

From: [ACT](#)
To: [Marilyn Ezzy Ashcraft](#); [Tony Daysog](#); [Malia Vella](#); [Trish Spencer](#); [Tracy Jensen](#)
Cc: [Manager Manager](#); [City Clerk](#); [Yibin Shen](#)
Subject: [EXTERNAL] Item 5-I. City Council March 5 Agenda-Second Reading of Amendments to Sunshine Ordinance.
Date: Wednesday, February 28, 2024 11:19:04 AM

ACT

Alameda Citizens Task Force

Vigilance, Truth, Civility

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

After expressing our strong objections to the amendments as presented by the City Attorney, we were gratified to hear the thoughtful modifications contained in Council Member Vella's motion and adopted by Council. However, the following "tweaking" is needed (to use the City Attorney's description of changes you can make at the March 5 meeting without triggering the need for a third reading).

The Vella motion provides for amending the ordinance to provide 10 days public notice on the city website, with hearings open to the public and available to watch online. The City Attorney has chosen to address these issues outside of the ordinance in the Hearing Officer Administrative Regulations in a new Section VII. It provides for 10 days' notice **but does not specify where published or required content**. It requires that the public may attend a hearing in person or remotely but **does not specify the means of remote attendance or the preservation of the audio/visual record**.

We believe that the Hearing Officer Sunshine Ordinance complaint hearings should be required to meet the same notice and public attendance requirements now required for OGC complaint hearings. We also believe that lay readers of the Sunshine Ordinance should not have to go to a separate Regulations document to learn their rights.

OGC Complaint hearings now must meet the notice and public attendance requirements contained in the Sunshine Ordinance at Section 2-91.5 concerning the location and content of

hearing notices and Section 2-91.14 (c) regarding videos of a hearing and the preservation of the same.

We propose that both Sections 2-91.5 (b) through (e) and Section 2-91.14 (c) be incorporated into the Sunshine Ordinance amendments. This would ensure that the notice is placed on the current city “Agenda, Minute and Video Data Base” web page and contain all relative documents so that the public can understand the issues and watch the proceedings by live video or by a preserved video thereafter. *We note that Section 2-91.14 (c) is included in Item 5-I Staff report, indicating that the City Attorney may intend to apply it to hearing officers, but the section only applies to a policy body, agency, or department. We fear it does not clearly include a hearing officer.*

This is not re-inventing the wheel, but merely making a Sunshine complaint hearing presided over a hearing officer subject to the same notice and attendance requirements now applicable to an OGC complaint hearing.

The following is our suggestion of simple modifications of the amendments on these issues:

1. Add a new subsection (d) to Section 2-93.2 as follows:

At least 10 days’ notice of a hearing shall be given in compliance with Section 2-91.5 (b) through (e)

2. Add a new subsection (e) to Section 2-93.2 to read as follows:

All hearings on Sunshine Ordinance complaints shall be livestreamed to the public and recorded in compliance with Section 2-91.14(c).

3. Re-letter the existing subsection (d) of Section 2-93.2 to (f)

Sincerely,

Alameda Citizens Task Force Board of Directors

From: acrane@comcast.net
To: Marilyn Ezzy Ashcraft; Malia Vella; Trish Spencer; Tony Daysog; Tracy Jensen; City Clerk
Subject: [EXTERNAL] Comments re: City Council 3/5/2022 Agenda Item 5-1 -- Amendment to the Sunshine Ordinance
Date: Thursday, February 29, 2024 9:14:37 AM
Attachments: image001.png
[Revisions to Sunshine Ordinance - Regulations.docx](#)
[City of Alameda - File # 2024-3829-with LWVA edits.docx](#)

THE LEAGUE OF WOMEN VOTERS OF ALAMEDA

February 28, 2024

Mayor Ashcraft, Vice Mayor Daysog and Council Members Jensen, Herrera Spencer and Vella
RE: Sunshine Ordinance

We have carefully reviewed the draft of the amendment to the Sunshine Ordinance which is scheduled for final approval on the consent calendar for the 3/5 City Council meeting. We believe that the text does not fully reflect the decisions made at the 2/20 meeting and are proposing changes to conform it to the intended result. We are also suggesting a modification to the regulation to reflect the language of the ordinance.

