

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - APRIL 5, 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; City Clerk Lara Weisiger; Special Counsel Kristen Rogers, Olson Remcho; Police Captain Jeff Emmitt, Assistant City Attorney Alan Cohen]

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the March 1, 2021 Meeting

Commissioner Chen stated Amy Gong Liu's name was misspelled; the City Clerk noted it will be corrected.

Commissioner Reid stated at the end, she made comments regarding submitting a null and void remedy.

Commissioner LoPilato stated she had small edits which she emailed to the Clerk's office and shared them with the Commission.

Vice Chair Shabazz stated his changes clarifying why he stated he was recusing himself from the Jackson Park Committee because he was invited to be a part of the Committee.

Vice Chair Shabazz moved approval of the minutes with the clarifications.

Commissioner Chen seconded the motion which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Shabazz: Aye; Chair Tilos: Aye. Ayes: 5.

3-B. Hearing on Sunshine Ordinance Complaint Filed by Scott Morris on May 12, 2020

Vice Chair Shabazz stated it was suggested by the City Attorney's office that he recuse himself; he publicly commented on Mr. Morris's initial request via Twitter; he wants to

publicly state that he will not be recusing himself, but will make impartial decisions based upon the facts that are presented tonight and also the information that he has reviewed.

The Chief Assistant City Attorney stated the City Attorney's office legal opinion is that Vice Chair Shabazz should recuse himself; she wants to give more context to some specifics on the basis for the recommendation; Vice Chair Shabazz did recommend Mr. Morris file a complaint with the OGC publicly via Twitter; it is the City Attorney's opinion that the comment suggested to Mr. Morris that Vice Chair Shabazz would be a receptive audience to Mr. Morris's complaint and that it went beyond just giving information to the public about the complaint process; she is informing the entire Commission of the basis for the advice because of the fact that, should the Commission take action regarding Mr. Morris's complaint and should that action be reviewed by a court, courts do find and do examine the propriety of recusals and whether a recusal was made or not; the City Attorney's office believes that the decision handed down by the Commission could be imperiled or weakened on a judicial review because of the fact that Vice Chair Shabazz has a basis for recusal; she indicated to Vice Chair Shabazz that it is his decision whether to recuse himself and he indicated that he would not recuse himself.

In response to Chair Tilos's inquiry regarding how to proceed with Vice Chair Shabazz' recusal issue, the City Clerk stated that there is not anything specific in the bylaws directing it, which she will check quickly.

Vice Chair Shabazz stated that he understood the bylaws that someone should state what the concern is and then they can continue; in preparation of Ramadan, he will be stepping away from the meeting briefly to break his fast but will be joining the discussion.

The City Clerk stated she just briefly looked through the bylaws and did not see specific direction on recusals.

Commissioner LoPilato inquired whether there could be some clarity on the exact verbiage that should be used when evaluating the nature of complaints; for example, is it binary between sustaining a complaint or finding it unfounded or whether a complaint is sustained and has merit or not.

The Chief Assistant City Attorney responded based on the text of the Sunshine Ordinance, it is not a binary; a complaint can be sustained that has merit is one option; another option is, after examination of the facts, there is a vote that the complaint does not have merit so it is not sustained; there is yet a third option where a decision is made that the complaint is unfounded, which was the Commission's March meeting vote; it was discussed at that meeting that there is no definition within the Sunshine Ordinance of unfounded, so the Commission needs to make the definition for each complaint; there are ramifications of a complainant having two unfounded complaints within a specific timeframe.

Commissioner LoPilato stated it would be helpful for Commissioners and the public to have a better sense of authorship and purpose of each of the documents enclosed with

the agendas; inquired that the Chief Assistant City Attorney or City Clerk give some specificity with respect to what the Commission has reviewed.

The Chief Assistant City Attorney responded basically both sides in each complaint have the option to present written arguments, which can take any form; the written argument submitted on behalf of the City appears more legal in nature because the City has retained outside counsel; another document would perhaps be titled proposed decision or suggested decision; the form of the document looks like a final Commission decision; the document is prepared by outside counsel; it is the conclusion that the outside counsel is urging, but it is not a requirement that the Commission needs to agree with it.

The City Clerk stated the City has always prepared a draft decision and presented it to the Commission for every single case; the draft decision gives the Commission a starting point; there have been times where the Commission has taken the opposite position than what was in the draft decision; going forward, it could be made clear that the decision is just a recommendation from the City and not final.

Commissioner LoPilato inquired whether the staff report is actually by special counsel and not the staff recommendation or Chief Assistant City Attorney's framing of the issue; and whether it is an advocacy piece it is a position statement by the attorney's representing the City in the adversarial adjudication.

The Chief Assistant City Attorney responded in the affirmative; stated the staff report is an adversarial piece and the waters are a bit muddled because it is also the City's position; in this particular instance, the staff report is the position of the City and the particular department within the City.

The City Clerk stated the City has always presented the staff report from its viewpoint.

Commissioner Reid inquired why staff and special counsel prepare a decision before the Commission hears a case; stated that she understands it has been common practice, but wonders if the Commission wants to continue the practice; further inquired whether the prepared decisions ever held the position of sustaining a complaint; stated it is important to know if the practice will continue; requested that the Chief Assistant City Attorney read the specific Public Records Act (PRA) Section 6250 3C Mr. Morris included in his complaint.

Chair Tilos stated the Commission could address Commissioner Reid's question whether to continue the draft decision process during Commissioner Communications.

Commissioner Chen concurred with Commissioner Reid; stated it seems like the deck is already stacked to reject the complaint from the get go; her understanding is that Commissioners should have an open mind when cases are presented; the staff report states that someone filed a complaint and it was already resolved; the complaint is not seen until the third or fourth document; it is not a fair process for residents who go through the trouble of filing a complaint to have all of these opposing documents in the beginning;

to already have the Commission's opinion written seems like a stacked deck; she is concerned about the way the documents come before the Commission; it was not until she saw Mr. Morris's statement that she actually understood what was going on.

The City Clerk stated staff hears the Commission and can come back with a different format next time with a more neutral staff report with the two opposing sides attached.

The Chief Assistant City Attorney stated she concurs with the City Clerk about the discussion to clarify the staff report format issue; emphasized that the proposed decision submitted by special counsel in both cases is the way that they are advocating; the other side is open to prepare their own desired decision as well; when attorneys file motions in court, typically, both sides prepare a proposed order or decision; it is a way for the attorney to urge the judge; she apologizes that it seems like stacking the deck, but the proposed decision is truly an advocacy piece; she appreciates the comments and the City Attorney's office will work with the City Clerk to clarify the process as appropriate.

