

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
MONDAY - - - MAY 3, 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; Assistant City Attorney John Le]

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the April 4, 2021 Meeting

Commissioner LoPilato made a correction to the Police Captain comments; inquired about redactions.

The City Clerk stated the redactions were missed and will be done.

Vice Chair Shabazz moved approval of the corrected minutes.

Commissioner Chen 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. 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.

The Assistant City Attorney gave a brief presentation.

Commissioner Reid stated her position proposes to include Commissioner LoPilato’s suggestions; her main concern is in the penalty section; inquired whether Commissioner received her last correspondence; inquired whether the Assistant City Attorney would review the proposed amendments section by section or using another method.

Chair Tilos stated there are some pretty big pieces of the proposal, but the meat of it is how to correct the null and void; suggested Commissioners identify the top five sections

and start discussion from there; stated that he would like to go away from the supermajority and is leaning towards Councilmember Knox White's proposal to re-agendize the issue; he also likes Commissioner LoPilato's piece about posting the Commission's decisions on the internet for transparency; said items are his top three topics he would like to vote on.

Vice Chair Shabazz stated part of the ordinance enables people to challenge meetings shifting from using the phrase "required" to "recommended;" what the Commission is attempting to achieve got lost in the language, particulars and supermajorities; there were some lessons from what happened with Commissioner Chen's complaints.

Commissioner Chen stated that she has been worn down because the issue has been going on so long; she read the materials and found the null and void piece came directly from the Brown Act; no one has ever thoroughly won a case on the Brown Act; she thinks what the Commission really wants is to have City government and Departments accountable for their decisions, how they make their decisions and transparency; she likes Commissioner LoPilato's recommendations to shine a light to assist the City in adhering to the Brown Act and Sunshine Ordinance; the Commission is not here to further any disagreements people have with the decisions the City Council and other commissions make, but whether or not the correct process was followed to reach decisions; the Brown Act is merely a tool to shame or embarrass the leaders into following the rules; the Commission should be practical and realistic; she supports posting the Commissions' recommendations to cure and correct any violations brought before them on the City's website or issuing a press release; every Commissioner wants to represent the best interest of the community; no Councilmember wants it publicized that they are always voting against the Commission; the Commission is calling people out and saying this is how it should be done; when things happen that are not transparent, trust is lost; she would like the Commission to be viewed as a group of five people who are trying to make everything run better; she likes the idea of adding in the transparency piece and making the decision not to sustain a complaint really clear; she was confused by the term "unfounded" versus "not sustained;" she embraces said proposal and does not want to set up an appeals process; the Commission would have done its duty and if the City Council does not want to accept the fact the Commission found a Sunshine Ordinance violation, it will be publicized; she does not think any Councilmember would want to be on a list of not listening to what the Commission sees as being transparent and good government.

Chair Tilos inquired whether Commissioners Shabazz and Reid are aligned with wanting to be transparent about the Commission decisions and posting decisions on the City website.

Commissioner Reid responded in the affirmative, stated that she feels very aligned with Commissioner Chen's comments; her main concerns are centered around the goal of transparency and full support for public participation at all levels; she made a suggestion to modify the penalty section that seems to disproportionately affect elderly participants who may not live an additional five years; she also recommends a more open approach

to allow residents to participate at the maximum level possible; she would also like to propose an appeal subcommittee in the event the Council disagrees on a proposal brought by the Commission; the goal would be to draw in as many members of the public as possible; said type of awareness is necessary in open and good government.

Vice Chair Shabazz responded that he appreciates Commissioner Chen's point about the objectives of accountability, transparency and restoring trust; if the Commission aligns on said baseline, then it can determine the method in which to achieve the goals.

Commissioner LoPilato stated that she likes the idea of grounding in said objectives; the intent behind her proposal as an tracking device; it is a way to see the health of the Open Government Commission (OGC) over the long term and what is done with the recommendations, the result and the action when a complaint comes in; she is open to discussions from the Commission or staff on improvements that could be made to her proposal; how it would look on the website is important to make sure it is effective; thanked staff for the benchmarking report, which was helpful; stated trust-building and trust-restoring is an important piece; a big part is creating a pathway for the Commission to give feedback to the City Council and make recommendations about how to avoid future problems outside the scope of a specific complaint; posting on the website could also accomplish accountability; she likes the language of John Knox White's proposal, which is a good direction for the Commission to go in terms of not getting too into the weeds of details about the complaint process.

Chair Tilos summarized the Commission members' comments.

Vice Chair Shabazz stated that he would like to have alignment around some general principle goals the Commission hopes to achieve, instead of conceptualizing along some spectrum of trust or punishment.

The Assistant City Attorney stated the Commission could make suggestions about what it wants to do and then a show of hands to move toward a motion.

Commissioner LoPilato moved approval of the proposal for Section 2-92.4.i.

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.

The Assistant City Attorney stated the next item is John Knox White's proposal and whether or not to have an additional appeals process or subcommittee; it would be productive for folks who are putting forth an affirmative proposal to be heard to figure out if there is support for a motion.

Chair Tilos summarized the Commission members' position.

In response to Chair Tilos's inquiry, Vice Chair Shabazz stated that he is tired of talking

about the matter; ideally, the OGC would be a body that could encourage accountability, trust and transparency; much of his thinking has not been focused on the null and void and teeth of the Commission; unfortunately, he views it as the Council will make whatever decision, regardless of the Commission recommendations; he suggests sending all of the proposals to the Council with some priorities; the staff report could summarize what has happened and present the goals the Commission would like to achieve; he does not have any strong opinions on this piece and is thinking about other mechanisms the Commission could use to achieve the goals of transparency, trust, increased participation, accessibility and equity in open government.

Commissioner Chen stated the City Council has to discuss the Commission's decision at a public hearing; the Council needs to decide whether or not to accept the recommendations or offer an alternative, which is all part of the transparency piece; the Commission's decision needs to be agendized at the next possible City Council meeting.

In response to Chair Tilos's inquiry, the Assistant City Attorney stated because it was in the context of a cure and correct, the item would be agendized for the Council to consider the recommendation and decide what to do.

In response to Chair Tilos's inquiry, Commissioner Chen stated Commissioner Reid deserves a separate hearing on her proposal.

Commissioner LoPilato reiterated her modifications on the John Knox White proposal, including changing the terms "agreeing and curing or disagreeing" and just calling it a "rejection;" stated it would be a choice to accept or reject the Commission's recommendation; she also leans in favor of including language like "in whole" or "in part" which would account for scenarios with multiple recommendations; she would also like to add language which acknowledges a broader array than just the City Council.

In response to Vice Chair Shabazz's inquiry, the Assistant City Attorney stated the John Knox White proposal was adopted fairly immediately after the removal; if the status quo were to continue, it would not advance the ends of justice; it was more keeping it in abeyance while the decision was made.

Vice Chair Shabazz stated it seems there are some attempts to focus on some particular rules and technicalities to impact certain things; he suggests having a policy that empowers people to hold government accountable and not keep government from doing things more justly; allowing flexibility and keeping it moving is important.

In response to Commissioner Reid's inquiry, Chair Tilos stated the motion will be to take John Knox White's proposal with Commissioner LoPilato's corrections.

Commissioner LoPilato moved approval of revising the ordinance to include the John Knox White proposal in Section 2-93.8.a with her redline and additional language carving out the ability not to maintain the status quo in the interest of conducting necessary City business.

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 LoPilato suggested addressing the provision adding a Subsection D to the complaint procedures, which would harmonize the Sunshine Ordinance language with the statutory language elsewhere in the Alameda Municipal Code (AMC) laying out the duties of the OGC; stated that she drafted a possible way to capture it under the complaint procedures; it would be non-binding recommendations and a vehicle for the Commission to do something beyond merely finding something substantiated or unsubstantiated.

In response to Chair Tilos's inquiry, the Assistant City Attorney stated his understanding of Commissioner LoPilato's proposal is that she is tying back to the duties of the Commission as set forth in AMC Chapter two; requested clarification if the additional language is put into the ordinance, there would still be a finding as to the merits of the complaint; then, rather than using the cure and correct remedy, it would be an alternative.

Commissioner LoPilato responded the existing process would be retained; stated the Commission would make a finding on the specific complaint; the finding may include a cure and correct remedy; there are many instances where, even if the Commission finds something substantiated, there is no appropriate cure and correct remedy; the issue could seemingly be resolved, but the underlying complaint is substantiated; she wants to create an alternative path where the Commission could take a majority vote as to whether there are also some informal resolution options that might be beneficial; she is open to making adjustments if there are legal concerns.

The Assistant City Attorney stated that is how he interpreted Commissioner LoPilato's proposal; there could be a scenario where the Commission could have a decision as to the merits and order a cure and correct; a footnote could be added about informal ways to deal with the complaint or how to anticipate future problems in the same decision; there could be a scenario that does not use the cure and correct, but rather an alternative remedy.

Commissioner LoPilato concurred with Assistant City Attorney's summary of her proposed process; stated that she discussed a slight modification that envisions dealing with a different path to be able to make recommendations outside of the decision; she is very flexible about whether people feel better about confining everything to one decision and getting it done in one meeting; she envisions a scenario where the Commission makes a decision, hammers out the points of the finding and whether there is a cure and correct or put a pin in the issue and take a vote as to whether it is something that needs to be pursued further.

The Assistant City Attorney stated the Code permits simply agendizing an issue if it needs to be heard further; additional language would not be necessary to do so.

Commissioner Reid stated that she would find it acceptable as long as the informal process does not penalize complainants.

Vice Chair Shabazz inquired whether the piece about being able to make a recommendation and do a report already exists and the Commission just has not utilized it.

Commissioner Chen stated the Sunshine Ordinance has only been given test runs in the past two years with just a handful of complaints; the Commission has been finding little things they did not know existed by struggling through the complaints; she did not vote with the majority at the last meeting, not because she did not agree with most everything, but because there was so much nuance in the issue being raised; she agrees with Commissioner LoPilato about having some kind of process that clearly does not require saying just yes or no; there could be a more nuanced response; she agrees with the Assistant City Attorney that said instances should be agendaized; the Commission is just trying to build something from scratch; it is like building a new car or airplane and realizing when trying to fly it that someone forgot the parachutes or there is no trap door; the trap door needs to be built now; the process is very healthy; when asked to vote in previous months, she did not know what the options were and was unclear about “unfounded;” it is important to have the same vocabulary about what the Commission is actually saying; she may find an issue unsustainable, but not unfounded; the moment the term “unfounded” is used, it becomes one strike against the complainant; two more strikes and they are out for five years; she hears Commissioner Reid’s concern.

Commissioner Reid stated it is very important to take note of the definitions of “unsustainable” and “unfounded;” her understanding is the term “unfounded” is very harsh; it puts a member of the community who is participating in the City’s democracy in a position where potentially they can no longer participate; she noticed the attorneys were pushing for using the term “unfounded;” there is some confusion around the two terms; just because the attorney recommends something does not mean the Commission has to follow it; it is important to clarify the terminology; the attorneys err on the side of more protection for the City; it is the position of the Commission to represent the people; the Commission should want to hear the complaints and give the community the opportunity to have a voice; she supports Commissioner LoPilato’s alternative path as long as there are no penalties to the complainant.

The Assistant City Attorney stated that he understands the confusion around the terms, which seems like a priority for some Commissioners; the proposal put forth by Commissioner LoPilato is unrelated; suggested dealing with it first; then, circle back to the terminology; neither of the proposals have any red line related to unfounded and the City Attorney’s office does not have any language currently proposed for how to resolve the issue.

Vice Chair Shabazz observed noted there was different language in each of the different complaints; there was a recommendation from City staff to “dismiss;” the issue could be a subcommittee conversation to develop the vocabulary in order for the Commission to

make a decision and make recommendations about how to improve the process.

Public Comment:

Stated that he was not keeping track of which item the Commission is discussing because the conversation seems to have drifted into some of the topics raised in issues later on the agenda: Zac Bowling, Alameda.

Commissioner LiPilato moved approval of the Commission adopting a recommendation for the addition of Subsection D to Section 2-93.2 with the new subsection stating: "In addition to the Open Government Commission's (OGC) ability to render a formal written opinion, finding a violation or non-violation of the Sunshine Ordinance, the Commission may also consider options for informal resolutions of complaints; upon a majority vote, the Commission may make non-binding recommendations to the City Manager, City Attorney's Office, City Clerk or City Council regarding informal resolution options or steps to avoid future similar complaints."

Commissioner Chen 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.

The Assistant City Attorney read the red-lined portion of the issue pertaining to penalties.

Vice Chair Shabazz stated there was a second addition at the end of the paragraph on page 47, Exhibit 4: "As soon as practical, the originating body shall consider and take appropriate action..."

Commissioner LoPilato clarified Exhibit 4 is staff's revisions to the original subcommittee proposal, which was steered away from; however, the next item on her proposed revisions is actually taken from that; the Commission could jump to it next; although the Assistant City Attorney stated there were no redlines in the penalty portion of the proposal, Commissioner Reid submitted some today that can be reviewed after.

Commissioner Reid stated that she submitted two proposals; one is labeled Section E under 2-92.2; she noticed her correspondence did not appear on the agenda; her second proposal is under penalties Section 2-93.8; suggested just following the order.

The City Clerk confirmed that Commissioner Reid's correspondence was delivered to all Commissioners and uploaded as part of the record.

Commissioner LoPilato read the revisions of Section 2-93.8.b: "If the Commission finds a violation of Section 2-9.2 Public Information, the Commission may recommend to the City, staff, City Manager, City Clerk, and the City Attorney steps necessary to cure the violation; the City Manager, City Clerk and/or the City Attorney, as appropriate, shall promptly render a final written decision upon receipt of the Commission's recommendation."

In response to Commissioner LoPilato's inquiry, the Assistant City Attorney stated that he is hesitant to speak about the intent of the revisions since he does not recall his office making the edits to the last sentence of Subsection B; it was actually an integration of the subcommittee proposal and changes that were made.

Commissioner LoPilato moved approval of the Commission recommending the revisions in Section 2-93.8.b.

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 Reid read her Subsection E proposal under Section 2-93.2: "If a complaint is determined by the OGC to be valid and sent as a recommendation to the City Council, but if they do not agree, the OGC shall then be allowed to create a temporary appeal committee comprised of one member of the OGC randomly chosen, and four members of the public chosen by each remaining member of the OGC to review the complaint. If the Appeal Committee determines that the complaint has merit, it is sent back to the City Council for a second review. The Appeal Subcommittee should adhere to the Brown Act;" as an alternative, the subcommittee members could also be chosen from a list created by the City Manager; her proposal is a good alternative to include members of the public and brings out more transparency and open government.

Chair Tilos stated the Knox White proposal does enough; he is not leaning toward going beyond it to set up another channel to handle OGC rulings.

Commissioner Chen stated she agrees with Commissioner Reid in the sense that she would like to involve more people in the open government process; however, there is nothing to preclude the City Council from rejecting the appeal; the Commission would be stuck in a merry-go-round of engaging people to be frustrated in a sense; the OGC has no teeth; the Commission could set up another body to just come to the same conclusion which would be twice as much no teeth; Commissioner LoPilato and John Knox White's proposal has the force of letting the community know what open government is and what can be done; there are other ways to engage the community and get them more involved, rather than frustrating them in the complaint process.

Commissioner Reid stated she is fine with letting it go; she just wanted to throw it out as a possibility; her second proposal is to modify the language under Section 2-93.8.D regarding penalties; the language is quite harsh and penalizes residents who bring forth complaints; outlined her proposed language; stated citizens should not be penalized; the Commission should support that they are bringing forth complaints.

Public Comment:

Stated the complaint process was meant to be a low-friction way to file a complaint but not negate other remedies; the penalties were built in to just prevent abuse and wasting

the group's time: Zac Bowling, Alameda.

Vice Chair Shabazz stated he does not support increasing the threshold for complaints; he agrees with the speaker that the intention of the penalties is to prevent people from just filing a lot of complaints; people have an opportunity through the informal resolution process to address any issues or complaints; if the Commission develops the clarity around the options and language that it can consider, it is not the binary of “unfounded” or “sustained” and it would not be harsh or punitive.

Commissioner LoPilato stated the Commission all agrees not to create a binary process; she does not support Commissioner Reid’s proposed changes.

Commissioner Reid moved approval of adopting her proposed option 2 in Section 2-93.8.D that filing three unfounded complaints prohibits filing a complaint for the next three years.

The motion failed due to a lack of second.

Vice Chair Shabazz stated there will be a discussion later related to whether or not there will be subcommittees; perhaps that would be a conversation as part of the subcommittee and could be brought back to the full group; if there are no other additions to this item related to replacing null and void, he would like to recommend that the Commission share the package with the City Council and ask them to make a decision on it.

Chair Tilos inquired whether there was anything else missing that needed to be discussed, to which the Assistant City Attorney responded in the negative.

Vice Chair Shabazz stated the additional items at the end of Commissioner LoPilato’s proposal regarding proposed revisions and posting information could be handled by the subcommittee, so the Commission does not have to pick through it tonight.

In response to Chair Tilos’s inquiry, the Assistant City Attorney stated that staff has been at this for some time; there have been discussions about moving with more deliberate speed; the plan was to get the input, put it all together and bring it to Council.

Commissioner Reid stated she would not approve the package if the penalty section remains as is.

Chair Tilos called a recess at 9:05 p.m. and reconvened the meeting at 9:12 p.m.

3-C. Accept the Annual Report and the Report Concerning Responses to Public Records Act Requests

The City Clerk made brief comments.

In response to Vice Chair Shabazz's inquiry, Chair Tilos stated the item was already presented to the OGC and a couple issues were found, mainly the records were not provided, but was resolved through an OGC hearing.

The City Clerk stated the item returned in order to provide more clarity on the complaints filed and to also include additional Citywide information.

Vice Chair Shabazz stated the NextRequest program is pretty cool; it is used at the City of Oakland and BART; his hope is not to have the same legal challenges with public records that Oakland is having; what stood out to him was the amount of requests the Alameda Police Department (APD) received that were not being tracked; inquired what the method is for the APD to get the public record requests and why are they not being tracked.

The City Clerk responded anything APD produces is categorized; stated the Department confirms they responded; records that were denied was not part of their tracking system; the concept came from the previous Commission discussion.

In response to Vice Chair Shabazz's inquiry, the City Clerk stated anything the City Attorney's office receives is separately tracked on the spreadsheet provided, regardless of the originating Department.

Commissioner Chen inquired why the APD does not track responses and whether they should be required to do so.

The City Clerk responded it was not being done before and was a new request from the OGC.

In response to Commissioner Chen's inquiry, the City Clerk stated APD has a completely separate set of rules regarding PRAs than everyone else; the Fire Department has a few separate rules as well, but the APD has a very complex and separate records program; at this point, they will not be using NextRequest.

Commissioner Chen stated it is unfortunate because of the need for transparency and rebuilding trust with the APD.

The Assistant City Attorney stated the question from the OGC was how the various departments track PRAs; each department is required, as custodians of their records, to respond to records requests and track the requests as they see fit; there is not a specific requirement in terms of tracking.

Commissioner LoPilato inquired whether the date the PRA was referred to the City Attorney's office always corresponds with the date the request was received.

The City Clerk responded most of the requests she refers to the City Attorney's office are

on the same day, but she does not know about any others.

Chair Tilos stated that he sees some variations on some of the dates listed on the spreadsheet.

Commissioner LoPilato stated an understanding of the legally required time to provide responses is helpful; having a rubric for gauging whether requests are being responded to on a prompt or timely manner is important; inquired what the City's position is on what is considered the number of days allowed under the Government Code.

The Chief Assistant City Attorney responded there are various code references in the Government Code which state that holidays and Sundays are not considered days within which to calculate responses; the City relies on the Code for the required 10 day period.

Commissioner LoPilato stated that she saw a section that indicated the legislative body of any city or district could name a Saturday as a holiday, which caught her by surprise; inquired whether that was enacted in Alameda, to which the Chief Assistant City Attorney responded in the negative, stated she was not able to find a parallel citation within the Alameda Municipal Code regarding Saturdays.

Commissioner LoPilato noticed a request in which the response provided was 18.8 gigabytes of data; inquired whether there is a way to indicate what that amount translates to in pages.

The Chief Assistant City Attorney responded the format in which the data is produced is generally the format in which it was retained on the City server; it also depends on what type of document or material is requested; she cannot comment specifically since it was before her time.

Chair Tilos stated that he noticed there were requests from Vice Chair Shabazz and Commissioner Reid that indicated electronic data was provided.

Commissioner Reid stated that she noticed that there were errors and omissions related to her requests and wondered how many errors are in the other requests; she also noticed that the number of pages of data produced could be reduced if email threads were not duplicated and only the parent thread was provided; she would like to see a comprehensive list in the annual report of all the requests made, organized by department.

Vice Chair Shabazz stated he would like to suggest addressing the issues in order; starting with the Annual Report, items related to the PRA, then the supplemental materials from staff.

Public Comment:

Stated from a privacy standpoint when implementing the new system, it would make

sense not to include personal information in the PRA descriptions, such as private citizen's addresses, especially with requests dealing with permits: Zac Bowling, Alameda.

Vice Chair Shabazz stated the current table in the annual report needs to be updated since there has been a disposition around one of the items; perhaps it could be noted that the hearing was held and the results could be in next year's annual report; it is important to note how the item was labeled "voluntarily withdrawn" and that the complainant did not necessarily agree with that; he would like a summary provided consistent with the previous year.

Commissioner LoPilato stated that she would be in favor of changing the language of the May 12, 2020 complaint disposition to be along the lines of: initially, noted as voluntarily abandoned, complainant brought forth the complaint, it was heard on April 5, 2021 and was found substantiated; the finding should be included in the disposition instead of waiting to note it on a subsequent report.

Commissioner Chen stated it is called an annual report, but actually looks like an annual of two sets of tables; she would like to see some kind of narrative; she agrees with Commissioner Reid that the data should be reorganized by department.

The Chief Assistant City Attorney stated that she wanted to make sure the Commissioners are looking at Exhibit 1, which notes there was an April 5th hearing regarding Mr. Morris's complaint; the table was revised to reflect what has happened.

Vice Chair Shabazz stated that the table indicates there was a hearing held on April 5th, but the point he is making is that it should also state the actual disposition; he would like to add language stating: "consistent with what the Commission previously approved;" the annual report from the February 3, 2020 meeting has a brief narrative; he would like to see something similar on the current report detailing what happened at the hearing.

Vice Chair Shabazz moved approval of adopting the annual report with modification to the table clearly stating that the disposition of the complaint from May 12, 2020 was sustained on April 5, 2021; additionally, there should be a narrative that includes a detailed description of the complaint consistent with prior annual reports.

Commissioner LoPilato seconded the motion.

Under discussion, Chair Tilos summarized the modification requested by Vice Chair Shabazz.

In response to Chair Tilos's inquiry, Vice Chair Shabazz stated the point he is trying to make is to have a narrative in the annual report similar to the last one; he appreciates the tables, as they simplify the report, but some of the nuance of what actually happened versus how it was portrayed in the initial annual report is lost in the table.

The City Clerk clarified that the disposition of "sustained" would be added to the table box,

and then the additional parts would be in the narrative.

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 inquired what the next steps are for the annual report and whether it would go to the Council in writing.

The City Clerk responded the annual report will be transmitted to the Council and they will receive a copy of it.

Chief Assistant City Attorney further clarified that Sunshine Ordinance Section 2-93.6 states the Commission shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of the ordinance brought to its attention during the previous calendar year.

Commissioner Reid stated her main concern is that there are inaccuracies in the annual report.

In response to Vice Chair Shabazz's inquiry, the City Clerk stated the annual report does not go before the Council as an agenda item, it just gets transmitted to them.

Vice Chair Shabazz stated there was some extensive conversations about challenges happening with PRAs, which might be something the Commission wishes to have a report to share with Council.

Chair Tilos stated Vice Chair Shabazz's comments could be addressed under Commissioner Communications.

Vice Chair Shabazz provided a brief background on the report; suggested prefacing the report by noting including background would be helpful; stated language should also be added to the Sunshine Ordinance so that the report is kept beyond the current Commissioners' terms.

Commissioner LoPilato suggested, in accordance with a public comment, that residential addresses be redacted before publishing the report.

The Chief Assistant City Attorney stated her understanding is that the only thing being published on the City's website will be the chart of the complaints; there is no requirement or authority under the Sunshine Ordinance to include the other documents.

The City Clerk clarified all staff reports and exhibits are posted on the City's website; the addresses that were listed were not the requestor's address, but the specific address for which information was being requested.

Commissioner LoPilato stated she is concerned about balancing privacy considerations and does not think specific addresses, even with regard to permit issues, is relevant enough to be included in the materials and could simply be redacted.

The City Clerk explained that when there is a well-known address of interest, requestors will use the address when submitting their PRAs; gave the example of the McKay property.

Commissioner LoPilato stated that she agrees it is fine for addresses for properties that are the subject of public discourse, but she sees some listed that are calls for service at specific addresses that seem to be residential.

In response to Chair Tilos's inquiry, Vice Chair Shabazz stated the last issue he wants to address is the supplemental documents compiled related to individual Departments requests; shared that when he submitted a PRA, the City Attorney's office addressed him as Commissioner Shabazz; he does not want to receive special treatment because he is on the OGC; he is concerned and hopes all community members are being treated equally based on the law; described the example of two separate requests for SB 1421 information where one requestor, the District Attorney, received 18.8 gigabytes of information, whereas the other requestor's was labeled non-applicable; he would like to ensure that people have access to the same information.

Commissioner LoPilato concurred with Vice Chair Shabazz; stated it seems one requestor is the District Attorney and the other requestor looks like a plaintiff-side personal injury law firm; one thing to consider is the extent to which PRAs may differ depending if there is active litigation; alternatively, it could be something less straight forward; she wants to highlight how helpful it is to see the requesting party; going forward, more clarifications should be built around the requestor so trends can be tracked.

The City Clerk stated the tracking and reports that can be run in the new system will be very verbose and drilling for the details will be possible.

Vice Chair Shabazz reminded the Commission that Commissioner Reid made comments about inaccuracies in the report regarding her own request and wonders what else may need to be addressed; if a subcommittee is created, it should become an annual thing; also suggested that one of the duties of the Commission could be a report evaluating compliance with PRAs.

In response to Chair Tilos's inquiry, the City Clerk stated a motion is needed to hear items past 10:30 p.m.

Commissioner Reid noted that she would pull items 4-A and 4-C.

Chair Tilos stated Items 4-A and 4-C will not be heard and could be placed on another meeting.

Commissioner LoPilato inquired whether Commissioner Reid wants to address anything specific regarding the inaccuracies of the report.

Commissioner Reid responded that she would propose there be a full review; she cannot approve something when she knows there are mistakes.

Vice Chair Shabazz moved approval of accepting the report concerning responses to the Public Records Act.

The City Clerk inquired whether the motion includes both record request exhibits, to which Vice Chair Shabazz responded it included Exhibit 2.

Commissioner LoPilato proposed an amendment to the motion to add an additional footnote saying the OGC is highly concerned regarding the lack of tracking of denials occurring within the APD.

Chair Tilos seconded the motion.

Vice Chair Shabazz accepted the friendly amendment to the motion, which 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. Correspondence from Commissioner Reid

Not heard.

4-B. Consider Preliminary Proposal to Address Possible Open Government Commission (OGC) Procedure/Bylaw Revisions and Ensure OGC's Substantive Compliance with Governing Ordinance via Subcommittee Formation (Commissioner LoPilato)

The Chief Assistant City Attorney noted items placed on the meeting agenda must be received by the Secretary at least 10 working days prior to the scheduled meeting date; inquired whether the item was indeed received by the secretary within said timeframe, to which the City Clerk responded in the affirmative.

Commissioner LoPilato stated this is an attempt to draw together different conversations and do it in a way that is compliant with the ordinances and move the Commission forward in an efficient way; it is an ambitious proposal which, the Commission could collectively whittle down to what feels interesting and manageable; staff feedback would be great if the vote is to agendize any of the items; there is room in the proposal to make some space to do some good work for the City; the bulk of the memo looks at procedures that might be appropriate for the OGC to shine a brighter light on issues arising under the

Sunshine Ordinance and provide more substantive information; the meetings are not linear or easy for the public to follow; she feels strongly that meetings going late into the night and topics being bumped impede public accessibility; she would like to make sure as the Commission makes recommendations to other bodies improvements that can be made to the OGC are reviewed as well; the item is framed around subcommittee formation.

In response to Chair Tilos's inquiry, Commissioner LoPilato stated much like when the ordinance revisions were being considered, there was a subcommittee of two commissioners formed to do the work and then it was brought back to the full Commission for a vote.

Chair Tilos inquired clarification on whether forming a subcommittee to hear complaints would be feasible in terms of the timing in scheduling a hearing.

Commissioner LoPilato responded she is not actually suggesting subcommittees on anything related to the findings on a complaint; the usual process would be followed for when a complaint comes in; what the subcommittees would involve is those situations where there is a conversation that reveals something much bigger going on after making a discrete decision on a complaint; there is a lengthy meeting dilemma where the solution is to revise the bylaws; the next steps would be to vote on whether the Commission would like staff to consider agendizing the creation of a subcommittee to do that; there are issues outside the scope of the complaint where the solution would be to form a subcommittee to track issues related to practical or policy problems encountered in the administration of the Sunshine Ordinance, and/or when there is a time sensitive issue that warrants a standalone report; the third issue in the ordinance seems to indicate the Commission should be reviewing postings; she would defer to staff on what this section of the ordinance might require.

In response to Chair Tilos's inquiry about agendizing the item for the next meeting, Vice Chair Shabazz responded the item is on tonight's agenda; the Commission is within order to discuss the matter and potentially make decisions; the length of the meetings is an issue that other Commissions do not have; one thing that could help is doing work and asking questions prior to the meeting; the meetings will not take as long if the Commission members could organize in a way to communicate with each other appropriately prior to meetings or have subcommittees address certain things; training for the Chair and Vice Chair would be helpful to figure out Commission boundaries without having to figure out bearings publicly on Zoom; having a time limit is a solution.

Commissioner Chen stated the issues are all things the Commission has been thinking about; the proposal is very comprehensive; the Commission should start thinking about priorities; the press release regarding the death of Mario Gonzales was very upsetting for a lot of people because it was similar to what happened to George Floyd; the trust level declined in the City, which is a form of open government and transparency; the item about postings is really important, especially on sensitive issues; the issue framing adds to the transparency or the distrust; she would like to see the Commission split into two-person

subcommittees to brainstorm and come back with a report to the full group for a healthy discussion; it sets the framework and provides a structure on how to talk about each issue.

Commissioner LoPilato inquired what the boundaries are with respect to what the Commission could do tonight.

The Chief Assistant City Attorney read the section of the bylaws related to the item; stated her opinion is the Commission has the authority to take action since it has been properly agendaized.

Vice Chair Shabazz stated what he shared previously about having goals and listening to different people's ideas are helpful; Chair Tilos discussed the use of technology to make things efficient and accessible; there have been many conversations around transparency, accessibility, accountability and equity; it is a thematic or principle way of thinking about the work goals; other categories include the null and void remedy, Sunshine Ordinance revisions and public presentations to engage people to know about the Commission; another potential way to consider organizing the Commission is related to how the Sunshine Ordinance is written; there is a section related to records and one related to meetings; a subcommittee could be formed to deal with any of the sections; a subcommittee could be formed to deal specifically with the Commission's structure; identifying the priorities is a good start along with who is willing to do work.

Chair Tilos suggested choosing one big issue to have a subcommittee address; stated it would leave room to tackle other topics.

