

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - JUNE 24, 2020 - - - 7:00 P.M.

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

ROLL CALL - Present: Commissioners Little, Pauling, Shabazz, Tilos and Chair Schwartz – 5. [Note: The meeting was conducted via Zoom.]

Absent: None.

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

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the Meeting Held on February 3, 2020

Stated that he is unsure how Board or Commission members make recommendations to specific parties, other than relying on the minutes; he would like the names of staff included in the minutes as discussed at the February 3rd meeting; also suggested a mechanism for statistical analysis of the data collected by the Police Department: Jay Garfinkle, Alameda.

Chair Schwartz stated the recommendation was to include the names of officials and staff at the beginning of the meeting minutes; he thanked the Clerk for doing so and hopes other Commissions would do the same.

The City Clerk stated she passed the recommendation on to the other Boards and Commissions on behalf of the Open Government Commission (OGC).

Commissioner Shabazz moved approval of the minutes, with the addition of identifying staff with their names rather than titles.

The City Clerk clarified the recommendation was to identify staff by name at the top of the minutes and use titles throughout the rest of the minutes.

Vice Chair Tilos seconded the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5.

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

The City Clerk gave a brief presentation.

Stated that he is concerned that the matter of the OGC authority has been an issue for almost two years; he is upset that the extent of the collaboration was to scrutinize his submission: Paul Foreman, Alameda.

Stated he would like to speak on the noticing requirements for special meetings: Jay Garfinkle, Alameda.

Chair Schwartz stated there are many issues regarding the Sunshine Ordinance that will be addressed; the first issue is the Commission’s authority over violations; the second is noticing requirements for special meetings, which is later on in the agenda.

Commissioner Shabazz requested that Chair Schwartz or staff briefly summarize each agenda item while progressing through the agenda.

Chair Schwartz concurred with Commissioner Shabazz’s request and briefly summarized the first item regarding the Commission’s authority.

Commissioner Tilos stated he was leaning toward Vice Mayor Knox White’s suggestion about having the issue re-agendized on the next reasonable agenda; the issue would allow another opportunity for public comment.

Commissioner Little concurred with Commissioner Tilos’s comments; stated that she appreciates the efforts of Councilmember Vella and Paul Foreman; the one aspect she feels is missing is how the Commission could pause the situation to avoid being in the same spot as two years ago; she would also appreciate including the language provided by Vice Mayor Knox White.

Chair Schwartz stated that he was under the impression, as suggested by the City Attorney, that Vice Mayor Knox White’s language is the sole amendment to be re-agendized and that Mr. Foreman’s proposals be rejected.

Commissioner Little stated she would like to see some sort of combination between the two; there is a lot of good language in Councilmember Vella and Paul Foreman’s submission; she does not feel it should be just one or the other; she would appreciate having the language that was submitted, then, add a clause which addresses the issue Vice Mayor Knox White brought up.

In response to Chair Schwartz inquiry, Commissioner Tilos stated that he would be in support of Vice Mayor Knox White’s language as the simplest proposal, but is not

opposed to Councilmember Vella's and Mr. Foreman's submission or a combination of both.

Commissioner Shabazz stated the Commission needs to think about the objective, find the solution between the various proposals and ideas which can still enable the ability for the public to participate in meetings, and some remedy to ensure that people have that opportunity.

Commissioner Pauling stated the Commission has to be able to move quickly to resolve issues, especially time sensitive ones; public comment does not get responded to by the Council and does not change a vote that has already been recorded and moved forward.

Chair Schwartz stated he echoes Mr. Foreman's comments that the City Attorney's comments are not sufficient to confer with the Commission on viable ways to provide teeth to the statute; the comments were more focused on that the Commission does not have the right to do so; he continues to disagree with the advice provided by Counsel; the ship has sailed, but he does not think Commissioners are limited in what they are allowed to do; simply asking Council to re-agendize something at their convenience is insufficient to address the seriousness of a failure in the City's legislative process based on the Sunshine Ordinance; now is not the time to be squashing transparency; it is time to increase transparency; the best way to do that is to provide some consequence to a failure to have a public process as required by the Sunshine Ordinance that makes it difficult for the City to have such a failure; Mr. Foreman's suggestion has two parts that the Commission should pay close attention to: 1) delay action that does not usurp the Council's legislative authority; if the Council is interested in empowering the OGC, they need to consider that; it does not make the OGC the legislative body, the Commission is not writing new legislation or weighing in on the merits of any legislation, the Commission is making sure the process is as transparent as it needs to be; 2) in Section 2-93.8 regarding penalties, Council accepts the recommendation from the Commission unless the supermajority rejects it, which gives some teeth to what the Commission does in the absence of "null and void;" the paragraph included in the supplemental memo from the City Attorney's office is adequate.

Commissioner Little stated there is a lot of language in the Vella-Foreman submission that lends a lot of clarity with respect to timelines that were missing from the current ordinance; being able to provide the public and the Council with some guidance around boundaries for complaints to be brought forward is important; inquired what the rationale is behind removing the OGC's ability to fine a violation and impose a penalty.

Chair Schwartz responded that he could not speak for Mr. Foreman, but to the extent that Mr. Foreman suggests that the \$250 penalty is like a parking ticket, he tends to agree; the penalty does not address the seriousness of having City legislation pass that has not taken into account the required public process.

Commissioner Little stated that she is not arguing one way or the other; she is just curious why it was removed.

In response to Commissioner Little's inquiry, the Assistant City Attorney stated Chair Schwartz's summary of Mr. Foreman's explanation is correct; quoted Mr. Foreman's comments rationale for striking it: "I struck the penalties because they are ridiculous, it is the tax payers who would be paying them."

Commissioner Shabazz inquired whether Mr. Foreman's comment regarding the tax payers paying the penalty is accurate.

Chair Schwartz responded in the affirmative; stated the penalty would be against the City, which is funded by tax payer's dollars.

The Chief Assistant City Attorney concurred with Chair Schwartz; stated the penalty is included as a deterrent, but whether it has any real practical effect is for the Commission to decide, as well as whether or not to leave in the provision.

Commissioner Tilos stated that he supports removing the provision, it is just a slap on the wrist and immaterial.

Chair Schwartz stated it bothered him that the proposal endorsed by the City Attorney's office wanted to keep the \$250 fine, but removed the more significant deterrent like delaying, or not allowing, legislation that was passed without the proper proceedings to go into effect.

Commissioner Tilos stated the power was taken away from the Commission; the Commission was clear and Council was clear on taking the power away; he shares the frustration with Mr. Foreman that this topic has been unresolved for two years now.

Chair Schwartz clarified that the rationale articulated by the City Attorney which the City Council needed to obey was that nullifying a Council action improperly usurped the authority of an elected body to legislate to an appointed body, which is not the same as delaying it and asking for another vote; for the Commission to cancel an ordinance passed by the Council is stronger; he agrees that the Council rejected that proposal; he does not think the Council rejected the idea of delaying implementation of an ordinance and asking for a supermajority.

Commissioner Shabazz stated referring to the teeth metaphor that has been used throughout the discussion, he feels as though the Commission's teeth have been kicked out; in absence of the power taken away, there are other things the Commission can do to encourage transparency; it seems the only options are to delay action for another vote or impose a penalty; reiterated some of the concerns he had regarding the perception of a "conflict of interest" with the City Attorney's office and the OGC, as well as with the Public Records Request Act; he does not have any specific solutions, but is frustrated that the Commission has no power to hold any bodies accountable for making sure meetings are accessible.

Chair Schwartz stated Mr. Foreman's proposal suggests that the Commission Chair be able to request that the City retain independent legal counsel as opposed to dealing with

the perceived conflict of interest; the City Attorney's office responded that they were not asked to do so; he agrees with the City Attorney's office that it is not within the charge of the OGC to tell the City Council to retain independent legal counsel.

The Assistant City Attorney stated the comments provided by the City Attorney's office to Mr. Foreman's proposal is just preliminary thinking; the Office plans to do a more thorough analysis once concrete direction is received from the Commission; the supplemental memo from the City Attorney's office should be considered as a starting point for the Commission to work with the City Attorney's office in developing a satisfactory proposal that can be repackaged for the Council; it would be helpful to staff for the Commission to weigh in on each item, so the City Attorney's office is clear on how to draft the proposal.

Chair Schwartz concurred with the Assistant City Attorney; stated that he would like to address each item; suggested breaking down into a few parts: 1) Section 2-92.2 of Mr. Foreman's proposal that further action on an agenda item shall be delayed until the complaint is resolved; 2) Section 2-93.8, Council shall accept the recommendation unless 4 Councilmembers reject it; 3) keep or eliminate the monetary penalty.

In response to Commissioner Little's inquiry, Chair Schwartz stated the discussions can include the Vella/Foreman proposal; added a fourth category regarding timing issues in general, which would encompass the rest of the changes; a fifth category could be discussed regarding independent legal counsel; regarding the timing issue, a member of the public commented that there will not be time for the public to weigh in if things are rushed.

Commissioner Pauling stated that she agrees with Commissioner Little and would like to work through the list item by item rather than bouncing around.

In response to Chair Schwartz's inquiry regarding timing, Commissioner Pauling stated that she concurs with the proposal to delay action on the second reading to address any outstanding issues and to do it within the regular meeting agenda framework so that Council can be notified quickly.

Chair Schwartz inquired whether the method would cut people short in their ability to participate if complaints must be filed and responded to so quickly.

Commissioner Pauling responded that she is ok if the second vote is delayed by two meetings to allow proper reparations.

Commissioner Little stated it is important to have transparency in the process and provide the boundaries of what can and cannot be brought forward; the situation could end up where something has gone through and an issue arises 30 or 40 days out; it should still be brought forward to the OGC; by setting the boundaries, the Commission knows what can happen; otherwise, there will be a pause in the entire process and it will be extremely muddled; as long as it is clear that the timing keeps business moving forward and hopefully allows enough time for the public to respond; this type of framework provides

the public and the leadership with guidance on what the Commission can still do about said items.

The Chief Assistant City Attorney stated the concern in the City Attorney's office is the longer period of time someone has to file a complaint, things might move forward; to be able to undo it becomes problematic; the Commission can decide to extend or shorten the timeframe, but there have been no problems with the current 15-day window and keeping items within the Commission's jurisdiction.

Commissioner Little inquired what the difference is between the 10 and 15-day timeframe, to which the City Attorney responded according to Mr. Foreman's proposal, the section dealing with public meetings and problems with public participation, as those tend to move forward more quickly, the 10-day rule would apply in that situation; the 15-day rule would apply to other violations because there would likely be no timing issues with an additional five days.

Commissioner Pauling inquired if the Commission votes on this, would it give power to recommend the Council delay the second vote for final passage.

Chair Schwartz responded Mr. Foreman's proposal would delay action until the complaint is resolved or rejected by a supermajority of the Council; Vice Mayor Knox White's proposal would ask the Council to review the Commission's recommendation and render a final decision.

In response to Commissioner Pauling's inquiry, Chair Schwartz stated the timing issue has to do with the timing of complaints and timing for the hearing.

Commissioner Little suggested combining Items A through F as one, rather than going through line by line.

Chair Schwartz concurred; inquired whether there is support for amending the timing requirements with respect to complaints and hearings as proposed by Mr. Foreman.

Commissioner Little moved approval of adding Items A through F of the Vella/Foreman proposal to the Sunshine Ordinance.

The Assistant City Attorney clarified that the days for filing the complaint are calendar days, and the days for the hearing are business days.

Commissioner Little stated the clarification is very important, suggested adding the information to the proposed language; amended her motion to include the language regarding calendar days.

Commissioner Shabazz suggested an amendment of business days rather than calendar days.

Commissioner Little accepted the amendment.

The City Clerk stated that changing 10 calendar days to 10 business days would put the hearing past the next Council meeting, so a complaint could come in after final passage of an ordinance; she believes the 10 calendar days was intended to ensure there is opportunity between introduction and final passage.

Commissioner Little withdrew her last motion and moved approval of her original motion to add Items A through F to the Sunshine Ordinance, and clarify in Items A and B that it is calendar days.

Commissioner Shabazz seconded the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Abstain. Ayes: 4; Abstentions: 1.

Commissioner Shabazz moved approval of substituting the word “chance” in Item C to the word “opportunity.”

Chair Schwartz seconded the motion, which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

Chair Schwartz moved approval of adopting the recommendation on Item G.

