

LARA WEISIGER

From: ps4man@comcast.net
Sent: Wednesday, March 04, 2020 5:10 PM
To: LARA WEISIGER
Cc: Malia Vella
Subject: OGC Enforcement Authority-Please forward to all OGC members.
Attachments: OGCEnforcement2.docx

*** **CAUTION:** This email message is coming from a non-City email address. Do not click links or open attachments unless you trust the sender and know the content is safe. Please contact the Help Desk with any questions. ***

Dear Commission Members:

Like all of you, I was distressed by Council's repeal of your enforcement powers and replacing the same with a purely advisory OGC role. However, I was heartened to hear Council's concern that, notwithstanding their determination, there was a desire to develop language that would give the OGC more leverage in the process and a request that the OGC develop recommendations to take back to Council. I was particularly impressed by the comments made by Council Member Vella at the Feb. 4 Council meeting and wrote to her suggesting that the two of us meet to discuss the matter. We have met and had a fruitful discussion which led to the attached draft of a proposed amendment of the enforcement provisions of the Sunshine Ordinance. Below are the significant aspects of our proposal.

Section 2-93.2 creates two separate enforcement tracks with Sec. 2-91 violation complaints being required to be filed shortly after the first appearance of the item on an agenda and running on a much faster time line than complaints under Sec 2-92. Our rationale for this is that complaints that seek re-do of a policy body action require expedited process. This is particularly aimed at giving Council notice of a pending complaint prior to the second reading of a proposed ordinance, thus giving them the opportunity to quickly resolve the matter before the ordinance is adopted. However, even in the case of a policy body action that does not require a second reading, this provides the opportunity for a speedy resolution of the matter.

The proposed sub-section (g) and (h) are important changes in the current process. The former requires that, "any further action on the agenda item shall be delayed until the complaint is resolved unless the City Attorney certifies in writing to City Council that delay will result in significant prejudice to the City and at least 4 Council Members approve proceeding forward with the item..." The latter provides that after receipt of a complaint and upon the request of the OGC Chairman the City must provide independent legal counsel to the Commission.

Finally, Section 2-93.3 (c) requires that, "Upon receipt of a cure and correct recommendation from the Commission, City Council shall accept the recommendation unless at least 4 Council Members approve rejection or modification of the OGC recommendation."

If anyone cares to comment on this proposal please feel free to contact me. As a former member of the OGC I am well aware of the constrictions of the Sunshine Ordinance and Brown Act concerning discussion of OGC business outside of a public meeting. Your comments will not be shared with any other OGC member. Please give me a heads-up as to when the OGC intends to address this issue.

Sincerely,

Paul S Foreman

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

- a. Complaints alleging a violation of Sec. 2-91 must be filed a no more than ten (10) days after the initial appearance of the item on a meeting agenda.
- b. Complaints alleging a violation of Sec 2-92 must be filed with fifteen (15) days after the alleged violation.
- c. 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. During this hearing the Commission will provide the parties with the chance to present evidence and make arguments.
- d. The hearing on a complaint filed pursuant to subsection (a) above must be scheduled no later than 20 business days thereafter. The Commission will render a formal written decision on the matter within five 5 business days of the conclusion of the hearing.
- e. The hearing on a complaint filed pursuant to subsection (b) above must be scheduled no later than 30 business days thereafter. The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing.
- f. 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.
- g. In the case of a complaint filed pursuant to subsection (a) above, any further action on the agenda item shall be delayed until the complaint is resolved unless the City Attorney certifies in writing to City Council that delay will result in significant prejudice to the City and at least 4 Council Members approve proceeding forward with the item while the complaint is proceeding.
- h. Upon receipt of any complaint under this subsection, the City shall, on the request of the Chairman of the Commission, retain independent legal counsel to advise the Commission regarding all aspects of the proceeding.

2-93.8 - Penalties

- a. If the Commission finds a violation of Section 2-91 (PUBLIC ACCESS TO MEETINGS), the Commission may recommend to the originating body steps necessary to cure or correct the 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.
- c. Upon receipt of a cure and correct recommendation from the Commission, City Council shall accept the recommendation unless at least 4 Council Members approve rejection or modification of the OGC recommendation.
- 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.