

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - MARCH 1, 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.]

Absent: None.

[Staff present: Chief Assistant City Attorney Elizabeth Mackenzie; City Clerk Lara Weisiger; Transportation Planner Lisa Foster; and Special Counsel James Harrison, Olson Remcho]

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the February 1, 2021 Meeting

Commissioner Reid stated noted there is missing information which should be added into the minutes.

Commissioner Shabazz stated he sent an email to the City Clerk with clarifications to the minutes regarding: a suggestion from Mr. Garfinkle regarding information in the Annual Report, the selection of the Chair and Vice Chair, his statement about never having all-nighters, Commissioner Communications and a point of order.

Commissioner Reid stated she would like public comments to be preceded with a “Public Comment” heading to make it clear, to which the City Clerk stated the heading can be added to the minute format.

In response to Commissioner Reid’s inquiry regarding Commissioner Shabazz’s correspondence being in the minutes, the City Clerk stated the correspondence would not be included in the minutes because it is already attached to the item as part of the record.

Commissioner Shabazz moved approval of the minutes with the clarifications.

Commissioner LoPilato 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.

### 3-B. Recommendation to Provide Feedback on Draft Recommendations from the Community-Led Committee on Police Reform & Racial Justice

Commissioner Chen recused herself and left the meeting.

The Chief Assistant City Attorney stated Commissioner Chen made the decision to recuse herself after being advised by the City Attorney's office due to a common law conflict of interest; further clarified that due to the virtual method of the meeting, members who recuse themselves are not participating and are not "in the room."

The City Clerk confirmed she is able to move recused members into a waiting room where they are unable to hear or participate in the meeting discussion.

Commissioner Shabazz stated at a previous meeting, there was concern about ad hoc committees; he is concerned that tonight's discussion might later be claimed to be in violation; he wants to make sure things are being done in order and requested input from staff on the matter.

The Chief Assistant City Attorney stated the only item agendaized is the Subcommittee presentation; the Commission should not go beyond said scope; the item is a presentation from Subcommittee members and not a meeting of the Subcommittee.

Chair Tilos clarified that the presentation requires no action and is being presented as an opportunity for Commissioners to provide feedback.

Steering Committee Members in attendance: Al Mance, Christine Chilcott, and Jolene Wright

Subcommittee Members in attendance: Amy Gong Liu, Andrea Carlise, Ayse Sercan, Bassy Obot, Beth Kenny, Debra Mendoza, Erin Fraser, Gavin Maxwell, Heather Reed, Jennifer Rakowski, Jono Soglin, Madlen Saddik, Melodye Montgomery, and Venecio "Vinnie" Camarillo.

Christine Chilcott gave a PowerPoint presentation.

Chair Tilos thanked the Steering and Subcommittee members for the presentation and for attending the meeting.

In response to Commissioner LoPilato's inquiry, the City Clerk stated Commissioner questions should be done prior to public comment; then, Commissioner discussion is after public comment.

Commissioner Shabazz stated that he wants to express solidarity with Mali Watkins, George Floyd, Breonna Taylor and many others that catalyzed getting to this moment; he appreciates everyone who put in the work and staff for getting the word out about tonight's meeting and engaging people.

Ms. Chilcott stated Commissioner Shabazz's list of questions was forwarded and received by the Steering and Subcommittee members prior to the meeting; if the answers cannot be provided tonight, the information will be provided to him at a later date.

Commissioner Shabazz inquired how many people responded to the survey from the mailer and what were the demographics.

The Transportation Planner responded 1,485 surveys were received; 70% of respondents own their home, 30% are renters; 43% are white; below 20% preferred not to answer; 10% are Asian, and everything else was below 10%; neighborhoods were dispersed regarding race and ethnicity; household income is: 5% under \$40,000, 13% \$40,000 to \$80,000, 17% \$75,000 to \$100,000, and the remaining have higher income.

Ms. Chilcott stated the survey was not just for Alameda residents; anyone who visits Alameda to visit friends or family, to work, or anyone who touches Alameda were encouraged to take the survey as well.

Jolene Wright discussed the Block-by-Block Program; stated it was a program that ran in November and December of 2020 which had non-sworn officers or "Ambassadors" walk the blocks on Park and Webster Streets doing outreach in support of homeless members and businesses.

Ms. Chilcott stated the group referred homeless members to services and was a way to take something out of the Police Department's purview and give it to a different group, who can support the efforts.

Ms. Wright recommended Commissioner Shabazz to reach out to the apdreforms email for more information on the input received.

Chair Tilos stated regarding the slide about defunding the Police, some of the current Police tasks go beyond racial reform; there are other ways to reallocate funds and have cost-savings; the Police are some of the most highly compensated employees of the City; suggested that the burden be taken off the Police Department by having employees, other than Police, monitor the tube closures and similar instances.

Ms. Chilcott concurred with Chair Tilos; stated the Committee looked into Alameda Police Department (APD) calls; the research shows a lot of the calls did not have a racial component; there were calls unrelated to Police work, which the Committee is reviewing.

Commissioner Reid thanked everyone for their work and for presenting to the public; stated that she read the draft recommendation and was impressed with everything the Committees have done.

In response to Chair Tilos's inquiry regarding Commissioner questions, Commissioner LoPilato stated she does not have a suggestion for the order of operations and deferred

to the other Commissioners.

Commissioner Shabazz suggested Commissioner questions be asked within the five areas of the draft recommendation to keep them organized and on topic.

Commissioner LoPilato stated that she likes that approach; she has a couple of bigger-picture questions; inquired whether it would be appropriate for her to lead with her over-arching questions before jumping into the different Subcommittees, to which Chair Tilos responded in the affirmative.

Commissioner LoPilato inquired if the Committee could speak about the involvement and efforts of the young people in the community; stated interactions with Police and youth can really be impactful; she would like to hear how the young folks in the community were engaged in the process.