Commissioner Little seconded the motion.

Under discussion, Commissioner Shabazz inquired what significant prejudice means, to which Chair Schwartz responded it is open to interpretation; stated there is a concept of prejudice that the City Attorney included in the supplemental memo regarding the statute of limitations; typically prejudice can be thought of as some right being sacrificed.

The Assistant City Attorney stated he does not want to speak for the drafter, but his thought is that the prejudice is an impact of ‘harm’ to the City.

Chair Schwartz concurred with the Assistant City Attorney, stated that is how he reads “significant prejudice” as well.

In response to Chair Schwartz’ inquiry, Commissioner Shabazz stated that he understands the clarification, but was also wondering how the phrase will be interpreted a year from now.

On the call for the question, the motion carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5.

Chair Schwartz moved approval of not recommending the Chair request the Council to retain independent legal counsel as it over-reaches the Commission's authority.

The Chief Assistant City Attorney stated staff understood that the process tonight would be collaboration with the Commission and draft a proper analysis to be brought back to the Commission which reflects the direction given.

Commissioner Little seconded the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

Chair Schwartz moved approval of Mr. Foreman's recommendation for Section 2-93.8-C.

Commissioner Shabazz seconded the motion, which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

Chair Schwartz moved approval of accepting the Foreman proposal of striking the monetary penalty.

Commissioner Tilos seconded the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

The Assistant City Attorney clarified Section C regarding the Council accepting OGC recommendations actually applies to Section 2-91, not 2-92; both sections involve a cure and correct, he just wants to make sure that was the motion and that staff has proper direction.

Chair Schwartz concurred with the Assistant City Attorney, stated the motion was applicable to Section 2-91 regarding public access of meetings.

Commissioner Little inquired whether there should be any conversation regarding Item D under the penalties section; she reads that section as someone bringing forward an issue simply to disrupt the process.

Chair Schwartz responded that Item D is not a redlined item and there are no changes to the section.

3-C. Set the First Monday of Each Month, Excluding September, as Established Meeting Dates

Chair Schwartz moved approval of accepting the proposal on meeting dates.

Commissioner Little seconded the motion.

Under discussion, Commissioner Shabazz stated one of the reasons he was on the OGC was because there were not as many meetings as the other Boards and Commissions; he organizes a program that also meets on first Mondays and may have potential conflicts.

Chair Schwartz stated it would be difficult for him to meet every month as well due to child care and other responsibilities; he agrees with Commissioner Shabazz wholeheartedly regarding the monthly meetings, but also understands holding a set date on the calendar so no one has to be chased around.

On the call for the question, the motion carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5.

3-D. Report to the Commission concerning Public Record Act (PRA) Requests that are Referred to the City Attorney's Office.

Chair Schwartz stated he read the report and appreciates the efforts of the City Attorney and City Clerk's office in drafting the report; it is very helpful for transparency to have the data; he appreciates Commissioner Shabazz in moving this forward; he appreciates that the City made the information on the Mali Watkins arrest available immediately on the City website; it fosters public debate and discussion at a time when it is important for the public to be able to have the discussion.

Commissioner Shabazz moved approval of accepting the report.

Commissioner Pauling seconded the motion.

Under discussion, Commissioner Shabazz stated that he appreciates how the report layout; suggested adding a number to the PRAs which includes the year, so it is easier to track how many are occurring in a calendar year.

In response to Chair Schwartz' inquiry, the Chief Assistant City Attorney stated adding a number can be done, because the PRA's are referrals to the City Attorney's office from various departments, the City Attorney's office will assign a number to them as they are received.

In response to Commissioner Shabazz inquiry, the City Clerk stated the Sunshine Ordinance includes each department having a designated person to handle PRAs and also allows anyone to make their request to any employee of the City or any Department; the Sunshine Ordinance tried to be very broad and inclusive so as not to funnel people to just one spot; staff has honored the spirit of that and does not limit any requests; she is working with the Public Information Officer on a web portal whereby people can submit requests electronically.

Commissioner Shabazz stated he would like to ensure that the PRA report be included in all the annual Sunshine Ordinance reports that go before the Council.