I am attaching a document which lists our proposed changes and the rationale behind them. I am also attaching a redlined copy of the proposed ordinance which includes our reasoning as comments. Please consider our recommendations to enhance the effort to improve the implementation of the Sunshine Ordinance.

Anna Crane

Anna Crane, President
League of Women Voters Alameda
510-521-7352

Details

File #: 2024-3829**Type:** Consent Calendar Item**Body:** [City Council](#)**On agenda:** 3/5/2024**Title:** Final Passage of Ordinance Amending the Alameda Municipal Code by Amending Section 2-22 (Open Government Commission) and Article VIII (Sunshine Ordinance) of Chapter II (Administration) to Establish a Hearing Officer Form of Adjudication of Sunshine Ordinance Complaints, Clarify Enforcement Provisions, and Revise the Duties of the Open Government Commission. (City Attorney, City Clerk)**Attachments:** 1. [Exhibit 1: Regulations for Administrative Hearings - Redline](#)

Text

Final Passage of Ordinance Amending the Alameda Municipal Code by Amending Section 2-22 (Open Government Commission) and Article VIII (Sunshine Ordinance) of Chapter II (Administration) to Establish a Hearing Officer Form of Adjudication of Sunshine Ordinance Complaints, Clarify Enforcement Provisions, and Revise the Duties of the Open Government Commission. (City Attorney, City Clerk)

The staff report for this ordinance was included when the ordinance was introduced and is available at the following link:
<https://alameda.legistar.com/LegislationDetail.aspx?ID=6510559&GUID=DA5A8119-2189-403C-9CE4-51A8C18BE697&Options=&Search=&FullText=1>

This ordinance was revised when it was introduced to include Open Government Commission review of the Regulations for Administrative Hearings in Section 2-22.4.a and complaints are filed in the City Clerk's Office in Section 2-93.1.a.

Exhibit:

1. [Regulations for Administrative Hearings - Redline](#)

Full text of the ordinance showing redline changes made during introduction:

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING Section 2-22 (Open Government Commission) and Article VIII (Sunshine Ordinance) of Chapter II (Administration) to Establish a Hearing Officer Form of Adjudication of Sunshine Ordinance Complaints, Clarify Enforcement Provisions, and REVISE THE DUTIES OF THE OPEN GOVERNMENT COMMISSION

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1: Section 2-22.1 (Commission Created; Purpose) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.1 - Commission Created; Purpose.

There is hereby created a Commission which shall be known as the Open Government Commission, whose purpose shall be to advise the City Council on administration of the Sunshine Ordinance.

Section 2: Section 2-22.4 (Duties of Commission) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.4 - Duties of Commission.

It shall be the duty of the Open Government Commission to:

- a. Provide assistance to the Council or the City on matters or tasks specifically assigned to the Commission by the Council consistent with the Commission's purpose, including review of any changes to the Regulations for Administrative Hearings concerning the appointment of Hearing Officers and procedures for conducting Sunshine Ordinance complaint hearings;
- 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. 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.
- e. The Commission will meet as needed. Members of the Commission shall serve without compensation.

Section 3: Section 2-22.5 (Composition of Commission; Special Terms, Qualifications, and Conditions) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.5 - Composition of Commission; Special Terms, Qualifications, and Conditions.

- d. The Commission shall be assisted, advised and generally staffed at meetings and functions by a licensed attorney from or designated by the City Attorney's Office, when legal services are necessary, and by a representative of the City Clerk's office.

Section 4: Section 2-91.14 (Video and Audio Recording, Filming, and Still Photography) of Section 2-91 (Public Access to Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended as follows (in redline, otherwise, no change)

2-91.14 Video and Audio Recording, Filming, and Still Photography

c. Every city policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room, except to the extent that such facilities may not be available for technical or other reasons. Such meetings held outside City Hall may not be available for livestreaming. All recordings will be archived indefinitely in digital form at a centralized location on the City's website within seventy-two (72) hours of such meeting or hearing. Each recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code, Section 7920.000 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall also be provided without charge on an appropriate playback device made available by the City. This subsection c shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection b above.

Section 5: Section 2-92.1 (Release of Documentary Public Information) of Section 2-92 (Public Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline form; otherwise no change.)

