

Alameda County Mayors' Conference

BUSINESS MEETING AGENDA

Notice of Agenda Amendment

April 10, 2019

6:30 p.m.

Kennedy Youth Center

1333 Decoto Road, Union City, CA

Item 8. Other Business Matters - Subsection (4) is amended as follows:

(4) Update concerning potential amendments to Bylaws and other actions related to the Alameda County City Selection Committee and authorization for the Executive Director to execute a response letter to Jason Bezis concerning alleged Brown Act violations.

Executive Director's Report

The Alameda County Mayors' Conference received a letter from Jason A. Bezis, dated March 11, 2019, regarding the Conference's procedures related to the Alameda County City Selection Committee. Since receipt of the letter, staff has been working with President Halliday and the City of Hayward legal staff to address matters raised in the letter. Attached is a letter dated April 10, 2019 that responds to Mr. Bezis's letter. In addition to the attached letter, a report will be provided at this meeting to fully update members regarding actions taken to date to more fully assure access to the Mayors' Conference's materials and meetings.

RECOMMENDATION - Consider the letter dated April 4, 2019 to Jason Bezis and authorize the Executive Director to sign and transmit it to Mr. Bezis.

Immediate Past President
PAULINE RUSSO CUTTER
Mayor of San Leandro

President
BARBARA HALLIDAY
Mayor of Hayward

Vice President
ALAN NAGY
Mayor of Newark

Alameda County Mayors' Conference

Alameda
Marilyn Ezzy Ashcraft

April 10, 2019

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Dear Mr. Bezis,

Fremont
Lily Mei

This is in response to your cure and correct demand letter dated March 11, 2019 regarding alleged Brown Act violations committed by the Alameda County Mayors' Conference (ACMC) when it made an appointment to the Metropolitan Transportation Commission (MTC) during its meeting on December 12, 2018. In your letter you identified six (6) alleged violations of the Brown Act (Gov. Code sec. 50270 et seq.), City Selection Committee statute (Gov. Code sec. 50270 et seq.), and the Metropolitan Transportation Commission Act (Gov. Code sec. 66500 et seq.) and demanded that they be cured and corrected. The Alameda County Mayors' Conference takes its commitment to open government seriously and takes your allegations seriously. Your allegations are addressed below.

Hayward
Barbara Halliday

Livermore
John Marchand

Newark
Al Nagy

Oakland
Libby Schaaf

Piedmont
Robert McBain

Allegations Related to Composition of the Alameda County City Selection Committee

Pleasanton
Jerry Thorne

You have raised several concerns relating to the composition of the Alameda County City Selection Committee (hereafter, "the City Selection Committee"). Specifically, you contend that the ACMC Nominating Committee, which consists of five members from the full ACMC membership, cannot properly act as the City Selection Committee pursuant to the Government Code. The ACMC does not disagree that the Government Code requires the City Selection Committee to be comprised of all mayors within Alameda County.

San Leandro
Pauline Russo Cutter

Union City
Carol Dutra-Vernaci

Executive Director
Steven Bocian

By way of background, the membership of the ACMC consists of the mayors of the fourteen incorporated cities in Alameda County. Pursuant to the ACMC Bylaws, the Nominating Committee of the ACMC makes

recommendations to the full ACMC membership regarding appointments to various bodies and advisory groups. Among the Nominating Committee's duties is to make recommendations on appointments that fall within the jurisdiction of the Alameda County City Selection Committee.

Unfortunately, paragraph 11 of the ACMC Bylaws creates the impression that the Nominating Committee also functions as the City Selection Committee pursuant to the Government Code by stating that "the Nominating Committee members shall also serve as the City Selection Committee." However, paragraph 11 also states that the Nominating Committee "makes recommendations to the full Mayors' Conference membership for appointments to various statutory bodies or advisory groups in conformance with requirements of applicable State legislation." Despite any language that may suggest the contrary, the full membership of the ACMC, not the Nominating Committee, discharges the appointment duties of the City Selection Committee, as required by the Government Code.

