

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - JULY 19, 2021 - - - 7:00 P.M.

Chair Tilos convened the meeting at 7:05 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]

Oral Communications

Paul Foreman, Alameda, stated regarding Section 2-93.8, a quasi-judicial decision is not a policy decision; it is an application of City law to the facts in the Sunshine Ordinance; the current proposal language drafted by Councilmember Knox White and Commissioner LoPilato appropriately deals with the issue; urged the Commission to support the conclusions.

Regular Agenda Items

3-A. Minutes of the May 3, 2021 Meeting

Commissioner Chen stated she would like to review the video to see whether she used the term superheroes as reflected in the minutes as she did not recall saying it.

The City Clerk stated the sentence could just be struck from the minutes.

Commissioner Reid stated that she wanted to make a correction that she had her hand raised but Vice Chair Shabazz spoke out of turn; it should be noted that Chair Tilos did call on her and she did not have an opportunity to speak; she also wanted to remind the Commission of the Rosenberg's Rules of Order and the courtesy of decorum where it is always best for only one person at a time to have the floor.

Vice Chair Shabazz stated as a point of order the item of discussion is the minutes and is not the appropriate time for Commissioner Reid's comments.

Commissioner Reid stated it is appropriate because it is best for every speaker to be first recognized by the Chair before proceeding to speak; it is a relevant point that should be made and pertains to a particular point in the minutes.

Chair Tilos stated he does not remember the incident and apologized if something was done out of order; there was some confusion with the phones and raised hands but he

always strives to grant the floor to whoever is asking to speak; thanked Commissioner Reid for calling it out.

The City Clerk clarified when people raise their hands to speak is not reflected in the minutes.

Commissioner Reid stated that she feels it should be included that Chair Tilos did call on her because it reads strangely in the minutes as she asked to participate in the subcommittee during her turn to speak.

In response to Chair Tilos' inquiry, the City Clerk stated Commissioner Reid's comments will be noted in the minutes for this meeting.

Vice Chair Shabazz stated the comments are debatable and he would like to review the video before voting to approve the minutes; inquired whether the minutes from the last meeting need to be approved before continuing with the agenda.

The City Clerk responded in the negative; stated the Commission could defer approval of the minutes to the next meeting; suggested capturing the current discussion in this set of minutes instead of modifying the other set; stated the minutes could be brought back to the next meeting if the Commission would like to consider further revisions.

Vice Chair Shabazz stated in light of the comments, he would like to ensure the accuracy of the minutes and find ways to better the practices so everyone can participate.

Vice Chair Shabazz moved approval of the deferring the approval of the minutes to the next meeting.

The motion failed due to a lack of a second.

In response to Chair Tilos' inquiry, the City Clerk stated she would capture the discussion in this set of minutes because she does not know where it would be inserted in the May 3<sup>rd</sup> set.

Vice Chair Shabazz moved approval of the May 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. Preliminary Report from Subcommittee on Bylaw Revisions

Commissioner LoPilato reviewed the items outlined in her report.

Vice Chair Shabazz thanked Commissioner LoPilato for beginning the work on the revisions; stated the OGC previously discussed bylaw revisions at its meeting on March

5, 2018; a subcommittee of Commissioners Dieter and Little had some recommendations related to Rosenberg's Rules and noted the League of Cities does that; he supports utilizing Rosenberg's Rules; another framing that exists is Roberta's Rules; encouraged folks to look back at the March 2018 meeting for the excellent recommendations from their predecessors.

Commissioner LoPilato stated that she noticed the subcommittee report prepared in 2018; it was recommended that Rosenberg's Rules be encouraged to be applied to all Boards and Commissions; continued her presentation.

In response to Commissioner Chen's inquiry, Commissioner LoPilato stated her thought was to move away from the existing content in the rules of order section and streamline a much clearer order similar to City Council to follow Rosenberg's with the modifications outlined; she is open to hearing other ideas on modifications; for the sake of consistency and creating a uniform experience for the public in participating, it would be a great step to follow.

Chair Tilos stated that he is aligned with Commissioner LoPilato's vision on setting eight minutes for each Commissioner's speaking time with the ability for a majority vote of the Commission to extend it.

Commissioner Reid stated that she would like to include a nine minute speaking time to be consistent with City Council and extension by a majority vote.

Commissioner LoPilato inquired whether there were any objections to nine minutes; there were none.

In response to Chair Tilos' inquiry, the City Clerk stated the timing is done on the Council level and can be done at Commission meetings.

Commissioner LoPilato inquired whether anyone had opposition to having a limit on presentations.

Commissioner Chen responded a 10 minute limit on presentations is fine; stated Commissioner Communications should be discussed in future meetings only needs an explanation long enough so that other Commissioners can agree or not agree to put an item on a future agenda; for presentations under Commissioner Communications, it should be less than 10 minutes.

Commissioner LoPilato concurred with Commissioner Chen's comments; stated that she will jot down five minutes and go from there.

In response to Commissioner Reid's inquiry, Commissioner LoPilato stated she would be putting a placeholder in the bylaws about the complaint procedures for now; the Commission will need to flesh out a public document that outlines the complaint procedures.

Commissioner Reid inquired whether a subsection under the Purpose of the Commission would be an appropriate place to put the complaint procedures.

Commissioner LoPilato responded amendments to Sections II Purpose of the Commission, and III, Membership, require City Council action; stated the Commission does not have the authority to change it; she would rather not have it go to Council and come back.

Vice Chair Shabazz stated he would defer to Chair Tilos, but because there is a lot of overlap in the agenda, he is okay with discussing and going through the items now so there would be no need to discuss them separately; encouraged streamlining the discussion.

