

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING  
MONDAY - - - SEPTEMBER 20, 2021 - - - 7:00 P.M.

Chair Tilos convened the meeting at 7:01 p.m.

ROLL CALL - Present: Commissioners Chen, LoPilato, Reid and Chair Tilos – 4. [Note: The meeting was conducted via Zoom.]

Absent: Vice Chair Shabazz – 1.

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

Oral Communications

None.

Regular Agenda Items

3-A. Minutes of the July 19, 2021 and August 2, 2021 Meetings

Commissioner LoPilato proposed changes to the July 19 minutes; stated on Page 12, her main point was that the percentage allocation for internal OGC structural issues should be small and not a big chunk of the report; on Page 15, Vice Chair Shabazz talked about a public ethics commission report and she does not know if the discussion was clear that the report was from the City of Oakland; on Page 16, she was delineating things that seemed right for inclusion which got lumped together; she will send brief language corrections to the Clerk; on Page 19, there is a typo: Sacrament instead of Sacramento; on Page 23, there should be more context regarding when the Chief Assistant City Attorney sent an email instead of just stating she gave an overview.

Commissioner Reid stated she made comments at the last meeting and wants to reiterate that her changes were noted properly.

Commissioner Chen moved approval of the July 19, 2021 minutes as amended.

Commissioner Reid seconded the motion, which carried by the following roll call vote: Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Chair Tilos: Aye. Ayes: 4. [Absent: Vice Chair Shabazz – 1]

Commissioner Reid stated the minutes mention that she offered to work with the City Clerk and it was followed through.

Commissioner LoPilato moved approval of the August 2, 2021 minutes.

Commissioner Chen seconded the motion, which carried by the following roll call vote:

Commissioners Chen: Aye; LoPilato: Aye; Reid: Aye; Chair Tilos: Aye. Ayes: 4. [Absent: Vice Chair Shabazz – 1]

### 3-B. Provide Input to the Subcommittee on Practical and Policy Problems Encountered on Administration of the Sunshine Ordinance

Commissioner Chen gave a brief presentation.

The Chief Assistant City Attorney inquired whether the report was included in the packet, to which the City Clerk and Commissioner Chen responded in the affirmative.

Commissioner Chen continued her presentation.

Commissioner LoPilato stated that she strongly believes the Commission should take the internal issues in a very small subheading because the focus of the report should be on external issues heard from the community; one issue that stood out to her was the concerns over the Alameda Police Department (APD) not tracking Public Record Act (PRA) denials; she has general concerns about the treatment of community members at the informal resolution stage of Sunshine Ordinance complaints, specifically the perception of a bullying dynamic; she is on board with the ad hoc language clarification; of the complaints that have surfaced, these are the ones she would prioritize.

In response to Chair Tilos' inquiry, the City Clerk stated the new PRA system that was launched, Next Request, is being used by all the City departments except for the Police; the APD has extremely different reporting requirements and regulations, so the Department is still handling requests directly; APD has received the feedback about the tracking concerns which can be included in the report.

Commissioner Reid stated that she submitted correspondence and was hoping to get more feedback from the public moving forward; if the issue is agendaized for another meeting, it would be great to get as much public feedback as possible; provided examples of issues included in her correspondence, including agenda revisions; stated it would be helpful if agenda subscribers receive notification when an agenda is revised; she noticed another issue that sometimes attachments are not included in PRA requests.

The City Clerk clarified that the system automatically stores all emails and retains attachments, but in very small instances, attachments are lost somehow and are not included.

Commissioner Reid continued sharing comments from her correspondence, including when exemptions should be used; suggested clarifying exemptions and creating a list of exemptions used every month for OGC review; suggested links should indicate expiration dates; stated other PRA issues include masking of information and calendars not including dates and times of meetings.

Commissioner Chen stated it is obvious Commissioner Reid has run into many

roadblocks with requests; the next step is to decide how to bring the issues back and whether to separate the PRA and Open Government pieces; she would like to make sure the discussions are productive and come up with good recommendations.

Chair Tilos stated that he is leaning towards staff make determinations about what is feasible, then bringing it back to the meeting for the Commissioners to make a decision about whether or not to pursue them.

