

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - FEBRUARY 2, 2021 - - - 7:00 P.M.

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

ROLL CALL - Present: Commissioners Chen, LoPilato, Reid, Shabazz, and Chair Tilos – 5. [Note: The meeting was conducted via Zoom.]

Absent: None.

[Staff present: Chief Assistant City Attorney Elizabeth Mackenzie, Assistant City Attorney John Le; and City Clerk Lara Weisiger]

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the December 14, 2020 Meeting.

Chair Tilos stated that since only he and Commissioner Shabazz were present at the December meeting, one of the new Commissioners can be the third vote if they read the minutes.

The City Clerk concurred with Chair Tilos, stated that a new Commissioner could watch the video and confirm the minutes are accurate.

Commissioner Reid stated that she watched the meeting video and moved approval of the minutes.

Commissioner LoPilato stated she also watched the video and is comfortable voting on the minutes.

Commissioner Shabazz seconded the motion.

Chair Tilos made brief comments on the minutes regarding his method of running the meetings; requested clarification about the Commission's recommendation to bring an item [subcommittee enforcement proposal] before the Council, which did not happen.

In response to Chair Tilos' inquiry, Vice Chair Shabazz stated he interpreted the item as it was the intent of staff to bring the item back to the OGC for the opportunity to provide input on the recommendations.

Chair Tilos provided background to the new Commissioners; stated a decision was made by the Commission to forward an item to the City Council; staff deliberately did not forward the item to allow the new Commissioners to be part of the conversation; expressed frustration that it was not forwarded; inquired whether the City Attorney's office had any comments.

Vice Chair Shabazz stated the discussion may not be appropriate right now since this item is the approval of the minutes.

Commissioner Chen stated the question is whether the minutes are accurate or not and can be approved; the Commission can then proceed to item 3-C; the fact that an action was not taken is not part of the minutes per se; the minutes are just conveying what the Commission recorded as to what happened at the last meeting.

Chair Tilos stated that he wanted to correct his statement recorded in the minutes regarding the OGC's objective to determine and fix anything broken in the Sunshine Ordinance; clarified that he meant to use the word "violation" instead of "broken."

Vice Chair Shabazz suggested deferring the minutes and moving on to other business since Chair Tilos has some concerns regarding his own statements in the minutes; stated that he does not feel comfortable with changes being made to what was actually stated although he appreciates and understands the intention of communicating clearly.

In response to Commissioner LoPilato's inquiry, Chair Tilos stated he would accept the minutes as is, but just wanted to make the clarifications.

The City Clerk stated Chair Tilos' clarifications are noted and will be reflected in the next set of minutes.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: Abstain; LoPilato: Aye; Reid: Aye; Shabazz: Aye; Chair Tilos: Aye. Ayes: 4 – Abstentions: 1.

3-B. Accept the Annual Public Report and Report Concerning Responses to Public Records Act Requests Referred to the City Attorney's Office in 2020.

The Assistant City Attorney stated the report is perfunctory and comes every year.

Vice Chair Shabazz inquired whether public comment should come before Commissioner discussion.

The City Clerk stated the typical flow is for the Commission to ask questions prior to public comment, take public comments, and the Commission can move into discussion after public comment.

Commissioner LoPilato stated references to 2019 should be changed to 2020; inquired whether the PRA chart only shows requests that actually rise to the City Attorney's office, to which the Assistant City Attorney responded in the affirmative.

In response to Commissioner LoPilato's inquiry, the Assistant City Attorney stated the chart encompasses requests that went to the different departments; the City Attorney's office reviews the requests to determine whether or not an exemption applies; the City Attorney's office has reviewed every request on the chart.

The City Clerk clarified requests that trickle up to the City Attorney's office require review; simple PRAs handled by other departments are not included on the chart; each department responds to many other requests that do not need review by the City Attorney's office.

Vice Chair Shabazz stated three out of four complaints were withdrawn; from his own experience in filing a complaint, there was encouragement to withdraw his complaint; inquired whether there was any communication with the complainants to withdraw their complaints.

The City Clerk responded in the affirmative; stated the process when a complaint is filed involves staff trying to work with the complainant to resolve the issue to get them satisfaction without having to go before the OGC.

Vice Chair Shabazz inquired what a voluntary suspension is, to which the City Clerk responded it was a request for records with an agreement to do some follow-up; stated the request was suspended until the follow-up was completed, rather than withdrawn.

The Assistant City Attorney concurred; stated the request involved records, which the complainant decided to voluntarily suspend until further notice.

Vice Chair Shabazz inquired what the status of the suspended request is now and whether there was further communication from the complainant.

The Assistant City Attorney responded his understanding is that the Attorney assigned to the request reached out to the complainant and has not heard back.

Stated the two reports do not provide the information they purport to provide; encouraged alleged violations be listed; he thinks it is inappropriate for the City Attorney's office to encourage withdrawals of complaints; all complaints should be heard to allow the Commission to observe and respond to patterns: Jay Garfinkle, Alameda.

