

From: [Krystal LoPilato](#)
To: [Lara Weisiger](#)
Subject: [EXTERNAL] Open Government Commission - Clarification on LoPilato Proposal (Agenda Item 3-D for 3/1/21 Meeting)
Date: Monday, March 1, 2021 10:11:11 AM

Hi Lara -

Thank you for sharing the Agenda packet for the 3/1/21 meeting. Can you please add this to the Correspondence file for Agenda Item 3-D and circulate to the Commission and appropriate Staff? Apologies to you (and the Commission/Staff/Public) for not providing this earlier in the week.

I defer to the City Attorney's Office on whether this would need to be re-agendized for a future date to allow Staff the opportunity to do any research or analysis of my proposal and/or proper opportunity for public comment. (And, of course, I defer to my fellow Commissioners on whether there is sufficient interest in this proposal to warrant doing so.) I have separate comments on the other proposals laid out in the Staff Report for 3-D which I will reserve for discussion in our meeting.

Thank you to Staff for preparing the Agenda Item 3-D Report to assist our further discussion of the "Null And Void" Remedy Replacement in the Sunshine Ordinance at our 3/1/21 Meeting. I noticed that my recommendation to consider using the City website for the Open Government Commission as an accountability tool was presented in the Report, and I appreciate that. My proposal is actually a bit different than what was stated in the Report. I apologize for any lack of clarity on my part during our lengthy OGC meeting discussion of 2/1/21. This is a preliminary idea in response to concerns raised in prior meetings and would be in addition to any changes made to Sunshine Ordinance Section 2-93.8 (Penalties).

Clarification of "LoPilato Proposal" for Consideration in "Null And Void" Remedy Replacement Discussions

Background:

Prior OGC discussions regarding the replacement for the former "null and void" remedy have centered on concerns about how to hold City Council and/or other Boards and Commissions "accountable" for choosing not to proceed in accordance with a recommendation by the Open Government to "cure and correct" a violation. This has been referred to as the question of how to put "the teeth" back into the Sunshine Ordinance after the removal of the OGC's ability to nullify an action by the Council or another Commission or Board. Many of the concerns by past and current Commissioners appear to relate to the possibility that the OGC might sustain a Complaint on a Sunshine Ordinance violation and recommend that it be cured and corrected, only to have that recommendation "ignored" by other bodies.

Intent of Proposal:

In my view, the focus on "putting the teeth back into the Ordinance" has been unnecessarily limited to discussions of language to replace the specific remedy in the Penalties section of the Sunshine Ordinance (Section 2-93.8). I see two other methods for ensuring accountability that can be leveraged to creatively add "teeth" without bumping into issues that could run afoul of the City Charter: (1) transparency through technology and (2) each voter's democratic ability

to elect new City Councilmembers when an individual has concerns about a Councilmember's actions in office (or the appointments City Council makes to our various other policy bodies).

My proposal centers on creating a way for the public to easily track whether decisions of the OGC (the body charged with ensuring transparency in local government) are being followed by the Council and other local Commissions/Boards. As such, it involves not only publicizing the vote of the OGC, but also the resulting action once that decision was presented to the policy body found to have violated the Sunshine Ordinance.

Preliminary Proposal:

To the extent that my fellow Commissioners retain concerns about "the teeth" in the various proposed amendments to the Penalties Section of the Sunshine Ordinance (Section 2-93.8), I propose the following additional Ordinance revision for consideration as a *supplemental* method to support accountability (subject to whatever modifications the Commission or Staff feel appropriate before recommending to Council). This does not eliminate the need for us to align on a recommendation for revisions to Section 2-93.8, but may bring a more holistic approach to accountability in our recommendation.

- *Sunshine Ordinance Revision:* Under Section 2-92 (PUBLIC INFORMATION), amend the Notices and Posting of Information provision (2-92.4) to include a new subsection (i) which would state: "Record of Open Government Commission Decisions and Resulting Actions. Within the Open Government Commission portion of the City's website, maintained in accordance with subsection (b) herein, a listing of Open Government Commission decisions on complaints brought pursuant to Section 2-93.2 of this Ordinance shall be provided. For decisions in which the Open Government Commission issues a "cure and correct" recommendation pursuant to section 2-93.8 of this Ordinance, the relevant policy body's action in response to that recommendation shall be listed as well." (This would be on a going-forward basis post-revision, so if there is a need to clarify a lack of retroactivity that could be included as well.)
- *Implementation:* On the [Open Government Commission webpage](#) maintained by the City, a new section could be created to reflect prior OGC recommendations and the corresponding results when those recommendations were considered by the policy body that was found to have violated the Sunshine Ordinance. This could be done in a user-friendly way, with an expandable section title like "Recent Decisions Of The Open Government Commission And Resulting Action," under which there would be a link to the OGC decision recommending the body "cure and correct" their violation and a link to the agenda and minutes of any meeting in which the policy body to whom a recommendation was made considered the recommendation and made a decision on whether to accept or reject it.
 - Where the recommendation is not addressed in a public meeting of the policy body to which a "cure and correct" recommendation is made, that could be noted as well.
 - To mitigate administrative burden for Staff, this would not need to be done within an immediate timeframe after the decision and resulting action. I am envisioning more of a long-term, publicly-accessible tracker of the health of our complaint / recommendation / result ecosystem.
 - To mitigate risk of any mischaracterization of decisions and their resulting actions, we could build in a process by which formal or informal sign-off on the description is obtained prior to publication on the website.
- *Example:*

MM/DD/YYYY: Open Government Commission Hearing on Complaint Alleging Violation of Sunshine Ordinance Section 2-91.5 (PUBLIC ACCESS TO MEETINGS: Agenda Requirements; Regular Meetings) in City Council Meeting on MM/DD/YYYY.

- Open Government Commission Ruling on Complaint: Sustained, Recommended "Cure and Correct" Step of Re-Noticing of Agenda Item for Public Comment.
- Resulting Action: City Council Reviewed Open Government Commission Ruling in Meeting on MM/DD/YYYY, voted 4-1 to adopt Commission Ruling and Re-Notice Agenda Item. (Ayes: __, __, __, __. Noes: __.) Item re-noticed for Council Meeting on MM/DD/YYYY.