

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - FEBRUARY 3, 2020 - - - 7:00 P.M.

Chair Schwartz convened the meeting at 7:04 p.m.

ROLL CALL - Present: Commissioners Little, Pauling, Shabazz, Tilos and Chair Schwartz – 5.

[Note: Commissioner Shabazz arrived at 7:25 p.m.]

Absent: None.

[Staff present: Chief Assistant City Attorney Michael Roush and City Clerk Lara Weisiger]

ORAL COMMUNICATIONS, NON-AGENDA

Jay Garfinkle, Alameda, stated that he emailed the Commission; discussed the City Attorney's office rendering opinions and interpreting rent laws.

AGENDA ITEMS

3-A. Minutes of the December 18, 2019 Meeting

Chair Schwartz expressed his appreciation for the comprehensive minutes; outlined corrections to the minutes; inquired about the statement: the Chief Assistant City Attorney clarified that the Commission would like Section 2-93.8 to remain as it is written.

The City Clerk responded the minutes could be amended to read: "as currently written" to clarify the Commission did not want the section revised.

Chair Schwartz proposed using "unamended."

The City Clerk stated she would revise the minutes to clarify.

Jay Garfinkle, Alameda, discussed the format of the minutes; suggested minutes include the name of staff members and written testimony be attached.

In response to Mr. Garfinkle's inquiry regarding the record request report, Chair Schwartz clarified the report is part of the next agenda item.

In response to Chair Schwartz's inquiry, the City Clerk stated staff titles have always been used in the minutes; the meeting videos are posted online; the practice has been not to include names.

Chair Schwartz inquired whether there is any downside to including a name the first time

a title is listed, to which the City Clerk responded in the negative.

Commissioner Tilos suggested the staff be listed on the first page under roll call.

Chair Schwartz concurred; inquired whether the change could be made across commissions, the City Clerk responded that she could pass on the suggestion; stated each commission adopts bylaws, rules and practices, and would make its own decision.

Chair Schwartz stated when the suggestion is passed on, commissions should be informed that in response to a public request, the Open Government Commission feels it would increase transparency to list the staff present at a meeting; inquired whether the minutes being approved could also be amended.

The City Clerk responded in the affirmative.

Commissioner Tilos moved approval of the minutes.

Commissioner Pauling seconded the motion.

Under discussion, Commissioner Little inquired whether she should second the motion since Commissioner Pauling was not in attendance.

Chair Schwartz stated Commissioner Pauling can second the motion.

On the call for the question, the motion carried by the following roll call vote: Little: Aye; Pauling: Aye; Tilos: Aye; and Chair Schwartz: Aye. Ayes: 4. Noes: None. [Absent: Commissioner Shabazz – 1.]

3-B. Accept the Annual Public Report and Report Concerning Responses to Public Records Act Requests Referred to the City Attorney's Office in 2019

Chair Schwartz expressed appreciation for the report and table, which is a great addition to transparency, and for Commissioner Shabazz getting the ball rolling.

Commissioner Little stated that she requested a column showing the number of days be added, so people do not have to do math and can determine if the response was timely.

The Chief Assistant City Attorney responded that he recalls the request; stated that he was unclear whether the number should reflect the days between first receiving the request contrasted with the day the documents were produced.

Commissioner Little stated that she wants an easy way to determine which complaints were out of compliance without having to read through the entire document; the math should be done to determine whether or not the response was handled within the City's timeframe.

The Chief Assistant City Attorney responded the City Attorney's office can add a line item in the next report.

Chair Schwartz inquired whether the count starts on the day the request was received or acknowledged.

The Chief Assistant City Attorney responded the date received; stated the ordinance requires requests be acknowledged within a certain period of time; the time to provide a response starts the day the request was received.

Chair Schwartz inquired about the deadline for acknowledgement, to which Chief Assistant City Attorney responded that he believes a request is supposed to be acknowledged within three days.

Chair Schwartz stated two counters may be needed; the number of days to acknowledge the request and number of days to respond.

The Chief Assistant City Attorney stated staff can do that.

Chair Schwartz inquired whether a number of complaints are being acknowledged late, to which the City Clerk responded acknowledgement might happen outside of the chart if the request is received in another department; the department might acknowledge the request and forward it to the City Attorney's office; capturing when another department acknowledges a request could be difficult.

Commissioner Little stated that she would want to ensure weekends and holidays are considered.

The City Clerk stated the response is 10 calendar days.

Chair Schwartz noted typically, in rules of civil procedure, weekend and holidays are excluded from three days.