The Chief Assistant City Attorney stated his office is handling it administratively and will work with the City Clerk's office to make sure the PRA report is provided to the Council along with the other requirements under the Sunshine Ordinance.

On the call for the questions, the motion which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

3-E. Discuss Organizing a Forum or Method of Communication to Inform the Alameda Community about the Public Records Act (Commissioner Shabazz)

Commissioner Shabazz made brief comments regarding the referral.

In response to Commissioner Tilos's inquiry regarding the steps required to make this happen, Commissioner Shabazz stated he would also like to know if a vote on the process is necessary to move the issue forward; he likes the idea of having something that anyone on the Commission, or staff, can present; he would also like to identify a time when the forum can happen.

Chair Schwartz inquired whether the idea of having a subcommittee could be considered, to which Commissioner Shabazz responded it just depends on which method would be the most effective; the intention is to ensure people are aware of the Public Records Act and how they can use it in the context of City government; the method used to achieve that would be to do a presentation to outline what it is and the process; he agrees with Commissioner Tilos's idea of creating a presentation that anyone can present so even after his time on the Commission, the vision could be expanded and be done in a way that is effective to reach the goal; his initial idea involved doing a live presentation, but under the circumstances, a virtual presentation could work.

The Chief Assistant City Attorney stated that the City Attorney office does Sunshine Ordinance training every three years; his office could put together something along the PRA that would be an outline; his office also provides AB 1234 training for elected officials and already have a set of slides regarding the PRA; it could be packaged up and have a forum in connection with the Commission, or whatever is appropriate, and have the public invited to attend virtually; if that is something the Commission is interested in, it is reasonably simple to do.

Commissioner Little stated that she understands there is training for staff and elected officials on the PRA process; what she heard from Commissioner Shabazz is that he would like the public to be able to understand the process; she does not think it is up to the OGC to mandate that; it would be up to an agreement between Commissioner Shabazz and the City; unless the Commission is adding it as a component to the training, she completely supports Commissioner Shabazz moving forward to provide this very important public service.

Commissioner Pauling concurs with Commissioner Little; stated that she believes a presentation by Commissioner Shabazz would be accessible and focused for the public; it is at the heart of what the Commission stands for, which is to protect the transparency of local government; partnering with the City could afford benefits such as free meeting space; she fully supports Commissioner Shabazz moving forward.

In response to Chair Schwartz inquiry regarding next steps, Commissioner Shabazz stated he will continue working on his slides if there are no objections from the Commission; he will work with the City Attorney's office and with staff to move forward and hold a public forum.

Chair Schwartz stated it is apparent that there is full support from the OGC; he would also be happy to support further action needed in the future.

In response to Commissioner Shabazz inquiry of anyone else wanting to be involved, Commissioner Little stated she would like to participate as well as introduce Commissioner Shabazz to another person who was instrumental in the PRA process with the Police Department regarding a recent incident.

Chair Schwartz stated he would also like to be involved as time permits; it is a very important topic.

3-F. Discuss Noticing Requirements for City Council Discussions of Proposed Charter Amendments (Chair Schwartz)

3-G. Discuss and Provide Recommendations Concerning Potential Amendments to Article VIII (Sunshine Ordinance) of Chapter II (Administration) of the Alameda Municipal Code, as Amended, Concerning Special Meetings, Including the Setting and Noticing of Such Meetings

Chair Schwartz recommended Items 3-F and 3-G be heard together.

Stated he is concerned with the way Council uses special meeting; suggested special meetings be permissible only if the topic being discussed cannot be reasonably put off to the next regular agenda; also suggested when items run over during a meeting, they should be put onto the next regular meeting agenda and not onto a special meeting the next day; Council invoked the urgency ordinance illegitimately: Jay Garfinkle, Alameda.

Stated the Commission is doing a great job; the special meeting ordinance is woefully inadequate and should be changed; special meetings are not held because of any urgency, they are held to dedicate a meeting to a specific subject; a special meeting needs as much notice as a regular meeting; he tried to include the noticing issues in his draft proposal: Paul Foreman, Alameda.

The Chief Assistant City Attorney stated the City Attorney's office is looking for input from the Commission for what it feels might be appropriate for the Council to consider.