In response to Chair Tilos' inquiry, the City Clerk responded information provided is electronically produced.

Commissioner Reid inquired whether there is a reason why other PRAs are not included in the report.

The City Clerk responded the Commission provided input into the format of the report and selected the PRAs that rose to the top in terms of importance; each department has their own PRA log; the requests received by her office and other departments are straightforward and simple; the ones brought to the City Attorney's office are more complex; therefore, the Commission specifically requested a list of those PRAs.

Commissioner Chen inquired whether there is a satisfaction survey done after complaints are resolved, to which the City Clerk responded there was a formal survey process years ago but it has not been carried forward in the budget; she receives informal follow-up from requests that are satisfactorily completed.

Vice Chair Shabazz stated reviewing the PRA logs and seeing who the frequent requestors are has taught him a lot about Alameda politics; he reached out to a few of the requestors and wanted to share some feedback; one of the glowing reviews from a requestor was: "if the City continues to hire people like those currently on staff, I remain confident that those of us in the general public who seek information will be able to get it;" he is concerned that the report focuses on the requests that specifically went to the City Attorney's office; he does not recall it was the initial intent; the Sunshine Ordinance designates the City Clerk as the primary custodian and the City Attorney's office is designated for the Police Department; based on his own experience and after reading the report, there have been a number of requests that may not have come forward that may have been beneficial to have recorded in the report; he does not know how challenging it would be to compile the data; in order to be able to understand whether or not the community is being fully served by departments outside of the City Clerk and City Attorney's offices, it would be helpful to know how many PRAs are actually coming forward; adding another column, which shows which departments the PRAs originated from, would be valuable information.

The City Clerk stated most of the requests, which are forwarded to the City Attorney's office, originate from her department; any requests that ask for emails must be reviewed by the City Attorney's office and are automatically forwarded; the City Clerk's office is working with the City Manager's office to implement a portal for record requests to be done through the City's website, which should simplify the tracking process as well.

Commissioner LoPilato suggested more appropriate language to replace "voluntarily suspended" might be "abandoned by complainant;" thanked Vice Chair Shabazz and former Commissioner Little for all their contributions and efforts on the PRA report; inquired whether there is an analytical framework for assessing PRAs; mentioned the importance of metrics to be able to track whether issues are moving in the right direction and if there is a failure rate; she would like to see a column, which identifies what is happening earlier in the pipeline; there should be a way to gauge whether departments are repeatedly overlooking requests; it would be helpful if a broader set of data could be built into the portal; it is important to implement the Sunshine Ordinance appropriately; inquired whether requestors are advised of the complaint procedure if they are not satisfied with the resolution of their request.

The City Clerk responded the complaint procedure would be included somewhere in the portal.

Commissioner LoPilato stated she would like to find a way to use the reports to shine a light on whether departments might be over zealous in rejections of PRAs or not as responsive as the Commission would like; she would like to hear if there are any other motions on whether the reports can be accepted as is or if changes are needed.

Chair Tilos stated the reports have come a long way, but more information can be added; the portal idea is good; perhaps the issue can be agendaized for a future meeting and the Commission can receive an update on the portal; he is leaning toward accepting the reports as is but would like to hear from other Commissioners.

Commissioner Reid stated whether or not a full report of all the PRAs including the columns is produced, the data feels incomplete; she is glad the City will plan to adopt a new method to capture the data more seamlessly.

Vice Chair Shabazz concurred with Commissioner Reid; stated that he would like to see additional information on context regarding the specific complaints; there seems to be an omission and he is curious about the “voluntary suspended” case; he is leaning towards not accepting the report, requesting additional information and then moving it forward; it could be accepted with the understanding that going forward specific information will be added; he is skeptical about a tentative approval; if it is not burdensome, he would like to request an additional column showing where PRAs originated and data where there are blanks; he does not want to create more work for staff, but the report paints an incomplete picture as is.

Chair Tilos reiterated the Commissioner’s comments and inquired whether two separate pieces could be voted on, to which the City Clerk responded in the affirmative.

Commissioner LoPilato stated because the “voluntary suspended” language is ambiguous, she is leaning more towards getting more information and the Commission would be able to give concrete and specific direction as to what that would look like; she would also like to know if there are any deadlines to avoid putting the City Attorney’s office in a non-compliant position.

The Assistant City Attorney stated that he is able to provide more context regarding the “voluntary suspended” complaint; the Attorney assigned to the case reached out to the requestor and the requestor asked for additional information; the Attorney and requestor were going to work out an agreement in terms of policy for the particular category of records; the Attorney asked if the requestor would voluntarily suspend the complaint in the interim until the issue is resolved; the City Attorney’s office did consider using the term “abandoned;” the Attorney reached back out to the requestor and did not hear anything further; changes can be made to reflect the information he just conveyed; he is willing to dive deeper if the Commission makes the request.

Chair Tilos suggested approving the report as is, with a motion for the voluntary suspended complaint be agendaized for the next meeting to check the status with the City Attorney office.