Complainant Scott Morris gave a brief presentation.

Special Counsel Kristen Rogers gave a brief presentation, including outlining objections to Vice Chair Shabazz participating in the discussion.

Vice Chair Shabazz inquired whether responses to PRAs are 10 calendar days or 10 business days, to which the City Clerk responded it is 10 calendar days.

Commissioner LoPilato inquired whether Mr. Morris received the full time frame of the documents he sought from the other County agencies or if the agencies just gave him more than Alameda.

Mr. Morris responded each of the other 12 county agencies gave him the full time frame of the documents he requested, except for the Alameda County Sheriff's office and the Oakland Police Department, neither of which appropriately responded to his request at all which is the subject of litigation right now with the City of Oakland.

Commissioner LoPilato inquired whether the notion of limiting it to contemporaneous as to a specific look back period is something that Mr. Morris saw in a written statute or was it purely from case law.

Mr. Morris responded the statute of issue has a list of things the City must deliver with regards to each arrest; current address used to be included; based on that, a Court of Appeals in Los Angeles interpreted the legislative intent of the law to be that it would only be for a limited period of time, but what the time would be was not defined and was only supposed to be what was reasonable; in 1995, the legislature removed the current address; years later there was a different decision looking directly at the subsequent section of that statute which defines the list of things that has to be released about every time a Police Officer goes somewhere and current address was also removed; since the language was removed, it does not apply anymore; there is no reason that it has any kind

of temporal restriction; it is reasonable to put limits on burdensome requests, but if he asked for a particular arrest and the Police Department still has records on it, the request cannot be denied based on the letter of the statute and how courts have interpreted it.

Commissioner LoPilato stated that she is curious about the origin of the May 12, 2020 email and why it is part of the agenda materials.

The City Clerk responded the May 12, 2020 email was forwarded from Vice Chair Shabazz today, along with a couple of other documents that were already in the record.

Commissioner LoPilato stated a 14-day look back period was the position that the City was taking initially; now it is a 30-day look back period; requested special counsel to walk through the steps of whether the policy was changed and whether there is continuing evaluation of ongoing changes.

Ms. Rogers responded that she may have to rely on Captain Emmitt for some details; stated that she understands the 30-day policy went into effect when the Police Department actually undertook to improve its Information Technology (IT); it was a matter of practical possibility of the time to be able to expand the records; the records can be viewed on the Department's website in real time up to 30 days back; it is now the practice and technological capability of the Department to have that 30 days.

Commissioner LoPilato stated that she is also curious if someone comes in with a request for 30 days, will they automatically get the information; inquired whether the current practice changed due to Mr. Morris's complaint.

The Police Captain responded that he does not now know where the 14-day policy came prior to May 12, 2020 because everyone involved in the executive decision making process at that time has retired; he was promoted to Captain in July 2020; since that time, the City has taken the position that the Police Department would provide 30 days; most of the decision came from knowing that the Department's Computer Aided Dispatch (CAD) and records management system was being upgraded and would be able to handle requests in an almost real time basis; the new system went live on February 24, 2021 and live with the Citizen Rims function on April 1<sup>st</sup>; information goes back to March 26, 2021; as the system moves forward, the database will continue to build information; there is a specific tab on the Citizen Rims page that is dedicated to arrests and is a rolling 30 day calendar; after 30 days, the names that are 31 days or older will drop off the system; he hopes that the system points citizens in a direction where they will have more information available.

Commissioner LoPilato stated Ms. Rogers mentioned that Alameda's policy is generally consistent with judicial guidance and policies from sister jurisdictions; requested Ms. Rogers to elaborate and inform the Commission how the benchmarking occurred and which jurisdictions Alameda aligns with.

Ms. Rogers responded that she would first like to address Mr. Morris's statements to help

elucidate exactly what the judicial landscape looks like; the staff report explains that the Kusar decision in 1993 rested on a statutory interpretation argument supplemented with a purpose of the interplay of the PRA provision as it relates to other protections for exactly the same information that are found in the Penal Code and other somewhat codependent; in some cases, there will be a very clearly articulated privacy interest; in the Kusar case, the rules of civil discovery were also barring some of the accessibility of the requested records.

In response to Ms. Roger's inquiry, Commissioner LoPilato stated the explanation provides a good balance with regard to the legal landscape, but she is still interested in the jurisdictional comparisons with respect to the length of the policy and look back.

Ms. Rogers stated San Leandro, Pleasanton, Berkeley, Milpitas and San Diego all have 30 day look back policies; the League of California Cities provides top notch legal guidance to municipalities throughout the State.

Commissioner Reid inquired what data was finally provided to Mr. Morris and if he received the full scope that he requested.

Mr. Morris responded in the affirmative; stated he received the data more or less after a lot of back and forth, he did receive what he requested.

Commissioner Reid inquired whether the data is identical to what is currently viewable on Police logs.

Mr. Morris responded he is not sure what is currently viewable and is not exactly sure what he ended up getting off the top of his head; the statute defines a lot of things like eye color and things like that he was not even interested in; he was really looking for who was arrested, on what charges and the disposition; he does not recall the specific details of everything included in the statute.

Commissioner Reid inquired whether Mr. Morris received a response on April 27<sup>th</sup> from his initial request on April 15<sup>th</sup>, to which Mr. Morris responded in the affirmative; stated the dates sound accurate, though he does not have the specific dates in front of him.

Commissioner Reid stated the initial response to Mr. Morris went beyond the 10 days.

The Chief Assistant City Attorney stated the 10 day period can be extended to 14 days to respond whether or not there are documents and, then, the actual disclosure comes later.

The City Clerk added that potentially the period could go longer than 10 days if it falls on a Saturday or Sunday, it can bump to Monday as well; it is important to note the day of the week.

Commissioner Reid reiterated the timeline for Mr. Morris PRA request; inquired why the data was given to Mr. Morris in three separate sections and what was missing.

Mr. Morris responded that he was given the data 30 days at a time; stated the Assistant City Attorney initially only gave him 30 days data; Mr. Morris then cited contradicting case law and was given an additional 30 days data; he was looking for 90 days total data; he specifically wanted to know whether the Police Department changed its booking practices in response to COVID 19 because there had been some guidance from the Sheriff's Office not to book people into jail under particular circumstances; until he complained on Twitter and filed a complaint, he was not able to get the full scope of what he was asking; he does not feel Vice Chair Shabazz was giving him a wink as a receptive audience, it was a way for him to actually get some accountability and the option existed.

