

Consider Further Revisions to the Sunshine Ordinance by Amending Various Provisions of Article VIII (Sunshine Ordinance) of Chapter II (Administration), Including Provisions Related to Public Access to Public Meetings and Public Records, and Sunshine Ordinance Enforcement.

To: Chair Henneberry and Members of the Open Government Commission

From: Yibin Shen, City Attorney
John D. Le, Assistant City Attorney

Title: Consider Further Revisions to the Sunshine Ordinance by Amending Various Provisions of Article VIII (Sunshine Ordinance) of Chapter II (Administration), Including Provisions Related to Public Access to Public Meetings and Public Records, and Sunshine Ordinance Enforcement.

SUMMARY

It has been over a decade since the City of Alameda started a process which culminated in the adoption of the Sunshine Ordinance. Many substantive provisions of the Ordinance have not been amended since that time. The proposed ordinance amends certain provisions of the Ordinance, including those related to access to public meetings, access to public records, and enforcement of its provisions.

BACKGROUND

In April 2009, the City initiated efforts to adopt a local open government ordinance (or “sunshine” ordinance) for the City of Alameda. In February 2010, the City appointed the Sunshine Task Force comprising several members of the public and a facilitator. Their charge was to work with City staff to research, draft, and recommend to the City Council a sunshine ordinance. The stated goal of the ordinance was to help ensure that the public receives timely notice of City Hall meetings and activities, and timely access to public records and information. On November 1, 2011, the City Council amended the municipal code to add a new Article VIII (Sunshine Ordinance) to Chapter II (Administration), which is codified beginning at Section 2.90.

Many of the substantive provisions of the Ordinance have not been amended since its adoption. The Ordinance covers two principal areas: access to public meetings and access to public records. The Ordinance also has a section devoted to its enforcement. The amendments recommended below cover all three principal areas.

The Sunshine Ordinance is primarily enforced by the Open Government Commission, formed pursuant to Section 2-22 (Open Government Commission) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code. No amendments are recommended to that portion of the Code.

DISCUSSION

Section 2-91.1 (Definitions)

Many of the Sunshine Ordinance's requirements governing access to meetings are imposed on certain "policy bodies" (e.g., posting the agenda at least twelve or seven days prior to the meeting). The Sunshine Ordinance currently defines "policy body" in a manner that does not comport with the formation of ad hoc bodies, which by their nature are not standing (permanent) committees and have a limited charge (e.g., amending a ballot question or authoring a ballot argument) or duration. In addition, the Ordinance defines a "passive meeting body," which has special agenda requirements, broadly. Staff is recommending that the definitions of "passive meeting body" and "policy body" be amended to reflect the way ad hoc committees are treated under the Brown Act and common law and the City's custom and practice of forming ad hoc meeting bodies.

Section 2-91.5 (Agenda Requirements; Regular Meetings)

The Ordinance requires all documents "material" to an agenda item accompany the agenda. The recommended amendment would clarify that only documents material to the matter anticipated for discussion or the proposed action are required to accompany the agenda.

Section 2-91.12 (Disclosure of Closed Session Discussions and Actions)

For closed session items, the proposed amendment grants each Councilmember the option of making a brief statement concerning the member's vote or abstention.

Section 2-91.15 (Public Testimony)

Staff recommends amending this section in two principal ways.

First, in part, this section states that all staff reports, presentations, comments from interested parties, and council questions should be made/presented prior to public comment. The purpose is to "provide the public with the fullest opportunity for public input before the board, commission or council". This requirement is not intended to bar subsequent questions or comments by the Council following public comment. The proposed amendment makes this position more explicit.

Second, the section states that multiple speakers may speak through a "spokesperson" who is limited to fifteen minutes. However, the language concerning a "spokesperson" is no longer consistent with Resolution No. 15382, which prohibits the ceding of time. Staff recommends repealing the section. It has also been suggested that this section could have applicability to quasi-adjudicatory proceedings. However, the ambiguities of this section make it difficult to properly apply it to such proceedings and to agenda items generally. If the Council is agreeable to allowing appellants and project applicants additional time, which is both commonly authorized and recommended by staff, staff

stands ready to take Council direction on this topic and will timely return to the Council with a Council Rule amendment to address this issue.

