

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - APRIL 3, 2023 - - - 7:00 P.M.

Acting Chair Chen convened the meeting at 7:02 p.m.

ROLL CALL - Present: Commissioners Miley, Miyao, Sullivan, Tilos and Acting Chair Chen – 5.

Absent: None.

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

NON-AGENDA PUBLIC COMMENT

Reopened below at the request of the speaker.

COMPLAINT HEARINGS

None.

REGULAR AGENDA ITEMS

4-A. Select Chair and Vice Chair

The City Clerk made brief comments.

The Commission asked questions and discussed the process for selecting the Chair and Vice Chair.

Commissioner Tilos moved approval of Acting Chair Chen serving as Chair and Commissioner Miley serving as Vice Chair.

Commissioner Sullivan seconded the motion, which carried by the following roll call vote: Commissioners Miley: Aye; Miyao: Aye; Sullivan: Aye; Tilos: Aye; and Acting Chair Chen: Aye. Ayes: 5.

NON-AGENDA PUBLIC COMMENT

Jay Garfinkle, Alameda, discussed the creation of the Open Government Commission; stated that the Commission has not ever taken any kind of meaningful action to reign in the City; applauded Commissioners for serving; urged Commissioner to use their own judgements in making decisions and make government more open for the public.

REGULAR AGENDA ITEMS CONTINUED

4-B. Minutes of the October 17, 2022 and December 19, 2022 Meetings

Commissioner Tilos moved approval of minutes.

Chair Chen seconded the motion, which carried by the following voice vote: Ayes: Commissioners

Miyao, Tilos and Chair Chen – 3. Abstentions: Commissioners Miley and Sullivan – 2.

4-C. Accept the Annual Report

Commissioner Sullivan stated that he read the report but would like an overview.

Vice Chair Miley stated that he also read the report; it would be helpful to understand whether the City formally responds once the report is delivered.

Chair Chen gave a presentation.

Commissioner Tilos provided a background on a social media issue related to a previous complaint.

In response to Commissioner Sullivan's inquiry about social media posts being considered public records, Chair Chen stated the City's Next Door account is public and subject to the Public Records Act; in the particular complaint, a Councilmember, in a public capacity, posted all 200 names of the people who submitted applications to sit on the Police Reform Task Force.

Commissioner Tilos stated it was a gray area; the Commission needed help to know what the City should be required to produce; the City can make a request to the public official, but cannot make a demand; there is no repercussion if the person does not want to provide the information.

The City Clerk concurred, stated it is up to the custodian of records to produce the documents.

Vice Chair Miley moved approval of allowing an additional 10 minutes for the presentation.

Commissioner Tilos seconded the motion, which carried by unanimous vote – 5.

Vice Chair Miley stated the discussion is helpful; the Commission having more clarity to adjudicate issues in the future would be helpful.

Commissioner Miyao stated it is also important to ask for follow up; it sounds like the reports are written, posted and nothing happens; suggested adopting a date by which the Commission asks follow up and including that in the report.

Commissioner Tilos concurred with Commissioner Miyao's comments; stated the request could be a good way to ask for feedback.

Chair Chen stated the two documents that regulate the Commission are the Sunshine Ordinance and the Bylaws; the Commission produces the annual report and gives it to the City Council, but nowhere does it say that the Council needs to act on the recommendations; the Commission could ask.

Commissioner Miyao stated the Bylaws say the Commission is supposed to advise the Council; the Commission should follow up on the report it produced, otherwise it all feels very mechanical as Speaker Garfinkle stated.

Chair Chen stated last year was the first time in the history of the Open Government that the Commission decided to write the report; previous Commissions had not; three months went by with no meetings, so the follow up just did not happen.

Commissioner Miyao stated maybe the Commission should go back to the prior reports and incorporate them here and ask for answers on all the questions that have been asked but have not been answered.

Commissioner Tilos stated the last years there were a lot more meetings compared to when he first started; there were eight meetings last year and only three meetings with no complaints his first two years, which is why the Commission never had a report to prepare for Council; this is all brand new, including all the Commission procedures; having new Commission members is good.

Commissioner Miyao stated that he watched all the hearings after being appointed; expressed appreciation for all the time the Commission has put into the new procedures; stated going through the background is helpful; Commissioners are here to do something and ensure answers are received.

Chair Chen stated the Commission was exhausted after all the hearings; three new Commissioners who have fresh minds and fresh thinking makes the Commission ready for the next step.

Chair Chen continued the presentation.