In response to Commissioner Reid's inquiry regarding how his complaint was classified, Mr. Morris stated the Assistant City Attorney asked him specifically to delay his complaint, not to withdraw it, but delay it for 30 to 60 days for the reason that he was serving other agencies in the area and that he was going to come up with a policy that was more in line with the law; Mr. Morris told the Assistant City Attorney that he consulted with attorneys who said there is not any reading of the statute that does not say the full universe of arrests as retained by the Police Department are available; he stated the City's policy has to be to provide arrests within the period of retention and if they have those records, they have to release them; the Assistant City Attorney knew his position and stated he would work on something that would strike a balance after talking to other Police Departments; that conversation was the last Mr. Morris ever heard from the Assistant City Attorney on the issue; there was no follow up; only after Vice Chair Shabazz approached him regarding the status of his complaint, it was placed on the agenda tonight.

Commissioner Reid inquired what the process is from the City's standpoint when a complaint is put on hold.

The Assistant City Attorney responded he had a discussion with Mr. Morris about establishing a records retention policy; stated Mr. Morris told him he was represented by an attorney; he told Mr. Morris to have his attorney contact him with some ideas about best practices; Mr. Morris's attorney never contacted him; maybe there was a miscommunication, but he felt that under the State bar rules of ethical conduct he was prohibited by law from contacting and having conversations with someone who is represented by counsel; he was waiting for a phone call from Mr. Morris's attorney and never received one.

Mr. Morris stated the statement is not true; he did not say he was represented by counsel; he said he had spoken to a lawyer to ask some questions, but the lawyer was not representing him; it was not supposed to be an adversarial thing; the Assistant City Attorney asked him to have the lawyer advise the City on what best practices would be, which would not be appropriate if the Assistant City Attorney thought it was opposing counsel; the lawyer did not think it was a good idea for him; to say that he was represented by counsel and that was the reason the Assistant City Attorney was prohibited from talking to him is just not true.

## PUBLIC COMMENT:

Stated the complaint was handled very poorly by the City; to classify the complaint as voluntarily withdrawn is erroneous and indefensible; it is a violation of how public records requests should operate; to preach about the City's 30 day policy and then release records from day 31 to 90 does not hold water; it sounds like the City does not have a policy: Matt Reid, Alameda.

Stated that she found it curious that the balancing test and redacting minors applies when it pertains to APD and their records, but not in regards to our neighbors interested in working on police reform; she is confused why Vice Chair Shabazz is being taken to task for merely communicating with a reporter, when a Councilmember and former Mayor who released the names of neighbors on a Next Door post: Jenice Anderson, Alameda.

Chair Tilos stated the whole reason for the Commission is to be more public and more transparent about records; some things did not go smoothly; he urges the Commission to include that in the discussion; he hopes to tackle some of the points brought up in the conversation that do not seem right.

Vice Chair Shabazz stated there is something to say about the process the complainant shared; the 12 day response period violates the California Public Records Act.

Chair Tilos stated there is a contradiction between calendar and business days if a response could carry forward if day 10 falls on a Saturday or Sunday.

The City Clerk clarified that City Hall is only open 4 days a week, Monday through Thursday; typically, the City tries to respond by Thursday if it falls over the weekend; April 27<sup>th</sup> was a Monday, which added extra days.

Vice Chair Shabazz stated that he asked the question because his understanding is it is calendar days; the law does not state it is business days; regardless of the operations of the City and what typically happens, it did not happen in this case; unless there is some correspondence requesting a 14 day extension, the City did not respond timely and was in violation of the Sunshine Ordinance; one of the main questions he has is why all the information was not given in the initial request; in 2018, he also filed a PRA request for arrest information, which was also denied; it was not until later requesting information that he eventually got it; regarding Mr. Morris's request from the correspondence as visible , it does not seem that there is a technical challenge to be able to access the information; again, there just seems to be something blocking information coming from the City Attorney's Office; he suggests finding the complaint sustained on the basis of the lack of response within the 10 day period; as far as potential resolutions, there could be some conversation about a potential pattern and some reform to provide consistent access to records, particularly coming from the City Attorney's office.

Commissioner Reid stated that she agrees with the goal of transparency and access to information; if data is accessible, it should be provided on day one.



Commissioner LoPilato stated that she is troubled by the same patterns; requested the Chief Assistant City Attorney to clarify what the timeliness requirement is with respect to calendar or business days under the law.

The Chief Assistant City Attorney stated her understanding is that the Public Records Act does not specify a calendar versus business days and that general principles of law indicate that absent a denomination of either of those terms, the default is calendar days; in this case, the request was made on Wednesday, April 15<sup>th</sup> and the 10 day period would have been on a Saturday, the 25<sup>th</sup>, so the 27<sup>th</sup> was the first business day.

Commissioner LoPilato stated there is a heightened privacy interest in the differences and types of information someone can request from a Police Department; she does see privacy interest in arrest records relative to calls for service which sounds to be a reasonable premise on which the case law may have developed to have a slight delineation between whether it makes sense to have a temporal limitation on arrest records because there is countervailing privacy interests; from a common sense and societal concern standpoint, it is important to balance transparency and privacy interests.

Commissioner LoPilato moved approval of redacting personal information in the May 12, 2020 attachment, which contains the arrest record log; stated that she was troubled to see the information with respect to names and addresses on the website for the purposes of tonight's hearing; it is important to have a mechanism from the transparency standpoint to redact the information.

Chair Tilos seconded the motion.

In response to Commissioner LoPilato's inquiry, the Chief Assistant City Attorney stated it is an appropriate motion and is fine from a legal standpoint.

The City Clerk concurred; stated the redaction can be done.

Under discussion, Vice Chair Shabazz stated that he appreciates and supports the motion; his intention for forwarding the materials he received was to share some of the dialogue that was not included in the exhibits or shared from City staff; it is important to have the other material that was omitted.

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

Commissioner LoPilato stated the timeliness is an interesting aspect looking at the technicalities; she is unclear what the Commission's authority is to recommend other type of solutions, but she is curious to know what others think about the timeliness issue; there is another angle there that was not fleshed out.

Vice Chair Shabazz stated that he was surprised no one did the math of 27 minus 15 despite all the legalese; he agrees with Commissioner LoPilato that privacy and balancing is a really important principle and should be in the conversation about policy; it was promised by a staff member to do or work with a member of the community and it was never followed-up; there were some unfulfilled promises going back to the relationship piece; reiterated his experience when requesting information regarding an arrest made at the Target in 2017; his request was stonewalled by the City; he was eventually able to get the correct information from the District Attorney's office; the social media account was used to put out a certain narrative; being able to access information allowed him to nuance the story in a certain way; he appreciates the concerns about privacy rights; there is something to be said about the public interest and journalists being able to access information to tell stories; questioned where Alameda's benchmark is in relation to other agencies; stated there seems to be some challenges regarding the PRA in the City Attorney's Office; one of the potential resolutions is having the Annual Report now; one of the duties of the Commission could perhaps be evaluating the performance of the City Attorney's Office; if there is a sustained complaint and the Commission wants to impose a penalty, perhaps someone could attend a PRA training.

