

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - OCTOBER 4, 2021 - - - 7:00 P.M.

Chair Tilos convened the meeting at 7:00 p.m.

ROLL CALL - Present: Commissioners Chen, LoPilato, Reid, Shabazz and Chair Tilos – 5. [Note: The meeting was conducted via Zoom and Vice Chair Shabazz arrived at 7:04 p.m.]

Absent: None.

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

Oral Communications

None.

Regular Agenda Items

3-B. Adopted Proposed Amendments to the Bylaw

Commissioner LoPilato gave a brief presentation.

The Chief Assistant City Attorney stated that she has no further comments as to any legal aspects of the Bylaws with exception of referencing the blank in Section 4-B.3 regarding procedures for complaint hearings; she wants to make sure it gets completed if there is a future motion; at the last meeting, she mentioned that she wanted to verify the revision regarding the 15-minute public comment time limit; she is comfortable with the insertion.

Commissioner Reid stated that she had a chance to read the correspondence submitted by Jay Garfinkle; acknowledge the extensive work; recommended taking additional time to digest it and allow other members of the public an opportunity to comment and take the ideas into consideration; stated her take-away from his letter are optimizing transparency and participation; Mr. Garfinkle's suggestions address said values.

Commissioner LoPilato continued her presentation.

Speaker:

Jay Garfinkle, Alameda, stated that he put a lot of effort in reviewing the proposed revisions; he thinks both the original Bylaws and complaint processes are very lacking; the public should have every opportunity to participate in the process; what matters now is the revisions by Commissioner LoPilato and the suggestions he submitted; his offerings are extensive and are based on many years experience in parliamentary procedure; urged the Commission to make every effort to optimize enhancing the openness and

transparency of government activities.

Commissioner Reid stated the Commission should acknowledge Mr. Garfinkle's comments; there should not be any rush to revise the Bylaws without careful consideration; reiterated some of the points referenced in Mr. Garfinkle's correspondence, such as the Bylaws being amended by a supermajority vote; stated the role of the City Clerk as the Secretary is confusing and should be clarified; if the Commission wants to continue considering meeting monthly, it should be included in the Bylaws; the suggestion to increase awareness regarding special meetings and updates is important; locations of meetings should be available and accessible to the public.

Chair Tilos stated that he does not agree with the speaker's comment regarding steamrolling through issues; nothing has moved that quickly during the entire time he has been on the Commission; he wants to gauge the rest of the Commissioners on making a motion tonight or pushing it out for several more meetings.

Vice Chair Shabazz concurred with Chair Tilos regarding the steamrolling comment; stated that he is willing to move to approve the revisions of the Bylaws; the issue has been and can be an ongoing process; he does not think any revisions voted on tonight will be final revisions; if the Commission adopts the provision of a supermajority requirement, it would make it potentially more difficult to make revisions in the future; he agrees with some of Mr. Garfinkle's comments; suggested a simple adjustment to noticing special meetings via electronic communications to add the phrase: "and others" beyond just local media; questioned how a majority of the Commission would call a special meeting, which could be addressed at a later point; stated other issues could also be detailed in a practical way that does not cause obstruction and enables the Commission to function.

Chair Tilos stated that he shares Vice Chair Shabazz's sentiments.

Commissioner Chen stated that she appreciates Commissioner LoPilato's hard work on the item, as well as the efforts of Mr. Garfinkle; she does not agree with the supermajority piece for the same reasons Vice Chair Shabazz stated in that it would freeze the Commission in place; inquired how the Secretary of the Commission is also a staff member and whether she is a voting member of the Commission.

Vice Chair Shabazz stated he could provide examples of organizations he has been a part of where there was a similar designation, including the Peralta Community College Board of Trustees, which has a Board Secretary who was hired to do specific work; technically based on the Bylaws, the Chancellor of the District is the Secretary of the Board; often times public institutions have a Secretary who serves as record keeper; if it is necessary, the City Clerk's role as Secretary to the OGC could be clarified to indicate that she does not vote; it is a standard practice, as is found in some private and non-profit organizations; it would be difficult for a volunteer body to have someone do the work that the City Clerk does as a volunteer; it is a common designation.