Commissioner LoPilato stated that she agrees with Chair Tilos' approach; some of the issues sound like they could be more easily resolved by simply asking staff and are not broad scale community concerns; it seems more feasible for staff to provide a response or clarification offline; the matter does not need to escalate to Council.

The City Clerk stated the exemptions, link expirations and masking issues are all going to be addressed with the new system; staff could definitely follow-up on any question about anything missed.

Commissioner Reid stated that she thinks there is broad community support for as much transparency as possible and for really understanding some of the details; the example she gave regarding the masking is just one of possibly two dozen examples she could personally give; inquired how the public will know about the new system.

The City Clerk responded that she announced the launch to the OGC at the last meeting; staff wanted to do a soft launch to get the system working; a social media blast and press releases would go out very soon.

Commissioner Chen inquired what the next step is moving forward.

Commissioner LoPilato suggested the deliverable be a two to three page report; questioned whether the report would be written by the Commission or staff; stated it should be presented at a future meeting to the full Commission.

Commissioner Reid stated suggested agendizing the item on the next meeting to provide an opportunity for public feedback; stated there could be more examples from people who have done PRA requests.

Chair Tilos stated the issue has been a topic of conversation over the last three meetings; there has been public comment; he does not want to belabor the topic any longer; something should be written up by the next meeting for a Commission vote.

Commissioner Chen stated there are some easy things that could be included in a two to three page report, but the PRA issue is a little bit more nuanced and complicated; if the Commission decides to hold a hearing at the next meeting on PRAs and invite the people who have submitted PRAs, the Commission would get the feedback needed to move forward.

Chair Tilos stated he would like to see how the new PRA system goes as it would address many of the issues Commissioner Reid brought forward; after a few months, there can be a check in with the public.

Commissioner LoPilato read the ordinance language; stated presenting an actual recommendation for action is ideal; the Commission is safely within compliance with its statutory duties by simply surfacing an issue as a heads-up; the Commission does not need to spend a ton of time thinking of exactly how to solve every PRA bottleneck before preparing the report.

Commissioner Reid stated that she agrees with Commissioner Chen; it would be great to get feedback from the public; suggested a public survey.

Commissioner Chen stated the survey could be included in the recommendation as an action item; she will meet with Vice Chair Shabazz to draft a memo as part of the report; she appreciates all the feedback and realizes the City is launching the new system for PRAs and there will be a sorting-out period to get the kinks out.

Commissioner Reid stated the Commission should try to shoot for the maximum possible to be delivered to the public; encouraged Commissioner Chen to make a motion.

Commissioner Chen stated that she would get together with Vice Chair Shabazz and a report would come to the Commission next month to go to Council as part of the annual report.

Commissioner LoPilato stated the report that is prepared will go on the agenda; there will be opportunity for public comment; suggested Commissioner Reid make the public aware of the item as opposed to creating a survey since there already will be space for public engagement.

### 3-C. Report from Subcommittee on Draft Bylaw Revisions

Commissioner LoPilato gave a brief presentation.

The City Clerk stated the report was shared with the League of Women Voters (LWV) along with a link to join the meeting; the LWV knows the item is being addressed tonight and have access to the meeting.

In response to Chair Tilos' inquiry, the Chief Assistant City Attorney stated that she had a discussion with Commissioner LoPilato at the beginning of her drafting process regarding specific issues that could come up; in general, she feels comfortable with the idea and concept of the Commission revising the rules that guide the meetings provided that the rules being drafted are consistent with the Brown Act; it seems very appropriate to spend time to ensure meetings are working well for both the Commission and the public; the only clause that she would like to double check is the provision about the 15-minute public comment period for non-agenda items.

In response to Commissioner LoPilato's inquiry, the City Clerk stated the 15-minute public comment period matches the City Council's practice; the non-agenda public comment used to be at the end of the Council agenda and was moved to the top because people were complaining about having to wait through the entire meeting to make comments; the 15-minute limit was imposed to prevent lots of speakers from delaying regular business.

The Chief Assistant City Attorney stated her concerns regarding the 15-minute comment period are now evaporated.

Commissioner Chen inquired whether the City Council rarely has speakers during the last comment section of the agenda, to which the City Clerk responded in the affirmative.

Commissioner Chen stated that she did not know the two-part public comment section was in the Sunshine Ordinance; inquired whether the OGC was in violation of the ordinance since they do not have a two-part comment section.

The City Clerk responded in the negative; stated the requirement is specific to the City Council.

Commissioner Reid stated the Commission should consider adding a specific role for the Vice Chair; she is also concerned about the language added to the Bylaws to establish one-member subcommittees; members should be working collaboratively; suggested striking the clause that encourages one-member subcommittees; encouraged two-member subcommittees instead; stated whatever is decided regarding public comment time limits should be consistent across all Boards and Commissions; suggested encouraging the public to engage with the Commission when only a few people, less than five, are in attendance; stated that she feels there is room for a point- and counter-point discussion; the OGC should be soliciting feedback from the public.

Chair Tilos stated exposed support for the changes.

Commissioner LoPilato inquired whether there are public speakers.

The City Clerk responded the one member of the public in attendance has not raised his hand to speak.

Commissioner LoPilato provided clarification on subcommittees; stated the goal is to give Commissioners flexibility; she would leave the language as-is, although noting there is a preference for two people, instead of just one; she is open to thoughts on whether the Vice Chair should have additional tasks, but is inclined to leave flexibility; requested feedback from other Commissioners on using Public Comment versus Oral Communications; stated otherwise, she is prepared to make a motion to adopt the revised Bylaws; inquired whether additional review from the Chief Assistant City Attorney is needed.

The Chief Assistant City Attorney responded that she would like the opportunity to run through it one last time to verify there are no legal issues; overall she is supportive, legally, of refining the Bylaws to reflect the practice and procedures the Commission would like to follow.

Chair Tilos concurred with the Chief Assistant City Attorney; stated he would also like to get comments from Vice Chair Shabazz; inquired Commissioner Chen's thoughts on Commissioner Reid's concerns about one -member subcommittees.

Commissioner Chen responded the way in which Commissioner LoPilato wrote the language makes it very clear; individuals can volunteer to get a task done; ideally, it would be good if another person wants to help; requiring that every subcommittee has at least two people is restrictive since there are only five members; it is really hard to require a minimum of two members; leaving it open and encouraging more than one member works; she understands Commissioner Reid's concern.

Commissioner Reid stated the Chief Assistant City Attorney mentioned in a previous meeting a one-member subcommittee was a possible concern; requested feedback from the Chief Assistant City Attorney on the issue and also regarding the spirit of establishing a subcommittee.

The Chief Assistant City Attorney stated whether it is satisfactory to have a subcommittee of one came up before; at that time, her view was a subcommittee of one is satisfactory and acceptable; she does not have any legal issue with including language that states either a subcommittee or designated individual can do outside research and advise the Commission.

Chair Tilos stated the Commission should give staff time to review the revisions.

In response to Chair Tilos' inquiry, Commissioner LoPilato stated the next step would be to have the item on the next agenda, including the same materials and Commissioner Reid's correspondence.

Commissioner Reid noted Commissioner LoPilato's summary of what happened in a prior meeting did not properly indicate that she volunteered to work with the City Clerk; cautioned against writing summaries in reports before minutes are approved.

3-D. Report from the Subcommittee on Proposed Complaint Procedure Revisions, includes Draft Complaint Form

#### Complaint Process

Commissioner LoPilato suggested not using the term subcommittee when the item comes back on the next agenda and gave a brief presentation.

In response to Commissioner LoPilato's inquiry, the Chief Assistant City Attorney stated that she had a chance to discuss the matter with her colleagues; as an overarching

reminder, her office is tasked by the City Council to staff and advise the OGC; the details and how it is done that is up to the City Attorney's Office, which wants to be responsive to the Commission's concerns; the Office is prepared to commit to delivering written guidance when appropriate; she does not think the Office would be comfortable with the draft procedures as written being absolute, especially referring to her role in the complaint process; the Office will commit to delivering the guidance mentioned in her July 19, 2021 email outlining the current staffing plan, which involves guidance to the OGC in its adjudicatory capacity when deliberating over complaints and calling upon outside counsel if necessary; she would be the one delivering guidance to the Commission; during the complaint process, instances may need elaboration; it would not be wise for her to commit to everything being in writing; guidance ahead of the hearing will be in writing; she does not know if her position will always advise the Commission; another Attorney could fill the position; concerns were raised about ethical walls or guardrails; attorneys are used to walling themselves off from their colleagues in a variety of situations; OGC cases would be no different; she does not have a formalized process; if a complaint is filed, she would advise the OGC in a neutral capacity and would not discuss anything with the staff representing the City.