In response to Chair Tilos's inquiry, the City Clerk stated the Commission has to have the written decision done within 30 days as required in the Code; the clearer direction the Commission could provide for the written decision to be circulated for all members to sign, the better; the next meeting is not until May which would be past the 30 days.

Commissioner Reid inquired whether or not records should be made available to the public if the policy of the City is to retain the records; further inquired if Chair Tilos was leaning more towards sustaining the complaint.

Chair Tilos responded in the negative, stated something is wrong; it can go several ways; it could be sustained or unfounded or found with merit; he does not think the Commission has all the answers yet; there is still another complaint to address and more conversations to have.

Commissioner Chen stated the Commission did find something wrong; a citizen seeking public information was pushed around; until he made the actual complaint, he did not get the data he was requesting; if this is how Alameda is going to treat public records requests, it is an important issue, but it is not on the agenda; the Commission needs to agendaize it for another meeting not to be in violation of the Sunshine Ordinance for discussing and acting on an issue that the public was not pre-warned about; the complainant did admit that he did not think he had a valid Sunshine Ordinance complaint at this point, so he is just utilizing this as a forum to be able to speak with the Commission and the community at large regarding the difficulty he had with obtaining public records; there does need to be a vote whether the Sunshine Ordinance was violated according to his complaint; then, pick up the PRA issue at a subsequent meeting.

Chair Tilos stated that on the issue of timeliness, the complaint could be found sustained; he concurs with Commissioner Chen about agendaizing the issue regarding the process.

Vice Chair Shabazz stated that he agrees there was a violation of the Sunshine Ordinance due to the lack of timely response and he is prepared to make a motion to that effect; for his own complaint in 2019, there was a subsequent meeting and process of how the actual decision was written and was hoping that could be a potential option; he is concerned about the behavior of City staff in this situation; people should not have to file a complaint just to receive a response when they make a request under the California PRA.

Commissioner LoPilato stated that she is curious about the resolution options; she would like to know how to bifurcate the motion.

Chair Tilos stated that he would approve sustaining on the basis of timeliness; discussing the process could come at another meeting.

The Chief Assistant City Attorney stated her role is not as an advocate for either side; it is to provide guidance on the law; there is a provision in the Code of Civil Procedure that is accepted for all courts in California that when the last day to perform or complete an act falls on a Saturday, Sunday or holiday, the timeliness limit is extended to the next court day closest to the trial date; there are no references within the PRA so the default is calendar days.

Commissioner LoPilato stated that she appreciates the clarification since it is such a tight technicality, which also was not offered up by the complainant; in civil litigation, there is a similar issue that occurs where parties are asked to engage in discovery and document production; it is a little similar in that there is a 30-day timeline; inquired whether there is an analogous production deadline.

The Chief Assistant City Attorney responded it is her understanding that if the due date to provide discovery falls on New Year's Day, you would get the benefit of the holiday; stated most attorneys would ensure that documents are postmarked or emailed timely.

Vice Chair Shabazz stated that he is hearing it is the spirit of the law versus the letter of the law; he finds it interesting that in the response to the complainant there was a quick going to the letter of the law, but he sees the Commission is feeling a little bit more merciful; due to his own previous experience with requesting information under the PRA, it is evidence of a previous violation for the current incident; his own opinion is to go with the letter of the law for the 10 day response time which was not referenced by the legal analysis and, then, coming back to figure out what the potential penalty or recommendation is; he is leaning more toward the letter of the law in this instance because of the pattern he has observed.

Commissioner Reid moved to sustain the complaint based on the fact that Mr. Morris did not receive the totality of his request within the 10 days through the provisions of the California PRA.

Chair Tilos stated the 10 days refers just to the response, not to the providing of the documents, so it is a false motion.

Commissioner Reid restated her motion to sustain the complaint based on the lack of receiving a response within the required 10 day allotment through the California PRA.

The Chief Assistant City Attorney noted there is actually a provision in the California Discovery Act that If the last day to perform or complete any act of discovery falls on a Saturday, Sunday or holiday, the time limit is extended until the next court date closer to the trial date.

Vice Chair Shabazz seconded the motion.

Commissioner Chen stated somehow the Commission wants to punish the wrongdoing by acting on this motion, which really does not get to the heart of the problem; she thinks the Commission has to go another route to get to the heart of the problem and needs to separate whether or not the Sunshine Ordinance was violated as per the complaint; the Commission is bending over backwards to count 10 days and try to use a mechanism that will not allow doing something, which should be done at a later date.

Chair Tilos concurred with Commissioner Chen; stated the Commission knows something is wrong but are basing the motion on a technicality where he thinks the Commission needs to dig deeper to find out what is really wrong and form that into a motion.

In response to Chair Tilos's inquiry, the City Clerk stated the last time, the Commission actually continued the hearing; the matter was continued and there was not a quorum, so it ended up on a subsequent agenda; the Commission could continue the item to a specific date and formulate the decision on that day in order to get to the other agenda items.

Chair Tilos inquired whether the item could be continued to the next meeting or to next Monday, to which the City Clerk responded the timeline is 30 days to formulate the decision.

Commissioner Reid withdrawing her previous motion; moved approval of just sustaining the complaint.

Vice Chair Shabazz stated there is a motion and a second on the floor; he suggested that in the context of this discussion; he is interested in what the other Commissioners have to say; he does understand the intention of withdrawing the motion to put another one forward.

Chair Tilos stated the Commission is within procedure and is not out of bounds based on precedent.

Commissioner LoPilato stated in the interest of moving things along and also for

transparency, she is finding herself aligned with Commissioner Chen's comments and still also troubled by what was heard today.

Vice Chair Shabazz stated that he is concerned with making sure the Sunshine Ordinance is being applied; neither the complainant or the legal counsel specifically address this; questioned if this issue is not what is sustained or addressed, then what is the process; when there is a pattern, or at least more than one instance of this happening, what is the mechanism to change the behavior; stated at the core of it, he still feels there was a violation even if it was not explicitly stated by the complainant or the presentation.

In response to Commissioner Reid's inquiry, Chair Tilos stated her latest motion to sustain was made but not seconded and is being discussed.

