

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - AUGUST 3, 2020 - - - 7:00 P.M.

Chair Schwartz convened the meeting at 7:05 p.m.

ROLL CALL - Present: Commissioners Little, Pauling, Tilos and Chair Schwartz – 4. [Note: The meeting was conducted via Zoom.]

Commissioner Shabazz joined the meeting at 7:15 p.m.

Absent: None.

[Staff present: Chief Assistant City Attorney Michael Roush, Assistant City Attorney John Le, and Assistant City Clerk Irma Glidden]

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the Meeting Held on June 24, 2020

Chair Schwartz stated he appreciates how detailed the minutes are and is impressed that everything was captured from the long meeting.

Commissioner Pauling moved approval of the minutes.

Vice Chair Tilos seconded the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 4. [Absent: Commissioner Shabazz – 1]

3-B. Discuss and Provide Recommendations to the City Council Concerning Potential Amendments to Article VIII (Sunshine Ordinance) of Chapter II (Administration) of the Alameda Municipal Code, as Amended, Concerning Special Meetings, Including the Setting and Noticing of Such Meetings

Chair Schwartz stated the Commission was asked to provide input on the process of noticing special meetings; there was controversy regarding a special meeting on a proposed charter amendment and allowing full transparency and access; the Commission made recommendations.

Stated he is concerned with the way Council uses special meetings and using an emergency to justify having a special meeting; the meetings have short notice and most

of the public is not even aware of the meetings, which results in very little public input and oversight; it is important to facilitate public input; encouraged allowing more speaking time for the public instead of reducing time; stated the Open Government Commission is an important body and he thinks some people on the Council are abusing the urgency ordinance: Jay Garfinkle, Alameda.

Stated that she supports the need for improved public information ahead of time regarding special meetings; she was alarmed to read about meetings in the paper after the meetings were already held; very substantive issues were discussed and she had no idea the meetings were happening; requested that a push-notification system be implemented for the public: Kathleen Sullivan, Alameda.

The Chief Assistant City Attorney stated the purpose of the amendment is to give a lengthier time before a special meeting would be held and encompass social media and other types of platforms so a larger group of people will be aware and can be heard; staff understood the direction and has attempted to include the changes in the ordinance.

In response to Commissioner Little's inquiry regarding emergency noticing raised by Mr. Foreman in his correspondence, Chair Schwartz stated to address the situation where there is a serious emergency the amendment allows seven-days notice or permitted by applicable statute.

The Chief Assistant City Attorney further clarified staff would still require the seven-days notice in a more urgent situation unless there is something very dire, in which case the noticing could be less; the language is proposed in the amendment and covers the concern raised by Mr. Foreman.

Commissioner Little inquired whether such situation would require a supermajority vote for a lesser noticing time.

The Chief Assistant City Attorney responded the way it is written, the Presiding Officer or City Manager could call a special meeting on very short notice; the premise is that it would be on very rare occasion and may be difficult to assemble a majority of the legislative body.

Commissioner Shabazz stated there was discussion regarding the manner in which people could be notified; he uses the practice of requesting to be placed on a distribution list; suggested including language on agendas to let people wishing to be included on the distribution for future agendas what steps to take; he would like that practice to be more known by placing the information on the City's website and directly on the agendas.

Chair Schwartz inquired whether Commissioner Shabazz wants different language to be included in the amendment or if his comments are a simple suggestion.

Commissioner Shabazz responded it is a suggestion, but he would review the current proposed language and provide input if needed.

Chair Schwartz stated that he is comfortable with the way the amendments are drafted and capture what the Commission discussed.

In response to Chair Schwartz inquiry regarding Section 2-91.5, the Assistant City Attorney stated the Section relates to agenda posting requirements and timing, including on the City's website and making agendas available in hard copy at the Main Library and Clerk's office.

Chair Schwartz stated that he would add a reference to texting, which was brought up by Commissioner Tilos, but not listed in the Section.

The Assistant City Attorney stated the language in the amendment refers to any other electronic means approved by the City Clerk without being more specific; staff did not want to preclude texting as a method as it may be possible in the future; however, a text notification system may not be technologically or financially feasible.

Chair Schwartz stated that he would like to suggest including texting as a method of notification; it is technologically feasible and financially would be worth it; having an opt-in list as suggested by Commissioner Shabazz could work.

Commissioner Pauling stated making clear the whole process of notification could be part of implementation; technological advances happen quickly; there are upcoming budget restraints; she is wondering whether the ordinance can keep the language as written, but put more specific information on the website and allow people to be on a notification list for a specific topic; that way there is specific guidance rather than just a reference to texting.

Commissioner Tilos stated the language of having a subscription to "electronic communication" could be used to mean texting as well as emails; in the event texting is not financially feasible, emails could be sent.

Commissioner Shabazz stated that he understands the need to be more general, but the goal is to maximize public participation and engagement; he recognizes technology does change quickly as Commissioner Pauling stated; he would like to include language that is general enough that could account for changes in technology, but specific enough that in this moment there are methods that people could use; he is interested in the law requiring someone to add a subscriber to a list.

The Chief Assistant City Attorney stated under the Brown Act, a person can request copies of the agenda with associated costs; now with technology, there are no costs to receive the agenda electronically.

The Assistant City Clerk stated when members of the public request to receive copies of the agenda, the Clerk's office adds them to a regular email distribution list; requests for mailed hard copies of the agenda is not common.

Commissioner Shabazz stated that he would like to suggest adding language directly on the agenda for people requesting to be added to a distribution list to receive future agendas.

Commissioner Little concurred with Commissioner Shabazz; stated that she would like the language added to the City website prominently at the top of the page where people look for agendas; she likes the current language regarding electronic communications as it leaves it open for the City to determine what is feasible and encourage flexibility for technological changes; she suggests keeping the language broad and not be limited to specific methods.