The Chief Assistant City Attorney stated a date acknowledged column will be added; other departments often acknowledge the request; typically, the City Attorney's office will also acknowledge the request, but it may be outside of three days; the Attorney's office will add the column and remind departments about the short timeframe to acknowledge receipt of the request.

Commissioner Tilos inquired whether the date acknowledged is the first calculation, to which the Chief Assistant City Attorney responded in the affirmative.

Commissioner Tilos inquired whether the ordinance requires response within 10 calendar days.

The Chief Assistant City Attorney responded the ordinance requires response to the

requestor about what is going to happen within 10 days; stated staff generally tries to provide the documents, but sometimes there is a delay.

Chair Schwartz inquired whether there is an opportunity to request an extension, like the State's Public Records Act statute.

The Chief Assistant City Attorney Responded in the Affirmative; stated extensions happens when documents are voluminous or take significant time to review to determine whether documents are privileged; the requestor is informed additional time will be needed; ideally, there is a 14 day window in which to provide the response; at times, the requestor is informed it will take additional time; staff tries to work within the 24 day window to provide the documents.

Commissioner Little inquired whether a notes column should be added at the end for transparency or if there is another mechanism to clarify circumstances and explain why the records request was not complied with within the timeframe.

The Chief Assistant City Attorney responded that is a very good point; stated the reasons for response outside of the timeframe can be added to the note column; the request is good and easy enough to do.

Chair Schwartz stated the table should be sufficiently simple to be digestible, but on the other hand the notes would help explain issues; the next go round could have a mechanism that shows when extensions were required.

The Chief Assistant City Attorney stated staff can do that.

Commissioner Shabazz expressed appreciation for the table, which allows people to understand what documents the City is producing and the amount of requests; encouraged staff to utilize notes to help with processing and tracking; knowing SeeClickFix is not the best solution, collaborative software should be used to communicate between different parties and should having tracking.

Jay Garfinkle, Alameda, stated that he has another non-agenda items to discuss.

Chair Schwartz stated the Commission is currently addressing the agenda item.

Mr. Garfinkle stated that he was surprised about cases with no documents produced; there should be an explanation when no records are found; if records are exempt, the letter from the City should explain the exemption; suggested ways to use the data and complaints to improve quality; stated that he spoke to the Attorney's office when he made a request; requestors should be able to communicate with the custodian of records directly; response to his request was timely, but the custodian of records was out of the office; expressed concern over voicemails being out of date.

Commissioner Shabazz concurred with Mr. Garfinkle about a notation when there are no

responsive documents; stated a distinction should be made if something is exempt; discussed his request; discussed a Police Department tasing incident, Senate Bill 1421 and a request he made; stated after a District Attorney's investigation was closed, he was told the information was available; initially, he was told nothing fell within the areas which are supposed to be disclosed, but the material was actually not disclosed because there was an active investigation; a distinction should be made whether there are no records that exist or the records are exempt based on whatever law, such as a personnel matter or active investigation; he is grateful the information is being incorporated in the annual report, which is not part of the Sunshine Ordinance; inquired whether there is need to codify that the public records requests information be provided in the future; he understands the matter is not on the agenda, but wanted to make the point.

Chair Schwartz stated it could be noticed on the next meeting and is a great idea.

Commissioner Shabazz moved approval of accepting the annual report and report concerning responses to the Public Records Act requests referred to the City Attorney's office in 2019.

Chair Schwartz seconded the motion, with the caveat that he is hopeful the additional information discussed by everybody can be included, which the Chief Assistant City Attorney has graciously agreed to do.

The motion carried unanimously by the following roll call vote: Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; and Chair Schwartz: Aye. Ayes: 5. Noes: None.

## COMMISSION COMMUNICATIONS

### Sunshine Ordinance Amendment

Commissioner Little inquired whether anyone from the Commission will be in attendance at the City Council hearing tomorrow night when the proposed revisions to the Sunshine Ordinance will be discussed.

Chair Schwartz stated that he submit a written communication and hopes to attend.

Commissioner Little stated that she is out of town; she also submitted a letter to the City Council.

Commissioner Pauling stated that she will be present, but she has come into the process a bit late; noted she was at the original Council meeting when the matter that caused the issue was heard.

Commissioner Tilos stated that he will not attend; he has discussed the matter with the City Attorney's office to voice his opinion.

Chair Schwartz stated the decision tomorrow night will determine the future abilities of the Commission; discussed the letter he submitted to Council; stated the City Council could

make a policy, not legal, decision to eliminate the null and void provision; artful amendments and looking at other cities could be considered to address concerns in a transparent, open and honest way; expressed concern over the amendment being presented as a legal imperative, which is not supported by case law; discussed process and duties of the Commission.