Section 2-92.2 (Responsibilities of Staff)

Subsection c. of this Section states that all “Custodians of Record” shall within ten (10) days after receiving a records request to “comply with such request”. This language is at odds with what the California Public Records Act requires and does not reflect the practical difficulties of immediate compliance within that timeframe. For example, atypically voluminous requests are often responded to on a rolling basis. The proposed amendment would make clear, which comports with the California Public Records Act and the common law interpreting it, that all that is required is a response within that timeframe. However, the amendment also clarifies that other provisions within the Ordinance concerning the timing and manner of the production of records would remain (“except as otherwise provided for by this Ordinance”). For example, although the amendment would align the Ordinance with provisions of the California Public Records Act, a member of the public could still request records within a timeframe “reasonably justified by a records requester,” if, for example, it was required for a hearing to be held within days (2-92.9). Similarly, this amendment would ensure consistency with other portions of the Ordinance that allow for production of records within a shorter time frame where such records were “previously distributed to the public” (2-91.10).

Section 2-92.4 (Notices and Posting of Information)

This Section requires certain documents be posted to the City’s website, including “Draft and Final Environmental Impact Reports and Environmental Impact Statements”. Moreover, environmental documents may be hosted by the environmental consultant in lieu of the City’s website. However, Subsection c. reiterates that “Large documents, such as...those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA)” shall be posted to the City’s website, but does not carryforward the ability to host the documents via a consultant’s website. The proposed amendment would harmonize this inconsistency.

Section 2-92.9 (Disclosure Requests)

This amendment is a conforming change to carryforward the amendment discussed above in Section 2-92.2 (Responsibilities of Staff). If the Council elects to make the change proposed in that section, this Section 2-92.9 would similarly require an amendment to ensure consistency.

Additionally, a new Section e. is added to clarify that Custodians of Record may respond to a records requests by providing an internet link through which responsive documents can be downloaded by the requestor. Because this has been the City’s practice, staff recommends adopting this clarifying amendment.

Section 2-93.2 (Complaint Procedures Regarding Alleged Violations of Sunshine Ordinance)

Two amendments are proposed here. First, an amendment is proposed to memorialize the practice of the City Clerk's Office's efforts to consult with the complainant, the City, and members of the Open Government Commission prior to setting a hearing date for an Open Government Commission hearing. The City Clerk's Office has experienced difficulty both complying with the short timeframe within which to have the hearing conducted and coordinating with unresponsive complainants to set the hearing. Since hearings on complaints are to be heard in short order (30 days from the date of the complaint), the amendment states that failure to respond to inquiries from the Clerk's Office to obtain an agreeable hearing date could lead to forfeiture of the hearing request.

Second, staff recommends amending portions of subsection b. related to the Open Government Commission's written decision on Sunshine Ordinance complaints. Existing local law states that the Open Government Commission will prepare a written decision within 14 days. However, staff has found this unworkable where amendments to staff-prepared draft decisions are proposed by Commission members at the hearing and schedules do not align. Since modifications to the final decision are often made by Commission members in an open and public meeting, staff is recommending that the 14 days be lengthened to the sooner of either 30 days or the Commission's next regular meeting. This will allow for greater Commission and staff coordination on finalizing the written decision.

Section 2-93.7 (Sunshine Ordinance Supersedes All Other Local Laws)

This provision states that all local laws inconsistent with the Sunshine Ordinance are superseded. However, this provision has no application to the Charter, which is amended only by a vote of the electorate. This amendment would clarify this very point (*i.e.*, all local laws are superseded except the Charter).

Section 2-93.8 (Penalties)

Under existing local law, the Open Government Commission may: (1) order the action of the body null and void or issue an order to cure or correct for violation for violations of Section 2-91 (PUBLIC ACCESS TO MEETINGS), and (2) order the City to comply for violations of Section 2-92 (PUBLIC INFORMATION).