Commissioner LoPilato stated the language regarding the role of the Secretary is consistent across all Alameda Boards and Commissions Bylaws; there is always an interest in maintaining specificity to the work of the Commission, but also some uniformity and basic provisions.

The City Clerk concurred with Commissioner LoPilato; stated the Secretary is always a staff person; she does not staff all the Boards or Commissions, so typically someone in the related Department is the Secretary noted in the Bylaws as an Officer fulfilling said role.

Commissioner Reid stated that she agrees with Mr. Garfinkle's position to allow members of the public to be invited to participate in the work of subcommittees; she feels it is a good goal to incorporate in the Bylaws; the review and analysis of Public Records Act (PRA) requests should be an essential goal of the Commission included as an order of business; it is good preparation and streamlining process to include a section in the agenda on Standard Commission Business; review of prior meeting meetings could be something the Chair could work with the City Clerk to streamline the process; allowing time for the Commissioners to respond to public comments is a good practice.

Chair Tilos inquired whether there are glaring issues that need to be addressed before moving forward.

Commissioner Chen stated Commissioners are not allowed to hold debates with public speakers under non-agenda public comment; inquired whether it would be a violation of the Brown Act.

The City Clerk responded the rule is actually in the Code of Conduct which applies to all the Boards and Commissions; stated every Commissioner signs that they will follow the Code of Conduct, which states public comment is not to be a debate.

Commissioner Reid stated the intention behind it is not debate, but for clarification purposes; speakers should not be excluded just for time limitations if they have something else to say on a topic.

Vice Chair Shabazz suggested the basis for discussion be the revisions proposed by Commissioner LoPilato; stated particular things could be added from Commissioners and Mr. Garfinkle; he has nothing to add to the work done by Commissioner LoPilato, other than the clarification question around process and majority requesting a meeting; he is prepared to make a motion.

The City Clerk stated the Bylaw provision Vice Chair Shabazz asked about is actually replicated based on the City Council; either the Chair or three members can call a special meeting; the reason it exists is so the Chair does not have the ultimate authority to block something Commissioners wants to hear; it is a practice that has not been used during her time, but it does exist.

Commissioner Reid inquired whether public comment submitted during an appropriate part of the agenda should be allowed to be read to the Commission.

Commissioner LoPilato stated reading correspondence into the record as a standard practice could be very time consuming and not ideal; there already is a practice in which the City Clerk can accommodate speakers who are unable to attend or speak during the meeting.

The City Clerk concurred with Commissioner LoPilato; stated the Clerk's office would make any reasonable accommodation; the feedback received from most of the public when the COVID lockdown happened and staff was reading public comments was they were tired of the Clerk reading the comments; then, an automated reader was used, which the public did not like either; reading the public comments into the record was not well-received.

Chair Tilos stated that he has no reservations against the current system where the correspondence is received and distributed by the City Clerk; he is confident all Commissioners are checking their emails and are very thoughtful of the comments.

Vice Chair Shabazz stated that he hears an underlying theme from Commissioner Reid illustrated in the lifting up of Mr. Garfinkle's comments, which is the desire to maximize public engagement; the theme has been repeated over a few months; his thoughts are to think of other ways to have the same outcome, including considering a town hall forum or encouraging people to be involved in civic organizations; he has heard the repeated suggestions of finding other ways, having public involved in subcommittees or increasing speaker time, but the meetings have been very long; there are alternate ways of doing it that does not reduce public participation by having very long meetings.

Chair Tilos concurred with Vice Chair Shabazz; stated the biggest comment he received from more than one Councilmember was about the length of OGC meetings, which is why the City Attorney's office proposed removing the complaint procedure from the Commission completely; he is looking for more efficient ways; it is not efficient use of the Commission's time to deliberate every point in correspondence received; it is not a debate; Commissioner Reid already knows how other Commissioners feel about some of the themes she would like to change and seems redundant.