The ACMC recognizes the confusion raised by the language contained in paragraph 11 of the Bylaws. ACMC staff is drafting amendments to the Bylaws that will more clearly align the Bylaws with applicable provisions of the City Selection Committee statute, such as clarifying that the full membership of the ACMC serves as the Alameda County City Selection Committee. Staff intends to present the proposed amendments for consideration during the May 2019 ACMC meeting.

Allegations Related to the Validity of the ACMC's December 12, 2018 Meeting and MTC Appointment

Your letter also raises concerns regarding the validity of the ACMC's December 12, 2018 action to appoint Mayor Carol Dutra-Vernaci of Union City to the MTC. You contend that the City Selection Committee lacked the necessary quorum to conduct business since only five (5) members of the Nominating Committee were present. As previously discussed, the Nominating Committee serves as an advisory body to the full ACMC membership regarding appointments. Eleven (11) of the fourteen (14) members of the ACMC were present for the December 12, 2018 meeting, thus satisfying the quorum requirement. Consequently, the full membership's approval of Mayor Dutra-Vernaci's appointment was appropriate.

Additionally, you contend that there are no meeting minutes for the "City Selection Committee meeting on or about December 12, 2018." To the extent that the full membership of the ACMC carries out the duties of the City Selection Committee, the meeting minutes of the ACMC meeting of December 12, 2018 serve as the minutes of the City Selection Committee. A copy of the December 12, 2018 ACMC meeting minutes is enclosed with this letter.

The Clerk of the Board of Supervisors does not maintain the minutes of the ACMC/City Selection Committee meetings and was not present at the December 12, 2018 meeting. The Executive Director of the ACMC prepared the meeting minutes for December 12, 2018 and maintains all ACMC

records as required by the Bylaws. The Executive Director was recently deputized by the Alameda County Clerk of the Board of Supervisors to act as its deputy for the purpose of serving as the permanent secretary and recording officer of all business undertaken by the ACMC when acting as the City Selection Committee, beginning with the April 10, 2019 meeting.

Your letter also raises an issue related to the adequacy of notice of the agendas for ACMC meetings. The ACMC meeting agendas, including committee agendas, are posted on the ACMC website one week in advance of the meeting. The host city posts the agenda 72 hours prior to the meeting at a publicly accessible location in compliance with the Brown Act.

Finally, you contend that the ACMC does not take adequate measures to invite non-mayors to apply for the MTC appointment. Pursuant to paragraph 11 of the Bylaws, the ACMC makes it a priority for mayors to be appointed to board positions, such as MTC Commissioner. However, pursuant to the Bylaws, members of the public may also be considered for such positions. Information regarding board openings is available on the ACMC website and included in the agenda materials for each ACMC meeting. That being said, the ACMC will explore how it can expand outreach regarding board openings.

Conclusion

Without admitting that any violation of law has occurred, the ACMC will accomplish the following:

-) Amend the ACMC Bylaws to clarify the following:
 -) That the full membership of the ACMC serves as the Alameda County City Selection Committee;
 -) That the President and Vice President of the ACMC shall serve as the Chairman and Vice Chairman, respectively, of the City Selection Committee.
 -) That the Executive Director shall serve as the secretary/clerk of the City Selection Committee and shall be deputized by the Alameda County Clerk of the Board of Supervisors.

In addition to the tasks referenced above, please note that the following has been accomplished since receipt of your letter:

-) The Executive Director has been deputized by the Alameda County Clerk of the Board of Supervisors.
-) Expanded online presence through use of three active website domains:
 -) www.alamedacountymayorsconference.org;
 -) www.alamedacountycityselectioncommittee.org; and
 -) www.acmayorsconference.org.

I hope the preceding discussion addresses your concerns regarding the Alameda County Selection Committee and actions it took during the December 12, 2018 meeting. Assuming, for the sake of argument, that the circumstances discussed herein amount to violations, the ACMC asserts that they are technical in nature and the ACMC has substantially complied with the requirements of the Brown Act, City Selection Committee statute and the Metropolitan Transportation Commission Act.

Please contact me if you have any questions or need to follow-up regarding this appointment.

Sincerely,

Mayor Barbara Halliday, City of Hayward
President, Alameda County Mayors' Conference

Enclosures