweeney Park will be one of the largest inner City Parks, which should also be honored as part of the process.

Commissioner Dieter inquired why the survey is posted at two different online locations.

The Public Information Officer responded the survey is posted in a number of places; stated there are several versions of the Survey Monkey survey and links to the main survey have been posted on social media; outlined other users who have received surveys, such as See Click Fix and Peak Democracy; stated a mailer was sent to people across Alameda; the survey has also been publicized in the newspaper; the City has tried to give access to as many people as possible and did not want to limit it to just people who would take a survey on Survey Monkey; over 3,500 responses have been received.

Commissioner Dieter inquired about the outreach online; stated the City's website survey has been discussed verbally, but there have only been tweets about Peak Democracy.

The Public Information Officer responded some people like Peak Democracy and others do not; stated whether people want to fill out the survey on Survey Monkey, Peak Democracy or via the mail is a personal choice; the data is being collected in the exact same way for everyone who responds.

Commissioner Dieter stated there is also a telephone survey for an infrastructure parcel tax that would cost \$23 per month per \$100,000 of assessed valuation; inquired whether the surveys are related.

The Public Information Officer responded in the affirmative; stated the telephone survey just started.

Commissioner Dieter inquired whether the City is doing the survey in order to move forward in a campaign, to which the Public Information Officer responded not necessarily; stated the City is trying to figure out options to pay for infrastructure needs; once the City has collected the data from all of the surveys, the City will present the results to Council for Council to decide if and how to move forward.

Commissioner Dieter stated thoughts on infrastructure immediately go to sidewalks and streets; when she took the survey, there was an option for affordable housing; inquired about affordable housing being included in an infrastructure survey.

The Public Information Officer responded that she would have to talk to the Public Works Director to specifically answer the question; stated that she thinks it has to do with the original phone survey, which included housing and traffic; she believes it was included to see the public's priorities in total; she would want to provide a response after asking the Public Works Director.

Chair Dieter stated that she would not recommend conflating affordable housing into an infrastructure bond measure or future surveys; it dilutes the issues and is a little confusing to the public.

3-C. Review the Rules of Order for City Council Agendas and Meetings

The City Clerk gave a brief presentation.

Vice Chair Little inquired whether the Commission should go through the list of items that was provided by the Council subcommittee; stated that she has questions and comments throughout the list; going through the list one item at a time might be easiest.

Chair Dieter stated that she has a motion that she would like to make which might clarify how the Commission moves forward.

In response to Chair Dieter's inquiry regarding the agenda title, the City Clerk stated the Commission's feedback will be provided to the City Council; the review encompasses the Commission's discussion, which will be passed onto the City Council.

Chair Dieter inquired whether the complete rules of order do not exist as one document, to which the City Clerk responded in the affirmative; stated the resolution has been amended.

Chair Dieter inquired whether the rules are posted on the City's website, to which the City Clerk responded in the negative; stated the resolutions are all posted separately.

Chair Dieter inquired whether the rules of order and order of business are two separate things, to which the City Clerk responded in the affirmative.

Chair Dieter stated the Commission is discussing the rules of order tonight, which is how to conduct meetings; inquired whether the Commission could also provide input on how the public could easily access the rules in the future.

The City Clerk responded in the affirmative.

Commissioner Foreman stated said matter is the first thing that should be addressed.

Stated that he had not paid attention to the details of running meetings or heard of Rosenberg's Rules of Order; discussed the two methods for counting an abstention; stated one counts an abstention as a no; the other method, called present and voting, does not count abstaining as a no vote; he reviewed the rules and did not see the method used to count votes; custom has been an abstention is the same as a no vote; it does not happen often; discussed a recent example: Richard Bangert, Alameda.

Chair Dieter stated that she would like to make a motion to repeal the original resolution and any resolution amending it altogether, introduce a new resolution that adopts Rosenberg's Rules of Order, unless it conflicts with an express rule adopted by resolution of the City Council, and where Rosenberg is silent, provisions would be added to the resolution; in other words, standard parliamentary rules would be adopted and special rules would be passed as needed; further stated to try to guide the discussion, she would share a handout with follow Commissioners because it is in writing and will be made part of the public record.

The City Clerk inquired whether the motion would be to make a recommendation to have Council repeal the resolutions because Council has to repeal its resolutions, to which Chair Dieter responded correct.

Chair Dieter stated what she has handed out includes her outline of Rosenberg's Rules of Order, which is part of the staff report, and clauses needed in the new resolution; the items Rosenberg's Rules is silent on and the City Council has taken a position on are in the list of clauses; the first is counting votes, which the public speaker addressed; read the proposed clauses; stated that she reviewed the daisy chain of resolutions and included what she considered to be important or missing and came up with the list of clauses that the Commission could consider adding to Rosenberg's Rules or Order; stated that is her motion.

Commissioner Foreman requested the motion be read back.

Chair Dieter stated the motion is to consider suggesting that the City Council repeal the original resolution and any resolutions amending it and introduce a new resolution adopting Rosenberg's Rules of Order, unless it conflicts with an express rules adopted by resolution of the City Council; where Rosenberg's Rules is silent, add provisions to the resolution which she specifically named.

Commissioner Foreman stated the handout is simply an outline of how to attack the matter and does not necessarily become part of the motion; leases and land sales are covered under the Charter, which is kind of redundant; without going over everything section by section, he does not know that everything has been covered; he is assuming the motion is just how the Commission proceeds, not necessarily that the handout is where the Commission will end up; inquired whether or not his understanding is fair.

Chair Dieter respond a little of both; stated that she would like the Commission to end up here, but she thought maybe the Commission may have something to add if members feel there is something important she may have missed; Rosenberg's Rules of Order were part of the agenda packet; she decided to write an outline to help the Commission focus because it is too hard to read quite a few pages.

Commissioner Foreman stated that he likes the list, but may have an issue with closing debate; he thinks it should be very difficult to close debate, not just a majority vote; he

might be able to support the general motion, which really does not include the outline; however, if voting for the motion is for the limited outline, he would have troubles.

Chair Dieter stated that she envisions Rosenberg's Rules of Order as part of the new resolution; the special rules would be at the bottom to add items which are applicable to the City of Alameda; rather than reinvent the wheel, Rosenberg's entire text should be adopted; then, the special rules should be added to the end; it would all be one resolution.

Commissioner Foreman inquired whether items which contradict Rosenberg's Rules would be included, to which Chair Dieter responded correct.

Commissioner Foreman inquired whether the motion is Rosenberg's Rules, plus whatever the Commission decides as a group, not necessarily the list, to which Chair Dieter responded correct.

Vice Chair Little stated something in Rosenberg's Rules that might not be applicable to what is happening could be scratched; she loves the spirit of Chair Dieter's proposal; trying to figure out which version was the most current gave her a headache; she would love to see a new version in one document; when she was doing her research, Rosenberg's versus Robert's, she appreciates the more simplistic, user friendly Rosenberg's Rules; however, the current City Council structure is run a little differently; if the Commission is going to make a recommendation tonight, she is not comfortable and would want to go through the finer points to ensure nothing is being missed; for example, Rosenberg's Rules recommends that the presiding officer take a less active role, defer to others and speak last, which is not necessarily how the City Council is currently being managed; she would want to make sure that the Commission goes through the provisions with a little more detail; her understanding was that the intent of going through the Rules of Order was to ensure that City Council meetings do not go until 3:19 a.m.; a wide gamut of recommendations could be proposed to the City Council that should be put on the table to consider.

Commissioner Henneberry seconded the motion.

Under discussion, Chair Dieter stated when she read Rosenberg's Rules of Order, she discovered it is basically how things are run now; the Chair usually does wait to speak last; the only thing that she saw different was that the Chair invites a motion after public comment, which she thinks would be wonderful; it would focus the debate, rather than having an hour discussion with the public waiting for a motion; that is the only thing she saw which was different.

Commissioner Foreman stated that he is in favor of repealing and starting all over; the Commission should start with the current rules of order and go through item by item to decide what should be kept; then, wherever the City is silent, Rosenberg's Rules would be followed; it is being flipped to say the rules are Rosenberg's Rules, which is not what

the Council asked the Commission to do; that he does not think he will be able to support doing it the way proposed.

Chair Dieter inquired whether there is any special rule that she forgot to include, to which Commissioner Foreman responded that he cannot answer that because he did not have an opportunity to compare; stated that he is worried something will be missed; history has to be respected; starting with the original document makes more sense; it should be repealed and codified in one document.

Commissioner Henneberry inquired what was the genesis for the matter coming forward and what the City Council wanted out of it.

The City Clerk responded the matter was raised via a referral; Councilmember Matarrese brought it forward to have changes made.

Commissioner Henneberry questioned whether Councilmember Matarrese thought meetings were going too long; stated the rules are not the problem.

Chair Dieter stated the impetus was there was a question about public comments non-agenda.

The Assistant City Attorney outlined the public comment issue that lead to the referral.

Commissioner Henneberry stated the entire issue came out of a specific arcane item; he has been dealing with Robert's Rules of Order for 30 years; the rules are not the issue if there is concern about the length of meetings, which is due to the Chair and meeting participants; he thinks Rosenberg's Rules look pretty good, clean and like a nice breath of fresh air compared to Robert's Rules; he does not want to go through every resolution because there was a non-agenda comment issue.