Vice Chair Shabazz stated a complaint dated May 12, 2020 was for APD Arrest Information; Request 20-40 dated April 15, 2020 was for APD Arrest Information; inquired whether the request was the PRA that lead to the “voluntary suspended” complaint, to which the Assistant City Attorney responded in the affirmative.

Vice Chair Shabazz moved approval of deferring the approval of the report to the next meeting in order to have the City Attorney provide information about the specific instance and to provide any additional context regarding the withdrawn cases as consistent with previous annual reports.

In response to Chair Tilos’ inquiry, Vice Chair Shabazz re-stated his motion: to defer the acceptance of the annual report with the direction to the City Attorney’s office to provide additional context and factual information regarding the “voluntary suspended” case, and, as consistent with previous annual reports, provide any additional context about the withdrawn complaints.

Commissioner Chen seconded the motion.

In response to Chair Tilos’ inquiry, the City Clerk stated there is no specific deadline; the annual report has typically been presented at the Commission’s first meeting of the year in February.

Vice Chair Shabazz stated he really likes the table and does not want to mandate the format, but asks that the information be accurate.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Shabazz: Aye; Chair Tilos: Aye. Ayes: 5.

In response to Chair Tilos’ inquiry, the City Clerk stated the Commission can provide a specific date to hear the matter; the first Monday of every month is now reserved in case the Commission has business; this issue can be considered business and does not have to wait until the specific established date of February or October; any direction the Commission provides will be welcome.

Vice Chair Shabazz stated the Commission could schedule the meeting around the timeliness of the City Attorney’s office.

Commissioner Chen stated if there is a specific pattern of requests that are asked repeatedly, the Commission should anticipate that there will be more questions about more controversial items; items should be clustered together instead of listed by when

the requests came in; that transparency and information should be available on the City's website; it may be a bit more work for staff on the front end, but on the back end the readily public has access to the information.

Chair Tilos concurred with Commissioner Chen; stated he would prefer to receive the report in a format that can be filtered rather than in a PDF.

Commissioner Chen stated the report format is not an issue; that she would like to be more transparent in the future ahead of the game; as an example, if there were 10 requests for information on the Wellness Center, she would like to see a paragraph stating there were 10 questions relating to the same issue, which indicates the public's concern regarding the topic; the City should be transparent about the context, rather than just listing the requests; she would like to see how the Commission could improve services by looking at all the different questions that keep popping up repeatedly; there should be a way to foresee these things in the future and be more transparent up front.

Commissioner Reid concurred with Commissioner Chen's points; stated Commissioner Chen's concerns could be achieved through a filter and is doable.

The Assistant City Attorney stated there are some practical considerations regarding the suggestions; the sorting of the spreadsheet sounds like a great idea, but meta data needs to be produced in order for that to happen; for each request, tags would need to be created that can be coded and then sortable; the task is achievable, but is comprehensive and at a considerable cost; another consideration is augmenting the report to include all requests, not just ones that come through the City Attorney's office; to the extent that this will impact how other departments handle and document requests, it is difficult for the City Attorney's office to commit the other departments; the comments and ideas are good, but how to effectuate it is also important.

The City Clerk stated documents posted for the agenda are converted to PDF; there would have to be a different distribution if the Commission would like Excel or another sortable format; there are definitely repeated requests, but sometimes even repeated requests on the same topic are for separate pieces of information or different documents; the system devised by the City Attorney's office is very specific to their office; her department uses a simple tracking system; other departments use a similar tracking system; sometimes not every request is captured, especially, if it was a simple request which was completed immediately; the Clerk's office has compiled an online database of documents for requests that was built over time, which includes campaign filings, all of the Council records and legislation.

Vice Chair Shabazz stated that he appreciates the explanation from the Assistant City Attorney and the City Clerk; he understands the challenges of the task and does not want to regulate the processes, but wants to encourage information to be available, get the metrics, and have transparency without telling staff how to do their jobs; he is concerned that the information is only the requests for the City Attorney's office; his request for the 2013 through 2018 PRAs did not come from the City Attorney's office; the list is

incomplete; he is not sure how to address the issue and does not want to recommend something too laborious or highly intensive; he would like to recommend having something a little more comprehensive in the future so that it will be useful for the Commission in evaluating the annual report.

The City Clerk stated perhaps the reason Vice Chair Shabazz did not receive the response from the City Attorney's office is because they had not started the tracking process yet; the City Attorney's office started after the direction from the OGC; the direction of incorporating all of the requests and adding the column seems to be what the Commission wants going forward; the Commission could also provide direction to have this item come back; it may have been spottier in the past since the City Manager did not to pass on the request to department heads.

Commissioner LoPilato suggested a streamlined way to get the information which may help to spot issues the Commission may want to address; stated that she is curious to hear some baseline stats: adding the column for the originating department, the number of requests received, number of requests fulfilled, and number of instances in which a request was denied without sign-off from the City Attorney's office; this would help identify instances where people have not receives responses or the denial of a records request did not surface to the City Attorney's office; a tiny amount of over-arching statistics that can be obtained from each department would be helpful to see if there really is a problem; those numbers could identify some gaps if there are any.