Commissioner Reid stated that she would amend her motion; the dates fall under 14 days and technically is a violation; pointed out the importance that the requestor did not receive the totality of the information that he requested and the fact that he had to go back and forth, which took an extended period of time; the Commission collaboratively agrees that it was not the procedure that falls within the spirit of the Brown Act and the transparency the Commission is seeking.

Commissioner Reid moved approval of sustaining the complaint based on the lack of timeliness.

Chair Tilos stated that he likes where Commissioner Reid is going, but wants to phrase it more succinctly; stated the complaint is being sustained due to lack of totality of his requests in an efficient manner.

Commissioner Reid amended her motion to include that it did not follow the spirit of the Brown Act and the requestor did not receive the totality of his requests in an efficient manner.

Vice Chair Shabazz stated the references to the Brown Act and the PRA does not prescribe a specific time in which records have to be produced, the 10 days is related to a response.

Chair Tilos stated that is why he used the word efficient; it was not efficient for Mr. Morris to go back and forth and file a complaint before getting any information.

Commissioner LoPilato stated it would be good to get some legal guidance on the terms of totality and efficiency that she is not aware as rooted in law.

Commissioner Chen stated the description of the Commission's duties includes reporting to the City Council at least once annually on any practical or policy problems encountered in the administration of the Sunshine Ordinance; she feels like Mr. Morris's claim is not sustained, but to double down on saying his complaint highlighted and brought into the spotlight a real serious problem that he is not the only one who has faced; the Commission

is tasked with telling the City Council where problems emerge in the Sunshine Ordinance.

Chair Tilos stated Commissioner Chen's comments as something that could be agendized or put under Commissioner Communication for another meeting.

The Chief Assistant City Attorney clarified some points, including that the Sunshine Ordinance does require a response from the City within 10 days as to whether or not there are responsive documents; if more time is needed to make that determination, a notice can be sent out to the requesting party that an additional 14 days is needed; there is no set deadline in producing the documents; there is a lot of case law about what a city needs to follow and the efforts it needs to make, but there is no specific time frame or parameters that spell out exactly what the City has to do that is objective; regarding the terms totality and efficiency she is not aware of those terms being used in the Sunshine Ordinance; she does not know whether either of the terms is used in case law that interprets either the Brown Act or PRA; the terms are general and may be used in some case law, but, to her knowledge, it is not used in some standard in the Sunshine Ordinance before the Commission tonight.

Commissioner Reid stated the issue is not that the documents did not exist; the issue is that the City was reluctant to give documents to the requestor; Mr. Morris did not receive what he requested until he had to finally push for the information by filing a complaint; when the City responded, all the data was given to Mr. Morris in one day, which was 87 days of data; this is why she strongly feels the complaint is sustained; when a requestor receives resistance or has an obstacle, it is the duty of the Commission to ensure there is transparency and members of the public should be able to confidently request and get information from the City with full transparency; her motion is to sustain the complaint.

Vice Chair Shabazz stated that he understands one of the intentions of the California PRA is the balancing act of having transparency weighed against the privacy of citizens; another aspect of the balancing is the efficient operations; to him, the issue around the 10 days is clear that it is not the production of the full amount of data within the 10 or 14 days; it is 10 days to respond to the request; he understands the concerns that it seems like a technicality; an option to addressing it is the concept of restorative justice and how it can be applied in this situation; one way is to address the Council as Commissioner Chen suggested; another way is to get an updated policy which Mr. Cohen promised to Mr. Morris; an finally, something related is the City's retention policy; these are all potential opportunities; it all goes back to what the complainant said was needed; it was centered around not having any obstruction; he thinks sustaining the complaint and coming back with specific recommendations within the scope as a Commission and asking for guidance from the City Council or asking for a report from the City Attorney's Office on how they are implementing the PRA so that this experience does not happen again.

Commissioner Reid inquired whether Vice Chair Shabazz's comments were a second to her motion, to which Vice Chair Shabazz responded in the negative.

In response to Chair Tilos's inquiry, the Chief Assistant City Attorney stated that she sees

three different options: 1) sustain, 2) not sustain, and 3) find it unfounded which means it has been found to have no merit; inquired whether any Commissioners asked about the timeliness issue while both parties were still participating via Zoom.

Chair Tilos responded in the affirmative; stated he believed Mr. Morris was asked and responded he felt the initial response was timely.

The Chief Assistant City Attorney stated that she just wanted to make sure the parties were heard on an issue that seems to be important to some Commissioners.

Vice Chair Shabazz stated that he did bring the question up during the clarification part; he noticed Mr. Morris had his hand up, perhaps to respond to the Chief Assistant City Attorney's question.

Chair Tilos stated there is a motion that was not seconded; asked if there were any other motions.

In response to Commissioner LoPilato's inquiry, the City Clerk stated it is the Commission's prerogative whether to allow Mr. Morris to address the Commission; if there are more questions, the Commission is not prevented from asking questions of anyone.

Commissioner LoPilato moved to hear from Mr. Morris whether he had concerns about the timeliness of his request.

Mr. Morris stated the 10 day issue was not really a big issue for him; the fact of the matter is that the PRA does have a requirement for this agency to produce records promptly; that is the word that is being danced around; he is surprised that the Assistant City Attorney did not mention this; when you talk about timeliness or efficiency, there is a requirement that once a determination is made that there are records available, those records need to be provided promptly; it is a legal term from statute and what really was violated here.

Vice Chair Shabazz moved to sustain Mr. Morris's complaint on the basis that the City did not respond to his request promptly.

Chair Tilos stated he that wants to add the phrase in totality.

Vice Chair Shabazz stated that he would be against doing so; his perspective is that the Commission is trying to recognize that something was not done properly; the 10 days is one part and that was about notifying; in Mr. Morris's case, the information was not provided until 12 days later; the initial piece is that his request was not responded to in a timely fashion; then, it addresses the other layers he identified a while ago.

Commissioner Reid seconded the motion.

Under discussion, Commissioner Chen stated the complaint appears to be about the

court decision that was cited; questioned whether it is valid to abandon the original complaint because the Commission found violations of the Sunshine Ordinance.

The Special Counsel stated that she concurs with the Chief Assistant City Attorney regarding the timeline issues; stated what is really important to recognize is what was included in the materials provided on the 27<sup>th</sup> was what was going to be required to produce a lot of the records and a very important privacy interest; just because the information is available, does not mean it is easily produced; she thinks the response from the City was timely.

In response to Commissioner Reid's inquiry, the City Clerk stated the Commission could have discussion of the motion once it is seconded and also someone could make a call for the question if they feel there has been enough discussion.