Chair Tilos stated that he likes the flow of Commissioner LoPilato's presentation and would like to continue in said manner.

Commissioner LoPilato continued her presentation.

In response to Commissioner LoPilato's inquiry, the City Clerk stated the Commission can modify the sections of the agenda in the bylaws and have an actual item where complaint hearings would land before the regular agenda items to make sure the hearings are held as required by the complaint process; modifying the agenda sections is acceptable.

Commissioner LoPilato stated the issue of outlining how things come to be placed on the agenda is already in the bylaws but is a little bit confusing; inquired whether staff is the primary source, but Commissioners could also reach out to staff for guidance.

The City Clerk responded in the affirmative.

In response to Commissioner Reid's inquiry, Commissioner LoPilato stated it would be helpful to have some clarifications in the bylaws about how staff decides to place items on the agenda; inquired whether the proceedings for the Chair and Vice Chair election should be modified.

In response to Chair Tilos' inquiry, the City Clerk explained the history of when the Chair and Vice Chair were elected; stated it has been done in many different ways and not consistently.

Chair Tilos concurred with the City Clerk and stated the Commission used to only meet in February and October; suggested having the elections in January or February after members are appointed by newly elected Councilmembers.

In response to Commissioner LoPilato's inquiry, Vice Chair Shabazz stated the bylaws currently state the election takes place after January 1<sup>st</sup>; the unique composition of the

Commission distinguishes it from others; how officers are selected accounts for that; there is also a habit in the order of appointment, which, should be codified if it will be the practice.

Commissioner LoPilato stated the comments are helpful; she will tinker with some options and bring it back to the group; continued her presentation.

Commissioner Reid stated that she was going to suggest no new items be considered after 10:00 p.m. unless a supermajority of the Commission votes to allow the items to be heard; this would facilitate more communication with the public so the meetings do not go too long with the potential for losing participants.

Chair Tilos stated he could support either 10:00 or 11:00 p.m.

Vice Chair Shabazz stated his main concern is the public's ability to participate; if the practice is to have Commissioner Communications as the mechanism to get things on the agenda, he would be concerned about things that do not get on the agenda; the Commission takes a long time to have discussions and go over details; he would encourage having only three minutes for Commissioner Communications and have that section first; it depends on the composition of the group.

Commissioner LoPilato stated that she will do a little research on the other bodies that do it in a similar way.

The City Clerk stated the section in the original bylaws matched a deleted section of the Sunshine Ordinance.

Commissioner LoPilato stated it would be great to allow non-agenda items to be a space to encourage community members to come forward outside of the complaint process with issues they are facing; inquired whether there are strong preferences on the minutes section.

Commissioner Reid stated the bylaws state draft minutes should be available in 10 days; inquired whether it would be possible to publish the draft minutes as soon as possible.

The City Clerk responded the deadline of 10 business days for draft minutes is always met; stated unapproved minutes are not published in the agenda database because members of the public could think they are approved and take them and run with them; if the Commission finds fault in the unapproved minutes, posting them would be misleading to the public.

Commissioner Chen stated when reading the minutes, she felt like she relived every minute of the meeting; she would suggest moving in the other direction of having just a basic outline of the discussion with the key points and having the last paragraph state the decision; she gets bogged down reading the minutes and is having trouble reliving the entire experience; it is not helpful to her and actually works the opposite of transparency

because it seems like too much information.

The City Clerk stated a form of minutes commonly adopted called Action Minutes which is as Commissioner Chen described; past Commissioners have stated there was not enough included in the minutes; the Clerk's office is happy to go towards Action Minutes and will do whatever the Commission prefers.

Chair Tilos stated he feels the longer minutes are helpful because there are a lot of members of the public who did not attend the meeting live and do not know all the pieces.

Commissioner Reid inquired whether the live transcript can be published.

The City Clerk responded the Zoom function used for the meetings does not capture a transcript; the captioning is only shown on the screen during the discussion, but not transcribed; the video of the meeting is posted the day after the meeting; the Clerk's office is also available to help and provide information to let people know what transpired at the meetings.

Commissioner Reid inquired how a disabled person can watch the video, to which the City Clerk responded the captioning is in the recording, but the typing is not transcribed or saved anywhere in a document.

Vice Chair Shabazz inquired whether the issue is regarding revising the actual process of the minutes or about what is captured in the minutes.

Commissioner LoPilato responded her intention with the question was to gauge whether there were any strong statements about the way minutes are handled that could be incorporated in the bylaws, including changing to Action Minutes if decided; she would work with the City Clerk to be sure the Commission is referring to the most contemporary practices in the bylaws; she would like the minutes section of the bylaws to reflect what the Commission is actually doing as opposed to making huge changes.

Vice Chair Shabazz stated as someone who uses minutes for historical research, he is grateful when they include more detail; provided an example of a meeting in the 1940's where watching a video was not possible; stated the detail in the minutes was valuable beyond just bullet points that would be included in Action Minutes; he appreciates Commissioner Chen's point about having so much discussion included in the minutes, but does not have a strong opinion about it and appreciates the ability to go back and read to understand what was discussed; issues with the minutes has come up a few times; there are conversations that do not seem germane during the minutes and it is not the time for that; he would like the Commission to figure out the appropriate time and not discuss things that are not relevant at that moment; these issues could be addressed in training.

Commissioner LoPilato stated that she appreciates Vice Chair Shabazz's comments and has noticed the same issues arise; in working on the language of the bylaws, she will try

to find an easy place to insert language about the process; she agrees basic training would be helpful; for the last item, she is hoping to add a new section in the bylaws: an index of onboarding resources; it will change over time, but would be a straightforward procedural process for each new Commissioner; it would be a placeholder until more information is spelled out.