In response to Chair Tilos' inquiry, the Assistant City Attorney stated it seems reasonable to add the extra columns which brings it more in line with Section 2-98.6 which established the annual report; Vice Chair Shabazz mentioned the report is essentially a tally for comparative and statistical purposes; perhaps a next step is to survey the departments and see what they are currently doing, check with staff and report back; it may give the Commission more ideas on how to track the data.

Chair Tilos stated he is leaning toward not making a motion on the item and referring it back to staff for the additional column and to survey the departments.

In response to Chair Tilos' inquiry, the City Clerk stated the Commission could proceed with the direction or formalize it in a motion.

Chair Tilos stated he would just like to provide direction to staff.

3-C. Discuss and Provide Recommendations Concerning Potential Amendments to Article VIII (Sunshine Ordinance) of Chapter II (Administration) of the Alameda Municipal Code, as Amended, to Replace "Null and Void" Remedy.

In response to Chair Tilos' inquiry, the Assistant City Attorney stated the City Attorney's office did receive the Commission's input and the motion was clear; as was noted, the Commission composition changed, so it was best to hold it in order to be able to receive input from all the new members before sending it to the Council; all of the input that has

been provided by the previous Commission remains intact and will be transmitted at the appropriate time once the process concludes; staff simply wanted to provide the new members an opportunity to weigh in.

In response to Chair Tilos' inquiry, Vice Chair Shabazz stated what happened at the last meeting is reflected in the minutes.

Stated since 60% of the Commission members are new, the report submitted to Council should be the work product of the new commissioners; he is concerned that the City Attorney granted the City Council immunity from the OGC's oversight; urged the new Commission to stick to the original mandate of providing transparency: Jay Garfinkle, Alameda.

Stated the issue started in October of 2018; since that time, nothing has happened except the Commission has tried to fight for its original enforcement power; the Commission has only received delay and obstruction from the City Attorney's office; he disagrees with Mr. Garfinkle that the Commission should start over; the City Attorney's office has made it clear that there is no pathway for the Commission to have any more influence on decisions; urged the Commission to work with the City Attorney's office on the John Knox White proposal if they want to move forward: Paul Foreman, Alameda.

Chair Tilos stated he would like to propose making a motion to have staff bring to Council the original resolution voted on by the previous Commission and see if there is a second; if there is no second, the new Commission could provide feedback and a different motion.

Vice Chair Shabazz moved to affirm the previous Commission's decision to forward the Subcommittee's recommendations to the City Council.

Chair Tilos seconded the motion.

Under discussion, Vice Chair Shabazz stated he found it unusual that the item came back to the Commission without going to the Council; noted the Chair and Vice Chair was not brought forward; stated that he does appreciate the intention of enabling the new Commissioners to participate in the discussion; the subcommittee's work was a great attempt to move forward and he is interested in what the Commissioners have to say; he hopes the item can be brought to Council.

Commissioner Reid stated that since she is new on the Commission, she would appreciate the opportunity to do some research on the specific context; she encouraged a commitment from the Commission to meet next month to collaborate and come up with a resolution.

Commissioner LoPilato stated that she did not expect the chance to be able to weigh in on the item; since seeing it on the agenda, she has been knee-deep in the archives of the Commission and has a pretty good understanding of the context; thanked everyone for their work and efforts on the issue; she understands the frustration; there is a lot of

investment in the issue; the sequencing on how the work happened is actually a root of the problem; it was not collaborative and became adversarial; she does not think the method was effective in reaching the end point hoped for by the Commission; she is concerned and does not want the Commission to get so bogged down with retaining its enforcement authority or taking the reins back from the City Attorney's office and potentially squandering an opportunity to make a recommendation that is actually going to get adopted by the City Council; in the staff report, the City Attorney's office has stated the super-majority requirement violates the Charter even though the subcommittee proposal did a great job in explaining why it does not; it is clear from the video and also reflected in the minutes that the City Attorney's office stated they would bring the issue to Council if they could find legal arguments for it; where it stands now, the City Attorney's office found legal problems and wanted to bring it back to the Commission for consideration; she is concerned that marching forward with what was done might result in the Commission losing the opportunity to actually provide feedback and craft a replacement remedy which the Commission would like; she would like to discuss issues with the City Attorney's office, as well as some problems she found in the subcommittee proposal; she thinks a lot can be done with the Knox White proposal.

Chair Tilos inquired whether the only reason the City Attorney's office did not present the proposal to the City Council was to give the new Commissioners the opportunity to provide their input, to which the Assistant City Attorney responded in the affirmative; stated what the City Attorney's office has said from the onset is that the City Attorney's office is obligated to analyze any proposal the Commission puts forth for potential issues; the City Attorney's office remains committed to conveying the Commission's proposal to the Council subject to legal analysis of its viability.