Commissioner Reid stated that she does not know how other Commissioners feel and that Chair Tilos's comment is an assumption.

Chair Tilos stated that he understands Commissioner Reid's desire to get the public more engaged, but he is also trying to balance out how to shorten meetings; the initial schedule of bi-annual meetings became monthly meetings; work is being done; he would like to tilt it back the other way in terms of meetings.

Commissioner Reid stated that she appreciates Chair Tilos's position and that he has been doing this for a long time; she is just an average member of the community and she

is not afraid of change or afraid to bring her ideas to the table; just because something has been done one way does not mean it is the optimal and the best way for the public to engage; members of the community are unaware of what is going on; the OGC should be supporting these values; she is sorry to sound redundant, but teachers repeat themselves hoping their students will learn; Mr. Garfinkle's suggestions should not be ignored; she appreciates Vice Chair Shabazz asking for ways in which the OGC can engage the public more; the email list distribution is a very simple change, which is a good idea.

The City Clerk stated the public already has the ability to sign up to receive email notifications of any and every meeting; the City sends out notifications of every agenda, posts upcoming events and lists upcoming meetings; the City makes sure the public has every ability to know about and participate in every meeting.

Commissioner Chen moved approval of accepting Commissioner LoPilato's revisions to the Bylaws.

Vice Chair Shabazz seconded the motion.

Under discussion, Commissioner LoPilato made a friendly amendment to address a couple items; under Section 5-A. Regular Meetings, which references semi-annual meetings, she does not want to automatically assume the OGC is sticking with monthly meetings; suggested adding the language: "on the receipt of an alleged complaint or due to ongoing business before the Commission" so it is clear that there could be instances other than a complaint requiring another meeting to be held.

Vice Chair Shabazz stated he thought the language already stated: "or as needed."

Commissioner LoPilato stated to be very clear, after the phrase "alleged complaint..." add "or due to ongoing business before the Commission;" under 5-B. Special Meetings, add the words: "or others" after "local media" to address the noticing; strike the word "mail" so it just says "written notice;" in Section 8. Rules of Order and Governing Procedures, Section 3-C. Statement of Position, the final line should state: "each Commissioner may briefly state his or her position on the matter before roll call or the call for the next item of business;" the City Clerk will add the link to the complaint form and procedures in the highlighted sections once it is completed.

Commissioner Chen and Vice Chair Shabazz accepted Commissioner LoPilato's friendly amendment.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: No; Shabazz: Aye; Chair Tilos: Aye. Ayes: 4. Noes: 1.

Vice Chair Shabazz stated the Bylaws could be revisited at some point in the future; suggested not dispensing with the subcommittee in the event the Commission considers

revisiting the Bylaws.

In response to Chair Tilos's inquiry, the City Clerk stated if an individual Commissioner has interest in further revisions to the Bylaws at some point, it could be raised as a Commission Agenda Request.

In response to Chair Tilos's inquiry, Commissioner LoPilato stated that she would like to start tonight but is open to a later implementation if more adjustment time is needed; it is intended to be a living document and reference material that will be consulted a lot.

Commissioner Reid stated starting at the beginning of the year seems appropriate.

Commissioner Chen stated it should be effective at the next meeting; she sees it as a living document; she has been studying and will keep in mind Mr. Garfinkle's suggestions while seeing how well the newly revised Bylaws are working.

Vice Chair Shabazz stated he would like to implement it immediately.

Commissioner LoPilato stated there is flexibility about voting to adjust time limits on presentations and things like that if needed for any other agenda items.

3-A. Approve Report to City Council on Issues/Problems Arising from Implementation of the Sunshine Ordinance

Vice Chair Shabazz and Commissioner Chen gave a brief presentation.

Vice Chair Shabazz moved approval of allowing an additional minute for the presentation.

Chair Tilos seconded the motion, which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Shabazz: Aye; Chair Tilos: Aye. Ayes: 5.

Commissioner Chen and Vice Chair Shabazz completed the presentation.