Commissioner Miyao stated one thing to potentially add is whether 15 days is the right number of days; people going on vacation for more than 15 days; when they return, the complaint period is already passed; he understands it is not an exhaustion statute; the public still has relief under the Brown Act, which is considerably longer; to the extent there is interest in actually open government, the Commission should ask when the 15 days start and whether 15 days is the right amount of days; the Ordinance is also confusing in terms of calendar days versus business days, there is no consistency, which is confusing for the average person who is really just trying to understand and be an active participant in government.

Commissioner Tilos stated perhaps Commissioner Miyao's inquiry could be something the Commission takes on as an agenda item for discussion amongst the new Commissioners and the report can be pushed along as is.

Commissioner Miyao concurred with Commissioner Tilos's recommendation.

Chair Chen continued the presentation.

Vice Chair Miley stated that he agrees with the discussion about having a required time frame for response; inquired what a reasonable timeframe would be for the Council to formally respond if the Commission were to incorporate it into a motion.

The City Clerk responded that the Commission can set any timeframe they want; the Council may or may not meet that timeframe.

Vice Chair Miley stated that he understands City staff has a lot on their plate and does not want to put out a timeframe that is not realistic; 90 days seems like it would be reasonable; some guidance from staff would be useful.

In response to Vice Chair Miley's inquiry, the Chief Assistant City Attorney stated if the Commission is asking for a response from City Council, staff does not have the ability to require the City Council take any sort of action, which is reason for the ambiguity.

In response to Chair Chen's inquiry on whether reports from the Commission are actually presented to the Council, the City Clerk responded in the affirmative; stated that she transmits all materials and reports on behalf of the Commission.

The Chief Assistant City Attorney stated confirmed the City Clerk does convey the reports to the City Council.

Commissioner Tilos stated that even though the Commission did not receive formal answers to the first report, which was regarding PRA requests, there has been great improvement from technology and more awareness; for the most part and year over year, improvements are happening, even if there are no formal responses from the Council.

Chair Chen stated after her complaint was sustained, the cure and correct function of the Sunshine Ordinance, which was to render that decision null and void, was promptly removed by the City Council; what the Commission did as kind of a fall back was to start posting all of the outcomes of complaint hearings online.

Commissioner Tilos stated the Commission did get a lot done to tie up loose ends and meetings have helped push along that progress.

Speaker:

Jay Garfinkle, Alameda, stated watching the discussions is frustrating; urged the Commission to just accept the report; stated a lot of discussion is happening, which should be agendized with the public invited to participate in the discussion; it is time to update the whole thing, have open meetings where people can discuss all these things and come up with solutions; he has been asked by a couple of Councilmembers not to send text messages or emails because somebody might do something with it, which is absurd; it cuts down the ability to communicate; private emails and texts should remain private; if folks want to communicate publicly, then they would use the City provided email system; suggested having a work session that is open to the public.

Commissioner Tilos moved approval of accepting the report.

Vice Chair Miley seconded the motion, with a friendly amendment to request Council to provide a response in 90 days.

Commissioner Tilos accepted the friendly amendment to the motion.

On the call for the question, the motion carried by unanimous voice vote – 5.

STAFF UPDATE

The Chief Assistant City Attorney made an announcement about a complaint filed December 21, 2022 that was not heard by the Commission because it was resolved.

COMMISSION AGENDA REQUESTS

The City Clerk outlined the process to add items under the Commission Agenda Request section.

COMMISSIONER COMMUNICATIONS

Chair Chen asked new Commissioners to brief introduce themselves.

Vice Chair Miley stated that he grew up in Alameda and currently works for the County of Alameda in one of the Board of Supervisors offices; he went to Washington Elementary and Encinal High School; he has three kids and lives on Bay Farm; he cannot imagine a better place to raise a family and is pleased to be sitting on this esteemed Commission; he looks forward to lively discussions moving forward.

Commissioner Miyao stated that he has lived in Alameda with his wife and one son for only two and a half years; he was born and raised in Sacramento and went to school in Los Angeles and Virginia; he currently works for a midsize Bay Area based company that is committed to solving the retirement crisis in the United States.

Commissioner Sullivan stated he moved to Alameda in November of 2019 and was in San Francisco for 44 years; he loves Alameda and bought a Victorian home in the West End; he has been working on the house for the past three and a half years; for 20 years, he has been personal injury, criminal defense, landlord, tenant attorney; he has also been playing golf in Alameda since he was six; 6, he loves to be of service and trying to build community; he cannot think of a better way than being of service to a City that he loves.

Commissioner Tilos welcomed all the new Commissioners; stated they all have equal pride and love of Alameda.

ADJOURNMENT

Chair Chen adjourned the meeting at 8:08 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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