Commissioner LoPilato stated one of the components of the procedures is dependent on whether there is a written statement; she wanted to create a timeline; inquired whether it is beneficial to have the pre-hearing submission timeline include some kind of guidance.

The City Clerk responded that she had some concerns about the timeline; stated if the Commission wants to hold meetings the first Monday of the month and a complaint is submitted later in the previous month, the timeline could make it harder to get the hearing on the agenda; expressed concern about coordinating special meetings.

The Chief Assistant City Attorney stated the process is more like a motion hearing and more formulaic; individuals filing complaints are most likely not attorneys; the process should not be stifled too much; after someone has gone through the trouble and effort of filing a complaint, they might feel boxed out if they do not understand Respondent Statements; she thinks Commissioner LoPilato addressed the issue and provided enough flexibility, but she is mindful there may be instances in which the Complainant would not articulate their argument and her written guidance may not capture all arguments; there needs to be some flexibility.

Commissioner Reid stated in a prior meeting, the City Clerk mentioned Complainants are required to attend the hearing; inquired whether there would be any legal issues with someone filing an anonymous complaint.

The Chief Assistant City Attorney responded that she is not aware of any legal issues; stated that she would look into the matter more deeply in advance of the next meeting; most of her concerns have to do with the practicalities; it seems odd to her having a quasi-adjudicatory process where there are two sides and one side is anonymous; she is not aware of any legal prohibition.

Commissioner Reid stated that she does not want to exclude members of the public who wish to remain anonymous; the goal is to create a platform of transparency and allow the public to come forward while still maintaining their privacy; it is a practice in San Francisco and other places; she sent Commissioners case law which supports doing so; as an inclusive city, Alameda should allow anyone to come forward anonymously.

Commissioner Chen stated that she has not thought about the issue enough; when talking about transparency and openness, people should also be transparent and open; if someone feels strongly that the government is not following the laws, they should be public about it; she understands the need for privacy, but she is not sold on it; she would like to look into what the benefit would be.

Chair Tilos stated it would be more of a con or detriment because it would open it up for a lot more complaints, which could be frivolous.

Commissioner LoPilato stated that she would not be supportive of an anonymous complaint process because it is ripe for abuse; she does not want to change the process or weaponize the concept of transparency to jam up City government or utilize staff resources; on the one hand, the Commission wants to hear as much as it can about issues people are encountering; on the other hand, the complaint process requires a hearing, staff time and responding party statements; she does not want tax dollars spent on these things a dozen times a month; if someone wants to privately express issues with the Sunshine Ordinance, there is still a vehicle to do so; the complaint process is not the only way to handle issues; if someone wants to raise an issue anonymously, they can email the Commission via the City Clerk; there are lots of ways to raise a concern other than the complaint process.

The Chief Assistant City Attorney stated it would be hard to harmonize an anonymous complaint procedure with the limit on unfounded complaints that currently exists in the Sunshine Ordinance.

Commissioner Reid inquired why the language is not more streamlined to just include denied and sustained; stated San Francisco and Oakland have only two options.

Chair Tilos stated that he asked the same questions two or three meetings ago; the Commission wanted more options.

Commissioner Chen stated if the complaint is sustained, the Commission agrees the complaint is valid; if a complaint is denied, it means the facts of the case did not uphold the complaint; if it is unfounded, it falls into the rule about two unfounded cases in one year; a person can file more complaints as long as their complaints is denied, rather than unfounded.

Commissioner Reid inquired whether the unfounded option should just be eliminated, to which Commissioner Chen responded in the negative; stated unfounded captures cases in which the process is being weaponized.



Chair Tilos stated if a person has two unfounded cases, they should not bring more complaints.

Commissioner Reid stated the penalties are harsh.