Chair Dieter stated when looking at the issue, Councilmember Matarrese noticed there were other rules which are not being followed because they are not clear, such as Councilmembers are only allotted three minutes to speak; there was a whole host of things; it is great that the Council subcommittee looked to Rosenberg's Rules of Order; the League of California Cities (LCC) recommends Rosenberg's Rules; the City is pretty much following Rosenberg's Rules already and just needs to apply special rules; she spent hours and hours going through all the resolutions trying to find things that were not covered by Rosenberg's Rules, which are the ones she added to the end; she felt everything else was covered.

Vice Chair Little stated going through her list, she is finding similarities between the notes she took on the various resolution items and Chair Dieter's list; she just wants to be cautious that the Commission is not missing something; she finds the City's rules terribly confusing; the language is circular and not understandable; she appreciates Rosenberg's Rules; she would consider moving forward and not going through everything line by line as long as there is agreement that there is a comparison between

what Rosenberg is recommending and the current rules to make sure nothing missing; for meeting hours, Chair Dieter's list recommends midnight; she saw it was 11:00 p.m., then midnight and back to 11:00 p.m.; she thought the current time is 11:00 p.m. now.

The City Clerk stated midnight is not reflected as the time in the Sunshine Ordinance; amending the ending time and the 10:30 p.m. vote to consider remaining items would require an ordinance amendment.

Commissioner Foreman stated it does not matter if the Commission proceeds as he is suggesting or as the motion is suggesting, except he does not see a way to not go through article by article; he opposes adopting the proposal; the review needs to be done as a group; he is willing to support the motion, but he is still going to want to go through every item.

Chair Dieter stated the Commissioners all like Rosenberg's Rules of Order; the Commission wants to make sure it has not missed anything for only the special rules; she went line by line through it; suggested coming back again with the special rules to give Commissioners an opportunity to study the resolutions to see if anything has been missed.

Commissioner Foreman stated the suggestion makes sense; that he would be more comfortable and the Commission might save time.

Chair Dieter stated there is a motion and a second; perhaps the Commission should take a vote.

Commissioner Henneberry stated that he has a timing question; the Commission is scheduled to meet twice per year; the next meeting is October; however, the Commission can meet in the interim if there is a reason to meet; inquired whether a vote of the Commission decides scheduling.

The Assistant City Attorney responded in the affirmative.

The City Clerk stated the Commission's meetings are typically held the first Monday; in the past, the Commission met the next month to continue review.

Commissioner Foreman moved approval of tabling the motion until the next meeting in the next 30 days.

Chair Dieter inquired whether the meeting would be held the first Monday, to which Commissioner Foreman responded that is fine with him.

The Assistant City Attorney stated that he will be gone the first Monday in March; inquired whether the Commission would agree to the first Monday in April.

Commissioner Foreman inquired whether other days are available.

The Assistant City Attorney responded perhaps later in February or mid-March.

Commissioner Foreman rephrased the motion; moved approval of the same motion with the meeting date being the first Monday in April.

Vice Chair Little seconded the motion.

Under discussion, Commissioner Henneberry inquired whether a subcommittee would go over the matter prior to the next meeting.

Commissioner Foreman stated the Commissioners could all share their comments with each other prior to the next meeting, which cannot be done.

The Assistant City Attorney stated each Commissioner can send comments to the City Clerk for distribution, but the Commissioners cannot collectively discuss the matter until the meeting.

Chair Dieter inquired whether she could have sent her list to the City Clerk after the agenda was posted, to which the Assistant City Attorney responded in the affirmative; stated communications should be sent to the City Clerk to be sent out to everyone at the same time; after communications are sent out, three members cannot discuss the matter outside of a meeting.

The City Clerk noted communications are posted and made public.

Chair Dieter stated that she will withdraw her motion.

Commissioner Foreman inquired why the motion is being withdrawn; stated that he is tabling Chair Dieter's motion.

Commissioner Henneberry inquired whether it would be permissible to have a two person subcommittee of Chair Dieter and Vice Chair Little, to which the Assistant City Attorney responded in the affirmative.

Commissioner Henneberry stated the subcommittee could put something together for distribution to the rest of the Commission prior to the next meeting.

Vice Chair Little and Chair Dieter both expressed a willingness to do so.

Chair Dieter stated there is a motion to table the matter until the next meeting.

On the call for the question, the motion carried by unanimous voice vote – 4. [Absent: Commissioner Schwartz – 1.]

Chair Dieter inquired whether there is another motion to set up a subcommittee.

Commissioner Henneberry inquired whether a motion is needed, to which the Assistant City Attorney responded a motion should be done to determine the subcommittee membership and direction.

Commissioner Henneberry moved approval of having a subcommittee comprised of the Chair and Vice Chair Little to put together a proposal, provide it to the City Clerk and have it distributed to the Commission prior to the next meeting.

