

To: Open Government Commission  
From: Subcommittee on practical or policy problems encountered, members, Rasheed Shabazz, Serena Chen  
Date: July 12, 2021

## BACKGROUND

The duties of the Open Government Commission include advising the City Council on the implementation of the City of Alameda's Sunshine Ordinance, developing goals to ensure the practical and timely implementation of ordinance, and report in writing to City Council at least once annually on any practical or policy problems encountered in the administration of the Sunshine Ordinance (Ordinance, 2-22.4 (b-d)). Since 2016, each year, the Commission votes to accept an annual report prepared by City staff (February 1, 2016, February 6, 2017, October 2, 2017, February 4, 2019, and February 3, 2020). The report presented February 1, 2021 was not accepted until May.

At the May 3, 2021 Commission meeting, Commissioners agreed to forming a subcommittee to address practical and policy problems encountered and appointed Commissioners Chen and Shabazz meet and report back at the next OGC meeting. The Subcommittee members met twice via telephone in May and July. Discussion topics included: Sunshine Ordinance revisions, complaint and hearing process, public meetings, public records, operations of the Commission, and communication and the relationship with the City Attorney's Office.

## DISCUSSION

The subcommittee has observed the following issues encountered:

- Lack of clarity on roles, responsibilities and duties of serving on the Open Government Commission
- Lack of clarity on roles, responsibilities of City Attorney's Office (CAO) as to its relationship to the Commission members individually and to the Commission as a whole
- Poor communication between Commission members and CAO
- Ambiguities in the existing Sunshine Ordinance that require clarification and correction.

## RECOMMENDATIONS

We recommend the following strategies to address these issues:

1. Orientation training for all new Open Government Commissioners members, which should include an in-person session that covers the contents of a comprehensive Open Government Commission Handbook/Binder
  - a. Governing documents (city and state)
  - b. Operational (code of conduct, roles/responsibilities, rules of order, etc.)
2. Clarification of the role/responsibilities of the CAO in relationship to the OGC
3. Improve mutual respect between OGC and CAO. An in-person session facilitated by a professional independent facilitator to identify sources of conflict between OGC and CAO and identify specific ways in which communications can be improved.
4. In accordance with SO 2-22.4(d), the development of a 10-Year Report that will provide an overview of the creation of the Sunshine Ordinance and Open Government Commission ordinance and the accomplishments of the OGC and most importantly recommendations, based on the data and interviews with past Commissioners, staff, and complainants, as to how the Sunshine Ordinance and the Open Government

Commission can be improved. In accordance with SO 2-22.4(e), the development of a report on Alameda's public records system, modeled after the City of Oakland's "Spotlight on Oakland's Public Records System: A Data-Driven Review of City Agency Performance and Opportunities for Improvement," Public Ethics Commission, City of Oakland, May 2021, <<https://www.oaklandca.gov/news/2021/spotlight-on-oaklands-public-records-system>>.

5. Develop goals and establish a timeline to address short-term and long-term "fixes" to ensure practical and timely implementation of the Sunshine Ordinance.

We believe that the OGC as a commission should have an opportunity, on a timely basis, to participate in all proposed changes to the SO and OGC ordinances before they are presented to the City Council.

## **Exhibit 1**

### **I. Orientation for all new members**

- a. In-person 2-3 hour session to cover contents of an Open Government Commission (OGC) Handbook/Binder
  - i. Governance documents (City of Alameda)
    - 1. Alameda Municipal Code Sec. 2-22 Open Government Commission
    - 2. Alameda Municipal Code Article VIII – Sunshine Ordinance
    - 3. Open Government Commission By-Laws
    - 4. Code of Conduct, Model of Excellence
  - ii. State laws – Brown Act, Public Records Act
- b. Operational tools
  - i. Rules of order (e.g., Rosenberg Rules of Order, time controls for meeting management)
  - ii. Duties of OGC
    - 1. Advise City Council on the administration of the Sunshine Ordinance including changes to the SO and OGC
    - 2. Hear and decide complaints of violations of the Sunshine Ordinance – hearing process/timeline/disposition of decisions
    - 3. Develop goals to ensure practical and timely implementation of the Sunshine Ordinance
    - 4. Issue reports to council, the public
      - a. Annual Report content and context
      - b. One decade of Open Government Commission – Report

### **II. Roles/responsibilities of City staff**

- a. City Attorney's Office (CAO)
  - i. Prepare packet for each complaint to include the complaint, a staff report/overview, staff actions and complainant response(s) and recommendations for a cure and correction if OGC sustains complaint.
  - ii. Advise OGC on the legal interpretations of the SO, OGC, Brown Act, Public Records Act
  - iii. Communicate all communications pertinent to the OGC to commissioners
  - iv. Contact complainants to determine if issue can be mediated
- b. City Clerk
  - i. Advise OGC members on parliamentary procedure
  - ii. Maintain timely communications with OGC
  - iii. Relay the OGC decisions and recommendations to the originating body
    - 1. Report back to OGC as to the originating body's response to the cure and correct
  - iv. Respond to questions from potential complainants as to procedure

### **III. Relationship between OGC and the CAO – How do we build trust?**

- a. What are our specific roles and how do we relate to one another? Where have issues of contention arisen? Understanding the structural conflict of interest between the role of the OGC and CAO and find ways to work constructively within it.

#### IV. **Issues that need addressing**

- a. Public Records Act (PRA) requests – where have bottlenecks arisen? Are they idiosyncratic or systemic – if the latter, how can OGC help?
- b. Amendments to the SO and OGC
  - i. Clarification of what is not a “legislative body” – e.g. add definition of “ad hoc” committee to SO to align with Brown Act.
  - ii. Are we satisfied with the mechanism for enforcement?

#### **V. ARTICLE VIII. - SUNSHINE ORDINANCE**

##### **VI. 2.90 - INTRODUCTION.**

This sunshine ordinance has been developed to codify the City of Alameda's public policy concerning participation in the deliberations of the City's legislative bodies and to clarify and supplement the Ralph M. Brown Act and the California Public Records Act and expanding its application and effectiveness to local governments. It is an affirmation of good government; and a continued commitment to open and democratic procedures. It is an effort to expand our citizens' knowledge, participation and trust. As procedures of government change and evolve, so also must the laws designed to guarantee the process remains visible. **In addition, this ordinance will establish a mechanism for enforcement.**

(Ord. No. 3036 N.S., § 1, 11-1-2011, eff. 2-1-2012)