Commissioner LoPilato stated the staff report outlines that the subcommittee's support for the original position requiring the Council to act by super majority runs afoul of the Charter; read the proposal; stated that she also sees reference to special counsel; the packet itself is very confusing; she is hopeful that she did not invent that there are some concerns regarding the super majority requirement.

Chair Tilos stated there were concerns in November and the subcommittee addressed the issues in the December meeting.

The City Clerk provided context as to why there was no legal opinion on the proposal when it came forward from the subcommittee; clarified that the subcommittee provided the proposal the day the packet was published, so the City Attorney's office had no time to do a legal review; now with the benefit of time, the City Attorney's office was able to weigh in.

Commissioner Chen stated that she has spent 30 years going to City Council meetings in the County and beyond representing public health policies; as a professional advocate for public health and watching numerous Council meetings, she strongly feels that all of the actions were voluntary, in terms of Council trying to comply with the true intent of the Brown Act, which provides for transparency and people being notified in a timely manner;

her concern is if there is just going to be a legal fight deep in the weeds, she would just like to get out the weed whacker and ask the question of how to make it so all the public boards and commissions follow the intent of the Brown Act, which is recognizing that it is the people's government; it is the people's business they are conducting; when legislative bodies decide to make decisions without adequately noticing the public, there has to be some recourse; she would like to move forward with a solution that works for everyone; one where there is trust in Councilmembers and Commissioners to do their due diligence; she feels trust was lost and would like to find a way to rebuild it.

Vice Chair Shabazz noted Roberts Rules of Order requires a motion and second prior to having a conversation, which was his intention in making the motion, not to subvert the new Commissioners from providing input; acknowledged the research done by Commissioners LoPilato and Chen to go through and better understand the issue; he concurs with Commissioner Chen's comments regarding rebuilding trust; inquired whether if something else is found to be in violation of the Charter, will it be addressed; stated that he is interested in hearing from the Council whether or not the supermajority requirement is legal; the Charter was recently cleaned up so he is surprised if this issue was missed.

In response to Chair Tilos' inquiry, the City Clerk stated the Commission does not have to strictly adhere to Roberts Rules of Order; the Council adopted using Roberts Rules of Order, which was reviewed by the OGC, but the OGC did not specifically adopt adhering to it; according to the rules, it is correct to state the motion in the beginning to have a discussion, and substitute motions can also be made.

Commissioner LoPilato stated that she would like to suggest taking the best parts of what was offered up in December, parts that are streamlined and elegant from the Knox White proposal, and then adding in some other creative items to add some meat; the City Attorney's flagging of some issues tells her that City Council may have some issue with it as well; she would like to consider having an opportunity to ask other questions of the City Attorney's office and bring the item back next month; maybe an alignment can be reached tonight on a modified proposal; she is concerned that the language in the subcommittee proposal would make it impossible to make a complaint about a noticed agenda item because of the timing; she understands the proposal was pushed through with a desire to be done with it, but there are still issues she would like to discuss; a compromise could be coming up with a way to make votes very public; a way for the public to see whether the City Council or other Boards or Commissions are running roughshod over the OGC's recommendations; she believes there may be other options that may have sharper teeth without running into legal issues; she does not support moving forward with the December proposal because she sees problems with it and it is not as strong as what the Commission could potentially put forward with further thought.

Vice Chair Shabazz withdrew his motion.

In response to Chair Tilos' inquiry regarding timing, the Assistant City Attorney stated it depends on what the Commission, as a whole, feels needs to be addressed prior to the

meeting; he heard Commissioner LoPilato mention a menu of concerns and questions; once there is a sense of what the Commission would like to address, staff will be able to assess whether coming back at the next meeting will be enough time.

Chair Tilos inquired whether the Commission would be able to have the follow up information for the four complaints by the March meeting, to which the Assistant City Attorney responded in the affirmative; stated it would definitely be feasible; he also heard the Commission talk about getting input on potentially broadening the scope of the public records requests; inquired whether there should be two separate meetings to address both agenda items; stated it would depend on the nature of the questions being asked, but he would rather do it all in one meeting.

Commissioner LoPilato moved approval of identifying big-picture questions to pose to the City Attorney's office in order to determine whether it is feasible to reconvene in March with concrete language to talk about.

Commissioner Chen seconded the motion.

In response to Vice Chair Shabazz's inquiry, Commissioner LoPilato stated she is amenable to any friendly amendments to her motion to continue discussing beyond questions posed to the City Attorney's office.

Commissioner LoPilato stated she is thinking of the questions that would help frame how to move forward include: 1) whether the City Attorney's office would be comfortable recommending anything that contains a super majority requirement; 2) she is curious to hear a little bit about benchmarking of what other jurisdictions have done regarding a null and void remedy; and 3) have the City Attorney's office elaborate on the risks are of getting it wrong; it would benefit the Commission and the public to be grounded in the understanding of why it is taking so long to get it right; she would also like the Commission to consider the idea of posting votes taken on OGC recommendations and whether there are legal concerns around it.

