



City of Alameda

Staff Report

File Number:2022-1886

Open Government Commission

Agenda Date: 4/4/2022

File Type: Regular Agenda Item

Agenda Number: 4-C

Discuss Statutory Regulations Controlling the Hearing Process and Opportunities to Encourage Parties to Confer and Attempt to Resolve Issues Prior to the Hearing

At the February 7, 2022 Open Government Commission meeting, the Commission approved discussing Commissioner Cambra's below proposal at the next Commission meeting.

DRAFT

Good day all:

Below is a report to the OGC from the Chen/Shabazz subcommittee in response to a request by the OGC to encourage the parties to engage in discussions prior to an OGC hearing in hopes of resolving or narrowing the issues that gave rise to the filing of a complaint.

This draft is being submitted only to Commissioner Serena Chen and Chief Assistance City Attorney Elisabeth McKenzie via the City Clerk's Office for comment and suggested edits prior to being including in the agenda packet for the February OGC meeting.

The final content of this report/recommendation shall be determined by Commissioner Chen with input from Attorney McKenzie. I am available for further discussion if required.

This report is submitted as a live WORD document to facilitate editing.

Respectfully,

Jeff Cambra, Commissioner

Open Government Commission

Background

In May of 2021, the City of Alameda's Open Government Commission ("OGC") created a subcommittee to identify and address the policy and operational issues which the OGC faced during the 2021 year. Commissioner Chen and then Commissioner Shabazz were appointed to create a

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draft report for the full OGC to review. The subcommittee met several times and the draft report was presented to the full OGC at its January 11, 2021 meeting.

During that meeting, it was suggested that the mandatory hearing date of 30 days calculated from the date the complaint was filed as provided for in the Alameda Municipal Code (“AMC”), Section 2-93-2, b was very short and did not give the parties time to possibly resolve the issues raised in the complaint. Additionally, depending on when the complaint was filed, a special meeting of the OGC might be required in order to meet the mandatory 30 day hearing requirement.

The OGC requested Commissioner Chen to review the AMC to see what options might be available to extend the hearing date. Commissioner Cambra offered to assist in the review.

The Statutory Hearing Process

AMC §2-93-2 describes the OGC hearing procedure and sets out the timeline for a person to file a complaint, for the OGC to hear the complaint, and when a written decision is to be finalized.

Briefly, “A complainant must file a complaint no more than fifteen (15) days after the alleged violation of the Sunshine Ordinance. (AMC §2-93-2 a.). The parties “shall appear before the OGC no later than thirty (30) business days from the date the complaint was filed”(AMC §2-93-2, b.) The OGC is required to render a formal written decision no later than thirty (30) business days from the conclusion of the hearing or at its next regular meeting, whichever is sooner. AMC §2-93-2, b.

AMC §2-93-2, b. also allows the parties to agree to extend the date of the hearing beyond thirty days by agreement.

“[T]he complainant and the City (as respondent) shall appear at a hearing scheduled, in consultation with all relevant parties, including the Commission members, no later than thirty (30) business days from the date the complaint is filed, ***unless all relevant parties agree to a later date.***” [Emphasis added]

Authority of the Commission

The OGC has statutory authority to develop complaint procedures (AMC §2-22.4, g.) and to consider ways to informally resolving complaints as part of a recommendation to the Council regarding such options (AMC §2-93-4, f.).

Discussion

It is clear that the OGC can develop complaint procedures to facilitate the hearing process itself, but

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it does not have the authority to extend any of the filing, hearing, or written decision submission deadlines contained in the AMC as those dates were established by action of the Council. Consequently, only the Council can amend those deadlines.

AMC §2-93-2, b. does allow all relevant parties, including Commission members to extend a hearing date beyond the thirty day deadline by mutual agreement. While the OGC could not require the parties to agree to extend the date, there does not appear to be any prohibition on informing the parties of the opportunity to extend the time of the hearing to allow the parties the opportunity to resolve the dispute or narrow the issues if a particular dispute informally.

Additionally, a hearing date extension would allow the parties additional time to prepare and submit materials to the OGC well in advance of the hearing date allowing the commissioners adequate time to review the materials prior to the hearing.

The mechanics of informing the parties of the opportunity to extend the hearing date and securing the authorization to extend signatures could be incorporated into the complaint form with a separate signature required for the extension, or the extension could be included as a separate document in the complaint form package.

Recommendation

The commissioners are invited to review the statutory regulations controlling the hearing process and discuss the opportunities to encourage the parties to confer and attempt to resolve the issues presented in the complaint prior to the hearing date.

The OGC may also consider recommending to the Council that a mandatory “meet and confer” requirement be included in the statutory complaint process with an automatic extension of the hearing date.