

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - DECEMBER 14, 2020 - - - 7:00 P.M.

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

ROLL CALL - Present: Commissioners Little, Pauling, Shabazz, Schwartz and Chair Tilos – 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 November 16, 2020 Meeting

Commissioner Schwartz stated he noted some changes in the minutes.

The City Clerk acknowledged and confirmed the edits.

Commissioner Schwartz moved approval of the minutes.

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

3-B. Consider the Subcommittee Proposal Regarding Potential Amendments to Article VIII (Sunshine Ordinance) of Chapter II (Administration) of the Alameda Municipal Code to Replace the Null and Void Remedy and Consider Sending the Proposal to the City Council as the Commission's Recommendation

Commissioner Schwartz expressed his appreciation to Commissioner Pauling, the City Clerk, and the Chief Assistant City Attorney for working with him on the proposal; stated the proposal captures all the issues discussed at the June 2020 meeting; thanked former Commissioner Paul Foreman for his ideas which lead to drafting the amendments; stated that he did additional research into the argument that the Commission could not implement a requirement of a supermajority vote via an ordinance; he researched the issue extensively and found it is incorrect; the Charter actually states: "the vote of three members of the Council, except as otherwise provided, shall be necessary for any act of or by the Council;" the phrase is very important because it does not create a sacred

requirement of three votes for all matters that cannot be changed without a Charter amendment; the proposal lays out a host of other examples requiring a supermajority; things as basic as the Council suspending Rosenberg's Rules of Order, which governs proceedings, needing a four-fifths vote; there are other instances in the Charter that specifically include the phrase "except as otherwise provided;" discussed the sparse authorities that were presented against the proposals; stated the case authorities do not suggest that the Commission cannot make such a proposal; in fact, in some ways the arguments support the proposal.

Chair Tilos stated that he appreciates all the examples provided to defend the subcommittee's proposal; it gives the Council a lot to support the recommendation.

In response to Vice Chair Shabazz's inquiry regarding the proper meeting process, Chair Tilos stated since it is more cumbersome with Zoom, he prefers to chair the meetings more informally and will not require Commissioners to raise hands or to be called to speak; he will open up the discussion for Commissioners to make opening comments; then, after the presentations, will allow Commissioners to jump into discussion.

Commissioner Shabazz stated that he is interested in asserting directly what the Commission is attempting to do with the proposal rather than getting into the details.

Commissioner Little stated she appreciates how clear and concise the proposal is; thanked the subcommittee for finding another legislative statute for the Commission to proceed with teeth in the ordinance; stated that she fully supports the proposal.

Commissioner Pauling acknowledged Commissioner Schwartz for his efforts in the legal aspects of the proposal and the City Clerk for clarifying the timeline; stated that she is thrilled with the final product and fully supports it.

Commissioner Schwartz stated the proposal accomplishes what Commissioner Shabazz wanted by presenting the basics before getting into the weeds.

Commissioner Shabazz clarified his comment about starting with basic information was in reference to making sure viewers are up to speed on the background of the issue, especially if they have not read the staff report or proposal; gave an example: someone watching the meeting may not know what the conversation is about if they did not read the report; providing the background at the start is helpful.

Commissioner Schwartz concurred with Commissioner Shabazz and summarized the issue; stated the Commission nullified an ordinance which was voted upon by the City Council and determined there was not proper notification to the public; then, the "null and void" authority of the Commission was removed from the Sunshine Ordinance; the Council agreed it was inappropriate for the Commission to have said authority because it usurps the legislative power of the Council; the Commission did not agree with the determination; Council sent the ordinance back to the Commission to find a new remedy to provide teeth to the ordinance in the absence of "null and void;" the proposal which will

be voted on tonight would have the Commission refer back to the Council a matter which was not properly noticed to cure and correct the improper notice and for the City Council to reject the Commission's recommendation to cure and correct, it would require a four-fifths supermajority.

Chair Tilos stated Commissioner Schwartz's synopsis sums up what the Commission has been dealing with for two years.

Commissioner Shabazz stated some of the proposed language refers to the City Council, inquired whether the cure and correct applies to other bodies of the City and what would be the distinction.

Commissioner Schwartz responded if the Commission finds a violation, steps necessary to cure and correct can be recommended to the originating body unless it has already been cured and/or corrected.