Commissioner Little stated that she has faith the current City Council would seriously consider Open Government Commission recommendations and hopefully reach conclusions the Commission recommends, which might not always be the case; expressed concern over the provision being removed without having other safeguards.

#### Public Records Act Forum

Commissioner Shabazz stated that he wanted to follow up on a previous request for an agenda item at the next Commission meeting about organizing a forum or method of communicating about the Public Record Act; if the matter needs to be placed on an agenda to make it happen, he would like it done; if not, he would be interested in working with staff to host something to inform the community about the Public Records Act.

The Chief Assistant City Attorney stated the City Attorney's office would be happy to work with Commissioner Shabazz to set it up; the matter can be placed on the agenda or Commissioner Shabazz could meet with the Attorney's office to figure out something; the Attorney's office would be happy to do it.

Chair Schwartz stated that he would welcome having an agenda item if there is a proposal for something the Commission could do; he is open to any kind of proposal; it is a great idea.

The Chief Assistant City Attorney stated both can be done; Commissioner Shabazz can meet with the Attorney's office and the matter can be placed on an agenda to do something more formal.

Commissioner Shabazz stated that he shared the suggestion at the last meeting and did not follow up to make sure it was on the agenda tonight; he does not know the level of detail needed for an agenda item.

Commissioner Tilos stated something might need to be done outside of the agenda since the next meeting is not until October.

The Chief Assistant City Attorney stated the Attorney's office is happy to meet with any Commissioners about the type of forum.

Chair Schwartz stated both can be done.

Commissioner Pauling suggested a subcommittee work on the forum; inquired whether the forum should be held by summer before getting too far into the election cycle; inquired whether the forum would be done by June.

Commissioner Shabazz responded in the affirmative.

Commissioner Pauling inquired whether a subcommittee can be formed.

The Chief Assistant City Attorney stated that he is a little reluctant to have the Commission create a subcommittee because the matter is not on the agenda; he suggests meeting with Commissioner Shabazz to set something up that could involve the Commission; the forum could be noticed as a Commission meeting; the forum could be done in June if desired.

Chair Schwartz stated having a subcommittee could be included as part of a proposal at the next meeting.

Commissioner Little inquired whether Commissioner Shabazz is interested in educating people; stated that she would not want to stand in the way of Commissioner Shabazz doing outreach; questioned the need for a formal process.

Chair Schwartz stated a formal process is not needed, but the next agenda could include a formal Public Records Act communications project or subcommittee if desired by Commissioner Shabazz.

Commissioner Shabazz stated the distinction is wanting to utilize the platform of the Open Government Commission to educate people about the Public Records Act; stated that he will follow up with the City Attorney's office; hopefully the entire Commission can be invited.

#### Public Comment

Commissioner Shabazz inquired whether Oral Communications needs to be opened in response to a request to speak.

Chair Schwartz stated the member of the public already spoke under Oral Communications.

#### ADJOURNMENT

Commissioner Shabazz moved approval of adjourning the meeting.

Commissioner Little seconded the motion.

Under discussion, Mr. Garfinkle asked to raise a point of order; stated he brought up some points which were not discussed; questioned what is accomplished by mentioning things.

Chair Schwartz stated full Commission comment is not typical for items not on the agenda; the Commission would not have been prepared to address the issue; Mr. Garfinkle's specific minutes request was addressed.

Mr. Garfinkle stated that he suggested quality assurance analysis of record logs; inquired whether it goes any place or accomplishes anything.

Commissioner Tilos stated it accomplished something; the Commission heard the suggestion and can consider it when making decisions; stated the spreadsheet is evolving; Mr. Garfinkle's comments have been listened to and can be considered.

Commissioner Pauling stated that she understood Mr. Garfinkle's comments; the Commission is addressing quality when talking about timeliness of response; the initially, timeframe is going to be used as a red flag; she heard Mr. Garfinkle.

Mr. Garfinkle discussed conversations with the Police Department; stated that he is trying to learn the process on interacting with the Commission.

Chair Schwartz stated Commissioners were interested in the remarks, but are not prepared to take further actions on the particular remarks right now; he would welcome a more detailed proposal.

Mr. Garfinkle stated that he has a suggestion about exhibits; he does not know whether the matter should go through the Commission; discussed policies.

Chair Schwartz stated there has been a motion and second to adjourn.

Commissioner Shabazz called the question, which carried by unanimous voice vote – 5.

There being no further business, Chair Schwartz adjourned the meeting at 8:05 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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