In response to Commissioner Reid's inquiry, the Chief Assistant City Attorney stated that she is not entirely sure what Mr. Foreman's referenced in his correspondence regarding the City Attorney's office; there may have been comments about complaints hearing serving as a semi-adjudicatory capacity, which means that the Commission is making decisions about the legitimacy of a complaint.

Commissioner Reid inquired whether it is the opinion of the City Attorney's office that the Commission is a quasi-judicial body.

The Chief Assistant City Attorney responded she is not sure the term is quasi-judicial; she

is more familiar with the term quasi-adjudicatory; it is difficult for her to interpret someone else's statement about another statement that was made.

Commissioner Reid stated that she would like clarification on what Mr. Foreman was asking in his correspondence; if the OGC is quasi-adjudicatory, what are the ramifications of the recent null and void proposal and what are the necessary steps to rectify the situation; inquired whether it is true that the OGC is quasi-adjudicatory.

Chair Tilos stated the term came up when the City Council and City Attorney's office said the Commission could not use null and void; therefore, the OGC does fall under the label of quasi-adjudicatory.

The Chief Assistant City Attorney stated another staff member from her office made the presentation to the City Council on June 1st; she cannot intuit exactly what Mr. Foreman is meaning in his comments; she would be happy to respond at a later time with more depth.

Commissioner Reid stated Mr. Foreman's comments regarding the statements made at the June 1st City Council meeting that the OGC is quasi-judicial should be addressed; inquired how the City Attorney's office interprets that statement now.

Chair Tilos stated null and void has been answered; the Commission cannot use it; inquired whether Commissioner Reid's is intending to bring the null and void issue back for discussion.

Commissioner Reid stated that she just asked the question and would like an answer from the Chief Assistant City Attorney on whether the City Attorney's office considers the OGC to be quasi-adjudicatory.

Chair Tilos stated the Chief Assistant City Attorney already stated she would provide a response in depth at a later time.

Commissioner Reid stated her question was mentioned in the correspondence from Mr. Foreman, which she assumes everyone has had a chance to read.

Chair Tilos stated the correspondence was sent two hours before the meeting and not everyone has read it.

The Chief Assistant City Attorney stated that she scanned Mr. Foreman's correspondence; at this point, there is no reason to say anything different than what Mr. Le may have said on June 1st; she does not recall the exact comments and is still not entirely clear what Commissioner Reid is asking her to do related to this particular agenda item.

Commissioner Chen stated what she understood is that the Commission has an adjudicatory function, which means the Commission decides whether or not there is

validity to a complaint; what can happen once a complaint is deemed valid, is to advise the Council, or whichever Commission, that they are in violation of the Sunshine Ordinance; the Commission does not have the function to make any decision null and void; she has been listening very intently to the entire process; she was indignant when it first happened three years ago; sitting on the Commission, she has come to realize that having an adjudicatory role is not the same as having the right to make something null and void; as a point of order, the subcommittee did not make any comment or statement or recommendation on that specific issue and it is not on the table at this point.

In response to Commissioner LoPilato's inquiry, Vice Chair Shabazz stated the complaint by Scott Morris was put on hold due to the expectation that the City Attorney's office would develop a policy; his understanding is that has not taken place; the recommendation was for the policy to be put in place and for it to be published publicly.

Speaker:

Jay Garfinkle, Alameda, stated the staff report appears convoluted and extensive and he cannot tell what the recommendations are; encouraged the Commission to carefully read Mr. Foreman's letter; stated the Sunshine Ordinance as drafted in 2013 is out of sync with what the public expects from the government in terms of openness; encouraged the OGC to set up a committee to find out what the public would like to see in terms of openness in the procedures.

In response to Commissioner LoPilato's inquiry, Vice Chair Shabazz stated the Word document provided to the Commissioners has redlines of corrections and revisions.

Commissioner Chen stated because there was not enough time to put together a proper report, she would like another month to clean it up for the sake of the public being able to see what was just sent to the Commission today.

Vice Chair Shabazz stated nothing in his report is new; the difference is previous iterations in July and the rudimentary outline has details he was not able to include before due to lack of computer access; shared that tonight is his last meeting; stated everyone is welcome to utilize the information.

