

CITY OF ALAMEDA ORDINANCE NO. \_\_\_\_\_  
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING SECTION 2-22 (OPEN GOVERNMENT COMMISSION) AND ARTICLE VIII (SUNSHINE ORDINANCE) OF CHAPTER II (ADMINISTRATION) TO ESTABLISH A HEARING OFFICER FORM OF ADJUDICATION OF SUNSHINE ORDINANCE COMPLAINTS, CLARIFYING ENFORCEMENT PROVISIONS, AND PROVIDING FOR OTHER UPDATES AND ENHANCEMENTS TO THE SUNSHINE ORDINANCE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1: Section 2-22.1 (Commission Created; Purpose) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.1 - Commission Created; Purpose.

There is hereby created a Commission which shall be known as the Open Government Commission, whose purpose shall be to advise the City Council on administration of the Sunshine Ordinance, ~~and hear and decide complaints of violations of the Sunshine Ordinance.~~

Section 2: Section 2-22.4 (Duties of Commission) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.4 – Duties of Commission.

It shall be the duty of the Open Government Commission to:

- a. ~~Hear and decide complaints by any person concerning alleged non-compliance with the Sunshine Ordinance;~~  
Provide assistance to the Council or the City on matters or tasks specifically assigned to the Commission by the Council, consistent with the Commission's purpose
- f. Consider ways to informally resolve ~~these~~ complaints and make recommendations to the Council regarding such complaints;

- g. The commission will meet at least semi-annually or as needed ~~based on the receipt of an alleged complaint of violation of this ordinance~~. Members of the Commission shall serve without compensation.

Section 3: Section 2-22.5 (Composition of Commission; Special Terms, Qualifications, and Conditions) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.5 – Composition of Commission; Special Terms, Qualifications, and Conditions.

- d. The Commission shall be assisted, advised and generally staffed at all meetings and functions by a licensed attorney from or designated by the City Attorney's Office, when legal services are necessary, and by a representative of the City Clerk's office.

Section 4: Section 2-93.1 (Primary Regulatory and Enforcement Body) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-93.1 – ~~Primary Regulatory and Enforcement Body~~[RESERVED.].

~~The primary regulatory and enforcement body of the Sunshine Ordinance shall be the Open Government Commission formed pursuant to Section 2-22 (Open Government Commission) of Article II (Boards and Commissions).~~

Section 5: Section 2-93.2 (Complaint Procedures Regarding Alleged Violations of the Sunshine Ordinance) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

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

- a. Any person may ~~complainant must~~ file a complaint against any violation of the Sunshine Ordinance no more than fifteen (15) days after ~~an the~~ alleged violation ~~of the Sunshine Ordinance~~. Such complaints shall be heard by a Hearing Officer consistent with Section 1-8 of this Code. No complaint shall be accepted when filed against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.
- 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, as soon as practicable and~~ no later than thirty (30) business days from the date the complaint is filed unless all relevant parties agree to a later date or the Hearing Officer finds good cause for an extension of time. 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.

~~c. During this hearing t~~The Commission Hearing Officer will shall provide the parties with the ~~chance opportunity~~ to file written materials (e.g., briefs), present evidence and make arguments. The Hearing Officer shall issue a written decision affirming or rejecting the complaint and making a finding on whether the complaint was unfounded. A complaint shall be determined to be unfounded if it was brought without any reasonable basis. The decision shall be issued as soon as practicable, and no later than 30 days after the conclusion of the hearing. All Hearing Officer decisions shall be posted on the City's website and promptly forwarded to the Commission and the City Council. 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.

~~de. The Commission may consider Hearing Officer decisions in support of its duty to provide advise to the City Council on the administration of the Sunshine Ordinance~~No complaint shall be accepted when filed against a member of the City Council or an officially declared candidate within forty-five (45) days of a City election.

Section 6: Section 2-93.8 (Penalties) of Section 2-93 (Enforcement Provisions) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

#### 2-93.8 – Penalties.

- a. If the ~~Commission~~ Hearing Officer finds a violation of Section 2-91 (Public Access to Meetings), the ~~Commission~~ Hearing Officer may recommend to the originating body steps necessary to cure or correct the violation. The originating body shall consider the Hearing Officer's recommendation and render a final decision on whether to accept or reject the Hearing Officer'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 is encouraged to consider taking all necessary actions to maintain the status quo pending the

~~originating body's review of the Commission's recommendation, to the extent doing so would not be prejudicial to the City. 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~~ Hearing Officer finds a violation of Section 2-92 (Public Information), the ~~Commission~~ Hearing Officer may recommend to the City steps necessary to cure or correct the violation. The City Clerk, City Manager and/or City Attorney, as appropriate, shall promptly consider the Hearing Officer's recommendation and inform the Council of their final decision. ~~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.c. 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. All violations determined to be unfounded prior to July 15, 2021 shall be reset and forgiven.

#### Section 7: IMPLIED REPEAL

Any provision of the AMC inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

#### Section 8: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

#### Section 9: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection,

paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 10: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Attest:

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Presiding Officer of the City Council

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Lara Weisiger, City Clerk

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I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the \_\_\_\_ day of \_\_\_\_ 2021, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this \_\_\_\_ day of \_\_\_\_ 2021.

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Lara Weisiger, City Clerk  
City of Alameda

Approved as to form:

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Yibin Shen, City Attorney  
City of Alameda