The proposed amendments clarify that the appropriate remedy for a violation of section 2-91 (PUBLIC ACCESS TO MEETINGS) and Section 2-92 (PUBLIC INFORMATION) would be for the Open Government Commission to issue a recommendation that the policy body cure and correct. This amendment would be more in line with the two core duties of the Commission, codified in Section 2-22 (OPEN GOVERNMENT COMMISSION), the local organic law that created the Commission: (a) "[h]ear and decide complaints," and (b) "make recommendations to the Council regarding such complaints".

A redlined copy of the proposed revisions to the Sunshine Ordinance is attached as Exhibit 1.

RECOMMENDATION

Consider further revisions to the Sunshine Ordinance by amending various provisions of Article VIII (Sunshine Ordinance) of Chapter II (Administration), including provisions related to public access to public meetings and public records, and Sunshine Ordinance Enforcement.

Respectfully submitted,
Yibin Shen, City Attorney
John D. Le, Assistant City Attorney

Exhibit:

1. Redlined version of proposed revisions to the Sunshine Ordinance.

PROPOSED REVISIONS TO SUNSHINE ORDINANCE

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING
VARIOUS PROVISIONS OF ARTICLE VIII (SUNSHINE ORDINANCE)
OF CHAPTER II (ADMINISTRATION), INCLUDING PROVISIONS
RELATED TO PUBLIC ACCESS TO PUBLIC MEETINGS AND PUBLIC
RECORDS, AND SUNSHINE ORDINANCE ENFORCEMENT

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

Section 1: Subsections c. and d. of Section 2-91.1 (Definitions) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. "City" shall mean the City of Alameda.
- b. "Meeting" shall mean any of the following and shall have the same meaning as defined in Section 54952.2 of the California Government Code unless the definition in this subsection is more restrictive in which case the more restrictive definition shall apply:
 1. A congregation of a majority of the members of a policy body at the same time and place;
 2. A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
 3. Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.
 4. "Meeting" shall not include any of the following:
 - (a) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
 - (b) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively

discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

- (c) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

c. "Passive meeting body" shall mean:

- 1. Advisory committees created by the initiative of a single member of a policy body, including the Mayor, or a department head;
- 2. "Passive meeting body" shall not include an ad hoc committee (i.e., appointed for a single purpose on a temporary basis) or a committee that consists solely of employees of the City of Alameda created by the initiative of a single member of a policy body, including the Mayor, or a department head.

d. "Policy body" shall mean the following and have the same meaning as "legislative body" is defined in Section 54952 of the California Government Code unless the definition in this subsection applies to a broader range of boards, commissions, committees or other bodies:

- 1. The Alameda City Council;
- 2. Any other board enumerated in the Charter of the City of Alameda;
- 3. Any board, commission, committee, or other body created by ordinance or resolution of the City Council;
- 4. Any committee or body, created by the initiative of a policy body as a whole;
- 5. Any standing committee of a policy body irrespective of its composition.
- 6. "Policy Body" shall not include an ad hoc committee or a committee which consists solely of employees of the City of Alameda, unless such committee was established by Charter or by ordinance or resolution of the City Council.

Section 2: Subsections a. of Section 2-91.2 (Passive Meetings) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. A passive meeting shall mean ~~meetings as defined in Section 2-91.1b.4(b) and (c)~~ and meetings of a passive meeting body as defined in Section 2-91.1c.

- b. All passive meetings shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.
 - 1. Such meetings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the meeting shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the meeting shall be accessible to such inquirers as a public record.
 - 2. Such meeting need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
 - 3. Such meetings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from members of the public as may be relevant to the business of the meeting.
 - 4. Passive meeting bodies may hold closed sessions under circumstances allowed by this article.
- c. Any entity performing a function delegated by the City shall abide by subsection b.