Chair Tilos stated since Commissioner Chen will be the sole subcommittee member and she needs more time to clean up the report, it can be paused and brought back at a later meeting.

Vice Chair Shabazz stated that he was unavailable to attend the September meeting; the subcommittee was hoping to get input; additional feedback should be shared now, so when the item returns, it can be dealt with effectively and efficiently; this is the first time the Commission has authored a report; the report does not have to be the everything report; encouraged subsequent reports and for the Commission to do with it what they will.

Commissioner Chen stated in light of what Vice Chair Shabazz said, she is okay if the Commission approves sending it on; it is an ongoing process; moved approval of accepting the report.

The Chief Assistant City Attorney inquired whether the draft of the report which was attached to the agenda has additional language.

Vice Chair Shabazz responded the staff report has blanks where information needed to be inserted or facts cited; stated the clean document he sent at the start of the meeting includes the information.

The Chief Assistant City Attorney stated that she has concerns; the Commission would be voting to approve a document that was not in the packet and people are having trouble locating; it would not be a good idea to consider voting on a document that was provided so late.

Commissioner Reid stated it seems there is a lot of confusion about the document and perhaps would be wise to table it until the next time and Commissioner Chen would have an opportunity to clean it up a bit.

Commissioner Chen withdrew her motion.

Vice Chair Shabazz suggested deferring the item to the next meeting.

Chair Tilos concurred; stated it will be brought back on the next agenda November 1st.

3-C. Adopt Proposed Complaint Procedure

Commissioner LoPilato gave a brief presentation.

Speaker:

Karen Butter, League of Women Voters, inquired whether the process addresses complaints about the Commission.

Jay Garfinkle, Alameda, clarified what he meant regarding the term steamrolling; stated when members of the Commission have a lot of momentum, it is impossible to change their mind on issues he believes they misunderstand; he feels the complaint process is heavily tipped toward protecting the actions of City staff and elected officers; submitted suggestions on how to tip the process in favor of the public; urged the Commission to table consideration of the process until the next meeting.

Vice Chair Shabazz moved approval of adopting the proposed complaint procedures.

Commissioner LoPilato seconded the motion.

Under discussion, Commissioner Reid thanked the members of the public present at the meeting; stated that she agrees with Mr. Garfinkle's comments; the Commission should take a little more time to digest the recommendations; they are very detailed; she is in favor of adopting most of them; highlighted a list of important items, including keeping a record of communication between a Complainant and City staff, the idea of the pre-hearing process, including details for Complainants to visualize the process, removing the term unfounded, and the Annual Report to the City Council should be on the Regular Agenda, not the Consent Calendar.

Vice Chair Shabazz stated, typically, according to parliamentary procedures or Robert's Rules, the person making the motion speaks first to debate the motion; as someone who has filed a complaint, he echoes some of Mr. Garfinkle's sentiments in regards to feeling like the process was weighted against him, even when he filed a complaint as a sitting Commissioner; the process being weighted is not necessarily germane to Commissioner LoPilato's suggestion; the procedures specifically outline what will be addressed first; the first thing he would like to see is what the complaint is about, rather than City's response; at the hearing, the person should have an opportunity to share first; then, a response, presentation of facts and opportunity for rebuttal with time restrictions provides a clear process which tips the scale back towards the Complainant; this is a much better process; he appreciates the efforts around collaboration; he is not trying to change the rules for a particular outcome; encouraged the Commission adopt something that is going to be more fair for people who file complaints; what is proposed moves in that direction.

Chair Tilos stated that he shares the same sentiments as well; having the City Attorney's Office provide a neutral opinion tips the scale towards the Complainant and addresses some of the concerns Commissioner Reid has regarding making the process more open, public, easier and fairer; the Commission should move forward.

Vice Chair Shabazz stated that he absolutely agrees with Chair Tilos; during the conversations related to Mr. Morris's hearing, there was discussion related to the different findings and the need to go beyond the binary; the proposal provides a wide array of opportunities; looking back at the pre-2018 era, the process delineates a spectrum of options including sustained, unfounded, and denied, which should continue because there have been a lot of shenanigans and attempts to change rules and manipulate processes; he does not want people to use the OGC as a vehicle to attempt to do so.

Commissioner Chen stated there has to be a balance between helping a democracy work or throwing molasses in the wheels; the OGC was set up to make sure the government does not run roughshod over the public, deny them the right to know what is happening and to have a representative government; the ultimate decision makers are the voters; if folks do not like how their elected officials are behaving or legislating, having an election is what a legislative democracy is; the OGC and Sunshine Ordinance is set to give the public an opportunity to question whether decisions and access to public records are being denied; the Commission is able to decide whether or not to agree with the Complainant; the OGC should not be used to delay how local government; sitting on the Commission, she can see why there are complaints about government not acting quickly;

being a successful Complainant, she can see why it is important to have a vehicle to question and ask an objective body to decide whether or not a complaint is valid; she would vote to accept the proposal, which is a lot better than what came before; moving forward, tweaks and corrections could be on an annual basis.

Commissioner LoPilato thanked everyone for the feedback; stated that she is glad most folks feel like it is an improvement; she would like to include a glossary and an FAQ section; this is the type of thing the Commission could revisit and quickly address; the FAQs deal with things within the City Clerk's purview, so she has offered to complete it; the glossary and FAQs could come on a future agenda; the procedures are ready to move forward; acknowledged Ms. Butter's comments regarding how a complaint against the OGC would be handled; stated it is a question that the Commission needs to grapple with; she does not know whether it needs to be resolved tonight and does not know whether the Commission has the authority to resolve it; it is something to look at and propose some suggestions in the future; thanked Mr. Garfinkle for his interest in the procedures; stated that she is not supportive of his proposed changes because she is very mindful of the need to stay within the boundaries of the Sunshine Ordinance and the Commission's ability to direct staff.

Commissioner Reid stated that she did not receive an email regarding a complaint filed that the Commission will hear in November; inquired the date of the email.

Chair Tilos stated Commissioner Reid not receiving the email could have easily been a staff miscue and is not something the Commission should be discussing.

The City Clerk responded the email was sent to Commissioners on September 22nd.

Commissioner Reid stated that she has some concerns she would like to address; while she appreciates all of Commissioner LoPilato's work on the procedures, she wants to restate that she believes a subcommittee should be more than one person; it was a lot of work and the public should have been incorporated in the process; the Commission should not ignore good suggestions that do not always require extra time from City staff; the Commission should be tipping the scale towards the public's benefit; she questions whether it is appropriate for the person who submitted the document to second the motion; she is in favor of adopting most of the redlines submitted by Mr. Garfinkle, which support the public and are much more transparent; she will not be supporting a motion of the proposal as is.

The Chief Assistant City Attorney stated that she sent out the email to the Commissioners on September 22nd regarding the complaint to be heard in November; she sent it to Commissioner Reid's City email address, which she thought Commissioner Reid uses for OGC business; she could send it to another account.

Commissioner Reid thanked the Chief Assistant City Attorney; stated she just double-checked the email address and there was no email from September 22nd.

The Chief Assistant City Attorney stated it shows that the message was sent on her end; she will resend the email; if the email is still not received, she will endeavor to see why it is not going through.

Commissioner Reid requested the email be sent to the address corresponding to the OGC.

Chair Tilos stated the conversation could be taken offline.

Vice Chair Shabazz stated that fortunately he was not included in the conspiracy and received the email on September 22nd at 5:13 p.m.; to address Commissioner Reid's concern, people who make proposals can also make motions; there is a motion and second on the floor and he is ready to call the question; he added that it would be helpful to make the form available electronically.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: No; Shabazz: Aye; Chair Tilos: Aye. Ayes: 4. Noes: 1.

COMMISSION COMMUNICATIONS

4-A Consider Communication regarding Informational Report on Disclosure of Documents (Vice Chair Shabazz)

Vice Chair Shabazz gave a brief presentation.

In response to Vice Chair Shabazz's inquiry, the City Clerk stated the item does not require a motion, but the Commission could provide direction.

In response to Chair Tilos's inquiry, Vice Chair Shabazz stated as a Commissioner, the body can make requests or advise the City Council, but cannot tell staff what to do.

Chair Tilos stated that he concurs with Vice Chair Shabazz's request, but since it is under Commission Communications, he thought the request might be more informal.

Commissioner Chen stated the item should be put on the agenda for next month for the Commission to formally request staff to provide a report.

Vice Chair Shabazz stated the first question is whether the Commission wants the information; when would be a matter of staff and their capacity to be able to provide it.

Commissioner LoPilato encouraged feedback from the Chief Assistant City Attorney on any questions about the nature of the request, if it is doable and not necessarily committing to any timeline.

The Chief Assistant City Attorney stated her understanding of Vice Chair Shabazz's

request is he is asking for the same information that is in the semi-annual report the City Attorney's Office provides as a Consent item on the City Council agenda; the last report presented was on September 7, 2021; other dates included March 2, 2021, September 3, 2019, and February 19, 2019; she could not readily find the 2020 dates; the report is required under the Sunshine Ordinance and is publicly available; she reviewed the 2016 report Vice Chair Shabazz included with his Commission Communication; it appears to be very similar, if not a duplicate, of what was submitted to the City Council; it is information that has already been made publicly available; information about how the City responds to PRAs consistent with various new laws poses a definite challenge and would require direction from the City Council because it is providing legal advice and interpretation subject to attorney-client privilege; it is not information the City Attorney's Office would normally disclose in a public meeting; the City Attorney's Office would do so if the Council directs such disclosures; if the Commission decides to make the request to the City Council, she would definitely note the fact she has indicated that such analysis may require legal interpretation that may be subject to attorney work product and attorney-client privilege.

Commissioner Reid stated that she would like the Commission to receive a copy of the report sent to the City Council as a point of procedure; she would also like to see all of the PRAs that have been submitted in a monthly report sent to the OGC.

Vice Chair Shabazz stated if some of the information is already being provided to the City Council, it would not be difficult to share the information with the Commission; regarding the piece on attorney-client privilege, his request is that the Commission is asking for an informational report which provides context and what is required in the Sunshine Ordinance; what is disclosable has changed over the last five years; perhaps the additional laws become an issue.

The Chief Assistant City Attorney stated that she may not have been clear and apologized; she is taking the request in two pieces; the first piece is for the City Attorney's Office to provide the OGC a report similar to what is provided to the Council indicating what, if any, documents have been released after being initially withheld from disclosure; as to that piece, the information is regularly provided twice a year to the City Council in a publicly available report; the ones that she reviewed indicate no documents have been declassified; the second piece of Vice Chair Shabazz's request is asking for an analysis or explanation of how the City Attorney's Office, and the City as a whole, treat document requests with the advent of some new laws; it is this piece the City Attorney's Office believes would require her office to divulge attorney work product or attorney-client communications because it would require her office to indicate what legal interpretation they take of the laws in their application to specific requests that are made to the City, which would require direction from City Council.

Vice Chair Shabazz stated that he understands what the Chief Assistant City Attorney is communicating; it is not that he disagrees; he is in no position to make a decision for the City; he is requesting a formal, agendaized Commission agenda item in the future; for the second portion, the Commission may ask the City Council for information or documents

that are now disclosable; having the conversation publicly could help the OGC continue to effectively do its work.

Commissioner Reid stated that she would support a motion that specifies the OGC would have a formal agenda item to further discuss these issues, asking the City Attorney's Office to submit a copy of the same report to the OGC and to also include monthly reports of PRAs submitted and exemptions that have utilized.

Vice Chair Shabazz stated that he would make a motion not including everything Commissioner Reid included; he is a fan of the PRA, but doing a monthly report might be burdensome; he is attempting to start with one request for an informational report, which includes a recommendation to permanently implement a PRA supplement in the annual report.

Vice Chair Shabazz moved approval of the Commission requesting that City staff provide an informational report on disclosure of documents.

Commissioner LoPilato inquired whether providing the same document as the one on the City Council's Consent Calendar under the Commission's Staff Update section meets the needs of the motion.

Vice Chair Shabazz responded essentially, the issue came before the Commission five years ago and a Commissioner asked what it was about; he is asking the same thing; the core of the question is that he is requesting the information come back to the Commission to be shared in a way that is contextualized; he does not think it should take more than half an hour to provide the information and allow the public to be aware of the report that goes before the City Council twice a year.

Commissioner Reid stated that she is familiar with the report and has been following it; she appreciates Vice Chair Shabazz's motion but would like to make a friendly amendment to make it even more open and include the list of the PRAs on a monthly basis; stated that she does not think it would take much of City staff's time; it would be highly beneficial to the OGC and the public to see all the requests coming through, how the City Attorney's Office is handling them and what exemptions are being used repeatedly.

In response to Chair Tilos's inquiry, Commissioner Reid stated that she agrees with Vice Chair Shabazz's motion, but would like to add to his motion that a PRAs report is added on a monthly basis.

Chair Tilos stated Vice Chair Shabazz already declined adding the monthly PRA piece because it gets a little more tedious and adds more content to already-long meetings.

The Chief Assistant City Attorney stated that she is concerned Commissioner Reid's request is not agendized; there is discussion and action being contemplated about a request that is not on the agenda; cautioned the Commission to be careful.

Commissioner Reid clarified that her request was to place the item on the next agenda.

In response to Chair Tilos's inquiry, the City Clerk stated if the Commission gives direction tonight, the item can come back at a later date when there is time on the agenda.

In response to Chair Tilos's inquiry, the City Clerk stated a motion has been made but not seconded; a motion can be made since the matter is listed as an agenda item.

Commissioner LoPilato inquired whether the motion is to talk about it at a future date as an agenda item; stated that she thought the actual motion was to directly request that staff provide the information and materials at the future agenda.

The City Clerk stated the motion was to request staff to provide an informational report.

Commissioner Chen stated under Commission Communications, the Commission can only ask to have an item be put on an agenda; technically, the item is not being discussed right now; it has to be an agenda item for the Commission to ask staff to do something.

Chair Tilos moved that the Commission discuss what they would like to do at a later time; stated he is trying to avoid putting it on the agenda next month; inquired whether it is correct procedure to put it on an agenda for a future date.

The City Clerk stated there is no date in the motion, so a later time is fine.

Commissioner Reid inquired whether Chair Tilos is making a motion.

Chair Tilos stated he withdraws his motion.

Commissioner Reid moved approval of placing the item on the agenda for a later time to include a monthly PRA report and that the City Attorney's Office share the bi-annual report with the OGC.

Chair Tilos stated there is no second on either Vice Chair Shabazz or Commissioner Reid's motions.

Vice Chair Shabazz stated the Chief Assistant City Attorney clearly cautioned the Commission against considering and discussing the item that is not on the agenda; a simple solution would be to request the item be placed on the next agenda.

Commissioner Chen seconded Vice Chair Shabazz's original motion.

Commissioner LoPilato stated before taking a vote, she wants to make sure the staff who will be responsible for providing the report is clear on the scope of what is being requested.

The Chief Assistant City Attorney stated in general, the City Attorney's Office takes direction from City Council on workload; she would like to strike a balance to be reasonable; the report that includes the information Vice Chair Shabazz has asked for is already in a written report so a copy could be attached to Commissioner Communications in a meeting closest to whichever City Council meeting the semi-annual report is presented; she does not envision producing a separate report.

On the call for the question, the motion failed by the following roll call vote: Commissioners Chen: Aye; LoPilato: Abstain; Reid: Abstain; Shabazz: Aye; Chair Tilos: No. Ayes: 2. Abstentions: 2. Noes: 1.

Vice Chair Shabazz stated this is his last OGC meeting and shared his resignation letter; wished all the Commissioners well.

Adjournment

Chair Tilos adjourned the meeting at 9:50 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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