

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING ARTICLE VIII (SUNSHINE ORDINANCE) OF CHAPTER II (ADMINISTRATION) TO CLARIFY ENFORCEMENT PROVISIONS, AND PROVIDE 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 2-93.2 (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 anthe alleged violation of the Sunshine Ordinance. Such complaints shall be heard by the Commission consistent with 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 Commission 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.
- b-c. During this hearing tThe Commission will shall provide the parties with the chance opportunity to file written materials (e.g., briefs), present evidence and make arguments. The Commission shall issue a written decision affirming or rejecting the complaint and making a finding on whether the complaint was unfounded. Within the Commission portion of the City's website, the City shall provide a listing of Commission decisions on complaints brought pursuant to this

Ordinance. For decisions in which the 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. 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 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 violations.

Section 2: 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 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 consider the Commission’s recommendation and render a final decision on whether to accept or reject 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 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 finds a violation of Section 2-92 (Public Information), the Commission 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 Commission’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.

Section 3: 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 4: 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 5: 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 6: 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.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

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 ____ 20__, 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 ____ 20__.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda