

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - FEBRUARY 7, 2022 - - - 7:00 P.M.

Chair LoPilato convened the meeting at 7:01 p.m.

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

Absent: None.

[Staff present: Chief Assistant City Attorney Elizabeth Mackenzie;
City Clerk Lara Weisiger]

NON-AGENDA PUBLIC COMMENT

Jay Garfinkle, Alameda, stated that he feels the Commission just rubber-stamps whatever the City Attorney or outside counsel says; Commissioners do not have much training for their position; discussed the First Amendment Coalition, a non-profit organization of attorneys who are experts in the Brown Act; suggested Commissioners purchase guides; a guide addresses the social media issue.

COMPLAINT HEARINGS

None.

REGULAR AGENDA ITEMS

4-A. Minutes of the January 11, 2022 Meeting

Commissioner Tilos moved approval of the minutes.

Commissioner Cambra seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

4-B. Approval of the Annual Report on Issues Arising from the Implementation of the Sunshine Ordinance and Consider Agendizing a Discussion to Review the 30 Day Mandatory Hearing

Chair LoPilato requested the recommendation from Commissioner Cambra be considered separate under agenda Section 6.

Commissioner Chen gave a presentation.

Commissioner Montgomery moved approval of giving an additional 5 minutes.

Commissioner Cambra seconded the motion, which carried by the following roll call vote: Commissioners Cambra: Aye; Chen: Aye; Montgomery: Aye; Tilos: Aye; and Chair LoPilato: Aye. Ayes: 5.

Commissioner Chen completed her presentation.

Commissioner Montgomery inquired whether there is a report on Public Records Act (PRA) requests.

The City Clerk responded that the Commission received a chart of the PRAs, which has now been superseded by the new Next Request software; a demo will be done tonight [see Item 4-D]; there is no statutory requirement for a PRA report; it was something the Commission requested in the past.

In response to Commissioner Montgomery's inquiry, Chair LoPilato stated that she thought the report would continue to be prepared annually; her understanding from the City Clerk was that the report was an ad hoc response to a request from the Commission as it is not a requirement in the Sunshine Ordinance; language in the Sunshine Ordinance states the Commission may request a tally of records with advanced notice to the City Clerk as opposed to it being an annual report; if Commissioners are attached to referring to it as an annual report she will not jam up the wheels, but thinks the language could be a little more precise.

Vice Chair Chen clarified that she made a logical assumption that the report was annual since she joined when a second PRA report was presented; she can see that the language is incorrect and stands corrected.

Commissioner Tilos stated he also shared the same assumption as Vice Chair Chen since the report was presented twice consecutively; inquired whether the Commission will be done with the Annual Report and it does not have to return again once a motion and vote are made tonight.

The City Clerk responded in the affirmative, stated the Commission could accept all the edits tonight and that could become the final report, it does not need to come back for another approval without redline; she will publish and post the final report.

Vice Chair Chen stated that she will fix the end notes so that they reattach to their original citation reference point; she is ready to move forward.

Chair LoPilato inquired what the best language would be to reference a report on PRA requests, to which the City Clerk responded the revisions suggested should be captured; the Commission or individual members could ask her at any time for a tally of the records and she would be happy to produce it, especially with the Next Request system; it is easy

to use and members could even run the tally themselves; the Next Request demonstration later tonight may help address and alleviate some of the Commission's questions.

Speaker:

Jay Garfinkle, Alameda, congratulated Vice Chair Chen on the monumental task; stated the Commission's duty is to enhance transparency of the government activities; ad hoc committees are subject to the Brown Act; the Police study done last year should have been open; the Commission needs to be very liberal when making recommendations to the City Council as to what it should be doing; encouraged monthly PRA updates; suggested Police PRAs also be reviewed by the Commission; the Commission should define what is meant by "private account" regarding social media.

Commissioner Cambra stated he concurs with all the suggested edits made by Chair LoPilato; suggested adding a brief description of "creating a legislative affairs website" in addition to using the link to the Legislative Affairs for those folks who are reading a hard copy; also suggested including the 2021 hearing results.

Vice Chair Chen stated the 2021 figures are included in the report; it is not listed in the chart, but is included as text.

Commissioner Cambra stated there does not seem to be specific references back into the report for the three cases listed in the appendix which occurred prior to 2021; inquired if it would be appropriate to incorporate the data into the existing report.

Vice Chair Chen responded it due to time and COVID limitations; stated that she and former Vice Chair Shabazz met on the phone several times to try to create the document together; in actuality, two documents were created; the portion in the appendix was created by former Vice Chair Shabazz without a give-and-take between the two of them; she thought the information he had is important and worthy of being included; she decided to include the information in an appendix with a disclaimer at the top; she is reluctant to remove it as this is the first report and other things have happened before this report that were not recorded anywhere in history; moving forward the report could be more precise.

Commissioner Tilos stated that he values the comments from Commissioner Cambra and Vice Chair Chen; he believes over 80% of the message the Commission wants to convey is in the report; he is comfortable with the report as is; there is valuable information in the appendix and he does not want it removed; in the interest of time, he is leaning towards the report being the final product.

Commissioner Montgomery moved approval of accepting the report with the edits.

Commissioner Tilos seconded the motion.

Under discussion, Chair LoPilato stated replacement language needs to be suggested

for the edits that were included as comments rather than redline.

In response to Chair LoPilato's inquiry, the City Clerk suggested changing the language to remove the word "annual" and make it broader.

Chair LoPilato stated the simplest way to address the issue could be striking the word "annual" in the footnote and add language stating: "to increase the scope of the staff-produced report on PRA requests;" inquired whether Commissioner Montgomery's does not accept deleting the end notes.

Commissioner Montgomery responded in the affirmative, stated the end notes should not be deleted.

Chair LoPilato re-stated the motion: to accept the report with the redline edits accepted, including the minor language change to strike the term "annual" and to reincorporate the end notes.

In response to Chair LoPilato's inquiry, Commissioner Cambra stated he would make a friendly amendment to add a brief descriptive passage regarding the legislative affairs website so long as it does not further the discussion.

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

4-C. Accept the Annual Report

The City Clerk gave a brief presentation.

In response to Chair LoPilato's inquiry, the City Clerk stated an error in the report was caught by the Chief Assistant City Attorney; she will make sure the corrected version is posted.

Chair LoPilato inquired if it would be possible to hyperlink to the actual final decision in the disposition column of the report, to which the City Clerk responded in the affirmative.

In response to Chair LoPilato's inquiry on how the "relief sought" column is characterized, the Chief Assistant City Attorney responded she and the City Clerk drafted the report and chart jointly; "relief sought" is the only phrase used in the Sunshine Ordinance; in the interest of space and using a chart format, the "relief sought" is just a truncated version of how each complainant's filing is distilled; there is no specific process followed other than to try to have an accurate snap shot of the relief being sought by each complainant.

Chair LoPilato stated that she was curious about whether there might be an adjustment or footnote to the final column for the complaint heard December 6th regarding the custodian of records for the NextDoor PRA request.

In response to the Chief Assistant City Attorney's inquiry, Chair LoPilato stated the global question is does the statutory language indicate that there should be a level of specificity about who potential custodians are or is that referring more to the location of records that were produced.

The Chief Assistant City Attorney stated that her understanding is the final column is supposed to relate to where any records, if they exist, are housed in the City.

The City Clerk stated that she concurs with the Chief Assistant City Attorney; the specific language is: "the location of all records relevant to each complaint held by the City;" if records not housed in the City are not list.

Vice Chair Chen stated if she can get all the data used for the bar chart and the data from 2021, she could do a new bar chart for the report and fulfill Commissioner Cambra's wish.

The City Clerk stated a motion and vote to approve the report was already done and would have to be reopened if Vice Chair Chen wants to make additional amendments.

Vice Chair Chen stated she will leave it alone.

Commissioner Montgomery moved approval of accepting the annual report.

Commissioner Chen seconded the motion.

In response to Vice Chair Chen's inquiry, the City Clerk stated she will upload the correct version that includes the Scott Morris case and will be the official report.

In response to Chair LoPilato's inquiry, the City Clerk read the section that was missing in the version of the report included in the packet.

In response to Vice Chair Chen's inquiry regarding the dates, the City Clerk stated the Scott Morris case was filed in May of 2020, but not heard until April 2021, which is noted by an asterisk and footnote.

Chair LoPilato stated that she would like to make a friendly amendment to add a hyperlink in the disposition column of the report to the actual OGC final decision for each complaint.

Commissioner Montgomery accepted the friendly amendment.

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

4-D. Update on Public Records Act (PRA) Requests

The City Clerk gave a demonstration of the PRA software, NextRequest.

Commissioner Cambra moved approval of extending the time for the City Clerk to finish her presentation.

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

The City Clerk finished her presentation.

In response to Chair LoPilato's inquiry, the City Clerk stated there is no vote needed on the item; the update is for information only.

Vice Chair Chen inquired whether the NextRequest software increased the number of requests and what that number is.

The City Clerk responded the Next Request launched in August so it is difficult to do a comparison from last year yet; the PRA tallies are based on the calendar year, not the fiscal year; it will be interesting to see how much requests have increased after the year.

Commissioner Cambra inquired whether there is a help feature in NextRequest, to which the City Clerk responded in the affirmative; stated all of the FAQ and Help options are always available at the bottom of each webpage; the Clerk's office is happy to help as well.

Commissioner Montgomery stated she is impressed by NextRequest and cannot wait to check it out.

Vice Chair Chen inquired whether Mr. Garfinkle's statement that an in-person meeting between a Commissioner and a Councilmember would not be subject to the PRA is correct.

The Chief Assistant City Attorney responded if a written record of a meeting, such as in a City-maintained calendar, is requested, it could be subject to and produced under the PRA; Mr. Garfinkle referred to the content of the discussion, which would not be subject to a PRA request.

Chair LoPilato stated that she echoes Commissioner Montgomery's sentiment that NextRequest is a cool system; the update was helpful to see how the tallies and statistics are available for everyone.

In response to Chair LoPilato's inquiry regarding Police Department tallies, the City Clerk stated the OGC process of going through the City Clerk's office would be the same and

she would be happy to put requests through for individual members or the Commission.

In response to Chair LoPilato's inquiry, the City Clerk stated her office does not actually receive a tally from the Housing Authority (HA) since they are a completely separate agency; HA results have never been tallied or shown to the Commission; from time to time, the Clerk's office receives PRA requests for the HA which are forwarded; the one really nice thing about the internal end of the system is that staff gets reminder emails about when requests are due before they are due; it is great at keeping staff on track; once growing pains are smoothed out, the system will be extremely efficient.

Vice Chair Chen stated because the HA was listed as an agency that needs to follow the Brown Act, complaints need to go directly to them; inquired whether the OGC has any jurisdiction over complaints filed against the HA for Brown Act violations.

The City Clerk responded that the City Council makes appointments to the Housing Authority Board of Commissioners (HABOC), but the HA itself is a separate agency; the City contracts with the HA for some services and requests for those records, such as rent program records, have been produced through the City; other than that, there is very little overlap.

Vice Chair Chen clarified her question, inquired whether a violation of the Brown Act by a HABOC member be considered a violation under the Sunshine Ordinance.

The City Clerk responded the HABOC is appointed subject to the Health and Safety codes, so it is a different code; the HABOC is not included in the Municipal Code.

STAFF UPDATE

The Chief Assistant City Attorney announced Commission training would be done at the March meeting as long as no complaints are filed.

In response to Commissioner Cambra's inquiry, the Chief Assistant City Attorney stated staff is developing the syllabus which will include topics that have come up over the past year, including issues that have been raised and conflicts of interests; it is a public meeting so the public will be able to attend.

In response to Chair LoPilato's inquiry, the Chief Assistant City Attorney stated any Commissioner can email her directly with suggested topics prior to the training.

Chair LoPilato inquired if nothing else planned for March, would the training bump to April.

The Chief Assistant City Attorney inquired whether Chair LoPilato is suggesting bumping the training to April if there is no business in March.

Chair LoPilato stated she was just throwing it out there that the Commission does not need to meet every month since there were 10 meetings last year.

The Chief Assistant City Attorney stated that she will coordinate with the City Clerk regarding the meeting; if it turns out that the training would be the only thing happening in March, it could bump it to April.

COMMISSION AGENDA REQUESTS

Chair LoPilato gave an overview of how Commission Agenda Requests works based on the new bylaws adopted by the Commission; any Commissioner may request that the full Commission take a vote to place an item on a future agenda for deliberation and action.

4-B. Consider Agendizing a Discussion to Review the 30 Day Mandatory Hearing

Commissioner Cambra gave a brief presentation.

In response to Chair LoPilato's inquiry, Commissioner Cambra stated that he just wants to make sure he interpreted the statute correctly; the options are discussion points and recommendations the Commission could consider.

The Chief Assistant City Attorney stated that she would like to reserve any substantive discussion for the next meeting; it would be a bit premature for her to start rendering opinions; as a broad-brush assessment, she read Commissioner Cambra's comments and thought the topic could be discussed at a future meeting.

In response to Chair LoPilato's inquiry, Commissioner Cambra stated that he prefers to keep it broad so that each of the Commissioners would have an opportunity to be creative and suggest things; he wants to make sure everyone understands the statutory scheme and the Commission's authority versus Council's authority.

Vice Chair Chen moved approval of agendizing a discussion of the statutory hearing dates at a future meeting.

Commissioner Montgomery seconded the motion.

Under discussion, Commissioner Tilos inquired about Commissioner Cambra's timeline.

Commissioner Cambra responded he is not married to having it on the March agenda.

Commissioner Tilos stated that he would like to make a friendly amendment to have the item agendized after March.

Vice Chair Chen stated her motion was for a future meeting; if the training is scheduled in March and would only take one hour, the item could take only a half hour to be done rather than waiting until April or May.

Chair LoPilato offered a substitute friendly amendment to add: "at the next scheduled

meeting”.

The City Clerk clarified that Chair LoPilato is saying “at the next scheduled meeting when there are other agenda items already planned”.

Chair LoPilato inquired whether the amendment to motion is acceptable, to which Vice Chair Chen responded in the affirmative.

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

COMMISSION COMMUNICATIONS

Commissioner Chen stated it is the Year of the Tiger and wished everyone a Happy Lunar New Year.

NON-AGENDA PUBLIC COMMENT

None.

ADJOURNMENT

Chair LoPilato adjourned the meeting at 8:54 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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