Commissioner LoPilato stated the penalties are rooted in the Sunshine Ordinance, which the Commission does not have the ability to revise, nor is it the topic of the agenda item; she thinks it might be instructive to describe the different type of findings; listed examples.

Commissioner Reid stated it is overdone and should be much more simplified and fair for the public.

Chair Tilos stated Commissioner Reid's comments are noted.

Commissioner LoPilato stated the Commission needs to deal with the pre-hearing submission timeline.

Chair Tilos concurred; stated the decision to have monthly meetings is all new and the timing need to be hashed out.

The City Clerk discussed scheduling.

Commissioner LoPilato stated she could work with the City Clerk and Chief Assistant City Attorney between now and the next meeting to streamline a solution; the individual from the City Attorney's office supporting the OGC needs sufficient time to review the materials and prepare something for the Commission, while also working to prevent off-cycle meetings; the goal is to give everybody a clear and transparent process and timeline; the language could be a little more vague to say: "based on the complaint submission timing, the City Clerk will advise all parties of when written submissions will be due..." or something along those lines.

In response to Chair Tilos' inquiry, the City Clerk stated there are timing requirements for scheduling a complaint hearing; prior to setting the monthly Mondays, staff always tried to schedule the hearing for the next meeting; it was quicker because all that was needed was the complaint and staff report; hearings sometimes had to be set on a different date based on the schedules of the Commissioners and/or Complainant.

Chair Tilos inquired whether bringing the item back on October 4<sup>th</sup> is a reasonable timeframe, to which Commissioner LoPilato responded that she could potentially have it ready; stated the complaint procedures might require more legal review; deferred to the Chief Assistant City Attorney.

The Chief Assistant City Attorney stated she is fine to do the review on one or both items by the October 4<sup>th</sup> meeting.

Commissioner LoPilato stated getting the Bylaws done by the October meeting might make sense; the complaint procedures could move to November, but the Commission could attempt to get it on the next agenda.

#### Complaint Form

The City Clerk gave a brief presentation.

Commissioner Reid stated the City Clerk's form is an online form and hers is the paper version; the forms are modeled after San Francisco's form; her revision includes a worksheet to help people indicate which section of the Sunshine Ordinance may have been violated; a hyperlink to the Sunshine Ordinance could be included in the online form; references could also be posted on the City's webpage; requested the Chief Assistant City Attorney sure all the references are correct; suggested cleaning up the forms for the next meeting.

Commissioner Chen stated the revised form may actually reduce the amount of complaints; in answering the questions on the form, the person may realize that they are answering "no" to most of the questions and what they really should do is come to the meeting to speak under public comment.

Commissioner Reid concurred with Commissioner Chen's comments; stated it is another way to educate the public.

Commissioner LoPilato stated the worksheet reminds her of the self-help legal access center of the court system; the specific breakdown of the sections assists individuals in articulating claims, which is also helpful for the decision-makers; it is definitely a nice option to consider; she would like to hear from the City Attorney's office to make sure there are accurate statements of the law and requirements; in the spirit of encouraging public comment during the meeting, it may be beneficial to include a statement at the end of the worksheet that people are welcome to share their concerns with the OGC if they are no longer interested in filing a complaint.

Commissioner Chen concurred with Commissioner LoPilato; stated the form should lead with encouraging public attendance and comment during the OGC meetings; she feels two of the complaints the OGC heard this year have a place in the public comment section due to the Bylaw revisions.

Chair Tilos concurred with Commissioner Chen; stated the Commission could guide people towards public comment before going down the road of filing a complaint; the complaint process takes a lot of resources on both sides; issues raised during public could be placed a future agenda.

Commissioner Chen stated that she would have probably addressed the Commission under public comment before filing a complaint if she has known it was a possibility, although her timeline would have run out.

Commissioner Reid inquired whether the timeline should be extended to 30 days.

Commissioner Chen stated the timeline would have to be changed in the Sunshine Ordinance.

Commissioner LoPilato stated there should be language regarding the 15-day filing requirement; people should be aware they may need to file their complaint while going through the informal process.

Commissioner Reid stated perhaps the 15 calendar days could be changed to 15 working days to be more accommodating.

The City Clerk stated a revision would need to be approved by Council because the 15-day requirement is in the Sunshine Ordinance.

Commissioner Reid stated the comments could be suggested to the City Council by the Commission.

Commissioner LoPilato stated the issue of timing has come up historically, including in the prior iteration of the Commission's attempt to revise the Sunshine Ordinance; rather than proposing a lot of revisions to the timing, it might be appropriate to flag during the revision of the complaint procedure; the 15-day requirement is there for a reason.

In response to Commissioner Chen's inquiry regarding revising a complaint, the City Clerk stated even if the person outlines the issues vaguely in the complaint, specifics and details can be raised at the hearing.

Commissioner Reid stated the issue was also one of her concerns; allowing additional flexibility for an individual to make modifications or additions does not create such a tight box for people and is more open.

Commissioner LoPilato stated that she could take a stab at changing some of the language to inform Complainants it is in their best interest to give the Commission as much information as possible, but the Commission also understands the Complainant may gain information over time or may need to revise or add to their complaint, all of which will be considered up until the hearing.

Commissioner Reid stated that she is ready to finish her collaboration with the City Clerk and submit a more polished version of the complaint form documents for the next meeting.

The City Clerk stated she is happy to have it ready for the next meeting; suggested the complaint form and procedure be addressed together.

Chair Tilos stated the October meeting should tackle the Bylaws and the complaint procedure should be in November.

Commissioner LoPilato stated if there are other items on the October agenda, the Commission could proactively put the complaint procedures on a future agenda; if both items can go in October, there may not be a need for a November meeting.

The City Clerk stated Commissioner Chen and Vice Chair Shabazz's subcommittee report would return in October.

Commissioner Reid stated that she would be happy to bifurcate the procedures and the form; they do not need to be on the same agenda item; suggested having the item done in October.

Chair Tilos summarized that agenda items for the October meeting: the Bylaws and the Sunshine Ordinance practical and policy problems, with the complaint procedures and form on the November agenda.

Commissioner Reid stated that she is fine with the schedule.

#### COMMISSION COMMUNICATIONS

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

The City Clerk stated Vice Chair Shabazz requested that she pass on his intention: he thinks the report should come back before the Commission again as an agenda item; the report went to the Commission on February 1, 2016 in response to a Commissioner raising questions at the time; the City Attorney reported back on the issue; the subject has not changed and an identical report would come back; Vice Chair Shabazz thought it would be good to have the report on another agenda.

The Chief Assistant City Attorney stated her understanding of the communication is that Vice Chair Shabazz is asking for the same information the City Attorney's Office provides in the twice yearly report to the City Council, which has already been done once this year.

Commissioner LoPilato stated Vice Chair Shabazz's email includes a request for information about how State laws like Senate Bill 1421 and Assembly Bill 748 have changed City requirements for disclosure and let the Commission know where the information is available on the website.

Chair Tilos stated since there are some clarifying questions from the Chief Assistant City Attorney, perhaps Vice Chair Shabazz should just present the item to the Commission in October; at the Commission's discretion, it could be placed on the November agenda.

Commissioner Chen stated it is a good idea that the Commission is copied on the report that City Council receives since it directly impacts open government.

Chair Tilos stated he would like to hear more from Vice Chair Shabazz at the October

meeting.

Commissioner Reid stated that she would also like to hear from Vice Chair Shabazz as well.

The City Clerk stated she add the item to the October agenda.

4-B Consider Communication regarding Draft Sunshine Charter Article (Commissioner Reid)

Commissioner Reid made a brief presentation.

Chair Tilos stated getting more teeth has been a two year ordeal; the Commission is close to a happy compromise; his position is he would like to focus on the Bylaws and making the OGC meetings more efficient.

Commissioner LoPilato stated it makes sense to see what other jurisdictions are doing, but the Commission should stay mindful of the impacts on staff bandwidth; comparing San Francisco and Alameda is like apples and oranges; it is important to stay aware when looking at things that would actually impact procedure.

Chair Tilos stated the discussion of tonight's meeting was very robust and a good organic conversation; thanked the Commission for always continuing to bring their thoughts and perspectives to the meetings.

### Adjournment

Chair Tilos adjourned the meeting at 9:30 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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