

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.