Chair Tilos stated he thinks an index of resources is a great idea.

Commissioner Reid stated that she appreciates all of Commissioner LoPilato's work on the bylaw revisions; inquired whether a requirement could be added to communicate with the OGC whenever the OGC is mentioned at Council or other Boards and Commissions meetings.

Commissioner LoPilato stated that she is hearing is the desire to have a statement that if a matter pertaining to the OGC is brought before another policy body, such as the City Council, that staff will make the OGC aware of the item; she thinks it is a question for staff with respect to whether the OGC has the power to require it.

The City Clerk stated if the OGC would like to put in a request to be informed of matters pertaining to the OGC, staff could do their best; quite often Boards and Commissions are typically copied on reports.

Commissioner LoPilato stated that she noticed the Code of Conduct includes that if staff is presenting something that relates to a Commission, there should be space for the Commission chair to be able to respond if there is a dispute; if there is a statement like that, she may add a mirror image of it into the OGC bylaws because it was a very significant recent issue.

Commissioner Reid inquired whether some reference to the minimum number of members required to create a subcommittee should be added.

The Chief Assistant City Attorney stated another option is to give the Commission the ability to designate a single member; it could be a subcommittee or a sole member.

Commissioner LoPilato stated she will write something out for the Chief Assistant City Attorney to review.

Commissioner Reid suggested meeting locations also be included in the bylaw revision if the City Attorney and City Council wish to proceed with providing Zoom meetings to the public; she also wanted a possible amendment to increase the time for public speakers when there are less than five speakers in order to encourage as much public participation as possible or allow an opportunity to speak a second time.

Chair Tilos stated the meetings have been going beyond 11:00 p.m. since January; time limits for speakers should not be increased and should remain at three minutes; most of the speakers comply with three minutes; he does not want to give an invitation for more

time; if a speaker requests another 30 seconds, he would grant it, but there have been no requests for time extensions and he does not want to change the rules.

Vice Chair Shabazz stated it is not necessary to increase the speaker time; meetings are one method of getting things done and take a long time for various reasons; there are other things like workshops or charrettes; people can individually contact Commissioners and have conversations; there are alternatives to just opening the floodgates for additional time, which is not the most optimal method of letting democracy flourish.

Commissioner Chen stated that she concurs with Vice Chair Shabazz.

Commissioner LoPilato stated that she agrees with keeping the speaker time at three minutes; the point is well taken that there are other ways to get ideas out there; a guiding principle is that Commissioners are very available and can say things during Commissioner Communications if a member of the public brings something forward.

Chair Tilos stated Commissioner time limits should stay at the eight minute mark.

Commissioner Chen stated regarding the issue of declaring a conflict of interest and recusal, until she read up on the issue, she did not believe she had a conflict of interest when she was asked to recuse herself; there needs to be some clarification on the process; when she read about it online, it was mainly about financial interest.

Commissioner LoPilato stated the topic is definitely one for training and something for the onboarding resources in the bylaws.

Chair Tilos thanked Commissioner LoPilato for all the work, providing a good framework, and for being very efficient in asking the questions; he thanked the Commissioners for their input as well.

### 3-C. Report from Subcommittee on Practical and Policy Problems Encountered on Administration of the Sunshine Ordinance

Vice Chair Shabazz and Commissioner Chen gave a brief presentation.

Chair Tilos stated he was given a 45-minute orientation by the Recreation and Parks Director, along with the Chair of the Commission when he was appointed to the Recreation and Parks Commission; suggested the same orientation process for new Commissioners, rather than the two hours proposed by the subcommittee.

In response to Chair Tilos' inquiry, Commissioner Chen stated it would have been helpful for the three new commission members to meet with the City Clerk to go over the Sunshine Ordinance and Handbook; there is a group dynamic; one Commissioner might ask a question that another Commissioner did not even think about; the idea was just her personal vision of how to onboard people and existing Commissioners could also join the orientation as a refresher.



Vice Chair Shabazz stated that he is also considering the certain dynamics of the staff currently; provided the example of the new Chief Assistant City Attorney not having some of the historical knowledge that the City Clerk has; proposed the orientation be based on the roles and responsibilities of a specific position and title versus the individual, i.e., there may be some instances where the Chair could do something informally and a staff person could provide a more formal orientation.

Commissioner Reid suggested the OGC create a video for training purposes, which might also be cost-cutting moving forward; inquired whether the subcommittee would create an online binder as suggested; noted the Chief Assistant City Attorney has been very respectful and she appreciates the good working relationship.

Chair Tilos stated there is some value in having a new Commissioner come onboard with a staff member and a current Commissioner.

Commissioner LoPilato stated the orientation portion is not what she pictured as being part of the thrust of this particular report; all the ideas are great and are things the Commission should be doing; she sees structural issues with the OGC as a smaller subheading to the broader, internal issues, which should be the report's focus; it is not sufficient to train OGC members with the same training given to everyone; Commission members need something more in-depth with more resources; training that is developed around how to function as an adjudicatory body would benefit the OGC; she would add the 2019 Sunshine Ordinance training video to the list.

In response to Vice Chair Shabazz's inquiry, Commissioner Chen stated the report is a whole different thing; the exhibit is just a list of things the subcommittee would like to have done; the report is one of the OGC duties; she agrees the annual report and the decade report are going to be much more robust and detailed; the way for people to work together successfully is by working together; there is no cohesion in the high tech/low touch situation of the pandemic and Zoom world; instead, there are people thinking of plots against each other and having a lot of divisiveness in the country as a whole; training should be exempt from being considered congregating as a quorum; Commissioners are not legislating or making decisions; training is about learning the laws the Commission is required to oversee; she always benefits from hearing other people's questions; having at least one group session of the new members with veteran members would be beneficial.