In response to Commissioner Little's inquiry, Commissioner Shabazz stated the focus has been related to the power of the City Council; he overlooked the language which stated the "originating body;" he is concerned about whether the City Attorney's office would support the Commissions' recommendation.

Chair Tilos stated the subcommittee drafted a proposal for the full Commission in order to have more substance than just a recommendation from a subcommittee of two members; he hopes to have a motion on the proposal after Commission discussion.

Commissioner Shabazz concurred with Chair Tilos; inquired whether the written analysis will support the recommendation of the Commission or will there be something different when the proposal goes to the City Council.

The Chief Assistant City Attorney responded, at a minimum, the Commission's recommendation will be taken to the Council; the City Attorney's office will do a deep analysis of what the subcommittee and full Commission proposed; if the Attorney's office finds a legal way to support it, it will make the recommendation to the Council.

Commissioner Schwartz moved approval of the subcommittee recommendation.

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

Oral Communications

Chair Tilos re-opened Oral Communications because the speaker was unable to join the Zoom meeting at the time.

Stated that he is disappointed in the level of transparency throughout City Government; the OGC is supposed to be about improving transparency; he would like to know if there is a way the public could communicate in writing and have it considered by the Commission; he would like clarification on publication of reports, specifically on the police reform committee report: Jay Garfinkle, Alameda.

Chair Tilos stated the method to provide communications to the Commission is via email.

The City Clerk concurred with Chair Tilos, stated an email can be sent to the Commission as a non-agenda oral communication item; the problem is the Commission cannot engage in discussion of a non-agenda item; it would be up to a Commissioner to agendize the item.

Chair Tilos concurred; explained to Mr. Garfinkle that after receiving communications on a non-agenda item, a Commissioner could propose to place that item on the agenda to be discussed.

The City Clerk further clarified that the item would be agendized to a future meeting.

Commissioner Shabazz provided an example of how the process works; stated that he took Mr. Garfinkle's suggestion about having a flow-chart for the PRA process and tried to create one; the item would not necessarily be one that needs to be agendized if there is another method of addressing the issue; another example was that he, as a community member, would go before various boards or commissions and make specific recommendations for issues to be agendized; if that process is appropriate for the OGC, perhaps it is something that can be adopted.

Chair Tilos stated the OGC used to only have two scheduled meetings, and would only meet if there was a complaint filed; if there are no meetings on the schedule, this is not the place to be discussing other issues that are not complaints; some of the matters regarding transparency or reporting should go to Council; the main objective of the OGC is to determine if something is broken in the Sunshine Ordinance.

The City Clerk stated the next scheduled meeting is in February; if a member of the public wants to submit a comment to pass on to the Commission before or after the agenda is published, she would share it as a non-agenda item communications; the Commission probably should not go too far into discussion on this issue since it is not on tonight's agenda; she is happy to discuss the issue offline with Mr. Garfinkle and Chair Tilos.

Chair Tilos stated Mr. Garfinkle can send his concerns to the Clerk or Commission to be addressed further.

Commission Communication

Commissioner Pauling stated she would like to thank and acknowledge everyone; she had a wonderful learning experience from being on the Commission for the past year; she

truly appreciates the intelligence and curiousness of the Commissioners and how the topics were handled.

Chair Tilos thanked Commissioner Pauling for stepping in during an eventful time and for all her help serving on the subcommittee.

Commissioner Little thanked the Commission and stated she is excited to see who will be replacing her and Commissioner Pauling; offered her assistance if ever needed, which would no longer be a violation since she is no longer on the Commission; she will be sworn in on the School Board tomorrow night; invited anyone who would like to attend.

Chair Tilos wished Commissioners Little and Pauling well in their next endeavors and thanked them for their time on the Commission.

Commissioner Shabazz stated that he would like to have the PRA Annual Report on the February meeting; he would also like to add crafting some language that could potentially be in the City Charter or somewhere else to make sure the PRA Annual report is continually done, especially after the comments from tonight regarding transparency and the goals of the Sunshine Ordinance.

The Chief Assistant City Attorney stated both the PRA Annual Report and the Annual Report on Complaints are already on the February agenda.

In response to Commissioner Shabazz's inquiry, the Chief Assistant City Attorney stated he is retiring but will still be around in January and February.

Adjournment

Chair Tilos adjourned the meeting at 8:18 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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