Chair Tilos inquired what the Commissioners' thoughts are on continuing the meetings beyond a certain time or if Commissioners prefer hard stops.

Vice Chair Shabazz expressed support for never having all-nighters.

Commissioner Reid stated that she prepared a presentation for the meeting.

Commissioner Chen stated she suffers from Zoom fatigue; she does not mind meeting more frequently than twice a year; suggests dividing the tasks so everyone is fresh; she would like to punt to the next meeting.

Chair Tilos inquired whether the Commissioners would be agreeable to set a hard stop of 9:00 p.m. for the meetings.

Commissioner Reid stated that she is okay with going as long as possible to address all the agenda items; her presentation is brief and she would like to be able to present it tonight.

Commissioner LoPilato stated that she wants to be respectful of the public attending the meetings and knows how difficult it is to stay so late; the meeting should be conducted in a way in which members of the public who have come to make comments get to make comments; the Commission should be respectful of the public's time even if it means cutting off Commission discussion to move things forward.

Vice Chair Shabazz stated the meetings can be more efficient and can be prioritized if there is a work plan or objectives and not arbitrarily choosing items over others; the first question is what is the Commission's goal and what can be done to increase transparency and accountability.

The City Clerk stated she does not think the Commission should specifically decide how to conduct meetings tonight; perhaps an agenda item could be brought back to address implementing rules.

Chair Tilos stated that he proposes to pause the discussion on 3-C to hear the next agenda item until 10:00 p.m.; then, the Commission can make a call to continue the meeting or continue the item to the next meeting; inquired whether there is a consensus on pausing 3-C to take the next item.

In response to Vice Chair Shabazz's inquiry, the City Clerk stated the next item is a specific communication from a Commissioner and is thus listed under Commission Communications as an agenda item.

In response to Chair Tilos' inquiry about public comment, the City Clerk stated there are 17 members of the public attending the meeting, but she does not know if they will be speaking on the item until it is called.

In response to Chair Tilos' inquiry regarding pausing 3-C, Commissioner LoPilato stated that in the interest of efficiency with respect to item 3-C, it might be beneficial to quickly do a round robin of things to be prepared for the next meeting or perhaps create a subcommittee or just collect the questions other Commissioners may want to offer the City Attorney's office; she suggests closing the loop so there is something to come back next time; then, move on to 4-A to hear from any members of the public.

Commissioner Chen stated she would like to be more fresh when discussing the item; suggested continuing the item to the next meeting to talk about it exclusively and have better, more thoughtful details to discuss; she would also like to allow Commissioner Reid to do her presentation.

Vice Chair Shabazz stated any additional information the City Attorney's office can provide would be helpful and important to include, especially information missing between

2011 through 2019; urged working together to figure out what would be an effective replacement for the null and void remedy; he would like whatever the solution is to encourage transparency and accessibility.

Commissioner Chen there was an accountability that was completely removed and the Commission just wants to see what that accountability can look like.

The Assistant City Attorney inquired whether there is any desire to bifurcate the items directed to staff; stated the issues related to the annual report can be at a subsequent meeting; the null and void questions posed by Commissioner LoPilato and Vice Chair Shabazz can be discussed at a next meeting.

Chair Tilos responded both subjects are pretty meaty and concurred with the Assistant City Attorney; inquired whether two separate, dedicated meetings could be done.

The Assistant City Attorney responded in the affirmative, stated since there is no requirement on follow-up with respect to the annual report, the item can be on an April meeting; the null and void remedy item can be the focus of the March meeting so no momentum is lost; he suggests converting the questions that have been posed by Commissioner LoPilato and Vice Chair Shabazz in a motion to direct staff to come back with a staff report to address the items; addressing Vice Chair Shabazz's comments, once information is laid out regarding other jurisdictions, it might provide the Commission with some ideas about the universe of options out there.

Vice Chair Shabazz stated he likes the suggestion of finding other jurisdictions and other possible options; he is willing to put some energy collaboratively towards drafting a flow chart; seeing it visually may assist with understanding the process at each step.

In response to Chair Tilos' inquiry regarding consensus on bifurcating the topics at two separate meetings, Vice Chair Shabazz stated he is opposed to having the next meeting solely on the null and void issue; there is currently an effort to do some police reform to address racial equity and subcommittees have been going to some of the different commissions; there are some things that may align with some of the issues of the OGC; it would be beneficial to provide a space to discuss the issue within the OGC context.

Chair Tilos inquired whether Vice Chair Shabazz is recommending that the topics should be heard together in March or April.

Vice Chair Shabazz responded it goes back to his comments about making a work plan with goals and priorities and how that would reflect the timing; he suggests meeting in March, April, and May to address all the issues, but prioritize the issues based on what reaches the goals of what the Commission is about; there is conversation to be had about oversight, which very much aligns with some of the functions of the Commission; based on the timeline and priorities, he suggests providing a forum in March for the Commission to learn about oversight issues, address the null and void issue in April, then address the annual report in May or June.