Commissioner Reid stated from her point of view, the complainant did not receive the information on his request in a prompt manner; on that basis, she requests that the Commission sustain the complaint.

Commissioner Chen stated that she agrees with everything Commissioner Reid said, but that is not what the complaint is; she is having trouble and needs clarification; it is clear that the City needs to do better in responding to PRAs, but that is not the issue of the complaint on tonight's agenda.

Commissioner Chen made an amended [substitute] motion; moved approval of not sustaining the complaint itself; however, the Commission found a lot of other issues on how the complaint was responded to and would like to explore further with the City Attorney's Office to address them.

The amended/substitute motion was not seconded.

Vice Chair Shabazz stated that he sees Commissioner Chen's point of view; the question is does the Commission have to make a determination of a violation solely based on what was put into the complaint; he is ready to call the question and may also have an alternate solution.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: No; LoPilato: No; Reid: Aye; Shabazz: Aye; Chair Tilos: Aye. Ayes: 3. Noes: 2.

Vice Chair Shabazz stated the only language in the Sunshine Ordinance relates to the disposition of a complaint is unfounded; there have been recommendations to sustain and not to sustain; the suggestion he was going to share was to just say that the complaint has merit; based on the complaint having merit, the Commission could proceed to recommend some of the particular cures that have been stated; if there is support for it, he would be willing to make a motion to reconsider the last vote and make a new motion.



Chair Tilos stated the next step is to draft the decision.

Vice Chair Shabazz stated as a point of order, he is more interested in the restoring part or what happens next; it is also important to address so the same issue does not happen again.

Chair Tilos stated the issue can be addressed with a letter to City Council, as Commissioner Chen suggested, on how to make changes to the policy.

The Chief Assistant City Attorney stated that she wants to confirm that to the extent that there is going to be any recommendation from the Commission as to any policy change, it will be a request to the Council to make that policy change and should definitely be agendaized.

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Chair Tilos called a recess at 9:55 p.m. and reconvened the meeting at 9:59 p.m.

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### 3-C. Hearing on Sunshine Ordinance Complaint Filed by Jay Garfinkle on February 25, 2021

Complainant Jay Garfinkle gave a brief presentation.

Special Counsel Kristen Rogers gave a brief presentation.

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The City Clerk stated a motion is needed to consider remaining items.

Commissioner LoPilato moved approval of considering the remaining items in order to get a response back to City Council.

Commissioner Chen seconded the motion.

Under discussion, Vice Chair Shabazz stated it is great that the City wants a response but he does not know whether it should motivate the Commission's agenda, goals and priorities, which is partially why he suggested the Commission collectively agree on its goals and priorities; he does not know if the Commission would be able to have the substantive discussion within the context of the Brown Act.

Chair Tilos stated that he is leaning toward that route as well; he would like to give Mr. Garfinkle his time so he will not vote to consider the next item.

On the call for the question, the motion failed by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: No; Shabazz: No; Chair No: Aye. Ayes: 2. Noes: 3.

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Mr. Garfinkle stated the only interested citizen was the lobbyist who created the resolution and lobbied Council; the general public was not aware it was on the agenda which did not allow them to weigh in on a very contentious piece of legislation.

Vice Chair Shabazz stated that he believes Mr. Garfinkle is out of order in discussing the specific merits of the legislation.

Mr. Garfinkle stated he did not want to debate every issue, but would respond if people have questions; the bottom line is that whether or not a legitimate process or resulted in instruction being given to lobbyists to say that the citizens of Alameda do not want to require previous law enforcement experience for Sheriffs; it is not an affirmative action issue; the question is how to go about getting the most qualified people to be Sheriffs; he believes that if Alameda citizens had the opportunity to weigh in on it, they would have opposed the resolution; they were not even given the opportunity, which is the violation.

Vice Chair Shabazz inquired whether there is a specific practice for legislation to be adopted and lobbied by the City.

The City Clerk responded most typically, specific legislation that goes to Council goes because it is considered outside the scope of the legislative agenda; the vast majority of stances on bills are done under the umbrella of the legislative agenda.

Commissioner Reid stated that she did not see that it was common practice for other cities to include specific bills on their legislative agendas; inquired if that is correct.

The City Clerk responded that she has not done a review of other cities and would not be able to comment on it; she would say that Alameda has done various iterations in the past and quite frequently specific Councilmembers raise specific bills under the umbrella.

Commissioner Reid inquired whether specific bills appear in the legislative agenda, to which the City Clerk responded generally it there are just larger topic.

Commissioner Reid inquired who decides which State bills the City supports, to which the City Clerk responded the City Manager's office.

In response to Commissioner Reid's inquiry, the City Clerk stated the support letters are sent out under the umbrella of the legislative agenda.

Commissioner Reid stated that she reviewed the video from the February 16<sup>th</sup> meeting and noticed a speaker was actually a lobbyist for the legislation and was noted in the staff report as a community member; she does not think that a lobbyist who is involved in the production of the legislation or supportive of a bill qualifies as what an Alameda resident would expect as a community member.

Vice Chair Shabazz inquired of Chair Tilos if the Commission is asking clarifying questions or stating opinions about members of the community.

Chair Tilos responded questions and comments only at this time, inquired whether Commissioner Reid had questions for Mr. Garfinkle or Ms. Rogers.

Commissioner Reid responded she would hold her questions for now.

Commissioner LoPilato stated her understanding of the procedure; inquired whether Mr. Garfinkle verified that Mr. Hofer is a registered lobbyist or if he was just using the term in reference that he was part of a non-profit organization.

Mr. Garfinkle responded that he drafted the resolution and presented it to several cities; whether or not he is a registered lobbyist is not the issue; he is acting as a lobbyist and is not a random member of the Alameda community.

Commissioner LoPilato inquired whether Mr. Garfinkle was speaking on behalf a group of citizens when using the word “our” in presentation materials, to which Mr. Garfinkle responded it is editorial.

Commissioner LoPilato inquired whether the legislative agenda is typically done as a consent calendar item, to which the City Clerk responded in the affirmative; stated it is on the consent calendar every year.

Commissioner Reid inquired a definition of what items are allowed to be on the Consent Calendar.

The City Clerk responded items that are considered routine.

Commissioner Reid inquired whether it could be said that non-controversial items can be on the Consent Calendar.

The City Clerk responded she would not make that statement because some people might find spending money on a vehicle controversial and some people might not.

Commissioner Reid stated she found the definition in Robert’s Rules and just wondered if it aligned with Alameda’s policy for its Consent Calendar.

The City Clerk stated if there was an item that would bring out the public, it would be definitely placed on the Regular Agenda.

Ms. Rogers further clarified that Council or a member of the public could pull an item off the February 16, 2021 Consent Calendar for discussion and had opportunity to do so during the Council meeting.

Mr. Garfinkle stated he has issues with the use of the Consent Calendar; Council adopted new rules that a member of the community can no longer pull items; also, contentious items are placed on the Consent Calendar.

Commissioner Reid inquired how a member of the public would know what SB 271 is on the legislative agenda.

Ms. Rogers responded if a member of the public is interested in a topic on the legislative agenda, there is information on literally every bill on the State website; it is the subject of a lot of public discourse and all subject to the same rules and principles and requirements for the meeting to be public; SB 271 is not an obscure piece of legislation; the issue tonight is whether the materials in the agenda provided the notice required for an interested person to show up.

Commissioner Reid inquired whether or not the person who made the comments previously reached out to the City.

Ms. Rogers responded that she did not know, but that Mr. Garfinkle's complaint is not alleging that it was a serial meeting or that there some improper conduct behind the scenes with respect to the particular issue; the person submitted a public comment and purported to represent an organization comprising 41 different individual member organizations and other Alamedans.

In response to Commissioner Reid's inquiry, the City Clerk stated anybody can reach out to the Council at any time; it does not matter whether it is before or after an item is placed on the agenda; a person can comment on the item on the agenda even if they had already reached out to the Council before.

In response to Commissioner Reid's inquiry, Ms. Rogers stated that she did not mean to suggest any knowledge of whether when, and what time someone communicated on the particular issue; any member of the public could send an email or submit a comment and still show up to the Council meeting.

In response to Commissioner Reid's inquiry, the City Clerk stated there is nothing that prohibits a member of the public from addressing the Council at any time.

Commissioner Reid stated she did not see the word Sheriff mentioned in the legislative agenda, although Ms. Rogers stated as such.

Ms. Rogers stated the point she was trying to make is that criminal justice reform is specifically called out as an area of the legislative priorities.

Commissioner Chen stated the City Council has reduced public access in the changes they made to the Consent Calendar; a second point of access limits comment on the an item to one minute; she feels the chances of someone catching it was close to zero.

The City Clerk stated the changes to the Consent Calendar went into effect after the February 16<sup>th</sup> meeting; the item was pulled and a member of the public was able to comment.

Commissioner Chen stated open government has to allow comment about the issue; she does not think people had a chance to be part of the discussion.

The City Clerk stated there is a speaker waiting and there needs to be a vote before 11:00 p.m. to continue the meeting.

Vice Chair Shabazz concurred with the City Clerk; suggested moving to public comment.

Public Comment:

Stated there was a great example of how this was done properly last summer at the July 21<sup>st</sup> City Council meeting regarding eight measures of police reform; to suggest support of specific items was jumping the gun; it is up to the City Manager's Office to determine which SBs apply: Matt Reid, Alameda.

Vice Chair Shabazz stated in 2018, he attempted to go to the County Registrar of Voters to run for Sheriff, but he was turned away because he does not have any law enforcement background; he would refer to Mr. Hofer and Secure Justice as advocates as opposed to lobbyists; part of the reason he wanted to run for Sheriff was that the current Sheriff at the time had exhibited ties to White supremacist groups, was involved with things related to Immigration and Customs Enforcement (ICE) and certain detainees and also the squalid conditions of the County jails; there was a campaign to audit the Sheriff's Office; whether or not these issues align with principals around reforms, he would say very much so and there will be a race in 2022; he does think that the legislative agenda outlines the various principals; the issue of it being on the Consent Calendar and then being pulled from the Consent Calendar, there was opportunity for people to speak; he is on the fence about it; part of him wants to find the complaint unfounded because it was clear from the legislative agenda that these items and general principles would be discussed; he is concerned that there is not generally a practice for specific legislation to seemingly come before the public; the questions are what are the specific positions Alameda takes on State and federal legislation; what is done if there is contradictory legislation; what is the process.

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Vice Chair Shabazz moved approval of continuing the meeting past 11 p.m.

Commissioner LoPilato seconded the motion, which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Shabazz: Aye; Chair Tilos: No. Ayes: 4. Noes: 1.

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Commissioner LoPilato stated that she does some State legislative advocacy, but is not a registered lobbyist and has not advocated for this bill; it is important to keep it clear that the agenda item is a road map and taking a bill by bill analysis is difficult because there are over 2,000 bills introduced each year; it is difficult for the average citizen to go through

and figure out exactly what bills might fall within various headings of the City's abstract goals; it is important to realize that there is no way the City Council agenda could possibly include references to each bill that the City might support or oppose under the umbrella; Senator Skinner, who represents Alameda, is a co-author with Senator Weiner of San Francisco; it is clear that the legislative agenda is considering a new plank to the public safety and homeland security platform, which includes support policing and racial equity outcomes consistent with actions taken by City Council throughout the year; it is called out and puts people on even further notice; it addresses the issue of broadening the support of reform measures; SB 271 was actually mentioned before it was open to public comment and there was quite a bit of notice; lots of metaphors are used; she believes the road map one is a good way to frame the way to look at the Brown Act and the Sunshine Ordinance; she will say that maybe a legislative agenda should not be on the Consent Calendar and there are all kinds of things that can be suggested when talking about the spirit of open government, but does not think making those suggestions through the vehicle of addressing specific complaints is the best approach; she hopes that when the Commission looks at the ordinance and recommendations, the Commission can weave in some language and contemplate what can be done to advance the issues outside of deciding specific complaints; with respect to this specific complaint, she would find it unfounded.

Commissioner Reid concurred with Commissioner Chen; stated that she also views the legislative agenda as generic; nothing really specific is included; watching the February 16<sup>th</sup> meeting, it was odd that something specific was added on the fly; it did not matter what the bill was; the public did not have time to understand what was discussed; that is where she is landing; it is the Commission's responsibility to ensure that the public is aware and the government is being transparent, that they have the opportunity to participate and express their opinion; she would argue that the gentleman that did speak was not from Alameda or a community member; in fact, he was a registered lobbyist; the procedure was not sufficiently transparent to allow the public the right to know and participate; the Commission should be striving for that; her suggestion would be to revisit and agendize the item to allow the public to come out and comment, which is the beauty of democracy.

