

**CITY OF ALAMEDA**  
**Memorandum**

**To:** Honorable Chair and Members of the Alameda Open Government Commission

**From:** John D. Lê, Assistant City Attorney

**Date:** June 11, 2020

**Re:** Supplemental Memorandum to OGC Agenda Item 3-B

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**REASON FOR SUPPLEMENTAL MEMORANDUM:** Apprise the Open Government Commission (“Commission”) of an alternative proposal to replace the now-removed null-and-void remedy in the Sunshine Ordinance as a potential starting point for discussion.

**BACKGROUND:** As part of Item No. 3-B, this evening the Commission is to begin a discussion of potential replacement remedy for the now-removed null-and-void remedy.

The City Attorney’s Office prepared an agenda report to facilitate that discussion. The objective of this agenda report was to convey the Council’s will, as articulated at the February 4 regular meeting where the Council discussed amended the Sunshine Ordinance and directed the City Attorney’s Office to work collaboratively with the Commission to prepare a replacement remedy, as a starting point. Part of this agenda report contained the City Attorney’s Office preliminary thinking on a proposal graciously offered up by a former Commission member.

To further facilitate the Commission’s discussion, in addition to what has already been proposed by a former Commission member, the City Attorney’s Office would advise the Commission to also consider the proposal offered by Councilmember John Knox White, who served on the original Sunshine Ordinance Task Force, to the full Council during the February 4, 2020 Council deliberation on this topic.

**DISCUSSION:** Councilmember Knox White had proposed that if the Commission finds a violation that the item of the originating body (e.g., City Council) be re-agendized for discussion or consideration by the originating body within a reasonable time. This discussion of the re-agendized item would consist of a finding of “concurrence or nonconcurrence with the” Commission’s decision on the merits of the Sunshine Ordinance complaint. Consideration of the re-agendized item would give the originating body an opportunity to cure and correct, if it concurs with a finding of violation. Finally, Councilmember Knox White expressed the need to “maintain the status quo” of the item approved by the originating body that gave rise to the Sunshine Ordinance complaint. The proposed language regarding “maintain the status quo” would give the City the flexibility to take any necessary action to avoid undue delay caused by a complaint.

Below is the language, as originally proposed, by Councilmember Knox White that could be added to subdivision a. of Section 9-93.8 (Penalties) of the Alameda Municipal Code:

- 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. The originating body shall review the Commission's recommendation and render a final decision by agreeing and curing, or disagreeing, with the Commission's recommendation as soon as practicable. Such a final decision is not subject to further administrative appeal except for judicial review. The City shall take all necessary actions to maintain the status quo, to the maximum extent authorized by law, pending the originating body's review of the Commission's recommendation. 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.

The City Attorney's Office's preliminary assessment suggests that this modification likely does not present legal concerns. If the Commission is interested in this modification, the City Attorney's Office will conduct more in depth analysis. Moreover, this Office believes the potential exception embodied by the "maintain the status quo, to the maximum extent authorized by law" would be a very narrow exception. It could arise, for example, in instances where preservation of a statutory deadline or honoring time sensitive commitments arising from an agreement (e.g., Development Agreement) would rightly preclude timely consideration by the originating body of the Commission's recommendation. It could also be triggered where undue delay threatens to frustrate the ends of justice or jeopardize public health, safety, or welfare (e.g., timely adoption of an ordinance to preserve local control or the need meet statutory requirements for adoption, such as adoption of Building Code standards).

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Chair and Members of the Open Government Commission  
June 11, 2020  
Page 3

Respectfully submitted,

/s/

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John D. Lê  
Assistant City Attorney

cc: Yibin Shen, City Attorney  
Michael H. Roush, Chief Assistant City Attorney  
Lara Weisiger, City Clerk