Commissioner LoPilato inquired whether there is interest in utilizing this mechanism of preparing a report on practical and policy problems encountered in the administration of the Sunshine Ordinance; stated it could be an ongoing subcommittee; the two people would be charged with listening to the Commission's items that come up addressing complaints and keeping notes to compile an annual report; two people should be identified to work on it, even though it would not be active immediately; this would be in addition to having a high priority subcommittee.

Chair Tilos stated perhaps reserving the last 10 minutes of a meeting to summarize the big issues could be a method for a subcommittee to compile the top issues onto a spreadsheet that could be an agenda item to decide what to present to the Council.

Commissioner LoPilato stated that she likes that idea; she would like it to be more than wrapping it up at the end of a meeting and going into the minutes; in a lot of cases it would be an actual report that the Commission does not necessarily have the authority to ask staff to do; she agrees with the method of doing a collective wrap-up and then charging two people with putting something together.

Vice Chair Shabazz suggested having speaking time limits for the Commissioners; stated potential specific reports could go forward, including concerns related to the City's

lobbying efforts; a semi-annual report related to lawsuit settlements used to come to the OGC, but now goes to the Council; he does not want to address items during meeting wrap-up; suggested using his work plan idea; stated the Commission should identify the specific reports to evaluate compliance with the Sunshine Ordinance.

Commissioner LoPilato stated rather than having multiple, different subcommittees, all the topics mentioned could all go into one annual report regarding the practical and policy problems heading; suggested going with: 1) creation of a subcommittee to review and identify potential revisions to the bylaws, and 2) creation of a subcommittee to prepare a report on practical and policy problems; stated Commissioner Chen also referenced that the postings are particularly interesting; a single Commissioner handled that in the past.

The City Clerk concurred, stated former Commission Dieter would read the agenda titles and postings, and report back to the full Commission.

Chair Tilos listed the three priorities: 1) bylaws, 2) practical policy, and 3) postings.

Vice Chair Shabazz stated the procedure piece could be coupled with the bylaws.

Commissioner Chen stated the procedure is actual hands-on things that are happening; the bylaws are broader and provide structure; they are actually two separate things.

Commissioner LoPilato stated that she sees a potential marriage between the bylaws and potential revisions to the Sunshine Ordinance; the process of looking through the bylaws could come under that umbrella.

Commissioner Chen stated the report about the practical and policy problems encountered relates to the Sunshine Ordinance, which was changed when ad hoc committees were added and now needs to be fixed, as well as “unfounded” and “sustained;” all are interrelated, but stem from problems in the Sunshine Ordinance.

Vice Chair Shabazz stated using the ad hoc example could be a report around the practical policy problems encountered with the administration of the Sunshine Ordinance; the question is where the report would go and if it would go to the full Commission; the challenges with the administration could be initially in the form of a report that could come to the Commission, and then be sent to Council.

In response to Chair Tilos’s inquiry, Vice Chair Shabazz stated that he would be interested in the practical problems and would frame it as one report; it has been 10 years and is time to revisit it.

Commissioner Chen stated that she would volunteer for the practical and policy problems, which is the whole reason she was unable to vote coherently.

Vice Chair Shabazz moved approval of appointing Commissioner Chen and himself as a subcommittee focused on preparing a preliminary report on the practical or policy

problems encountered in the administration of the Sunshine Ordinance.

Commissioner Chen seconded the motion.

Under discussion, Commissioner Reid stated that she also wanted to volunteer to work with Commissioner Chen.

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.

Chair Tilos inquired whether the Commission wants to meet in June.

Commissioner Chen responded she has a lot of election work to do.

Vice Chair Shabazz stated maybe July or August.

Chair Tilos stated there will be no meeting in June unless a complaint is filed.

Vice Chair Shabazz moved approval of continuing the meeting an extra five minutes past 11:00 pm.

Commissioner LoPilato seconded the motion, which 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 Commissioner LoPilato expressed interest in a bylaws subcommittee.

Commissioner LoPilato moved approval of appointing herself to serve on a subcommittee to review the bylaws.

Commissioner Shabazz seconded the motion, which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Abstain; Shabazz: Aye; Chair Tilos: Aye. Ayes: 4. Abstention: 1.

4-C. Consider Proposal to Amend the Sunshine Ordinance and Consider Other Discussion Items. (Commission Reid)

Not heard.

Vice Chair Shabazz stated that he wanted to echo the comments made by Commissioner

Chen related to trust and some revelations relating to the Police Department, particularly the use of facial recognition technology after it was banned, combined with the press release regarding Mario Gonzales; expressed concern that said issues reaffirm and reinforce the lack of trust related to APD operations.

Commissioner LoPilato stated in the formation of the practical and policy problems report, she would urge that there is some attention paid to the hotspots with respect to transparency in the Police Department.

Adjournment

Chair Tilos adjourned the meeting at 11:05 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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