The City Clerk stated regular agendas are distributed 12 days in advance, but with current COVID related issues, sometimes items that were not anticipated have had seven day notice and a special agenda has been sent out to take place on the regular meeting night; the seven-day noticing requirement prevails whether or not it falls on a regular meeting night.

Chair Schwartz stated methods of dissemination of information need to be brought into the present, especially during COVID; how the issue came about was a Charter amendment item had less notice than an ordinary meeting; as a result, a lot of people who may have wanted to speak on it did not learn about it and there was inadequate participation; the Commission should adopt new standard ways to disseminate information into the current day and current times; another point to consider is the Mayor's comments that meetings go very late and public access is not increased when important issues are being discussed at ten in the evening, or midnight, or two in the morning.

Commissioner Little stated there needs to be a distinction between a special meeting that is dedicated to one topic, versus a special meeting that is urgent in nature; the distinction would help to sift through and provide a little more guidance and flexibility with public noticing.

Chair Schwartz concurred with Commissioner Little; stated making the distinction is a great point; he agrees with Mr. Foreman that special meetings and urgent meetings being lumped together is counterproductive.

Commissioner Tilos inquired whether a special meeting, as used now, is anything that is not a regular meeting, to which the City Clerk responded in the affirmative; stated there is a further distinction in the section that special meetings do not apply just to the City Council, it applies to any special meeting of all bodies; the only body that is different is the City Council which requires a 12-day notice for regular meetings and seven-day notice for any special meetings.

Commissioner Pauling inquired whether a third category regarding closed sessions needs to be considered and whether whatever the Commission decides if it would apply to all Boards and Commissions or just the Council.

In response to Commissioner Pauling's inquiry, the City Clerk stated sometimes litigation matters come in after the regular agenda has been published; the closed session meetings are special meetings; items can be added to the closed session within the seven-day noticing requirement; it has been a practice that is helpful and useful in getting items to the Council in closed session that are not known about 12 days in advance.

Chair Schwartz stated there is not anything within the realm of the OGC's authority or persuasion to say about closed sessions; the issue will probably have to be carved out of the discussion about special meetings.

The Assistant City Attorney concurred with Chair Schwartz; stated one of the concerns the City Attorney's office would have is that the status quo of closed sessions remains in place.

Commissioner Shabazz stated it is interesting that the issues which brought this up in the first place were two very controversial items in Alameda, referring to the City Manager incident and Measure A; the Planning Board meeting regarding the same topic was noticed a month out, so there was a lot of public participation and robust discussion; considering the constraints of closed sessions and also considering the challenges of participation now, some people do not have access to the meetings; the principle should be what will allow people to participate, no matter what the meeting is labeled; what is the maximum way for people to know about the meetings.

Chair Schwartz moved approval to recommend four parts: 1) expand communications as to all meeting types to include social and new media; 2) for special meetings, meaning those meetings about discreet topics that require extensive discussion, that they are noticed 12-days out; 3) emergency meetings continue to be on the seven-day timeframe; and 4) closed session items continue on the seven-day timeframe.

Commissioner Little inquired whether there will ever be a circumstance where noticing cannot be within seven days for emergency items, to which the City Clerk responded when the first declaration of emergency was issued, the Brown Act exception of 24 to 48 hour noticing was used when the issue was beyond the control of the City; maintaining that policy would also be helpful and can be done under the emergency section.

Commissioner Little suggested an amendment to the motion which would be that special meeting notices would align with the regular meeting noticing timeframe for each particular body.

Chair Schwartz stated he accepts the friendly amendment that there would be some carve-out for a statutorily authorized 24 hour period for noticing for exigent circumstances; regarding the alignment of special meeting noticing to the regular meeting noticing requirements, he feels a special meeting should require more notice than a regular meeting and would like to apply the 12-day noticing for all special meetings.

The City Clerk clarified Chair Schwartz's motion that the 12-day noticing requirement should apply to all Boards and Commissions, to which Chair Schwartz responded in the affirmative.

The Chief Assistant City Attorney stated if an OGC complaint fell outside of a regular meeting date, there would be a 12-day requirement for noticing rather than a seven-day notice, which is okay, but is an unintended consequence; if there has not been any problems with the seven-day noticing for bodies other than the Council, the 12-day rule may not be warranted for all special meetings for all bodies.