Chair Schwartz moved approval of adding to the end of Section 2-91.4.f, rather than specifying texting, language stating: "with the objective of providing notice by as many viable means as possible."

Commissioner Little seconded the motion.

Under discussion, Commissioner Shabazz stated that he would like language added to agendas that would enable people to be added to a distribution list for specific bodies, rather than specific topics.

Chair Schwartz concurred with Commissioner Shabazz; stated language could be added to Section 2-91.4.f to state: "provide notice directly to any member of the public who has requested to be added to the distribution list for a particular body."

The Assistant City Clerk stated she understood an opt-in method is being suggested; inquired which method of distribution Commissioner Shabazz is suggesting.

Commissioner Shabazz responded that he does not want to prescribe a particular method as he knows not everyone has internet access or even access to just walk into the library; he suggests whatever the method is, just have an option for members of the public to be able to subscribe, whether it's by mail or email, taking into consideration accessibility issues.

The Chief Assistant City Attorney questioned whether another portion of the Sunshine Ordinance might be a better section to address the concerns; stated if it will be applied to all City Boards and Commissions, there may be a different section of the Sunshine Ordinance where the issue could be addressed; perhaps the amendment can be moved ahead as drafted with the initial amendments made by Chair Schwartz and bring back to the next meeting whether there might be a better place to address the concerns of Commissioner Shabazz regarding distribution.

Chair Schwartz stated it makes sense; in addition, he does not see any reason why an item could not be added to the Section allowing any member of the public to be added to a distribution list for a particular body.

The Chief Assistant City Attorney stated the Commission could do that.

The Assistant City Attorney stated in addition to the Brown Act, a provision in the Sunshine Ordinance Section 2-91.6 Public Notice Requirements, Subsection D states: "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, notifications that impact the entire neighborhood.;" if the Commission would like to make the change, it should be included in Subsection D.

Chair Schwartz stated he would propose to add the language: "provide notice to members of the public who have requested to be on a distribution list including those referenced in Subsection D of Section 2-91.6 of the Sunshine Ordinance;" as the Chief Assistant City Attorney suggested, look to see where it could be weaved in, but for now, it captures the issue raised by Commissioner Shabazz.

Commissioner Shabazz inquired whether there was a reason why members of the public could not be added in Section 2-91.4.f.1.

Chair Schwartz responded Section 2-91.4.f.1 states distribution is personally or by mail, which would preclude other methods of distribution; that is why he suggested adding a Section 2-91.4.f.3 for noticing by other means.

In response to Chair Schwartz inquiry, the Chief Assistant City Attorney stated adding 2-91.4.f.3 accomplishes what Commissioner Shabazz would like to see happen.

Chair Schwartz moved to approve adding a Section 2-91.4.f.3 with the language: "provide notice to members of the public who have requested to be on a distribution list including those referenced in Subsection D of Section 2-91.6 of the Sunshine Ordinance."

Commissioner Shabazz seconded the motion.

Under discussion, Commissioner Pauling stated that if there will be additional language, the Public Notice section of the Sunshine Ordinance should be referenced; it gets muddled if there is similar but not the same language in two different sections of the same ordinance; people look to the website to find the agendas; there should be a link which takes them directly to where they can choose the means of notification and the Commissions or topics they wish to be notified of; it goes to the heart of implementation.

Chair Schwartz clarified that his amendments includes the reference Commissioner Pauling mentioned.

Commissioner Pauling stated that she likes the idea of the reference to the Public Noticing Requirements Section to be highlighted so that the public can go to it directly to see meeting details.

On the call for the question, the motion carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5.

Chair Schwartz moved approval of adopting the draft amendments, as provided by the City Attorney's Office, with the two revisions that have been voted on by the Commission.

Commissioner Pauling seconded the motion, which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5.

### Commission Communication

Commissioner Tilos stated that he wants to clarify the new meeting scheduling; inquired whether meetings will only take place if the Commission receives a complaint and holding tonight's meeting was to complete unfinished business.

The Chief Assistant City Attorney responded in the affirmative; stated tonight's meeting was scheduled because the Commission wanted to address the item as quickly as possible; the regular meeting will be in October for staff to present other amendments the Commission discussed in June; there would not be a meeting in November unless there was a complaint or an item that needed to be addressed by the Commission; the schedule is set up so that meetings can be canceled if there are no items.

Chair Schwartz stated that he would have liked the opportunity at tonight's meeting to finish up the time sensitive matter of putting some teeth back into the Sunshine Ordinance, which the Commission was charged with; the issue of the back and forth about the underlying "null and void" and new solutions the Commission was going to implement has been sitting out there for almost two years; he is disappointed that the issue is now pushed out to October as members of the public and Commissioners expressed at the last meeting it has been going on for a long time; he thought the suggestions were specific and concrete and could have been done today as well.

Commissioner Little concurred with Chair Schwartz; stated that she almost forgot that the Commission still has to deliberate on the issue, that is how long it has been.

Commissioner Shabazz stated now that the meeting frequency has changed, he is interested in developing a work plan for the Commission; he has identified some goals that he would like to have an offline conversation with Chair Schwartz; as a body, it might be helpful to develop a work plan to think about what might be the goals for the Commission over the next one or two years to maximize participation by the people of Alameda in City government.

Chair Schwartz stated he would certainly welcome an opportunity to work with Commissioner Shabazz on a work plan.

## Adjournment

Commissioner Little moved approval of adjourning the meeting.

Commissioner Shabazz seconded the motion, which carried by the following roll call vote:  
Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye.  
Ayes: 5.

The meeting was adjourned at 8:08 p.m.

Respectfully submitted,

Irma Glidden  
Assistant City Clerk

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