

From: [paula.rainey](#)
To: [Marilyn Ezzy Ashcraft](#)
Cc: [Tony Daysog](#); [Malia Vella](#); [Trish Spencer](#); [Tracy Jensen](#); [City Clerk](#)
Subject: [EXTERNAL] Open Government Commission
Date: Tuesday, February 20, 2024 12:12:02 PM

City Council Meeting, February 20, 2024

Item 7A - Amending the Sunshine Ordinance

Dear Mayor and City Council,

I acknowledge that you are poised to amend the Alameda's Sunshine Ordinance to have a hearing officer hear and render rulings on Sunshine Ordinance complaints.

I ask that you implement the sentiment expressed by the Open Government Commission that hearing officer rulings be binding rather than advisory.

I also offer the following suggestions:

<!--[if !supportLists]-->1. <!--[endif]-->A revised ordinance utilizing a hearing officer should preserve the requirements that the complaint hearings be noticed, open to the public and aired.

<!--[if !supportLists]-->2. <!--[endif]-->The ordinance should spell out that hearing officers are to be knowledgeable on the Brown Act, the City of Alameda Sunshine Ordinance, and the California Public Records Act.

<!--[if !supportLists]-->3. <!--[endif]-->Once a decision is rendered by the hearing officer, the next steps need to be clarified in the ordinance, such as (a) including a timely deadline for the hearing officer to submit to the city a short written analysis and decision, and (b) having the hearing officer's findings be agendaized, perhaps on consent calendars, soon thereafter at a city council meeting so that it is clear the city council is taking the advisement under consideration.

Additionally, the commission should be given the opportunity to make recommendations in its annual report based on hearing officer decisions and empowered to focus on its other enumerated duties. The commission could hold an annual workshop to explore ideas for better open government. Workshops could provide positive feedback and identify recurring concerns among the public that have not risen to the level of formal complaints.

Thank you for your consideration.

Sincerely,

Paula Rainey
Alameda, CA

From: [ACT](#)
To: [Marilyn Ezzy Ashcraft](#); [Tony Daysog](#); [Malia Vella](#); [Trish Spencer](#); [Tracy Jensen](#)
Cc: [City Clerk](#); [Manager Manager](#); [Yibin Shen](#)
Subject: [EXTERNAL] Item 7-A, City Council Meeting Agenda for Feb. 20, 2024-Amendment of Sunshine Ordinance
Date: Thursday, February 15, 2024 3:20:08 PM

ACT

Alameda Citizens Task Force

Vigilance, Truth, Civility

Dear Mayor Ashcraft, Vice Mayor Daysog & Council Members Vella, Spencer, and Jensen:

Our October 13 letter in support of the Ashcraft/Jensen referral stated several issues that need to be addressed in the proposed amendments, none of which appear in either of the draft ordinances. They will be presented here again along with a new concern about the staff's failure to properly address the Jan 29 comments of the Open Government Commission (OGC).

A. The staff report fails to address the Commissioners comments at the Jan. 29th Open Government Commission (OGC) meeting. Item 7-A should be tabled until those concerns are addressed.

The Commissioners comments can be viewed at the 2:30 to 2:44 marks of the Jan.29 video. We urge you to watch it. https://alameda.granicus.com/player/clip/3326?view_id=6&redirect=true/ **While a City Attorney's Office (CAO) attorney did attend the meeting, there was no participation by him in the discussion, thus leaving the Commissioners to speculate as to how their concerns might be addressed.**

The staff report acknowledges Commissioner concerns about assuring public participation at the hearings, and the finality of a hearing officer decision, but fails to mention their concern regarding the conflict of interest of the City Attorney's Office (COA) or any city official having the final word in selecting hearing officers. The report lacks any response to these concerns. Neither proposed ordinance provides for public comment in the hearing, finality of a hearing officer decision, or a neutral hearing office selection process. **The report fails to**

inform you, the OGC or the public of the reasons for those omissions. We believe item 7-A should be withdrawn from the Feb. 20 City Council agenda to allow for a interactive discussion of these concerns between the OGC and the COA and a revision of the report that includes the City Attorney's responses to those concerns.

B. Ensuring the Neutrality of the Hearing Officer: In many cases these complaints are challenging actions approved by the COA, thus creating a conflict of interest in their having the final word in the selection process. The staff report relies upon the current Regulations for Administrative Hearings to ensure impartiality of the hearing officer. However, they were developed for rent control hearings where the city has no adverse interest and do not address conflict of interest. We suggest that the COA advertise the position and present qualified candidates for interview by the OGC, or a subcommittee thereof with the advice and consent of the OGC required to hire or discharge a hearing officer. We are open to other ideas, but oppose giving the COA, or any city officer, sole authority to perform this task.

C. Public Hearings and Meaningful OGC Oversight: Since a hearing officer complaint proceeding would not be subject to the Brown Act or Sunshine Ordinance, advertised public hearings, live streaming and posting of a video of the hearing and allowing public comment thereon should be expressly mandated in the Ordinance. **The Sunshine Ordinance is the people's law, and public awareness is essential to educate those our citizens as to the city's adherence to the same.**

D. Hearing Officer Decisions Final and Binding: The Sunshine Ordinance initially adopted by City Council provided in AMC Sec. 2-93.8 that OGC decisions on complaints would be final and binding on the parties. However, in 2018 the OCA advised that the section conflicted with the City Charter and California law because it constituted a legislative function that could only be exercised by the City Council. The Ashcraft/Jensen referral concludes that a hearing officer decision would be quasi-judicial. This view has now been confirmed by the COA in the report. This removes any issue of a hearing officer decision being a legislative function. Thus, you can provide for finality of the decision, subject only to court review, a result that we strongly support. The Mayor's Commission appointee, Klinton Miyao expressed the need for finality at the 2:34 mark of the Jan. 29 OGC meeting:

"That is the thing that I think would make the whole thing work. Without that, it's just adding a different layer of a funded employee who gets to recommend a decision that goes to the City Council and into a black hole, which is where effectively our work has gone."