Chair Schwartz stated it is a worthy consideration; he would suggest that, since the Commission is being asked for recommendations at this point, that he still recommends the 12-day noticing rule for special meetings and that the Commission be advised if it is not a good idea for any of the Commissions before there is a final resolution; the recommendation could be to increase public access and public transparency, and special meetings be held to the 12-day noticing requirement.

The Chief Assistant City Attorney stated the City Attorney's office would bring back draft language that reflects comments and direction from the Commission.

Commissioner Tilos stated there are accessibility issues and accessibility is lowered even more during this pandemic; important and controversial issues, such as Charter amendments, should not be noticed in special meetings during a pandemic when participation is low.

Commissioner Little disagreed; stated business has to continue; there is no idea how long the pandemic will last and City business cannot continue to be postponed; she would also argue that although the format of virtual meetings has been limiting to some people, it can also afford greater accessibility to the public who might not otherwise be able to attend a meeting and engage from home instead of in person; there are positives and negatives, but what is critical is expending all efforts to communicate and make sure the public has every opportunity to be aware of the various meetings and agendas that will be happening.

Commissioner Tilos stated he would like to add to Chair Schwartz's first recommendation regarding communication; he would like to implore technology be used, including text notifications and allowing citizens to opt in to receive notification about specific meetings.

Commissioner Little stated it would be an easy list since there are a number of Alamedans who already receive text notifications from the City regarding COVID updates.

Chair Schwartz stated that he would like to move toward a vote if there is a second on the four points, adding the text notifications to the first part.

Commissioner Little seconded the motion, which carried by the following roll call vote: Commissioners Little: Aye; Pauling: Aye; Shabazz: Aye; Tilos: Aye; Chair Schwartz: Aye. Ayes: 5

In response to Chair Schwartz inquiry, Commissioner Tilos stated that he does agree with Commissioner Little regarding the show must go on for day-to-day business; moved approval of the recommendation that Charter amendments or big issues should not be addressed during a pandemic.

The Chief Assistant City Attorney requested clarification that Commissioner Tilos's motion does not necessarily have to be a pandemic, but any type of declaration of local emergency.

Commissioner Tilos stated any situation that would prevent people from showing up, including a shelter-in-place order.

The Chief Assistant City Attorney inquired whether Commissioner Tilos would like something more specific than just a declaration of local emergency and a situation which would involve a shelter-in-place, to which Commissioner Tilos responded he is not opposed to a declaration of local emergency in the broader context.

The City Clerk requested clarification that the Commission recommendation would be that those items just not be on special meetings.

Commissioner Tilos stated his recommendation would be that such items would not be on any meeting agenda during local emergency situations.

The City Clerk noted the City Council has already taken action to move two ballot measures forward in July; she just wants the Commission to be clear that items are in process right now.

The motion failed due to a lack of second.

Commission Communications

Commissioner Shabazz stated with the recent arrest of Mali Watkins, there are some issues that overlap with the Commission; he probably has a slightly different perspective than Chair Schwartz regarding the amount of transparency regarding the information, considering his attempts to get information from the Police Department; there is list of demands for information from a group of young people which the OGC may be interested or able to address: 1) quarterly release of Police use of force; 2) independent oversight of Police review; and 3) the call for an audit of the Police budget; to what extent does the OGC want to make sure the people understand the City budget and the taxpayers funding; he wanted to raise these issues and see if there is a place for the OGC to better understand and make recommendations around the matters.

Chair Schwartz stated he appreciates that there was no legal compulsion regarding the release of the information, it was voluntarily released for public access within two weeks; he would be interested in police review, but does not think it would fall under the OGC.

Commissioner Little stated the one piece the OGC could look at is the multiple times people have requested body cam footage and the response from the APD was always that the incident was under investigation and footage could not be released; the APD set a precedent regarding releasing the Mali Watkins body cam footage even during an investigation, which the OGC should take note of, especially when constituents come forward to the OGC that their requests are not being addressed in a timely manner.

The City Clerk stated the next City Council meeting regarding the police topic is scheduled on Monday, June 29, 2020 at 5:30 p.m.

Adjournment

Commissioner Little moved approval of adjourning the meeting.

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

The meeting was adjourned at 9:47 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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