Vice Chair Shabazz stated the exhibits were set up to deal with internally bringing people in, then, expanding the relationship with the staff, and lastly, getting to the actual duties.

Commissioner LoPilato stated there has been a lot of uncertainty around whether the Commission is charged with recommending specific revisions to the Sunshine Ordinance or with the implementation of the ordinance; the delineation is also at the root of some of the tension and relationship issues between the Commission and the City Attorney's office, but also goes to the roles and responsibilities question; the Commission should be

mindful that it is not here as legislative drafters.

The City Clerk read section 2-22.4 of the Alameda Municipal Code regarding the duties of the OGC.

Commissioner LoPilato stated if a problem comes up over and over, such as the ad hoc exemption in the Sunshine Ordinance, the Commission could surface the issue through the implementation reports to Council as an issue the community is concerned about, rather than sending out Commission Communications about changing the language in the ordinance.

Commissioner Chen stated the reason she has that confusion is because the Boards and Commission Handbook actually lists “proposing amendments to the Sunshine Ordinance to the City Council.”

The City Clerk stated she would correct the Handbook and thanked Commissioner Chen for pointing it out.

Commissioner Reid stated the trainings would be great; suggested including members of the public as well so they can also learn; stated the Sunshine Ordinance is a guide to implement the Brown Act and should be looked at from that higher point of view.

Vice Chair Shabazz stated if the orientation is noticed, members of the public can participate; the Brown Act, which is based on principles of democracy, is a specific tool that is being used and clarified at the local level; the subcommittee will take all the feedback into advisement; this is just a starting place to correct some challenges the Commission has had with operations; the next piece regarding the roles and responsibilities relates to challenges of folks coming on the Commission and not necessarily knowing the different roles; Chair Tilos already suggested having a more informal meeting with new Commissioners, along with City staff; he likes Commissioner Chen’s suggesting that the first thing that should be seen in the complaint process should be the complaint itself, then, a staff report with action and response if there is any cure and correction; making sure all communications are pertinent is important so that one person does not have more information than others; provided an example of receiving email data for the Scott Morris complaint, which gave him a different timeline and understanding of the particular issue; stated one of the duties listed is contacting the complainant, which is actually a duty for City staff; these are just some issues the subcommittee wanted to bring up, specifically related to the City Attorney’s office.

Commissioner Reid inquired whether it would be appropriate to add that staff and the City Attorney’s office should inform the OGC about exemptions, which should also be included in the annual report or possibly a monthly report; stated the goal should be to educate everyone and to create greater access.

Vice Chair Shabazz clarified his understanding of Commissioner Reid’s suggestions: if there are complaints, communicate that there is a complaint, the exemptions being

claimed and have frequent reporting or monthly communication; suggested adding a Staff Communication section to the agenda as a mechanism to share important information with the public; stated the role and responsibilities of the City Clerk's office would include timely communications with the OGC and relaying the decisions or recommendations to the originating body; some of this is internal City communications that the subcommittee just does not necessarily know what happens, along with responding to questions from potential complainants.

In response to Vice Chair Shabazz's inquiry, Commissioner Chen stated sometimes complaints do not reach the Commission because they have asked the City Clerk's office for clarification; once the Clerk provides it, they realize it does not qualify as a complaint; she assumes that providing the clarification is one of the Clerk's duties and there must be a lot of interesting queries, including questions where people think the Sunshine Ordinance does more than it does; the Sunshine Ordinance does something very clearly prescribed and people think it is a vehicle to do something else; it would be helpful if the Commission could do something to inform people about the parameters.

Vice Chair Shabazz stated the Commission does not necessarily know what staff does in relationship to the Commission; the subcommittee was trying to outline some of the different roles and responsibilities and give staff an opportunity to clarify the roles.

Commissioner Reid stated that she would like to find a way for the OGC to be of service to the community regarding the Public Records Act (PRA); suggested having a statement on the City's website that would encourage members of the community to reach out to the Commission directly; also suggested providing a list of resources and points of contact in the community such as the library, Mastick Center or other community organizations.

Vice Chair Shabazz clarified the discussion is still on the roles and responsibilities section, not the PRA portion; stated Commissioner Reid's suggestions are interesting and the Commission will have the opportunity to come back to them; he would like to consider how individual Commissioners and relationships with different organizations may be able to be leveraged; the next issue is the question around how to build trust between the OGC and the City Attorney's office; the subcommittee wanted to begin this as a conversation; the guiding questions for bringing up the discussion and how to document it in a report included what are the specific roles, how do the OGC and the City Attorney's office relate to one another, where have issues of contention arisen, and the need to understand the structural conflict of interest between the role of the OGC and the City Attorney's office and find ways within it to work constructively.

Chair Tilos stated he definitely agrees with Vice Chair Shabazz's comment regarding the breaking of trust; he does not have answers; restated the issues that created the mistrust, including the December OGC meeting where items were not brought forth to the Council as recommended by the OGC; he is concerned about how complaints will be dealt with in the future and whether complaints will just go to a hearing body or mediator; he will leave it up to the subcommittee to figure out how to make it better.

Vice Chair Shabazz restated the issue and what needs to change with the process or clarification of roles to build or reestablish a trusting relationship.

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Chair Tilos inquired whether a break is needed.

Commissioner Reid stated that she would pull items 4-A and 4-B.

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Vice Chair Shabazz stated the first thing related to Public Records Act (PRA) requests is where the challenges have arisen and whether the challenges are idiosyncratic or systematic; if the problems are systematic, the question becomes how can the OGC help; among the recommendations was a 10 year report, which is overarching and not specific to the PRA requests; the report is modeled after a PRA report by the City of Oakland's Public Ethics Commission which came out in May; encouraged folks to read the report; stated the report is to understand what is happening with public records requests in the City of Alameda; the second question is regarding the amendments, including what is and what is not a legislative body, the adjudicatory functions and specifically the suggestion to add a definition to ad hoc; there is also the question around the mechanisms of enforcement, which has been a focus for the last few years; these are only a few issues discussed; there may be more specific recommendations; the subcommittee wanted to get feedback from the rest of the Commission.

Commissioner LoPilato stated the issues are the areas she imagined would be the thrust of what the report would encompass; her vision may not be in sync with the Commission and feels there may be a disconnect; there is the annual report prepared by staff which lists the PRAs and complaints; then, there is discussion about a possible 10 year review of the OGC and Sunshine Ordinance; what the Commission is charged with doing, which is also in the ordinance, is reporting to Council annually on practical or policy problems encountered in the implementation of the Sunshine Ordinance; it is the Commission's opportunity to weigh in on a more in-depth look at interpreting the issues listed in the PRA chart or what was surfaced during complaints; inquired whether her thoughts are in line with the type of reports produced.

Vice Chair Shabazz responded in the affirmative; stated that is where he sees the bulk of the challenges, along with the capacity to generate a report; additional areas have been outlined in the conversation; he could share specific things that have come up in meetings, but just wanted to hear from the rest of the Commission on the different issues that need to be addressed.

Commissioner LoPilato stated it would be great if the Commission had limitless bandwidth to dive in, investigate and do interviews to get to the meat of the issues; the report can be the Commission's opportunity to elevate and amplify concerns from the community; even something as simple as headings: "Concerns raised to the OGC via complaints" or "Concerns Raised to the OGC outside of the complaint process;" whatever it is needs to be substantive; listed items that should be included: ways in which community members,

including journalists, have had to push hard to get public records requests fulfilled, whether delivery of records after having to make repeated requests constitutes prompt delivery, how complainants are treated, there have been some observations of an adversarial or bullying dynamic, said issues are functional to flag that may not surface to Council otherwise; others are: how Consent Calendar items are placed on the Council agenda and the legality of certain Sunshine Ordinance provisions; she does not see the Commission as appropriately weighing in on it, but elevating it as it comes up could be a function of the report; the State and federal legislative advocacy agenda could be something the Council could report back on and concerns about the Alameda Police Department (APD) not tracking PRA denials; it is a benefit that the subcommittee is made up of members who have gone through the complaint process and can also fill in some of the gaps about their experiences; she thinks a 10 year report would be great, which will probably need some staff resources, but at least once a year a report should go to Council.

Vice Chair Shabazz summarized Commissioner LoPilato's suggestions and comments; stated that he encourages folks to go back and look at the different OGC complaints; one of the strengths of the subcommittee is that it is an undefeated group who have gone through the experience and whose complaints were sustained; suggested the supplementary report regarding PRAs be a regular report; stated that he would like to codify Commissioner suggestions; repeated concerns related to the ad hoc definition and Brown Act.

Commissioner Reid stated that she noticed some inconsistencies and wonders how the Commission can provide consistency and transparency across all Boards; inquired whether directing staff to appropriately provide a remedy should be brought up with the Council; gave some examples of inconsistencies within other Boards and Commissions.

In response to Chair Tilos' inquiry, the City Clerk stated most Boards and Commissions have their own staff members who do their minutes and may be running behind; the time stamping of the meetings require a staff person to be logged into the system during the meeting; other Boards and Commissions do not have additional staff like the Council and OGC; clarified that not all Boards and Commissions are required to broadcast meetings; she can review missing items and inform the appropriate staff.

Chair Tilos stated from his experience serving on the Recreation and Parks Commission, staff informed him that it sometimes takes four to eight hours to complete a set of minutes; there is no staff to facilitate minutes or time-stamping of meeting videos.

Vice Chair Shabazz stated that he hears the concerns regarding information being available, which could be included in some format; some Commissions do not have as much capacity as others.

Commissioner Reid inquired whether the OGC should alert the City Council about the inconsistencies with the other 11 Boards and Commissions.

Vice Chair Shabazz stated that when reviewing other Sunshine Ordinances, an OGC member could monitor what other Commissions are doing to see if there are any challenges; someone could monitor public meetings; the needs of the different Commissions should be considered.

The City Clerk clarified that the Sunshine Ordinance only requires broadcast of the City Council, Planning Board, Transportation Commission, Historical Advisory Board, Recreation and Park Commission and OGC.

Commissioner LoPilato stated it would be a good idea to have a discussion about prioritizing the issues the Commission will actually make a recommendation on once the report is brought back; these would be items that are high impact and would really bring as big of a change as possible, in terms of transparency improvements; other concerns can be listed or flagged, but not go in-depth; from the standpoint of institutional credibility to be of service to the Council and the community, the Commission should focus on true hot spots and substantive issues that lots of people are raising or see as extremely problematic.

Vice Chair Shabazz stated utilizing time more effectively by de-prioritizing or not duplicating efforts would be helpful.

Commissioner Chen stated that she wanted to clarify that she understands the conflicts between the OGC and the City Attorney's office are not personal; it is about the systems; the OGC is supposed to look at complaints against City government and the City Attorney's office represents City government; there is a built-in conflict; open government is like internal affairs on the government; depending on people's personalities and different things, there might be greater or lesser conflicts; the conflict is built into the nature of the relationship; the email received from the Chief Assistant City Attorney was a good explanation of a really great starting point for conversations; she wants to make it clear it is a systemic conflict and not personal; a systemic issue should be approached systemically and lay aside any personal feelings; she would like to figure out a way to work together and understand the underlying conflict to do what is necessary to reduce the conflict.

Commissioner LoPilato expressed support for Commissioner Chen's comments as the best framework for putting forth a lot of the challenges within the structure of the OGC; stated it is inherent in the system that was created in 2011 and 2012; it is beneficial context for Council and the public and furthers the institutional credibility; perhaps there could be ways to work within in or make changes to it at some point.

Vice Chair Shabazz summarized the comments and recommendations; stated the subcommittee will take the feedback and information received and work to prioritize some of the things to bring forward in a report; regarding comments made about capacity, staff may be able to assist in some ways with a multi-year process; considering how the Commission may want to operate over the next two years is important; this is one of the first reports that is trying to look at the system and address some of the recurring

challenges; the subcommittee will come back with a final report.

### 3-D. Update on Training

The Chief Assistant City Attorney announced Sunshine Ordinance training would be held on December 14<sup>th</sup> at 10:00 a.m. and a Study Session would also be scheduled, which would be publicly noticed.

In response to Commissioner Chen inquiry, the Chief Assistant City Attorney stated the content of the email she sent Commissioners would be more appropriately discussed during a later agenda item about the complaint procedure.

Vice Chair Shabazz thanked staff for working together to set up training; stated that he is looking forward to different study sessions.

## COMMISSION COMMUNICATIONS

4-A. Consider Communication regarding Correspondence with First Amendment Coalition (Commissioner Reid) Withdrawn.

4-B. Consider Communication regarding Discussion Items (Commissioner Reid). Withdrawn.

4-C. Consider Communication regarding Equity Survey (Vice Chair Shabazz)

Vice Chair Shabazz made brief comments.

In response to Chair Tilos' inquiry, the City Clerk stated any survey cannot be made mandatory; a person cannot be forced to fill it out; legally what can be asked and where the survey should come from is a question of whether it falls under the OGC or something the Council should direct.

Commissioner LoPilato stated that she likes the goal of the survey to ensure Boards and Commissions are diverse, inclusive and equitable; gaining the information at the application stage, rather than after the appointment stage, is problematic in nature; an interesting question is what does the application pipeline look like and what can be done to improve the pipeline and make it more diverse; she would add more immediately implementable things along the lines of applying an equity lens in the application process; also finding out what is done currently to recruit people and how that can be improved.

Commissioner Chen thanked Commissioner Reid for sharing the Sacramento link; stated part of the recommendation is suggesting that the City set up a committee on racial equity and diversity; the OGC's role is to increase the number of people who apply; it is hard to know where is the need to generate applications.

Commissioner Reid stated that she is supportive of the goal to represent all members of

the community; diversity is paramount; the OGC should really strive for it; she hopes other members will have a chance to review the Sacramento report; inquired what the cost would be if the OGC recommends it and Council decides to implement the process; stated it is an important issue and what is being requested is important to know.

Vice Chair Shabazz stated there is some level of interest and some questions around the practicality and privacy concerns and potential implementation cost; he is interested in knowing how it could be done in Alameda; it appears the Sacramento system was done by the City Manager's office or an auditor.

The Chief Assistant City Attorney stated this would be a request that would be appropriately considered by the City Council in that it deals with a body that is in addition to the OGC and also potentially may involve funds and/or staff time to actually conduct the program; said decisions should be made by Council.

The City Clerk concurred with the Chief Assistant City Attorney.

Commissioner LoPilato inquired whether the comment came up in the Police Reform and Racial Equity Subcommittee presentation to the OGC; stated if it was part of said context, it could be a way to frame the message that it did not come directly from the OGC.

Chair Tilos concurred; stated rather than calling it out as a separate request, it could be added to the report.

Vice Chair Shabazz stated he would like to frame it a little differently; the way he tried to frame it while writing it to the Commission was the question of what does equity look like within Boards and Commissions, considering how to implement it and whether it is possible to have something really be democratic when a wide spectrum of the community is not engaged; he questions whether or not there are substantive barriers to participation; he would like to streamline it and simply suggest the Council review the Boards and Commissions to increase representation; it is a question the Council should explore and if they choose not to, it is their prerogative.

Commissioner Chen moved approval of the OGC writing a letter to the City Council expressing interest in expanding citizen participation in City government, starting with Boards and Commissions, including a diversity audit so the Commission will know where outreach should be done.

Vice Chair Shabazz 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.

In response to Vice Chair Shabazz's inquiry, Chair Tilos stated his suggestion would be for Vice Chair Shabazz to draft the letter along with Commissioner Chen and bring it to the next meeting for review by the whole Commission.



Vice Chair Shabazz stated waiting a month for a letter is not very effective.

Commissioner Chen stated City Council takes August off so it will be a month anyway; the OGC can send the letter and speak during public comment.

Commissioner LoPilato stated the OGC should have a functional equivalent of a Consent Calendar; she does think the letter could be simple and streamlined; given the practical reality that Council is not meeting in August anyway, it may be beneficial to put some daylight on the letter and surface it through the full Commission.

Commissioner Reid stated that she can go either way and wants to leave it up to the rest of the Commission.

The City Clerk clarified the next meeting date of the OGC is August 2 and the packet would have to go out in one week.

Chair Tilos stated that he is leaning toward having Vice Chair Shabazz and Commissioner Chen draft the letter and send it out so an August meeting would not be needed.

Commissioners Shabazz and Chen agreed to draft the letter and send it to Council.

4-D. Consider Communication regarding Remote Meeting Participation (Vice Chair Shabazz)

Vice Chair Shabazz made brief comments.

Commissioner LoPilato stated that she loves the item very much and lifts up a lot of appreciation to Vice Chair Shabazz; she strongly supports it and has just some minor wordsmithing on the resolution; there are a lot of ways to do remote participation; the telephonic option is a low-cost approach; she is open to whatever the spectrum is as long as there is a way to continue to be accessible to folks who would not be participating in person.

Thanked Vice Chair Shabazz for bringing the item forward; stated it took a pandemic for folks to realize how inaccessible government is to certain people; being able to attend the virtual meetings has been transformational; he does not want the accessibility to end when September 30 hits; urged including AB 339 in Alameda's Sunshine Ordinance: Zac Bowling, Alameda.

Commissioner Reid stated she is also very supportive of the item, especially as someone whose first language is not English; it is a great idea.

Chair Tilos concurred with Mr. Bowling about keeping the momentum on the issue going; stated the pandemic made all the technological advances better; it could be very powerful in getting more people to meetings, which is the goal; he definitely supports it.

In response to Commissioner LoPilato's inquiry, the City Clerk explained that with the technology, staff is completely bypassing the Chambers equipment and the Zoom meetings are not integrated with the equipment; it is not to say it cannot be done, but she and her staff have been trying to troubleshoot and think of ways to do it; converting the system back to being live is complex; her office wants to wait until Council is back in August to start running tests and see how the technology could work; there is definitely some momentum with the issue; regarding the resolution, the OGC has never adopted one before and it may not be the right mechanism; suggested turning the resolution into a letter to the Council similar to the last item, as a motion would accomplish the same goal.

Chair Tilos concurred with the City Clerk; stated the proper channel would be to write a letter to the Council.

Vice Chair Shabazz stated it would be great if Chair Tilos would be willing to convert the resolution language into a letter to the Council and move it forward.

Chair Tilos stated he would be able to do so.

Vice Chair Shabazz stated that he authored the resolution, which includes two different suggestions; one is about continuing remote participation; the second is a piece related to making meetings accessible to the most common non-English language; Chair Tilos' letter could include one or the other or both.

The City Clerk stated the Sunshine Ordinance has a section about capping translation service at \$20,000 per year.

In response to Chair Tilos' inquiry, the City Clerk outlined Section 2-91.13e stated the main translation service used currently is sign language.

In response to Chair Tilos' inquiry, the City Clerk stated the translation expenses have never come close to the cap; she wanted the Commission to be aware since it is being discussed.

Commissioner Chen stated the existing law does not expire until December 2023 so there is time to do research; she does not know how many languages are needed; the largest minority group in Alameda is Asian, which divides up into Chinese, Filipino, and Vietnamese; she does not know which of those populations need the greatest language access; the letter could be vague and just state the OGC's desire to increase access to language minorities in the City; there is time to explore how it can be done; money should not be the only reason prohibiting increased access to non-English speaking residents of Alameda.

In response to Chair Tilos' inquiry, Commissioner LoPilato stated it can be simplified by adjusting the language to say the OGC recommends the City consider the options; if staff is going to do the research on cost and implementation, the Commission does not need

to give specific guidance; it can be packaged all at once, using the existing language and being mindful of tone.

Chair Tilos concurred with Commissioner LoPilato; stated the letter could be written asking for consideration of the two points; the letter will be drafted and sent to Council prior to their September meeting.

Vice Chair Shabazz stated as a point of order, contrary to Commissioner Chen's comment, the Governor's order ends in September, 2021; it is important to get the conversation to the City Council prior to that.

The City Clerk confirmed that the Governor's order ends September 30, 2021.

Commissioner Chen inquired whether the 2023 date in the resolution is incorrect, to which Commissioner LoPilato responded the date references the Bill and not the Governor's order.

Vice Chair Shabazz and Chair Tilos stated they will write the letters.

4-E. Consider Communication regarding Sunshine Ordinance Complaint Form and Procedure (Commissioner LoPilato)

Commissioner LoPilato made brief comments.

In response to Commissioner LoPilato's inquiry, Chair Tilos stated the issue seems a little heftier and could be an agenda item.

Commissioner LoPilato stated it would make sense for the Commission to agree to form a subcommittee to revise the complaint procedures; then, what the Chief Assistant City Attorney wants to share could be discussed; she wants a general thumbs up or down on the items outlined.

Chair Tilos stated the Commission should also discuss whether the OGC will still be the ones taking the complaints after Council's suggestion of just having a hearing officer.

Commissioner LoPilato stated it was not Council's suggestion; it was the City Attorney's suggestion, which Council rejected.

The Chief Assistant City Attorney stated the discussion of a hearing officer has not been agendized and it is a significant enough topic that it should be properly agendized.

In response to Commissioner LoPilato's inquiry, Chair Tilos stated it does make sense for the Chief Assistant City Attorney to present to the public what was provided to the OGC.

The Chief Assistant City Attorney gave an overview; stated the purpose of her email was

to give the Commission an update on how the City Attorney's office plans to staff complaints going forward; the vision is to realign how outside counsel would be used to advise her as she maintains her role as the advisor to the OGC; outside counsel would be used to provide guidance to the OGC in its adjudicatory role; the City department on the other side of the complaint would be represented at the hearing by another member of the City Attorney's office; the ethical wall she mentioned means that any other attorney from her office representing another department in the complaint process would be ethically walled off; in practical terms, nothing is discussed in the office; she would step back from taking significant roles in evaluating and reviewing PRA requests; she provided the information as it may have some bearing on how the OGC decides to evaluate revisions to the complaint process.

Commissioner LoPilato continued her presentation, inquired whether there is a desire to make a formal request for a different arrangement or if the arrangement will address some of the issues that have come up.

Chair Tilos responded he would like more time to mull over the issue.

Commissioner Reid stated that she has some concerns about outside counsel not appearing to be truly independent; the OGC should be making suggestions to the City Attorney about how to address issues and, conversely, what can the City Attorney can do to support the OGC.

Commissioner LoPilato questioned whether the Chief Assistant City Attorney would be willing to take on the role of doing a legal review of complaints; stated it would be really helpful for the Commission.

In response to Commissioner LoPilato's inquiry regarding the City Attorney's office taking on a non-advocacy role, the Chief Assistant City Attorney stated that she thinks the questions are all fair; she is not prepared to commit her office to any certain work plan in the context of a complaint at this time; a staffing decision was discussed internally and shared with the Commission to add to the full consideration of the issue; she would need others from her office to weigh in before committing.

Commissioner LoPilato continued her presentation.

Commissioner Chen stated that she is not prepared to make any decision or recommendation tonight; inquired whether anyone in the City could be Switzerland; stated there needs to be someone with no ties to the City in the way that the City Attorney's office represents the City; the OGC's duty is to find if a complaint has validity; she would like to put the issue on the next agenda so the Commission could have more discussion.

Chair Tilos concurred with Commissioner Chen; stated it does sound like a conflict of interest that the OGC is asking for a neutral memorandum from a City employee.

Commissioner Reid stated there is a greater discussion in that the City Attorney's office

went to the Council and bypassed the OGC; it seems the City Attorney's office has deeper concerns that have not been addressed; she believes there are underlying issues that the OGC should address before moving forward with other suggestions.

Commissioner LoPilato stated one thing she heard at the June 1<sup>st</sup> meeting regarding the OGC's adjudicatory function is a suggestion that there could be improvements to the ways in which complaints are adjudicated; while there are big philosophical questions the Commission wants to dive into, she is concerned that keeping it abstract opens up having many complaints filed in the interim period while the complaint procedure is not being followed; there is a big picture question about who advises the Commission and what does that look like; she encourages moving forward with something that outlines what a complaint hearing should look like, what kind of documentation could be submitted, the timing and what the findings and options are; something could be prepared that begins to answer the questions and put forth a proposal; she would like to see what could be done tonight to be sure something is brought forward for the OGC to take action on at a future meeting.

In response to Commissioner LoPilato's inquiry regarding whether there is interest in revising the complaint procedures, Commissioners concurred.

Chair Tilos stated he would like someone in a neutral position provide guidance on how the OGC should weigh in, rather than having outside counsel tell the OGC how to weigh in.

Commissioner LoPilato stated it might make sense to actually draft up what a complaint procedure might look like, acknowledging there is a desire for a neutral guidance and include expectations about what the docket and complaint hearing would look like; she would really like to get something moving forward and has already fleshed out some options; suggested creating a subcommittee to make some progress in the downtime.

Chair Tilos stated he would support doing so.

Commissioner Chen stated that she envisioned a flow chart of a process while reviewing Commissioner LoPilato's report; expressed support.

Vice Chair Shabazz stated if there is capacity of some staff members to create a flow chart, as another visual learner, it would be helpful.

Commissioner Reid stated that she is supportive of having an August meeting; she is willing to work on a subcommittee.

Vice Chair Shabazz stated that he supports figuring out the priority of the questions, including the issues around the complaint process, not necessarily the procedures, but how the information is presented; other issues may need to be prioritized and timelines considered.

Commissioner Reid stated including members of the public is also important since the OGC supports the public; it would be great to form a subcommittee that includes some members of the public.

Vice Chair Shabazz expressed concern about the Brown Act.

Commissioner Reid stated the subcommittee would comply with the Brown Act.

Chair Tilos stated that he would just like to get it done; the vote could be done right here to be done with the matter; he is also leaning toward cranking it out for the August 2<sup>nd</sup> meeting; it should be the lone agenda item in order to give it the full time and scope it should be given.

Vice Chair Shabazz stated if Commissioner LoPilato, and Commissioner Reid if joining the subcommittee, have the capacity to bring something back in August, he is fine with that; expressed concern about the potential for complaints to come forward; stated that he would like to be able to address the issues going forward; the opportunity for public involvement and participation could be at the August 2<sup>nd</sup> meeting.

Commissioner Chen stated that she agrees; if the Commission drills down on the issue, it can cherry pick the things that can be fixed right now; on August 2 the Commission can agree to start to map out how to proceed with the rest of it; she thought an outside facilitator was needed to help resolve and bring together the City Attorney's office and the Commission.

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Vice Chair Shabazz noted a motion is needed to continue the meeting past 11:00 p.m.

Commissioner LoPilato moved approval of continuing the meeting another 5 to 10 minutes.

Commission 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.

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In response to Commissioner LoPilato's inquiry, the City Clerk stated she would take Commission direction and place the item as a Regular Agenda item; it will be the only agenda item since there will not be minutes to approve.

Commissioner LoPilato stated it would be great if other Commissioners take whatever gift of time can be given this week, think through things and submit correspondence to be made publicly available when the packet goes out; the Commission would be better able to come prepared and wrap things up.

Chair Tilos restated that the Commissioners agreed to have an August 2<sup>nd</sup> meeting.

Adjournment

Chair Tilos adjourned the meeting at 11:02 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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