Vice Chair Shabazz stated that he hopes he would still be treated as a community member should he ever move out of Alameda; he is ready to move on the item; he appreciates Commissioner Reid's points regarding community members having knowledge of things and the sense of transparency and also about participation; the instance of the community member who advocated for the inclusion of a specific piece of legislation is an example of people being able to participate; it also provided an opportunity to clarify for those not aware of some of these issues related to police reform; he does echo Commissioner Chen's point and wonders if there is merit related to the concern about how things are noticed; he appreciates Commissioner LoPilato's metaphor of the road map; it seems there are some attempts to use the complaints as a way to address other issues; the Commission should identify issues and either come back with reports or advise Council on how to improve the application of the Sunshine Ordinance.

Commissioner Reid stated the Mayor specifically recognized that the speaker had reached out to City Council prior to the meeting, so the speaker was planned, which is fine, but argues that the public did not truly have an opportunity to weigh in; the Brown Act asks ample time be ensured for people to weigh in; five minutes is not an ample amount of time and no other member of the public came forward; there was no way anyone knew besides the Council and the speaker who knew SB 271 was going to be mentioned or that the legislative agenda was going to be pulled and new information was going to be introduced; it should have been agendaized and discussed properly.

Commissioner LoPilato stated that she wants to underscore there is nothing nefarious about a community member, lobbyist or advocate reaching out to the Council; typically, how that process might work is a person would reach out after seeing the draft ordinance or resolution; the fact the speaker reached out to Council is not uncommon or nefarious, it is engagement; with this issue, it was a distinction without a difference because ultimately, once that legislative agenda was passed, whether SB 271 was listed on it or not, it fell under public safety and criminal justice reform, which was passed and nobody would have had a chance to weigh in on it anyway because that gives the guidance to the City Manager to decide what happens to bills; based on the way the process for this particular issue unfolds, there is no opportunity to weigh in on each bill, it is just not how the process works; if the Commission wants to make another recommendation some day in some other context that it should work differently, then that is something to explore.

Vice Chair Shabazz thanked Mr. Garfinkle for bringing the issue to the Commission; stated there are concerns and interests in a couple different areas.

Vice Chair Shabazz moved approval of finding the complaint unfounded consistent with the recommendation of the City's Special Counsel.

Commissioner Reid stated in no way is she suggesting that there was anything nefarious at all; she does believe the public is entitled to transparency and to be able to weigh in; if the process is that the City Manager looks at the legislative agenda and decides what to support, it opens up the question of why the legislative agenda was pulled and specific bills were added; it was somehow out of line; there was no way for the public to have known the bills were going to be discussed; the speaker was a lobbyist and no other members of the public commented.

Chair Tilos stated when deciding the issue, he feels members are going too deep into the actual bill versus whether it was noticed and the public was able to comment; it should not matter whether the speaker was a lobbyist or a community member; the legislative agenda is a long list of things; he agrees with Commissioner Chen that it will just take a lot of work; he concurs with Commissioner LoPilato's roadmap framework and that it is difficult to navigate 2000 bills individually; there is this over guiding principle of how the City is going to be on the decisions; the specifics of the bills and what transpired in the meeting should not matter, the transparency piece is important.

Commissioner Reid stated she agrees with Chair Tilos; it does not matter what the bill is,

the issue is the legislative agenda appears to be a general roadmap; the question is how would someone know; it is not common practice to add a specific bill to the legislative agenda; that has not been done before in Alameda and to her understanding it is not common practice in neighboring cities; it falls out of the scope of the regular process.

In response to Commissioner Reid's inquiry, Chair Tilos stated there is already a motion on the floor.

Commissioner Chen provided an example of the process to get a resolution passed; stated anyone can present something to the Council, whether it is controversial or not; if the Council decides to put it on the agenda, when the agenda is published, the public has a chance to see it and has the opportunity to pull it for discussion; when that happens, typically, people will come out who might be against it; if the Council still wants to support it, they can vote on it; everybody gets a fair chance; she does not think the public had a fair chance in this instance; if the Council wanted to put bills on the Consent Calendar, name them and give the public a chance to see that and pay attention; if someone was watching the meeting they would not be able to do research fast enough to figure what was going on; it is important to give the public a fair chance.

Commissioner LoPilato stated that she agrees with Commissioner Reid regarding transparency and with Commissioner Chen regarding everyone getting a fair chance; there probably are improvements that could happen to the process; she thinks the Commission could find a vehicle to potentially provide recommendations; in the context of the current complaint, there was no violation of the Sunshine Ordinance.

Commissioner LoPilato seconded the motion.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: No; LoPilato: Aye; Reid: No; Shabazz: Aye; Chair Tilos: Aye. Ayes: 3. Noes: 2.

3-D. 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. Not heard.

### COMMISSION COMMUNICATIONS

Commissioner Shabazz stated the meetings have been going long; suggested Chair Tilos work with staff to prioritize and set the agenda.

Chair Tilos responded he thinks the amount of complaints received in the last few months is what is throwing the meetings off; inquired whether there are any complaints on the table, to which the City Clerk responded there are none at this point.

Chair Tilos stated that he is keeping his fingers crossed and hopes to be able to get to Item 3D on the next agenda; the complaints are what controls the agenda right now.



Commissioner Chen suggested a process for complaints; stated that she hopes there is a list collected of all the Commission's lengthy conversations about all the ways the Sunshine Ordinance is practiced.

Commissioner LoPilato suggests two avenues: 1) Section 2-22.4 indicates one of the Commission's duties is to report in writing to the Council at least once annually on any particular policy problems encountered in the administration of the Sunshine Ordinance; she agrees with Commissioner Chen that the Commission is spending about 90% of time on it; the Commission should probably establish a cadence on this in the context of a subcommittee; it should be assumed that complaints will continue to be received and should be explored; 2) Section 2-92.4 states that the Commission shall review public notices to ensure they conform to the requirements of the article and work to improve publicly accessible information databases; suggested welcoming staff's thoughts on what the Commission could best be doing to comply with both those aspects; stated there might be a way to get some suggestions about how the Commission could handle these issues offline in an efficient way; having some cadence may have quicker meetings which would give appropriate time for public comment; noted the great work Vice Chair Shabazz did in his PRA workshop.

Commissioner Reid inquired whether it would be possible to hold a special meeting to discuss the null and void remedy, to which Chair Tilos responded he would not like to do so.

Vice Chair Shabazz thanked people for attending his PRA workshop; stated he likes the suggestion about a subcommittee with clear goals; suggested exploring having the City Council timer feature and guidelines on what type of questions can be asked in advance of meetings.

Commissioner Reid inquired whether it would be possible to establish a subcommittee to discuss some questions that may be relevant to the Sunshine Ordinance.

The City Clerk responded it cannot happen tonight since it is not on the agenda; stated the Commission could explore it at a future meeting.

### Adjournment

Chair Tilos adjourned the meeting at 11:34 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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