Section 3: Subsection e. of Section 2-91.5 (Agenda Requirements; Regular Meetings) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. These time requirements shall apply to posting on the internet.
- b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda or, if such documents are of more than one (1) page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- c. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

- d. All agendas shall be posted on the City's website and the City's cable channel and available at the Alameda Public Library. Complete agenda packets for each body shall be posted on the City's website to the extent fiscally and technologically feasible and shall be available for review at the Alameda Public Library and at the City Clerk's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.
- e. All documents material to a matter anticipated for discussion or consideration or the proposed action of an agenda item must accompany the agenda.
- f. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- g. Notwithstanding subdivision d., the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
 - 1. Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
 - 2. Upon a good faith, reasonable determination by a two-thirds (2/3) vote of the body, or, if less than two-thirds (2/3) of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision a.
 - 3. The item was on an agenda posted pursuant to subdivision a. for a prior meeting of the body occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- h. Each policy body shall ensure that agendas for regular and special meetings are made available upon request to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.
- i. Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City of Alameda exist to conduct the citizen of Alameda's business. This ordinance assures that deliberations

are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION.

- j. The Council Agenda will limit ceremonial presentations and proclamations to no more than fifteen (15) minutes. If more time is needed, other arrangements should be made.
- k. Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Open Government Commission. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda.

Section 4: Subsection b. of Section 2-91.12 (Disclosure of Closed Session Discussions and Actions) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.
- b. A policy body shall publicly report any action taken in closed session, ~~and the vote or abstention of every member present thereon,~~ as set forth below, follows: As part of that public report, the clerk of the policy body shall report all votes or abstentions of every member present, and each member present may make a brief public statement concerning the member's vote or abstention.
 - 1. *Real Property Negotiations.* Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision b. of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.
 - 2. *Litigation.* Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise

enter as a party, intervener or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

3. *Employee Actions.* Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal, unless the City Attorney determines that disclosure would be detrimental to the City. "Dismissal" within the meaning of this article includes any termination of employment at the will of the employer rather than of the employee, however characterized.
 4. *Collective Bargaining.* Any collectively bargained agreement shall be made publicly available at least fifteen (15) calendar days before the meeting of the policy body to which the agreement is to be reported. At a City Council meeting no less than thirty (30) days before the initiation of bargaining of a new or extended collectively bargained agreement, the City Manager shall report the initiation of bargaining and the collectively bargained agreement shall be publicly made available.
- c. Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.
 - d. A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.
 - e. The City Attorney's office shall prepare and present on the City Council Consent Calendar, a list of documents which have been determined to be public after previously being determined to be unavailable to the public. This list shall be presented at least semi-annually and available on the City's website.

Section 5: Subsection b. and e. of Section 2-91.15 (Public Testimony) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. Every agenda for regular meetings shall provide, before undertaking regular business and again at the end of the meeting, an opportunity for members of the public to directly address a policy body on items of interest to the public that are within the policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 2-91.5e of this article. The Council agenda shall provide up to fifteen (15) minutes for this use. However, in the situation of the City Council, the agenda does not have to provide an opportunity for members of the public to address the Council on any item that has been considered by a subcommittee comprised only of Councilmembers at a public meeting, unless the item has been substantially changed since the subcommittee heard the item. The City Council shall have the authority to determine whether the item has been substantially changed.
 1. If the number of speakers interested in speaking under "Public Comment/Non-Agendized Items" exceeds the 15-minute period, additional time will be made available at the end of the meeting.
 2. In the instance where more speakers than can be accommodated within fifteen (15) minutes have signed up to speak, the City Clerk's office will randomly select the order in which speakers will be chosen to speak at the beginning of the meeting.
- b. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide, consistent with Council policy, an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. ~~The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have fifteen (15) minutes to present their case. The spokesperson for the proponent(s) shall have five (5) minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.~~
- c. A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision b. of this section.
- d. To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.
- e. The City shall take reasonable steps to ensure ~~All~~ staff reports, presentations, comments from parties with a direct connection to the agenda item, and council questions ~~will are to~~ be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues before the board, commission or council. This subsection should not be construed to constrain a policy

body's authority to consider or pose questions concerning any reports, presentations, comment, or testimony following public comment.