Commissioner Reid stated she would be okay with discussing the null and void next month, having monthly meetings and discussing the other agenda items in April; for the respect of the participants' time, she suggests moving forward to allow for public comment since it is getting late.

In response to Chair Tilos' inquiry, the Assistant City Attorney stated the direction he heard was that the null and void issue would come back in March; and the annual report would come back in April.

Commissioner LoPilato stated what she is hearing is the Commission is interested in receiving some amount of feedback from the City Attorney's office with respect to the null and void issue for the March meeting; there is general agreement that the annual report is less urgent and whether it comes back in April, May, or June would depend on what other time-sensitive issues may come up before then; she suggests adding an agenda item for the March meeting to set a work plan.

In response to Chair Tilos' inquiry, the City Clerk stated a motion is not required since staff can follow up on the consensus direction given.

Vice Chair Shabazz had a point of clarification regarding whether Commission Communications are agenda items or referrals.

Commission Communication

4-A. Discuss Possible Amendments to Sunshine Ordinance Sections 2-91.1(d)(3), 2-91.1(d)(4) and 2-91.1(d)(6) pertaining to Bodies (Commissioner Reid)

Commissioner Reid made a PowerPoint presentation.

Vice Chair Shabazz inquired what the time limit is for speakers, to which Chair Tilos responded three minutes.

Stated he is not seeking to invalidate or delay the work of the Police Reform or Jackson Park Renaming committees, they have done great volunteer work that should move on; this is about respecting the rule of law; urged the Commission to seriously consider specific amendments to the ordinance, so that citizens can understand, including repealing Section 2-91.1 (d)(6) that exempts ad hoc committees from the category of a policy body and Section 2-91.1 (d)(3) and (d)(4) to add the phrase "formal action" to both subsections and provide additional language to clearly define the terms "creation" and "formal action;" the amendments will bring Alameda in line with the Brown Act and existing case law: Paul Foreman, Alameda.

Stated that he was disappointed not to find anything discussed regarding the Sunshine Ordinance amendments at the February 2019 City Council meeting and with the City Attorney office rationale regarding the formation of ad hoc committees at the December

2019 meeting; the term ad hoc committees is not defined and does not exist anywhere in the Brown Act; the use of the term ad hoc has no relevance to the Brown Act; he suggests the Commission put together a play book or set of instructions and guidelines for members of the public: Matt Reid, Alameda.

Stated that he is concerned about ad hoc committees being exempt from the Brown Act; it is clear that they cannot be legally exempt; provided an example as to where transparency could help out with respect to the Police Reform committee; an online survey that has no scientific validity was put out by the committee; the survey results cannot be trusted; the public needs to be able to see and comment on groups operating officially as part of the government and doing the work of the people; he was disappointed in a tweet by Vice Chair Shabazz that the ad hoc committee issue was racially motivated: Michael Divine, Alameda.

Stated that his main concern is the lack of transparency in much of the government activities; he is thrilled that Commissioner Reid brought her proposal forward; the Commission should concentrate on making it work to improve transparency; urged the Commission to set up a working group comprised of members of the public and two members of the Commission to find ways to improve transparency and allow public oversight access of all committees: Jay Garfinkle, Alameda.

Stated the City Attorney has already confirmed that ad hoc committees are not subject to the Brown Act; the formation of committees is different than the terminology the Brown Act covers; the formation of the Police Reform committee was done by staff and endorsed by the City Manager, it was not an action of a legislative body: Zac Bowling, Alameda.

Stated it is clear that the creation of ad hoc committees seems like a major loophole and very controversial: Amy Lee, Alameda.

In response to Chair Tilos' inquiry, the City Clerk stated the item is similar to the Council Referral process; because the Council directs the work plan of the Commission, the action the Commission could possibly take is to seek Council direction on whether or not the Commission should take up the issue; the concept from the individual Commissioner is being presented and shared tonight; the Commission as a whole can decide whether or not there is enough interest in the proposal to seek Council advice on whether to pursue any changes.

Chair Tilos inquired whether the next move is to ask Council if the Commission should make a move on the issue, to which the City Clerk responded in the affirmative; stated the Council provides direction on whether or not to move forward on an issue brought forward by a Commission.

The Chief Assistant City Attorney concurred with the City Clerk; stated the City Council will be the final body to determine a work plan, namely if the City Attorney's office will be asked to develop any analysis or staff report.

Commissioner Reid inquired whether it is appropriate at this time to ask the Commission to put the item on their next agenda, to which the City Clerk responded the decision is if there is a majority of the Commission who want to forward an inquiry to Council.

The Chief Assistant City Attorney stated the City Attorney's office role is to do whatever the Council asks, similar to the discussion of the null and void.

