

From: CReidOpenGov@protonmail.com
To: [Lara Weisiger](#)
Subject: [EXTERNAL] For OGC Meeting 5/3/21
Date: Friday, April 30, 2021 12:48:54 PM

[Agenda Item 3-B: Recommendations Concerning Potential Amendment to Article VII \(Sunshine Ordinance\) of Chapter II \(Administration\) of the Alameda Municipal Code, as Amended, to Replacr “Null and Void” Renedy;](#)

[Reid Proposal: Notations in blue](#)--with selected LoPilato and Staff revisions included in [red](#).

Sunshine Ordinance Sections for Proposed Revision: 4/5/21 OGC Meeting Item 3-D
Proposed Revisions for Consideration by Commissioner LoPilato
2-92.4 - Notices and Posting of Information.

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 so long as a link to such documents is made available on 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.

i. Record of Open Government Commission Decisions and Resulting Actions. Within the Open Government Commission portion of the City's website, which is maintained in accordance with subsection (b) herein, the City shall provide a listing of Open Government Commission decisions on complaints brought pursuant to Section 2-93.2 of this Ordinance. 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. (Ordinance Sections 2-92.5 – 2-93.1 omitted for brevity)

Commented [KNL1]: Proposed additional subsection reflects "LoPilato Proposal" as outlined in Correspondence to OGC dated 3/1/2021.

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

- 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, after reasonable attempts have been made using all reasonably available means of making contact with complainant, 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 thirty (30) business days of the conclusion of the hearing, or at its next regular meeting, whichever is sooner.
- 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.
- d. In addition to the Open Government Commission's ability to render a formal written opinion finding a violation or non-violation of the Sunshine Ordinance, the Commission may also consider options for informal resolutions of complaints and, upon majority vote of the Commission, may make non-binding recommendations to the City Manager, City Attorney's Office, City Clerk, or City Council regarding informal resolution options or steps to avoid future similar complaints. (Ordinance Sections 2-93.3 – 2-93.7 omitted for brevity)

e. If a complaint is determined by the Open Government Commission to be valid, and sent as a recommendation to the City Council, but they do not agree, the Open Government Commission then shall be allowed to create a temporary appeal committee comprised of one member of the OGC (randomly chosen) and 4 members of the public, chosen by each remaining member of the OGC to review the complaint. If the "appeal subcommittee" determines that the complaint has merit, then it is sent back to the City Council for a second review. The "appeal subcommittee" should adhere to the Brown Act.

[Reid: Correspondence to OGC 3/8/21]

e. i.

The subcommittee members could be chosen from a list created by the City Manager for this purpose. The "appeal subcommittee" should adhere to the Brown Act.

[Reid: Correspondence to OGC 3/8/21]

2-93.8 - Penalties.

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 on whether to accept or reject by agreeing and curing, or disagreeing, with the Commission's recommendation, in whole or in part, as soon as practicable. Such a final decision is not subject to further administrative appeal except for judicial review. The City, City Council, and the relevant originating body 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.

Commented [KNL2]: Proposed revision to harmonize the Sunshine Ordinance with statutory language in AMC Section 2-22.4(f) which sets forth the "duties" of the OGC, including "Consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints (...)" (Alameda Municipal Code 2-22.4(f).)

Commented [KNL3]: Proposed revisions to this subsection reflect the Knox-White Proposal, with modifications by Commissioner LoPilato noted as

highlighted text (proposed additions to JKW language)
and strike-through text (proposed deletions from JKW
language).

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 ~~Manager, the City Clerk and the City Attorney~~ steps necessary to cure or correct the violation. ~~The City Manager, the City Clerk and/or the City Attorney, as appropriate, shall promptly render a final written decision upon receipt of the Commission's recommendation.~~

[Commented [KNL4]: Proposed revisions to this subsection reflect the language inserted by Staff in the Staff Revisions to the Subcommittee Proposal.]

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 twelve (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 **five (5)** 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**.

[Reid: Correspondence to OGC 4/27/21]

OR

d. A person who makes more than three **(3)** 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 three **(3) years**.

[Reid:Correspondence to OGC 4/30/21]

Sent from ProtonMail for iOS

From: [Carne001](#)
To: [Lara Weisiger](#)
Subject: [EXTERNAL] Null and Void Proposal- Open Government Commission
Date: Monday, March 8, 2021 4:23:33 PM

Dear Lara,

Here is my draft proposal for discussion regarding the **Null and Void remedy** to be added to the Agenda for the next meeting---

If a complaint is determined by the Open Government Commission to be valid, and sent as a recommendation to the City Council, but they do not agree, I propose that as a remedy to the "null and void" that the Open Government Commission then be allowed to create a temporary appeal committee comprised of one member of the OGC (randomly chosen) and 4 members of the public, chosen by each remaining member of the OGC to review the complaint. If the "appeal subcommittee" determines that the complaint has merit, then it is sent back to the City Council for a second review.

As an alternative, the subcommittee members could be chosen from a list created by the City Manager for this purpose.

In both cases, the "appeal subcommittee" should adhere to the Brown Act.

Thank you. I appreciate all the work you do.

Best,
Carmen