Section 6: Subsection c. of Section 2-92.2 (Responsibilities of Staff) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. The City Clerk shall be the City Custodian of Records and the City Manager shall designate a Custodian of Records for the Police Department. The City Clerk shall also designate in each department/office a Department Custodian of Records who shall ensure that all department staff who have contact with the public are prepared to provide written and oral information to the public.
- b. The City Clerk "City Custodian of Records" shall, during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The Custodian of Records of the Police Department shall during normal hours of operation, without unreasonable delay, and without requiring an appointment, permit any person to inspect Public Record(s). The custodians may establish reasonable limits to ensure orderly functioning of the office and protect records from theft or damage.
- c. Every "Custodian of Records" shall, ~~as soon as possible, and within ten (10) days~~ following receipt of a request for a Public Record, ~~comply with~~respond to such request within the time frames and in the manner set forth in the Public Records Act, except as otherwise provided for by this Ordinance. ~~In unusual circumstances, the time limit prescribed by this subsection may be extended by written notice by the Custodian of Records to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched provided that no notice shall specify a date that would result in an extension for more than fourteen (14) days. The term "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request: (1) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) the need to search for, collect and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; (3) the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two (2) or more components of the agency having substantial subject matter interest therein; or (4) the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. If a Custodian of Records believes the record requested is exempt from disclosure, he/she shall state in writing the express provisions of law that justify withholding the record.~~
- d. Requests submitted in person, via telephone, or via email or through the City website are considered requests.
- e. Nothing in this section shall be interpreted to hinder ordinary assistance in supplying records or information to the public and informal communications between members of the public, staff and members of policy bodies.

- f. While not required, a written request is recommended in order to create a paper trail for the convenience and reference of the requestor.
- g. Record requests made by email must be acknowledged with an email response to the sender.

Section 7: Subsection c. of Section 2-92.4 (Notices and Posting of Information) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. At a minimum, the following shall be posted on the City's website and provided in written form in the City Clerk's Office and at the reference desk of each Alameda public library. These documents must be posted on the City's Website for a period of at least four (4) years:

City Charter;

Alameda Municipal Code;

General Plan and Area Plans;

Zoning Ordinance;

Landmarks Preservation Ordinance;

Sunshine Ordinance;

Citizen's Guide to Public Information;

Records Index;

Records Retention Schedule;

Council Rules of Procedure;

Conflict of Interest Code;

Statements of Economic Interest*;

Executive Management Work Plans*;

Capital Improvement Plans*;

Agendas and Minutes of the Meetings of all Policy Bodies*;

Budgets*;

Draft and Final Environmental Impact Reports and Environmental Impact Statements (these documents may be posted on the website of the EIR/EIS consultant in lieu of the City's website).**

* These documents may be removed from the City's Website four (4) years after they are filed or adopted.

** These documents may be removed from the City's Website once the project that relates to the environmental documents has been built out.

- b. Each policy body shall have posted on the City's website all current meeting Agendas, minutes and other documents required to be made public and thereafter, make reasonable efforts to post past materials. Each policy body shall make reasonable efforts to ensure that its portion of the City's website is updated on a weekly basis.
- c. Large documents, such as drafts and final copies of City budgets and records concerning environmental impacts, including but not limited to, those resulting from compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), shall be posted on the City's website consistent with subsection a. above and made available at designated City offices with copies available for borrowing by the public at each Alameda public library.
- d. Notices shall be written in easily understood language without undefined abbreviations or acronyms and give a full description of the subject, applicable regulations, significant consequences of taking action or non-action, when and where the subject will be considered, opportunities for public comment, and where to obtain further information.
- e. The Open Government Commission shall review public notices to ensure that they conform to the requirements of this article and work to improve publicly accessible information databases to ensure consistency, equity, timing, and extent of noticing for meetings and other matters of public interest.
- f. Right to notice regarding matters that may impact the physical environment shall be equivalent for residential and commercial tenants and property owners.
- g. Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for meetings on said projects.
- h. *Online Public Records Repository.* The City shall maintain an online repository of public documents on a publicly accessible website. The repository will allow the public to download any document in the repository in its entirety.
 - 1. Documents in the repository shall be searchable at a minimum by title, date, author(s), and related City department(s).
 - 2. Public documents should routinely be published to the public records repository by default. Documents are not required to be added to the repository where it would be cost prohibitive to do so.

Section 8: Subsections a. of Section 2-92.9 (Disclosure Requests) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. A Custodian of Records shall make good faith efforts to comply within a shortened timeframe that has been reasonably justified by a records requester by the facts of his or her situation, e.g. the requester needs the documents for a hearing scheduled

the next day. A request to inspect or obtain copies of public records that is submitted to any department or to any policy body shall ~~be satisfied no later than ten (10) business days~~receive a response within the time frames and in the manner set forth in this Ordinance and the Public Records Act, unless the requestor is advised in writing ~~within three (3) business days~~ that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
 2. The requested records are in the possession of the department processing the request;
 3. The requested records are stored in a location outside of the department;
 4. The requested records likely comprise a voluminous amount of separate and distinct writings;
 5. The requested records r~~Reasonably involves~~ another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.
- b. Additional time shall not be permitted to delay a routine or readily answerable request.
- c. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but may be advised that providing such information may help the City assist the person finding all documents responsive to their request.
- d. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection a. of this section shall be sent to the requestor if an address has been provided.

e. A records request may be satisfied, where appropriate, by sending a web link to the requester where the records can be downloaded or inspected.

Section 9: Subsection a. of Section 2-93.2 (Complaint Procedures Regarding Alleged Violations of Sunshine Ordinance) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended by adding a new subsection e., as follows (in redline; otherwise no change):

- a. A complainant must file a complaint no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance.
- 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, 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. A complainant's failure to respond to communications from the City Clerk's Office related to setting the hearing may lead to a forfeiture of the complaint. During this hearing the Commission will provide the

parties with the chance to present evidence and make arguments. The Commission may render an oral tentative decision, or a formal written decision, on the matter at the conclusion of the hearing. If the Commission renders an oral tentative decision on the matter at the conclusion of the hearing, it will render a formal written decision on the matter at a continued meeting within 30 business days of the conclusion of the hearing, or at its next regular meeting, whichever is sooner~~within fourteen (14) business days of the conclusion of the hearing.~~

- c. No complaint will be accepted by the Commission against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.

Section 10: Section 2-93.7 (Sunshine Ordinance Supersedes All Other Local Laws) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

To the extent permitted by law, the provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply.

Section 11: Subsections a. and b. of Section 2-93.8 (Penalties) of Chapter II of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

- a. If the Commission finds a violation of Section 2-91 (PUBLIC ACCESS TO MEETINGS), the Commission may recommend to the City Council to originating body~~order the action of a body null and void and/or may issue an order~~ steps necessary to cure or correct the violation. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period as the first violation.
- b. If the Commission finds a violation of Section 2-92 (PUBLIC INFORMATION), the Commission may recommend to the City steps necessary to cure or correct the violation~~order the City to comply~~. The Commission may impose a two hundred fifty (\$250.00) dollar fine on the City for a subsequent similar violation, and a five hundred (\$500.00) dollar fine for a third similar violation, that occurs within the same 12-month period as the first violation.
- c. Fines shall be used for records retention technology, and/or Sunshine Ordinance training and education.
- d. A person who makes more than two (2) complaints in one (1) 12-month period that are determined by the Commission to be unfounded shall be prohibited from making a complaint for the next five (5) years.

Section 12: IMPLIED REPEAL

Any provision of the Alameda Municipal Code 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 13: 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 14: 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 15: 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 ____ day of _____, 2019, 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 ____ day of _____, 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda