

To: The Open Government Commission, City of Alameda

Re: Discussion of Items on February 3, 2019 Agenda

Date: January 31, 2019

Ladies and Gentlemen;

When I recently learned of the existence of the Open Government Commission I asked for and received an agenda for its February 3rd meeting. One of the exhibits is the minutes of the December 18th meeting which I reviewed. And in the process I learned of a number of issues that I believe might benefit from some clarification and/or possibly lead to further discussion. I'm planning to attend the meeting scheduled for February 3rd and hope to be able to discuss at least some, if not all, of them.

The following are the issues that I would like to discuss:

- 1.) I believe that in order to optimize our ability to understand what transpired during specific meetings that it's important to identify by name, person's who contribute testimony and/or opinions and/or generate the minutes of the proceedings of all official meetings. In this regard I note that such Staff are rarely so identified by name in the minutes of any meetings. This is true in the case of the City Council, Planning Board, and the many Commissions, including the OGC. This is suboptimal, in my opinion, since many, if not most, job titles aren't person specific. e.g. the City Attorney, Assistant City Attorney, Clerk, job titles of the personnel of the various Department. I can see no rationale for not identifying each and every person who participates actively in the meetings.
- 2.) The OGC should not be prohibited from reviewing and making rulings re ordinances or other actions passed by the CC simply because that's what a City Attorney argues. To do so, as has been proposed in the pending revision of the Sunshine Ordinance which has been forwarded to the CC would be, in my opinion, unfortunate. Limiting the authority of the OGC in this manner would, in effect, negate the Commission's ability to provide meaningful oversight of the CC's actions which is, and has been one of its primary functions and apparently was one of the reasons that it was created in the first place. In this regard, I believe that it would be appropriate to withdraw the changes in the proposed amendments to the Sunshine Ordinance that is scheduled to be considered by the CC on Tuesday, February 4th.
- 3.) It is my considered opinion that if challenged, the current practice of allowing the City Attorney to personally adjudicate the interpretation of policies and ordinances without public input and comment and the concurrence of the CC after such public airing should not be allowed to continue

The City Attorney, if challenged, should not be allowed to control the interpretation of policies and ordinances without public input through the OGC and comment and approval by the CC after such public airing. In order to optimize the operation of this restriction on the City Attorney's currently claimed

prerogative to make such determinations unilaterally, I suggest that the City Attorney be required to provide to a complainant a written document explaining the complainants right to challenge the City Attorney's decision through whatever means available such as by filing a complaint with the OGC, the City Manger, and/or directly with the City Council.

Giving the City Attorney the privilege of making unilateral and unchallengeable interpretations is, in essence giving him/her the ability to legislate which is clearly not part of the job description.

4.) If testimony is provided in writing, including the presentation of documents, during any official meeting of a Committee, Commission, or other agency of the City, such written testimony and/or documents should be included as an attachment(s) to the minutes rather than simply following the current practice of the OGC and others which is to indicate in the minutes that such written testimony and/or documents were presented.

5.) In response to Rasheed Shabazz's documents request #11 and the Public Defender's request #2 re Police Misconduct Reports I note that the report included in the agenda for the February 3rd OGC meeting which is identified as Exhibit 1, indicates that no documents responsive to the documents requests were found. I would ask if failure to find such documents is a frequent occurrence. And further, if the requested documents are not found, an explanation should be included in the report. Such explanation might be "It's believed by the City employee who would be responsible for them believes that they do not exist." Or, "The documents were found but are believed by the person responsible for them to be exempt from the Public Records Act." In addition, instructions as to how the requesting individual might want to pursue his/her request further, if there are such options available. Alternatively, if appropriate, the requesting person should be informed in writing that there are no further avenues available for finding the requested documents.

If responsive records have been found but they have been determined by an employee of the City that they are considered to be exempt from the Public Records Act, is a precise explanation the rationale for their exemption provided in writing to the requesting individual along with the identity of the employee who made that determination?

In the case of filed complaints does any person outside of the subject agency or department review and analyze these reports? For instance, in the case of complaints filed re the Police Department, where are such complaints filed and catalogued, and are they reviewed by any non-APD persons as a matter of routine. In this regard, if it is not the current practice, I would recommend that any and all complaints re any and all City actors be filled initially with the City Clerk for appropriate distribution and that a monthly status report be included with the agenda of the second meeting of the City Council each month. If redaction of portions of any documents included in the monthly reports is done, specific explanation of the nature of the redacted portion(s) and justification of such redaction(s) should be appended to each report.

I would also ask whether or not an organized and searchable compendium of such reports/documents, including records of their outcomes, is kept? If so, are any compilations of the reports analyzed regarding trends, and/or are other studies, done regularly and presented to the CC or any other element

of City Government? In my opinion, failure to carry out such analyses would lessen their value as potential agents for promoting the optimal effectiveness of City government.

I look forward to discussion and clarification of these issues.

Respectfully,

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