Raquel Williams responded that she is a high school senior and was on the Systemic and Community Racism Subcommittee; she was able to really be a part of the process and being a young person gave her a different perspective; she has had her fair share of racist encounters; she also has had standoffish and slightly scary encounters with the Police; she was able to shed light on what she was feeling, especially how some language comes off to someone who is young and at the beginning of her professional life; it definitely was a process of learning and educating simultaneously; she was able to be a resource for some people and, at the same time, use others as a resource for herself; there is something different about a young person's encounter with the Police; it has been a learning process as well as a ton of growth for her.

Ms. Wright stated from an overall perspective, it was important to engage the youth of Alameda; the Committee did send engagement opportunities to the School District for outreach in a newsletter; there were high hopes for every 12<sup>th</sup> grade government class in Alameda to take the survey as extra credit; representation is super important.

Commissioner LoPilato stated that she wishes she was live and in person so she could give everyone a standing ovation for the incredible report and presentation, which is a labor of love for the City; she noticed the thoroughness of the report and the level of data and information received from the City in the process; inquired if anyone could speak to their experiences in doing getting data; stated that she does not know if there has been a collective push, which resulted in many record requests, what the process was like, and whether they encountered any obstacles or resistance; inquired whether anything in their experience might shed light on how the Commission could help make the process smoother for other individuals or groups in the future seeking data.

Andrea Carlise responded the City was pretty responsive to the record requests, but that it took several requests, especially specific requests to the Police Department; the Transportation Planner and City staff were wonderful, but it felt like some of the initial requests were put aside and it seemed as though they preferred not to respond directly to questions asked, so she had to re-frame them; ultimately, the Subcommittees got the

information they wanted, on which their recommendations were based.

Erin Fraser stated that that he assembled many of the Subcommittee requests and the City's responses; they set up a process to file information requests through a form, which were prioritized in order to get a response; the Committee made many requests; his list has 20 requests; the Committee also wanted to conduct substantive interviews with members of City staff, particularly members of APD; they were able to get a ton of information and City staff did their very best to provide the information as timely as possible.

Erin Gong Liu stated as the Committee's work is coming to a close, one of the major obstacles faced as a volunteer Committee and the deeper a person digs in this kind of work, there is more substantive need to collect data; Commissioner Shabazz emailed the Committee regarding the need for quality data, which the Committee has always echoed since the beginning; they could browse through quantitative records that were made public by the City and APD, but they would also like to code qualitative interactions and get stories and information from folks in the City who maybe did not complete the survey, did not have time to provide numbers, or perhaps were not represented in the numbers that are seen online; one of the ultimate recommendations is the work needs to continue with the help of a full time Analyst and financial resources are needed to continue this type of work; many Committee members have done so much with their time volunteering to be able to parse through the information to create reports and make it logistically clear to everyone; if the work were to continue, it would need more statistical arms.

Ayse Sercan stated she was on the Accountability and Oversight Subcommittee; the City simply did not have a lot of the data the Committee was hoping to get as it is just not collected; in reading through the data and doing analysis, they also came to the conclusion that there needs to be a Data Analyst who is deriving and analyzing what data is collected to figure out what is going on; something cannot be reformed if that it is not understood.

In response to Commissioner Shabazz's inquiry regarding points of comparison in residential demographics, Debra Mendoza stated there is insider knowledge within the Committee; when a traffic stop is conducted, Police are required to report the race of the individual whether they were an adult or juvenile and the disposition of the traffic stop; basically, there are nuances within the data that they are not getting; they do not have the information, which is available; the information is being captured and just not made available, which is the case for a lot of the data; they did the best they could with analyzing the calls for service that were non-criminal in nature; they met with members of Police and Dispatch to try to understand the categories, but could only go so far.

Jono Soglin stated there is a real challenge correlating data; they could not correlate calls for service with specific incidents; coding data to draw conclusions to establish and track outcomes is a deep dive; the quantitative information is there, it just takes a deep dive and someone to go in and correlate and track incidents along the different stages.

Jennifer Rakowski stated that she was on the Oversight Committee; they did correlate the data to population to understand what the relative risk is for a particular community in terms of being arrested or stopped; whatever race data the City collects is based on the Officer's perception; there are limits to the data; in the coming years, there will be additional requirements for race-based data for stops and arrests to analyze disparities in terms of treatment; encouraged the community to push for immediate transparency as opposed to waiting until the Police Department is required to provide it to the federal government; not all of the data that needs to be collected is housed in the Police Department; it is looking at what complaints went to the Police and which ones went to other parts of the City about incidents with the Police; information is collected at the jail about what restraints were used; said type of information is not retained at APD, but is retained elsewhere; the City encourages having index markers at outside of APD that inform what is happening in the City.

Commissioner Shabazz thanked the Committee members for their responses, and even to questions he did not get to yet; stated there are different types of data: quantitative and qualitative; he is interested in qualitative data, including what happened when a person was pulled over, how the Officer interacted, and how it is that measured, i.e., a body camera, cell phone, or Ring doorbell device; there are a lot of ways data can be captured these days; he would like to know the location of the data since it can be housed in different places; the quality of collection is an issue as well; in 2017, the Alameda Democratic Club held an event about policing, particularly about immigration, since Trump was coming into office; he spoke with the Police Chief at that time about the traffic stops and shared data he felt was disproportionate comparing the number of Black people who lived in Alameda with the number of people who lived in Alameda; Black people were stopped more than their number; it was stated that 1) Alameda is next to Oakland and Oakland being a proxy for Black people in some people's geographic imagination; and 2) it was not a good to compare how many people live in a place versus how many people are stopped; he is interested in what other points of comparison are being reviewed; he would also like to know how if the current Police leadership acknowledges the traffic stop disproportionality; the question is important for the incoming Police leadership.

Alphonso Mance stated Commissioner Shabazz's questions are very important issues; one of the Committee's recommendations is to have the Crime Analyst and software the Police use make information gathering less subjective; there were certain things APD did not keep; the City has not had a Crime Analyst in a while; he has the same concerns as Commissioner Shabazz with regard to where the information is kept and how reliable it is; he is hoping that having a Crime Analyst keep the information will be more reliable, especially since the data would be input into software which asks specific questions; another recommendation is additional reporting to the FBI, which has pretty strict requirements and will also be more reliable; one of the more critical responses from the survey was that disproportionality does not necessarily indicate bias; one of the things he likes to look at is the number of stops versus the number of citations given; how many were just given a warning provides more information; if an Officer is stopping people and just letting them go, is the Officer just friendly to a certain group of people or because there was not a basis for the stop; there are other figures that could be gathered and

analyzed; the FBI and Crime Analyst is key; when talking to the Interim Police Chief about gathering better statistics, he was the one who actually suggested adding a Crime Analyst and purchasing the related software; the Committee is hoping the new Chief will be in favor of keeping statistics; one of the Steering Committee members will be participating in the new Police Chief interview, so the questions will be asked of the incoming candidates.

Commissioner Reid inquired whether it would be possible for the public to review the research documents related to the draft recommendation.

Mr. Mance asked for clarification about which specific documents Commissioner Reid is referring to as the Committee has put about 3,000 hours into looking at a lot of different sources; he personally did not keep a list of the sources, but is happy to share what some of them; he has been a lawyer for a while and a lot of his knowledge of California law is based on his work; he can research issues pretty effectively; if there is interest, each Committee could probably compile a list of sources used for the City to publish on the website.

Commissioner Reid stated that would be great; requested that the Committees indicate where they received the information to give the public an idea of how to be able to research information; transparency is helpful to the public.

Mr. Mance stated regarding the information specific to the APD, the Committee had three meetings with APD leadership which were all announced on the City's website and other social media and were open to the public; the meetings are still up for viewing on the City's website; the other information is available on Google Docs and all the requests for information are public.

Mr. Fraser stated every Subcommittee's requests to the City is posted on the City's website with a link from the website; all the information is available to the public and is organized in a way to be efficient for City staff to be able to respond to requests; in the final recommendations, outside research is footnoted.

In response to Commissioner Reid's inquiry, Mr. Fraser stated any data the Committee requested and received from the City is on the website.

The Transportation Planner stated the City sent 80 documents from various Departments, mostly APD; not all 80 documents have been posted online, but there is a list of the requests.

Commissioner Reid inquired how many years of data did was requested and researched, to which Mr. Fraser responded the Committee requested data from 2018 through 2020.

Commissioner Reid inquired whether the Subcommittee meetings were recorded and if the public could go back and watch the meetings, to which Mr. Fraser responded in the negative; stated none of the Unbundling Subcommittee meetings were recorded.

Commissioner Reid inquired whether the Committee is recommending mental health professionals, in lieu of Police and Fire, or recommending additional training in the mental health area or both.

Mr. Soglin stated the Unbundling Subcommittee was not looking at training, but another Committee recommended mental health training for Officers; the recommendation from the Unbundling Subcommittee was that when there is call for mental health services, like the CAHOOTS model, mental health professionals respond to the call; when needed, they can call and bring in law enforcement; in the CAHOOTS system, the number of calls needing law enforcement was tiny; law enforcement would always be available, but the idea is to have the professional with the training and skills respond to a mental health call; if the call is mental health, but also involves a crime or weapon, then law enforcement would respond.

Mr. Fraser recommended Commissioner Reid review the CAHOOTS model from Eugene, Oregon; stated there were roughly 24,000 CAHOOTS calls with only 0.6% requiring an armed Officer to support the CAHOOTS team.

Commissioner Reid inquired, from an example given in the draft recommendation, who would determine whether a person shoplifting from a pharmacy was acting out of dire necessity and not profit-seeking.

Mr. Mance responded by giving an example of diversion programs most of the Police agencies use in the juvenile system; stated the Police agencies have developed policies for determining whether it is appropriate to divert a youth; a similar system can be employed; the Committee recommendations have not figured out the nuts and bolts yet; the next stage is for the City to determine what works for Alameda and how to implement the recommendations; there are situations where Police Officers make the determination; Officers have a great deal of time and experience seeing these things in person; the City can lay out standards and the Police Officers have limited discretion within the standards; this is one model currently in place.

Commissioner Reid stated the report indicated juvenile offenses declined in Alameda; inquired whether the numbers are just dropping or if juveniles are diverted elsewhere.

Mr. Mance responded that he could not answer definitively; stated juvenile filings across the County are down by about 70% as juvenile crime is decreasing; there are a lot of diversion programs; the vast majority of cases that do occur were filed prior to diversion programs; his understanding is that the diversion programs are successful and youth who have completed the program are not re-offending.

Commissioner Reid suggested perhaps said level of detail and information could be added to the draft recommendation.

Chair Tilos stated he would like the Commissioners to rotate questions three at a time to



progress through the meeting more efficiently and get to public comment.

Commissioner Shabazz stated that he will transform his questions into comments; since he already submitted his questions in advance of the meeting, he will prioritize his questions and not ask all of them; he has two questions but will yield back his time for now.

Commissioner Reid inquired whether the racial statistics could be classified to be consistent with the census; i.e., should Hispanic be treated separately as an ethnicity rather than as race; and whether the Committee is recommending hiring a professional consultant from the Police sector, the non-profit sector, or other.

In response to Commissioner Reid's second inquiry regarding hiring, Amy Gong Liu stated the Committee recognizes that the initial recommendations are drafts but did everything to make them as clear as possible; in the final set of recommendations, the Committee will be taking and compiling all of the suggestions to produce the most clearest and logical path; with regard to the third party analysis, the recommendation came from a meeting with Interim Police Chief and several APD Captains; the Interim Police Chief stated APD is interested in starting a partnership with an organization called COMPSTAT for Justice and the Center for Policing Equity; due to the current situation, many Police Departments were driven to reach out to third party organizations that offer consulting services for free; they maintain a temporary and short working relationship with Police Departments, produce documents for the Departments and the public; the Committee wants to encourage APD to continue this kind of relationship; the Center for Policing Equity are inundated with requests, but stated is working towards creating the possibility to partner with APD; the Committee will continue to check in with the APD about feasibility.

Commissioner Reid inquired whether community members or the Police would be on the Board for internal accountability and oversight, to which Ms. Sercan responded the Accountability Board would be strictly a civilian board; stated there would be no sworn Police Officers, Police Department or City employees; the idea is specifically for community oversight because the Police already have Internal Affairs and their own internal management structure.

Commissioner Reid inquired how group affiliation would be determined for the General Conduct Affirmative Code, social media likes or membership in a group; and whether the five districts are based on census tracts.

Mr. Mance responded the APD informed the Committee that for policing purposes, the City is broken up into five districts; the districts are a policing designation and he does not think there is any significance outside of that.

Commissioner Reid stated she would like the public to have clarification about the districts; stated she has a few more questions but does not want to take up all the time.

Chair Tilos stated Commissioner Reid could submit her questions via email.

Commissioner Reid made her last questions: 1) whether the Police Chief or the City Manager would implement the recommendations, 2) whether the authority to investigate complaints would require a Boardmember to take a Police oath; 3) whether the purpose of the Subcommittee is to conduct investigations, amplify complaints or both.

Ms. Rakowski responded some of the Committee's recommendations are intentionally not fully fleshed out because it is the beginning of the process; issues are being identified that staff and the City Attorney will need to make further recommendations on; ultimately, the public would need to weigh in on a Charter commission; the Committee is flagging questions and concerns that need to be addressed for a well-functioning, thoughtful, clear and transparent process; answers cannot be provided at this early stage in the process.

Commissioner Reid stated her questions are concluded and she is happy to submit her remaining questions and comments for the Committee's review.

In response to Chair Tilos' inquiry, Commissioner Shabazz stated he will make comments, rather than ask questions; he would like to hear public comment.

Public Comment:

Inquired the purpose of tonight's presentation since all of the reports have been published and presented to the City Council and Planning Board; stated that he was hoping the presentation would be focused on how everything relates to the OGC: Jay Garfinkle, Alameda.

Stated Alameda Police should be allowed to hire who they need based on the current fiscal year budget; when staffing needs to be increased at a later time, it would be too late to select and train appropriate sworn and non-sworn people to meet the demand; Alameda has a lot of growing issues, including traffic, crime, and homelessness; it is going to be difficult to play catch-up when the hiring freeze is lifted: David Lee, Alameda.

Stated that she was speaking on behalf of her elderly Korean-America mother; she would like to know how much outreach and research has gone into the experience of racism for Asian Americans, especially immigrants who were unable to take part in the survey due to the language barrier; there is a dramatic rise in hate crimes against Asians: Sang Shim, Alameda.

Stated that he experienced racism in Alameda; there needs to be a balance between the protections and fairness in situations, like George Floyd and the dancing in the street incident; he would like to participate in more discussion; he wants Alameda to become a better place to live and work: David Chu, Alameda

Stated one of the items in the Code of Conduct is that an Alameda Police Officer should not be a member of an organization that is out of bounds; there are concerns about an affiliation between Police and the D.C. insurrectionists; the issue is defining membership

in those groups, what types of conduct would be expected and how it would be documented to ensure Officers know boundaries; the key question is what is the authoritative power; encouraged the Commission to think about how to present the work streams to the public and its impact on policing in Alameda : Matt Reid, Alameda.

Commissioner LoPilato stated that she is impressed by the amount of volunteer work, collaboration and thoughtfulness that has gone into all the reports; she is deeply humbled by the valuable volunteer service the Committees have given to the City; she appreciated the level of attention given to both proposed policy changes and the implementation and accountability angles; everyone here cares about the access to information through the Public Records Act; she is very interested in the idea of hiring a full time Crime Analyst, which would improve data collection and transparency, while still having someone in a professional capacity to be sure privacy issues are respected; she thought there were a lot of interesting recommendations regarding the Police Oversight Board; there can be some rough roads at the intersection between board transparency and the privacy doctrines around Police employee records; if the Oversight Board moves forward, she hopes there can be an ongoing dialogue with the OGC to collaboratively and proactively work out kinks with respect to the Sunshine Ordinance; the focus on the Code of Conduct in the Policies and Practices Subcommittee report and the note about the social contract reason is spot on; she would like to ensure that compliance with the Code of Conduct is included in the accountability process as well as all the general performance assessments, evaluations for promotion, and other steps in the personnel life cycle; Officers who exemplify excellent compliance should be positively recognized; she urges the Subcommittees and staff to keep an eye on the rapidly developing State law, i.e., Assembly Bill (AB) 1506 from last year creates independent investigations into certain Police use of force; AB 998 deals a lot with a mobile mental health crisis team.

Commissioner Shabazz stated that he has a lot of questions, but will try to keep his comments succinct; he worked as a journalist and has written extensively about Police in Oakland, Berkeley, BART, and even University of California Berkeley Police (UCBP); as an urban planner, he is very interested in policing as a form of social control; he has written about how civilian oversight is formed, including how Oakland's Police Commission was formed after the murder of Melvin Black; after Oscar Grant's murder, BART's hybrid model of an oversight board and auditor was formed; paraphrasing a comment by Dave Chappelle, the reason why he is an expert in policing is because he is a Black man in America; he had some early positive experiences with APD growing up in Alameda, but as he got older, his experiences were not as positive; he is grateful to not have had negative Police contact for a long time; he comes to the question about open government from a different position than other people who may have experienced policing differently; discussed a 1992 incident which became known as the "Mobile Digital Terminals" (MDT) incident where Alameda Police Officers were sending messages to each other about wearing Black face, dressing up as members of the Ku Klux Klan and going out and shooting Black people; in response to the incident, there was the Mayor's report on cultural diversity; he encourages folks to read the report because he already sees some parallels with some of the work the Committees have been doing; there are some unfinished efforts; under criminalizing survival, he is concerned about what

happens when people see unhoused people in public and how APD may respond to a call, how it is dealt with, and how it is coded; he made comments on the prosecutors docket and is making it public so people can see what the focus is on; perhaps it may come back to the OGC with some regularity and could be part of the annual report; expressed concern about mental health of those who work in law enforcement, not just Officers, but Dispatch, and other non-sworn positions; under policies and practices, last year, the Police Chief announced a change in how calls would be prioritized, which received a lot of negative reactions; in general, he is concerned about Police Chief policies and recommends review either by the City Manager or Council; he has observed unhoused people picked up and taken over the bridge so that they are no longer in Alameda; he is grateful that is no longer a practice; regarding fees, fine, and revenue, it would be beneficial to look at the data to see if there is some form of reparation or amnesty for people who have been targeted to a higher extent; he appreciates having all community voices heard under the policies and practices Subcommittees; since people are impacted differently, it is important to recognize getting more people to participate than just one segment of the community; expressed concern about retaliation; in 2015 and 2018, he interviewed many people while in the process of working on a story; nearly three dozen people he interviewed were Black people who asked to remain anonymous for fear of retaliation; more recently a City Councilmember put Committee member's names on a NextDoor thread regarding crime as if it was somehow related; he is concerned about how people can participate publicly without potential threats to their well-being; in the next phase of this process, he would like to identify ways for people who have been impacted by policing in Alameda to tell their stories without the potential of being harmed or invalidating their experience; regarding the social media protocol, there was an incident in August 2017 involving a group of young people who had weapons drawn on them at the Target store; a video was posted on the APD social media that one of the youths was suspected of stealing a car; after Commissioner Shabazz's first PRA request for related information was denied, he was able to get pertinent information with the new State law AB 1421; after tracking down the case to the District Attorney, he found out the person was not even charged for the crime; incidents are posted publicly on social media in a society where a person is innocent until proven guilty; there is no retraction after a mug shot is posted; this type of action re-affirms race crime association and re-enforces pre-existing stereotypes; urged the Committees to share their concerns, which perhaps could result in an audit; he hopes going forward that there could be a truth and reconciliation process to deal with some of the systemic racism; he is hoping the OGC could be a place where there will not be challenges when trying to obtain data from the City and some oversight conversation could return as the Committees consider models to put before the voters; he would like the community to build together so someone's safety is not predicated on someone else being over-policed.

Chair Tilos thanked all the Committee members for the presentation, attending and answering questions; praised their efforts and expertise.

Ms. Wright expressed appreciation to the City and staff for making the event possible.

Commissioner Reid thanked Ms. Chilcott for her presentation and expressed appreciation

to all Committee members.

Commissioner Shabazz raised a point of order proposing that, based on time and the timing of receipt of Commissioner LoPilato's proposal for item 3-D, that Commissioner LoPilato's proposal regarding the null and void remedy could be addressed at a later date. Commissioner LoPilato said yes, stated that she anticipated that; stated the long-range solution, while it can be packaged with Item 3-D's discussion regarding replacement of the null and void remedy, was an addition to other topics being discussed, so she is okay with re-agendizing it or handling it at a different meeting.

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Chair Tilos called a recess at 9:23 p.m. and reconvened at 9:26 p.m.

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### 3-C. Hearing on Sunshine Ordinance Complaint Filed February 2, 2021

Commissioner Shabazz recused himself since he was on the Jackson Park Renaming Committee and left the meeting.

The Chief Assistant City Attorney clarified that Commissioner Shabazz's recusal is based on a common law conflict of interest.

Commissioner Reid stated that she will also recuse herself based on the common law conflict of interest and left the meeting.

Complainant Paul Foreman gave a brief presentation.

In response to Commissioner LoPilato's inquiry regarding the discussion structure, Chair Tilos stated outside counsel will present next, followed by Commissioner questions and public comment.

James Harrison, Olson Remcho, gave a brief presentation.

Mr. Foreman stated there are no issues that he needs to rebut.

Commissioner LoPilato requested clarification on the delineation between Mr. Harrison's role and the Chief Assistant City Attorney's role tonight.

The Chief Assistant City Attorney responded that Mr. Harrison has been appointed as Special Counsel and is representing the interests of the City and the Alameda Recreation and Parks Department (ARPD); her role, as it would be in all meetings, is an advisory role in a legal capacity when questions come up from the OGC; she is not here in an advocacy role this evening; the two advocates are Mr. Foreman, on behalf of himself, and Mr. Harrison, on behalf of the City.

Commissioner LoPilato inquired what are the long-range impacts of a Commission

decision if a complainant comes to the OGC and seeks a remedy beyond what they received, such that they proceed with a private right of action; further inquired whether a Commission decision would become evidence in that type of litigation; stated knowing what the record could be used for would be helpful before deliberating.

The Chief Assistant City Attorney responded after tonight's hearing, if either party is displeased with the results and wants to pursue appeal remedies, that party would have the right to file a private right of action as a private lawsuit; the record that is created tonight would all become part of the underlying record; a reviewing Court would look at all of the evidence put before the OGC to determine whether or not the evidence used met the legal standard of the decision made by the OGC.

In response to Mr. Foreman's request to comment, the City Clerk stated the process that the complainant gets to present their case; the only other time the complainant should speak is if a Commissioner asks them a specific question.

Commissioner LoPilato inquired whether the OGC would be able to issue an oral tentative decision tonight with the opportunity for further clarification for finalization of the written decision; asked for clarification about the draft decision attached to the agenda.

The Chief Assistant City Attorney responded the draft decision was generated and prepared by Mr. Harrison on behalf of the City in the capacity as an advocate for one side or the other; it was prepared by one side with the hopes that the Commission would reach that decision, although not obligated to do so; the OGC can reach some aspects of the decision if not the entire thing; to address the first question, pursuant to the Sunshine Ordinance, the OGC could reach an oral or written decision tonight; if an oral decision is made, there is 30 days to capture it into a written decision; she advises that whatever oral decision is reached, it needs to be complete; the OGC should not make a partial decision tonight and plan to add to it afterwards.

The City Clerk stated that the practice has been that every time the OGC made a decision, it was completed during the meeting; only one time was there direction for staff to come back with more information; the written decision could be executed after without violating the Brown Act.

Commissioner Chen inquired what is within the purview of the OGC and whether the ARPD violated the Sunshine Ordinance when they established the subcommittee; since the Ordinance was changed to exempt ad hoc committees, it seems like, according to the Sunshine Ordinance at the time the ARPD decision was made, they were not de facto violating the Sunshine Ordinance; although there is a gray area in her mind whether they violated the Brown Act.

Chair Tilos stated Commissioner discussion will take place after clarifying questions and public comment.

Commissioner LoPilato thanked Mr. Foreman for being here and sharing the information

and materials he prepared; inquired in what ways, and when, has he shared his concerns with City Council and staff and what was the response.

Mr. Foreman responded the reason he shared his concerns was because he very much did not want to be here tonight; stated he wanted to get the issue resolved and thought it was very clear; he thought he should bring it to the attention of the Council and also made a call and wrote a couple emails to the City Manager with copies to the City Attorney; he received no answer from Council and received a phone call back from the City Manager; the City Manager was sympathetic; the letters he wrote to the City Manager were targeted to the City Attorney in the hopes the issue could be resolved; the response was zero; he wrote to the City Attorney again with questions regarding the issue and the response from the City Attorney was that he will find out when he reads the report written by Special Counsel; he is here tonight because he received zero response from the City.

In response to Commissioner LoPilato's inquiry regarding the case law, Mr. Foreman stated he did not find or research the cases he cited; the cases were researched by a good friend of his who is a California attorney and Alameda resident; he did not ask if the cases were shepardized as he has done work for him before and he is fully competent; Mr. Harrison would have brought that to their attention if it were the case.

Commissioner LoPilato inquired whether Mr. Foreman feels he has suffered some type of harm from the actions of the Renaming Committee or is it truly more just raising a question of legal interpretation.

Mr. Foreman responded that everyone has suffered harm; stated the harm is not caused by the Renaming Committee, they are hardworking people who did what they were asked to do; the harm is that the ad hoc exception has been exercised and it is clearly and unequivocally a violation of the Brown Act; he is afraid that next week, next month or next year there will be a citizens committee for the budget or shutting-down-the-pools; these committees violate the law; anytime a law which provides for public access is not abided, it harms the citizens and is a future harm; the committees and the Recreation and Parks Director did good work; he is not retracting from their hard work and efforts one iota.

Commissioner LoPilato inquired what Mr. Harrison's position is on whether the complaint is timely under Sunshine Ordinance Section 2-93.2 A; stated it seems the challenged action is the formation of the Renaming Committee; the actions happened back in the summer of 2020; she wonders if there is some type of relation back doctrine or continuing violation doctrine that applies to complaints under the Sunshine Ordinance; she is not aware of any case law; inquired whether the City is asserting a position regarding timeliness.

Mr. Harrison responded that the City has not asserted as a defense that the complaint is untimely, largely because Mr. Foreman framed his complaint through allegations that there was a continuing violation because the Recreation and Park Commission (RPC), followed by the City Council, considered the recommendations of the Renaming Committee, and therefore, furthered the violation via a fruits of the forbidden tree theory;

the City did not contest the timeliness of Mr. Foreman's complaint for that reason.

In response to Commissioner LoPilato's inquiry regarding when the creation of the Committee occurred, Mr. Harrison stated what the RPC did, which was consistent with the Brown Act and the Sunshine Ordinance, was to designate a less than a quorum of its members to act as a temporary advisory body; if the RPC stopped there, Mr. Foreman would not be here tonight; the RPC went further by directing the two-member ad hoc committee to work with the Recreation and Parks Director to facilitate public input; that involved the appointment of individuals to serve on the Renaming Committee, which is what led to the concern about that body having come into existence through some action of the Commission itself even though the Recreation and Parks Director appointed the members because the Commission had appointed two of its members to serve as an advisory body to work with the Recreation and Parks Director; the merging of the two is where the issue arose.

Commissioner LoPilato inquired whether the Chair and Vice Chair of the RPC participated substantively in the actual preparation of the process, including application for membership, outreach, interviews and appointments.

The Recreation and Parks Director responded that she met with the Chair and Vice Chair initially to discuss where outreach could be done, but she was the one who led the process, received the applications, did the outreach, conducted the interviews and made the appointments.

Commissioner LoPilato inquired whether the Recreation and Parks Director notified a group of Jackson Park neighbors via email about a July 9, 2020 RPC meeting including discussion of the park renaming.

The Recreation and Parks Director responded in the affirmative, stated there is an email group of neighbors of the park; whenever there is anything related to the park, she lets the group know.

Commissioner LoPilato stated it was a very proactive method for ensuring accessibility and transparency at an important stage in the process.

The Recreation and Parks Director stated she also reached out to the Jackson Park neighbors group to see if they wanted to have representation on the committee as well.

#### Public Comment:

Acknowledged the work of all the Commissions; stated the Chief Assistant City Attorney's predecessors took every opportunity to stifle any attempt to open City activities to the public; thanked Mr. Foreman for raising the issue; stated that he does not agree with Commissioner Reid being excluded from the discussion; expressed concerned about the Commission deferring to the City Clerk for past practices: Jay Garfinkle, Alameda.



Stated that she is confused regarding what the ad hoc group exclusion means; it seems there is a huge loophole which is not clearly defined: Imi Lee, Alameda.

Stated as part of the effort to keep the Committee accountable to the community, he filed PRAs, mobilized people to participate in surveys, and attended PRC and Council meetings; ad hoc committees are not a new development; it was only after the Committee published the top four names, which did not include specific name choices that complaints began; he theorizes that Mr. Foreman and Councilmember Herrera Spencer view the ad hoc committees as permitting a radical break from the status quo or that they correctly perceive the work of the committees as a challenge to Alameda's prevailing racial hierarchy: Josh Geyer, Rename Jackson Park Committee.

Reminded the Commission that they could propose to Council to authorize time for the City Attorney's office to look more closely at the issue; a document from the City of Los Angeles on neighborhood council formation cited the Brown Act regarding an exempt subcommittee "must be comprised solely of members of the governing body;" when members of the public are invited, the subcommittee then becomes subject to the Brown Act: Matt Reid, Alameda.

Stated that she lives near Chochenyo Park and felt very well-informed throughout the renaming process; she received immediate responses to her inquiries from the Recreation and Parks Director and Rasheed Shabazz; it is hard to understand why there is an issue with this ad hoc committee, particularly because it was community-led and centered on Black Indigenous People of Color (BIPOC) voices; the renaming process demonstrated how great work can get done through the ad hoc process: Meredith Hoskins, Alameda.

Stated when the ad hoc committee was set up, there was a pause to really engage the community; there was plenty of encouragement for people to submit names; the youth came up with new technology methods to engage the community; it was clear what was being asked and how the public was being engaged: Jennifer Rakowski, Alameda.

Stated there seems to be nitpicking over specific words of the Brown Act and Sunshine Ordinance surrounding this Committee in particular; the timing and ongoing framing seems interesting; he completely agrees with the Special Counsel's assessment that if there was any kind of issue, they were cured; urged the Commission to follow the Special Counsel's recommendation: Zac Bowling, Alameda.

The Chief Assistant City Attorney advised the Commission to use the terms "founded" or "unfounded" when discussing the issue; stated that the decision on the item needs to be approve by a majority of all members, which is three.

Mr. Foreman stated he objects to the use of the word because it does not mean the same thing as whether the appeal is sustained or not; if his claim is unfounded and he files a second claim that is unfounded, he would be precluded from filing claims for a number of years.

Chair Tilos and Commissioner LoPilato suggested talking in terms of “sustained” and “unsustained.”

The Chief Assistant City Attorney stated that Mr. Foreman is correct; there is a provision in the Sunshine Ordinance that if a person files two complaints in a 12-month period that are “unfounded,” they would be prohibited from filing a complaint for five years; he is incorrect in that there is no definition of “unfounded” in the Sunshine Ordinance that would give it a different definition than “unsubstantiated” or “denied;” there is a penalty for having two unfounded complaints, but there is no requirement that the OGC reaches some special finding to declare it unfounded.

Commissioner LoPilato moved approval of determining the complaint to be unfounded on the basis that it is not a question properly before the Commission because it requires legal analysis and requests a remedy beyond the scope of the Commission’s authority for resolving Sunshine Ordinance complaints and because it is untimely; even if the complaint was properly before the Commission and timely, there was substantial compliance with the Brown Act and any alleged violation was cured by the multiple noticed, properly agendized meetings.

Chair Tilos requested the motion be re-stated more concisely.

Commissioner LoPilato moved approval of finding the complaint unfounded primarily on procedural grounds.

Commissioner Chen seconded the motion.

Under discussion, Chair Tilos stated there is gray line between ad hoc and legislative body; the ad hoc committee had one clearly defined mission and was reporting to the legislative body; at the end of the day, it is the legislative body that has the final say; the ad hoc committee does the research and helps out; the OGC formed an ad hoc committee to deal with the null and void issue and he sees the Renaming Committee as a similar situation; the spirit of the Sunshine Ordinance is to bring more people into the discussion; clearly, there was already a renaming policy and ARPD or the RPC could have just renamed the park without public input and it still would have been in the scope of their powers; they chose to create an ad hoc committee to make the process more open to the community, which is the whole point of open government.

Commissioner Chen stated that she submitted a page from the League of California Cities guidebook on the Brown Act, which lists “what is not a legislative body;” it is very useful; there are two sections: 1) a temporary advisory committee composed solely of less than a quorum, and 2) groups advisory to a single decision maker or appointed by staff; she concurs with Mr. Harrison’s statement that the RPC combined both groups to form a committee, which falls into a gray area; it will always be a gray area until the City actually defines what is not a legislative body or what is not a policy body; the term “ad hoc committee” is not defined in the ordinance; it should be defined for clarity; there are valid

arguments on each side.

Commissioner LoPilato stated Commissioner Chen's phrase "outside the scope of the OGC" is spot on; that is the primary place she lands on the issue; all the facts inform the decision, but looking at the scope is very important; one of the significant things is there is nothing in the ordinance that gives the Commission power to re-write the ordinance or recommend re-writing the ordinance in response to a Sunshine Ordinance complaint; this seems more like a request to avoid future harm rather than a complaint about an action that was taken; the request has gone to staff and City Council where it belongs; she concurs with Commissioner Chen that perhaps, in some separate capacity outside of the complaint, if there ever is a collaborative review of the ordinance, the OGC could be the institutional knowledge about the definition of ad hoc; as it is right now, there is an ad hoc exception in the ordinance, that is what the OGC is charged to review; she wants to be careful not to overstep the authority granted to the Commission by delving into case law and legal analysis; it is not appropriate for the Commission to research case law, particularly since at the outset, the Commission does not have access to the ability to do their own research; cautioned against having legal citations in any written decision; stated the OGC is allowed to be the regulatory body of the Sunshine Ordinance; when looking at the ordinance, not just the academic question of whether it is in conflict with the Brown Act, there is the ad hoc exception; there is no dispute that this was an ad hoc committee; when the language in the Brown Act is looked at separately, the choice to find the complaint unfounded still holds up; she does not think the Commission even needs to get there; she worries that engaging in discussion that involve interpreting case law or complaints that involve lengthy legal analysis would create a chilling effect on those willing to serve on the OGC; a person should not have to be an attorney to be on the Commission; the practical lived experience of having gone through the processes is very relevant; she does not see a way to go forward under the Sunshine Ordinance with anything other than dismissing the claim as unfounded given the timeliness and scope issues and the lack of authority the OGC has to opining on inconsistencies with the Brown Act.

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Commissioner LoPilato moved approval of continuing the meeting past 11:00 p.m.

Chair Tilos seconded the motion which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Chair Tilos: Aye. Ayes: 3 – Absent: 2 (Commissioners Reid and Shabazz).

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Chair Tilos concurred with Commissioner LoPilato that a person should not have to be a lawyer to serve on the OGC.

Commissioner LoPilato stated the implication of nefarious or malicious intent by the volunteers that are serving on the committees is very harmful to the community and the argument about openness has been weaponized; she wants to acknowledge and appreciate that Mr. Foreman has been very clear throughout all of this and does not seek

to undo the work of the Renaming Committee.

Commissioner Chen stated that she really enjoyed reading the packet; she was impressed about how much work the committee put into the renaming; it made three dimensional the whole discussion about inclusion and bringing back hidden history; she is ready to move forward with a vote.

Chair Tilos concurred with Commissioner Chen; stated he appreciates all the hard work of the ARPD and RPC for including everyone in the community in the decisions; he is ready to vote on the issue.

On the call for the question, the motion carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Chair Tilos: Aye. Ayes: 3. [Absent: Commissioners Reid and Shabazz].

Commissioner LoPilato inquired whether the OGC is able to issue a decision that the complaint was found to be unfounded.

Chair Tilos stated they used the term “sustained” when issuing a decision on past complaints; deferred to the Chief Assistant City Attorney.

The Chief Assistant City Attorney stated that based on her recollection of the motion, it was slightly more involved; it is more appropriate and complete to have to vote match in the written decision.

The City Clerk clarified that Commissioner LoPilato’s initial motion included more detail, but was then simplified to find the complaint unfounded primarily on procedural grounds.

Commissioner LoPilato stated there was alignment in the deliberations that there was good public engagement in the process; inquired whether there was also alignment on a finding that there was substantial compliance with the Sunshine Ordinance; stated, if so, it should be part of the ultimate decision; another way to state it is that the issue was cured and corrected by the public meetings.

Chair Tilos stated he did not want to go that route to show that the Commission was talking about the ad hoc committees and not the methods used to cure it; it seems redundant.

The Chief Assistant City Attorney advised the Commission to create the most complete record possible; stated if the consensus or unanimity of the voting Commissioners is that the decision was based on three factors, all the factors should be in the final, written decision; it should be reflective of all the reasons the decisions was made.

Chair Tilos stated that he would be in agreement to include all Commissioner LoPilato’s reasons for reaching the decision.

Commissioner Chen stated that she was going with Commissioner LoPilato's initial long list as it puts in the public record why the OGC made the decision; under the Brown Act, there is an assumption that government moves so quickly and is so intricate that there will be violations of certain aspects, but if they turn around and correct the violations, they do a self-cure and correct, the Brown Act has that kind of elasticity in it to allow that to happen; even if it is found that the RPC violated the Brown Act, they already cured and corrected it and there is no case.

Commissioner LoPilato restated her original motion with the following basis: 1) the complaint was not properly before the Commission on a procedural level, 2) it requires legal analysis outside the scope of the Commission's authority, 3) it requested a remedy beyond the Commission's authority to resolve a Sunshine Ordinance complaint, and 4) if analysis is limited to actions that occurred and whether they violated the Sunshine Ordinance, the complaint itself is untimely under Section 2-93.2a; separately, despite all these factors, there are various indications in the record that the Sunshine Ordinance was complied with in full and any alleged violation was cured.

Chair Tilos and Commissioner Chen indicated their consensus with Commissioner LoPilato's comments.

In response to Chair Tilos's inquiry, the City Clerk stated once the document is compiled, the three voting members will sign it.

The Chief Assistant City Attorney stated a renewed motion should be made to make it abundantly clear that all Commissioners voted on that basis.

Commissioner LoPilato moved for a renewed motion on the basis as just set forth.

Chair Tilos seconded the motion, which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Chair Tilos: Aye. Ayes: 3 – Absent: 2 (Commissioners Reid and Shabazz).

3-D. Discuss and Provide Recommendations Concerning Potential Amendments to Article VIII (Sunshine Ordinance) of Chapter II (Administration) of the Alameda Municipal Code, as Amended, to Replace "Null and Void" Remedy. [Not Heard]

### COMMISSION COMMUNICATIONS

Commissioner Shabazz stated the OGC is a really energetic and enthusiastic group with different strengths; he hopes they could all build on those strengths to come together with a longer term plan; he sent staff an outline of areas and questions that could be considered for the plan over the next couple of months; announced that he will be hosting a Public Records Workshop on March 15<sup>th</sup>.

The Chief Assistant City Attorney stated Item 3-D was continued to the next meeting.

Commissioner Chen stated regarding the null and void topic, she saw a marriage between Commissioner LoPilato and Councilmember John Knox White's suggestions and would like to see it in one document for the OGC to review; having fresh eyes on it is of great benefit.

Commissioner Reid noted that she submitted a null and void remedy.

In response to Commissioner Reid's inquiry, the City Clerk stated she would caution the Commission that the public was told that the null and void topic was not going to be heard, so any further discussion or suggestions should be submitted for the next meeting.

The Chief Assistant City Attorney concurred with the City Clerk.

### Adjournment

Chair Tilos adjourned the meeting at 11:23 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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