2-92.1 - Release of Documentary Public Information

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 7922.570 through 7922.585 are incorporated herein by reference.

Section 6: Section 2-92.8 (Non-Exempt Public Information) of Section 2-92 (Public Access to Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline form; otherwise no change).

Section 2-92.8 Non-Exempt Public Information

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other laws, the following shall govern specific types of requests for documents and information:

- a. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 7927.500 if said completed preliminary draft or memoranda has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning

agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

c. Personnel Information: None of the following shall be exempt from disclosure under Government Code Section 7927.700.

(Subsections 1 through 4, no change.)

Section 7: Section 2-93.1 (Primary Regulatory and Enforcement Body) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-93.1 - [RESERVED].

Section 8: Section 2-93.2 (Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-93.2 - Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance.

- a. Any person may file a complaint with the City Clerk's Office concerning any violation of the Sunshine Ordinance no more than fifteen (15) days after the alleged violation. Such complaint shall be heard by a Hearing Officer consistent with Section 1-8 of this Code. No complaint shall be accepted when filed against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.
- b. Upon filing of an official complaint form (including submittal of all evidence) with the City Clerk's Office, the complainant and the City (as respondent) shall appear at a hearing scheduled, in consultation with all relevant parties as soon as practicable and no later than thirty (30) business days from the date the complaint is filed unless all relevant parties agree to a later date or the Hearing Officer finds good cause for an extension of time. A complainant's failure to respond to communications from the City Clerk's Office, after reasonable attempts have been made using all reasonably available means of making contact with complainant, related to setting the hearing may lead to a forfeiture of the complaint.

c. The Hearing Officer shall provide the parties with the opportunity to file written materials (e.g., briefs), present evidence and make arguments. The Hearing Officer shall issue a written decision concerning the complaint and include a finding whether the complaint was unfounded. A complaint shall be determined to be unfounded if it was brought without any reasonable basis. The decision shall be issued as soon as practicable, and no later than 30 business days after the conclusion of the hearing. All Hearing Officer decisions shall be posted on the City's website and promptly forwarded to the Commission and the City Council. Within the City's website, the City shall provide a listing of Hearing Officer decisions on complaints brought pursuant to this section. For decisions in which the Hearing Officer issues a "cure or correct" recommendation pursuant to subsection 2-93.8 of this section, the relevant policy body's action in response to that recommendation shall be listed as well.

e.d. All hearings on Sunshine Ordinance complaints shall be recorded by audio or video, and such recordings shall be handled in the manner described in Section 2-91.14(c). All decisions and recommendations of the Hearing Officer, and the relevant body's action in response to that recommendation, shall be public records and handled in accordance with Section 2-92

e.e. The Commission may consider Hearing Officer decisions in support of its duty to provide advice to the City Council on the administration of the Sunshine Ordinance.

Section 9: Section 2-93.6 (Penalties) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-93.6 - Annual Public Report.

The Commission shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of the Ordinance heard by the Hearing Officer during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof, the location of all records relevant to each petition, and any practical or policy problems encountered in the administration of the Sunshine Ordinance.

Section 10: Section 2-93.8 (Penalties) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-93.8 - Penalties.

a. If the Hearing Officer finds a violation of Section 2-91 (Public Access to Meetings), the Hearing Officer may recommend to the originating body steps necessary to cure or correct the violation. The originating body shall consider the Hearing Officer's recommendation and, as soon as practicable, render a final decision on whether to accept or reject the Hearing Officer's recommendation in whole or in part, and notify the City Council and the Commission of its decision. Such a final decision is not subject to further administrative appeal except for judicial review. The City is encouraged to consider taking all necessary actions to maintain the status quo pending the originating body's review of the

Commented [AC1]: Reason for change: This is to conform with what was discussed at the February 20, 2024 City Council meeting, and is in accordance with the existing procedures for handling Sunshine Ordinance complaints

Commented [AC2]: Reason for change: The originating body only has discretion to accept or reject the Hearing Officer's proposed remedy, not other parts of the Hearing Officer's decision. This change is consistent with Section 2-93.8(b). In addition, since the City Council and the Commission are informed of the Hearing Officer's recommendation, they should also be informed of the final action taken on that recommendation.

b. Commission's Hearing Officer's recommendations, to the extent doing so would not be prejudicial to the City. If the Hearing Officer finds a violation of Section 2-92 (Public Information), the Hearing Officer may recommend to the City steps necessary to cure or correct the violation. The City Clerk, City Manager and/or the City Attorney, as appropriate, shall promptly consider the Hearing Officer's recommendations and inform the Council and the Commission of their final decision. The final decision is not subject to further administrative appeal except for judicial review.

Commented [AC3]: Reason for change: This reflects that recommendations are to be made by the Hearing Officer, not by the Commission.

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Commented [AC4]: Reason for change: Since the City Council and the Commission are informed of the Hearing Officer's recommendation, they should also be informed of the final action taken on that recommendation.

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~~E:~~ A person who makes more than two (2) complaints in one (1) twelve (12) month period that are determined by the Hearing Officer to be unfounded shall be prohibited from making a complaint for the next five (5) years.

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Section 11: IMPLIED REPEAL

Any provision of the AMC inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 12: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 13: Severability

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 14: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 5th day of March 2024, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 6th day of March 2024.

Lara Weisiger, City Clerk
City of Alameda

2/23/24, 7:51 PM

Approved as to form:

Yibin Shen, City Attorney
City of Alameda

City of Alameda - File #: 2024-3829

Changes to proposed Sunshine Ordinance revision submitted for March 5, 2024 City Council Meeting.

Section 2-93.2(d). Add a new Section 2-93.2(d) to read as follows:

“All hearings on Sunshine Ordinance complaints shall be recorded by audio or video, and such recordings shall be handled in the manner described in Section 2-91.14(c). All decisions and recommendations of the Hearing Officer, and the relevant body’s action in response to that recommendation, shall be public records and handled in accordance with Section 2-92.”

Reason for change: This is to conform with what was discussed at the February 20, 2024 City Council meeting, and is in accordance with the existing procedures for handling Sunshine Ordinance complaints.

Section 2-93.2(e). Re-letter Section 2-93.2(d) to Section 2.93.2(e)

Section 2-93.8(a). Change the second sentence to read as follows:

“The originating body shall consider the Hearing Officer’s recommendation and, as soon as practicable, render a final decision on whether to accept or reject the Hearing Officer’s recommendation [This replaces the word “decision”], in whole or in part, and notify the City Council and the Commission of its decision.”

Reason for change: The originating body only has discretion to accept or reject the Hearing Officer’s proposed remedy, not other parts of the Hearing Officer’s decision. This change is consistent with Section 2-93.8(b). In addition, since the City Council and the Commission are informed of the Hearing Officer’s recommendation, they should also be informed of the final action taken on that recommendation.

Section 2-93.8(a). Change the fourth sentence to read as follows:

“The City is encouraged to consider taking all necessary actions to maintain the status quo pending the originating body’s review of the Hearing Officer’s [This replaces the word “Commission’s” in the original text] recommendations, to the extent doing so would not be prejudicial to the City.”

Reason for change: This reflects that recommendations are to be made by the Hearing Officer, not by the Commission.

Section 2-93.8(b). Change the second sentence to read as follows:

“The City Clerk, City Manager and/or the City Attorney, as appropriate, shall promptly consider the Hearing Officer’s recommendations and inform the City Council and the Commission of their final decision.”

Reason for change: Since the City Council and the Commission are informed of the Hearing Officer's recommendation, they should also be informed of the final action taken on that recommendation.

Change to the regulation

Add the **bolded** wording to the text of the regulation:

On the City's webpage, **to the Open Government Commission**, and to any subscriber who has requested to be noticed when there will be a hearing about a Sunshine Ordinance complaint, the City Clerk's office shall provide 10 days **written** notice prior to the hearing of the date, time, and place of the hearing and whether the hearing will be via teleconference. **A copy of the Sunshine Ordinance complaint shall be included with such notice.** The City Manager will also announce under City Manager Communications at a City Council meeting any upcoming hearings, **including the same information and documents as contained in the required notice.** Parties who filed a Sunshine Ordinance complaint and members of the public are permitted to attend the hearing including attending remotely.”

Reason for change: Since the Open Government Commission is being informed of other matters in the Sunshine Ordinance complaint process, it should also be given notice of the hearing. Providing a copy of the complaint is necessary to make that notice meaningful.