Vice Chair Shabazz stated he wants to address the mention of his tweet; read it verbatim; stated that he does not think his tweet was inaccurate; it is not entirely clear on the intention of the amendment or what the genesis truly is; inquired what could be the impact if some of the bodies are considered as meeting the requirements of the Brown Act; additional questions include whether it increases transparency or creates opportunity for people to be involved.

Chair Tilos stated it seems there is a lot of interest in the subject; asked if Commissioner LoPilato and Commissioner Chen want to pursue the matter further and seek direction from the Council.

Commissioner LoPilato stated the first step would be to check whether the Commission has interest in seeking direction from the Council to address the item; she is concerned about the topic and the way it is coming in; it could have an impact on chilling participation; she disagrees with a comment that it is not hard to abide by the Brown Act; it is hard because commissions cannot organically communicate on the side or build trust and relationships outside of public meetings; a lot of the topics discussed in the committees are more amenable to the way they have been structured; there are a lot of other issues the Commission can be working on; she appreciates Commissioner Reid efforts on the issue, but she does not think it is a priority at this time.

Commissioner Chen stated she thinks this is an issue for the City Council because it is looking at an ordinance; she will be agnostic on the topic because she sits on the Police Reform committee; it was one of the best committees she has been on and has a very diverse group of people; there is a real benefit of having working, temporary groups around an issue where they can coalesce and give recommendations; as it applies to the Brown Act, the question becomes when does a group stray into Brown Act territory; it is not within her bandwidth and should be something the Council should decide what to do with.

In response to Chair Tilos' inquiry, the City Clerk stated a Commissioner can make a motion to either send it to the Council or not; the Commission can take a vote or just let the matter die if no vote is taken.

Commissioner LoPilato inquired whether the issue has been raised to the City Council separately, to which the City Clerk responded communication on the issue has done to the Council and people have been publicly commenting about concerns; the Council is very aware.

Commissioner Reid moved approval of bringing the issue to the City Council for review.

The motion failed for a lack of second.

Vice Chair Shabazz stated he appreciates the efforts put into the presentation and the topic; he would have liked to see the same level of effort put into 3-C; he is concerned with what seems to be a contradictory public statement.

Commissioner Reid thanked the Commission for allowing her to make the presentation; stated the importance of making subcommittees transparent was the reason why she brought the item forward; her intention has nothing to do with the content of the committees; her concern is the procedure; if the goal as public representatives is to create a transparent government, she feels the Commission should hold that goal; while she appreciates that people are having conversations and meetings, why not adhere to the Brown Act and include members of the public to participate as well; full transparency at every level should be encouraged; she researched item 3-C and does not appreciate Vice Chair Shabazz's comment; she does have questions and would like to address the issue at the next meeting; she hopes that Commissioners fully respect each other on social media and work together and serve the public as they deserve.

Chair Tilos summarized the next steps to be taken at the next meetings; discussed the issue of timing for the meetings and expressed his desire to end the meetings by 10:00 p.m.; stated that he would like input on how to frame the next meetings.

Vice Chair Shabazz stated he would appreciate having adequate time; he is conscious that folks have already indicated having Zoom fatigue; explained why he made the reference regarding Commissioner Reid not doing research, which is what she already stated; commended her work on her presentation; stated that he would like the Commission to consider an invitation to the Police Reform and Racial Equity subcommittee for the next meeting; the question about Police oversight has come up before and providing another opportunity for the public to learn about the recommendations is important; the null and void topic and the annual report, could go a little further out; his goals on being on the Commission include: increase government transparency, increase public knowledge of government, and advocate for equity and inclusion within open government; his actions are motivated by these goals and if he is contradicting himself, let him know; he hopes the Commission could bring the steering committee item forward for March; he does look forward to offline conversation regarding [Paul Foreman's] contradictory comments to bridge and grow a deeper understanding of the intentions and potential impacts on other members of the community.

Commissioner Chen thanked Commissioner Reid for taking the initiative to bring up an issue she thought was important; she wants to acknowledge how important the issue is; the new Commissioners are off to a rousing start; she would like to see a work plan; the members of the Commission are thinking about how to enhance open government in the City, not just waiting around for complaints; members will not always agree on personal visions within the group, but she thinks it is very healthy; she was unaware of Alameda's

Sunshine Ordinance until someone told her about the OGC; it is important to get people more involved and more engaged; it would be fantastic to be open government ambassadors to everyone; there may not be agreement on every opinion that comes up, but that is what makes a democracy.

Commissioner LoPilato stated that she concurs with Commissioner Chen's comments; getting information out to the community is a core reason that she is interested in serving on the Commission; thanked the City Attorney's office for being patient in doing all the homework assignments; stated a work plan should include all the things the Commission wants to get done; she is excited about putting together any training opportunities; she loves training volunteers on advocating in a legislative space; giving people information in a way they can digest and use to be more engaged in the government is really worthwhile for the Commission; the Commission should create opportunities for public education and training; establishing a cadence for when certain topics come up in meetings is something the Commission should explore; thanked all the Commissioners for a robust discussion.

Adjournment

Chair Tilos adjourned the meeting at 10:47 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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