In response to Commissioner Foreman's inquiry, the City Clerk stated the meeting packet goes out seven days prior to the meeting, which would be March 26th.

Vice Chair Little stated that she thought the meeting would be in March.

Commissioner Foreman stated the Assistant City Attorney is not available.

The Assistant City Attorney stated if the Commission would rather meet in March, someone else from the City Attorney's office could attend.

Commissioners Henneberry and Little stated that they would prefer to meet in March.

Commissioner Foreman noted the Commission already voted on the motion.

The Assistant City Attorney stated the Commission is considering forming a subcommittee and could direct the matter be brought back the first Monday in March.

Commissioner Henneberry clarified the motion is to form the subcommittee and meet the first Monday in March.

Commissioner Foreman seconded the motion, which carried by unanimous voice vote - 4. [Absent: Commissioner Schwartz – 1.]

3-D. Recommendation to Approve the Records Retention Schedule

The City Clerk gave a brief presentation.

Chair Dieter inquired whether the retention schedule is considered the Public Records Index (PRI).

The City Clerk responded the two were separated; stated the League of California Cities (LCC) index, which provides a general guide of the documents that are open or closed, was adopted by the City Council; the retention schedule informs when records, which are listed by department, would be destroyed.

Chair Dieter inquired whether the City has two different retention schedules: the PRI and one by each department.

The City Clerk responded the PRI is used to disclose whether documents are public or partially public.

Chair Dieter inquired whether the PRI does not include when to destroy records, to which the City Clerk responded in the affirmative.

Chair Dieter inquired whether the schedule does not need to come before the Open Government Commission, to which the City Clerk responded the schedule was presented to the Commission in the past.

Chair Dieter stated the Sunshine Ordinance does not require the schedule to come before the Commission; inquired where the standards come from and whether there are different types of records; stated the Secretary of State, with the LCC, came up with guidelines; the City Clerk's Association also has guidelines; inquired where the City's standards for disposing of documents was formed.

The City Clerk responded the last column has the statutory reference and draws on many different sources, such as the Government Code and Elections Code; stated each department draws from different Codes; the citation of the statutory reference would be very similar in the City's schedule versus the Secretary of State guidelines; the City tried to whittle down its list to inform the public what documents the City has and retains.

Chair Dieter stated the schedule is not arbitrary; inquired whether the department heads are not just deciding how long to keep something and actually turn to a statutory reference.

The City Clerk responded in the affirmative; stated the City exceeds statutory reference in some instances, but it is never shorter.

Chair Dieter stated sidewalk repair requests would be deleted after five years, which means the records could be destroyed before the repair is done.

The City Clerk stated the clock starts ticking after the issue is resolved.

The Assistant City Attorney stated citizens' complaints for Police Officers have a five year retention period and start at the complaint date as opposed to resolved; the general rule is what the City Clerk indicated, but there are some situations where the clock might start at occurrence.

Vice Chair Little inquired how someone could figure out which is the case.

The Assistant City Attorney responded it is typically by statute; provided an example of hiring.

The City Clerk stated there are retention codes at the bottom of the page; provided an example of current year end, which is very specific.

Chair Dieter stated the main thing is for the public to understand; suggested adding footnotes for some about when the time starts.

Commissioner Foreman inquired whether the Commission needs to approve the schedule.

The City Clerk responded the City Council will be informed if the Commission takes action.

Commissioner Henneberry moved approval of approving the Records Retention Schedule.

Commissioner Foreman seconded the motion.

Under discussion, Chair Dieter stated that she plans on voting no because she does not think that technology should be driving public policy; if there were other reasons for wanting to change five years to three years, it would make more sense to her; just because the City does not have storage capacity is a bad precedent.

On the call for the question, the motion carried by the following voice vote: Ayes: Commissioners Foreman, Henneberry and Little – 3. Noes: Chair Dieter – 1. [Absent: Commissioner Schwartz – 1.]

COMMISSIONER COMMUNICATIONS

Commissioner Foreman inquired whether Municipal Code amendments prior language goes away and the Code reflects the current law, to which the City Clerk responded in the affirmative.

Commissioner Foreman inquired whether resolutions could be codified; stated the new rules of order will be neat, but could end up with the same mess.

The Assistant City Attorney responded the way to handle the matter would be to repeal the entirety and adopt a new resolution with all changes; stated discrete pieces of the original resolution were changed by just amending the section; the point is well taken—it makes it difficult to go to one document and figure out the rules.

Commissioner Foreman inquired whether that is the only way, to which the Assistant City Attorney responded as a practical matter.

Chair Dieter stated the City Council current version could have a legislative history with previous versions underneath.

The City Clerk stated the issue can be discussed when the matter returns to the Commission.

ADJOURNMENT

There being no further business, Chair Dieter adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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