However, if you decide otherwise, you should at least require that the respondent city body present a written explanation of the acceptance or rejection of a hearing officer decision as a regular City Council agenda item within as fixed number of days after notice of the hearing officer decision. **The currently proposed language contains no real timelines and is not**

clear on the form of the rejection.

E. The Continued Existence of the OGC:

The staff report asserts a Commission consensus which would support its abolishment. We have not discerned that there was any Commission consensus that it be abolished. There are six duties assigned to the OGC under AMC Sec. 2-22.4. Removing the resolution of complaints would still retain four duties:

- “b. Advise City Council on appropriate ways to implement the Sunshine Ordinance;*
- c. Develop goals to ensure practical and timely implementation of the Sunshine Ordinance;*
- d. Report in writing to the City Council at least once annually on any practical or policy problems encountered in the administration of the Sunshine Ordinance;*
- e. From time to time as the Commission sees fit, issue public reports evaluating compliance with the Sunshine Ordinance by the City or any Department, Office, or Official thereof.”*

We would also add the additional duty suggested in item B above requiring their advice and consent to the hiring or firing of a hearing officer. **We urge you to reject abolishing the OGC.**

We hope that all of the above will be of assistance to you in your consideration of Item 7-A.

Sincerely,

Alameda Citizens Task Force Board of Directors

Ashley Zieba

From: acrane@comcast.net on behalf of President@lwvalameda.org
Sent: Wednesday, February 14, 2024 3:18 PM
To: Marilyn Ezzy Ashcraft; Tony Daysog; Malia Vella; Trish Spencer; Tracy Jensen
Cc: City Clerk
Subject: [EXTERNAL] Comments re City Council 2/20 Agenda Item 7-A, proposed amendment to the Sunshine Ordinance
Attachments: Letter to the City Council re OGC.docx

I am attaching comments regarding on behalf of the League of Women Voters of Alameda for your attention. Thank you.

Anna Crane
510-521-7352

Comments regarding Agenda Item 7-A, proposed amendment to the Sunshine Ordinance

2/14/2024

The League of Women Voters is committed to open and transparent government, and the encouragement of citizens' participation. The Sunshine Ordinance reflects these ideals. We recognize that it should be a living document which can be improved over time.

We applaud the City's commitment to a reasoned discussion of alternative options to enhance the efficacy of the statute. We believe that the Open Government Commission plays a vital role in ensuring these goals are met. This role is laid out in Option A. It is important to retain a group in City Hall to advise the Council on public notice and information issues.

Complaints are, ideally, the smallest part of open government activity. They represent symptoms of problems that we are trying to avoid. The larger purpose of the Open Government Commission is to provide advice and policy recommendations in order to protect and enhance transparency and public access.

The Sunshine Ordinance should be a model of clarity which the public can use with confidence to understand the ways City government interacts with them. In our discussions of the proposed amendments it became evident that some provisions can be interpreted in different ways by informed reviewers. We therefore offer the following suggestions:

1. The revised ordinance should state explicitly that complaint hearings conducted by a Hearing Officer are subject to the current Open Government provisions which have applied to hearing conducted by the OGC – that they be properly noticed, open to the public, live-streamed and recorded for public access. See Section 2-91.
2. Administrative Regulation 21-001, Part IV provides that the City Attorney is authorized to appoint a staff of hearing officers who meet minimum qualifications (license to practice law in California and at least 5 years of experience) and any additional qualifications established by the City Attorney. We recommend that the ordinance should require the additional qualification that hearing officers be knowledgeable about the Brown Act, the California Public Records Act, and the City of Alameda Sunshine Ordinance.
3. The ordinance appears to state the findings and decisions by the Hearing Officer are binding (with respect to the specific case involved) except to the extent that the decision provides for a remedy that the City or Agency take action to "cure or correct" a violation. Any "cure or correct" remedy would be a recommendation handled in accordance with Sections 2-93.2(c), 2-93.8. The revised ordinance does not expressly state that however. If this interpretation is correct, the ordinance should be modified to make this clear. If something else is intended, that should be expressly stated so that it can be considered and included with the public discussion of the proposal.

The removal of the complaint-hearing duties from the Open Government Commission should enable it to devote more time to its other important duties of recommending procedures which enhance transparency and public participation. Substantive annual reports from the Commission which provide constructive recommendations with a review of the City's performance in this area provide value to our shared goals.

We support efforts to ensure that the Sunshine Ordinance functions effectively. We ask that you consider these comments while finalizing the amendment. The League of Women Voters of Alameda would be happy to work with staff on these issues.

Ashley Zieba

From: Mark Greenside <mark@markgreenside.com>
Sent: Saturday, February 10, 2024 9:43 AM
To: City Clerk
Subject: [EXTERNAL] Open government

Please, Lara, convey the following to the Mayor and Council. Thank you very much.

Sunshine laws and the OGC are the heart of democratic government both practically and symbolically. Everything should be done to maximize informing the public (sunshine laws) and allowing the public to participate, challenge, and monitor government actions (OGC). Any government actions that reduce, weaken, or eliminate Sunshine laws and/or OGC send the message that the public is not encouraged or welcome to participate... I don't think that is the message Council intends to send, is it? Please, reconsider what you appear to be doing regarding these matters.

Mark Greenside

Sent from [Mail](#) for Windows