

City of Alameda Open Government Commission

PUBLIC SUNSHINE ORDINANCE COMPLAINT PROCEDURE

Consistent with the language and spirit of the City of Alameda Sunshine Ordinance (Ordinance) to provide the most open government possible (see Alameda Municipal Code Chapter II, Article VIII, Sections 2-90 through 2-93), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

A. Initial Communications About Sunshine Ordinance Concerns:

It is the goal of the Open Government Commission ("OGC") to help the public gain access to public records and meetings. The Staff supporting the OGC will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the OGC. Members of the public are encouraged to contact the City Clerk to express any requests or concerns they have regarding the City's compliance with the Sunshine Ordinance so that Staff may work with them to resolve the issue, where possible.

1. The City Clerk may be reached at [email] or [phone] or [address + business hours].
2. The City Clerk shall discuss the request or concern with the member of the public and attempt to resolve the request or concern. Staff from the City Attorney's Office may also assist in this process. (However, the Chief Assistant City Attorney, who is responsible for providing advice to the OGC will not participate in any pre- or post-complaint advocacy on behalf of the City or in any initial dispute resolution efforts.)
3. If unable to immediately facilitate access to a desired record or to a public meeting, the Staff shall advise the member(s) of the public of the right to file a complaint with the OGC and to pursue the complaint process, and shall send the complainant a packet of information regarding the complaint process, including this Complaint Procedure.

Please note that under the Sunshine Ordinance, a formal complaint must be filed no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance. Members of the public should stay aware of this deadline during initial discussions with City Staff. In order to preserve all rights under the Sunshine Ordinance, it may be necessary for a member of the public to file a Complaint Form while they are continuing to work with Staff on possible resolution. As noted below, complaints may be withdrawn any time prior to the Complaint Hearing.

B. Filing a Complaint.

1. A complaint is "filed" by submitting the Sunshine Ordinance Complaint Form to the City Clerk via mail, fax, electronic mail (e-mail), in person, or via electronic submission through [redacted]. If a free-standing letter asserting a Sunshine Ordinance violation or concern is received, the City

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¶ The Open Government Commission (OGC) has an obligation under Alameda Municipal Code Section 2-93 to respond to public complaints.¶

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Clerk shall provide the Complainant with a Complaint Form for completion and submission or with information on how to submit a complaint digitally via [REDACTED].

2. Upon receiving the Complaint Form, the City Clerk will notify the full Open Government Commission and the City Attorney's Office that a complaint has been filed. A copy of the Complaint Form shall be forwarded to the City Attorney, who will determine staffing for the representation of the City Department or policy body alleged to have violated the Sunshine Ordinance (the "Respondent").
3. Separately, the City Clerk shall also send the Complaint Form to the Chief Assistant City Attorney supporting the OGC to begin the process of preparing any appropriate instructional documents for the OGC. [POSSIBLE INCLUSION: The City Clerk shall advise the Chief Assistant City Attorney whether resolution discussions with the Complainant are ongoing and the date of the anticipated hearing.]
4. The City Clerk will consult with all relevant parties, including the Open Government Commissioners, to schedule a Complaint Hearing as soon as practicable and no later than thirty (30) business days from the date the Complaint Form is filed, unless all relevant parties agree to a later date.
5. In accordance with the Sunshine Ordinance, 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.

C. Pre-Hearing Submissions and Analysis

1. The City Clerk shall provide the Complaint Form and any additional information submitted by Complainant to the City Attorney (counsel for Respondent) and to the Chief Assistant City Attorney (advisor to the OGC) no later than [X] calendar days prior to the Complaint Hearing.
2. Respondent shall submit a Position Statement to the City Clerk, Chief Assistant City Attorney (advisor to the OGC) and to Complainant no later than [X] calendar days prior to the Complaint Hearing.
3. Complainant may, but is not expected or required to, submit a Reply to Respondent's Position Statement and any additional information or evidence to the City Clerk, City Attorney (counsel for Respondent) and the Chief Assistant City Attorney (advisor to the OGC) no later than 10 calendar days prior to the Complaint Hearing if Complainant wishes to have such information considered in the neutral Statement of the Case provided to the OGC (see below). Information submitted within 10 calendar days of the hearing may still be considered by Commissioners, but Complainants are encouraged to provide information as early as possible in the process to ensure a thorough evaluation.

The Chief Assistant City Attorney, responsible for staffing the OGC, shall conduct a pre-hearing analysis of the materials submitted by both parties. The Chief Assistant City

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→ 2. A complaint must be filed no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance. ¶

→ 3. Hearing Schedule: ¶

→ If the responding City department (respondent), or the City Attorney, do not contest jurisdiction, or there is no request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint, a hearing will be scheduled no later than thirty (30) business days after the complaint is received. During this hearing the Commission will provide the parties with the chance to present evidence and make arguments. The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing. ¶

→ 4. The Administrator shall advise the complainant and the affected department of the date, time and location of the OGC meetings at which the complaint will be discussed.

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→ 6. Complaint Committee Hearings: ¶

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Deleted: → (b) The Complaint Committee shall review a complaint where jurisdiction is contested or a pre-hearing conference is requested at its next meeting and recommend whether the OGC has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and OGC, or otherwise assist the parties.

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- Deleted:** → (c) When the Complaint Committee recommends accepting jurisdiction, it shall do so at the next regular OGC meeting unless this would result in a violation of the 45 day time limit (30 business days to schedule hearing and 14 business days to resolve issue) for resolving complaints; in such case, a special meeting shall be called to hear the matter. The complainant may waive the 45-day rule or request a special hearing within the 45-day period. ¶
- 7. Continuances: ¶
- (a) A complainant may waive the 45-day rule and if a request for continuance is submitted at least three business days in advance of the scheduled hearing, it shall be granted. For requests submitted less than three business days in advance or for requests for subsequent continuances, the request shall be granted by a simple majority vote of the members present. ¶
- (b) If a respondent submits a request for continuance at least three business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present. ¶

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E. Public Hearing Procedure

The Complainant and Respondent shall receive a written notice from the City Clerk of the date and time they are scheduled to appear before the OGC for a hearing, and will be advised of the timeline for written submissions outlined above.

During the public Complaint Hearing, the Commission will provide the parties with the chance to present evidence and make arguments.

The Complaint Hearing shall proceed as follows:

- Complainant's Opening Statement and Presentation of Facts: 10 minutes
- Respondent's Opening Statement and Presentation of Facts: 10 minutes
- Complainant's Reply to Respondent's Presentation of Facts (if needed): 5 minutes
- Commissioner Questioning of Parties and Witnesses (if needed): 5 minutes per Commissioner
- Complainant's Closing Statement: 2 minutes
- Respondent's Closing Statement: 2 minutes
- Commissioner Deliberations and Decision

These procedures and maximum time limits are intended to create predictability and consistency for all parties, but the Commission is also committed to ensuring that members of the public feel comfortable navigating the process. Any questions about the Complaint Hearing procedure may be directed to the City Clerk before or during the hearing. Additionally, in special circumstances, the time limits or order of presentation above may be modified at the OGC Chair's discretion or upon a supermajority vote.

The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing.

F. Commission Findings

1. After hearing all testimony, the OGC shall deliberate and render a decision on the Complaint by a majority vote.

2. The Commission may issue any of the following findings:

- Complaint Sustained with Cure and Correct Recommendation
- Complaint Sustained without Cure and Correct Recommendation
- Complaint Denied
- Complaint Denied as Unfounded
- Complaint Dismissed (on jurisdictional or procedural grounds, not a finding on the "merits")

3. The OGC's oral deliberations and decision shall include as much detail as possible regarding the basis for the Commission's findings. The OGC's decision shall be memorialized in a formal written decision after the meeting and both the Complainant and Respondent shall be notified in writing of the final decision.

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For a document to be considered, it must be received at least 5 working days before the hearing. At the hearing before the OGC, should the complainant submit additional documentation that has not been submitted to all parties, he/she shall be given the following options:

- (1) Proceed with the hearing without OGC consideration of the additional documentation;
- (2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued;
- (3) If the additional documentation raises a new issue, the complainant may proceed with the hearing and file a new complaint on the additional issues, or withdraw and amend the complaint to include the new issues.

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4. Separate from the Decision on the Complaint, upon a majority vote, the OGC may also direct any subcommittees or Staff preparing reports or advisory letters to City Council on behalf of the OGC to consider including information about the circumstances giving rise to the Complaint at issue in their report or letter.

5. In accordance with the Sunshine Ordinance, a person who makes more than two complaints in one 12-month period that are determined by the Commission to be "unfounded" shall be prohibited from making a complaint for the next five years.

G. Remedies

[update once City Council finalizes Sunshine Ordinance revisions on remedies]

If a "cure and correct" recommendation is issued by the Commission, the City Clerk or Chief Assistant City Attorney shall include information in the next meeting's Staff Update section about whether the Respondent accepted or rejected the Commission's recommendation.

H. Documentation and Information Regarding Individual Complaints

1. The City Clerk shall keep a file of all documents and a log of all Complaints filed with the OGC, including the date of each Complaint, the department/policy body against which it was made, the nature of the complaint, and its status. This file shall be maintained in compliance with its records and retention schedule.

2. Copies of all correspondence relating to a complaint shall be sent to all parties.

Glossary / Terminology

Complaint Form:

NextRequest:

Complaint Hearing:

Complainant:

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→ 1. Within 10 days of issuance of the Order of Determination, either the complainant or respondent may petition the OGC for a reconsideration only if information exists that was not available at the time of the hearing.

→ 2. The OGC shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next OGC meeting.

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Respondent:

City Attorney's Office:

Chief Assistant City Attorney:

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Frequently Asked Questions

Where can I obtain a copy of the City of Alameda's Sunshine Ordinance?

You can get a copy of the Sunshine Ordinance from the Open Government Commission by calling (510) 747-4800 or from the City's website at *****.ci.alameda.ca.us.

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Can you give me some information about the Open Government Commission?

The Open Government Commission's duties include (a) hearing and deciding complaints by any person concerning alleged non-compliance with the Sunshine Ordinance; (b) advising City Council on appropriate ways to implement the Sunshine Ordinance; (c) developing goals to ensure practical and timely implementation of the Sunshine Ordinance; (d) reporting in writing to the City Council at least once annually on any practical or policy problems encountered in the administration of the Sunshine Ordinance; and (e) from time to time, as the Commission sees fit, issuing public reports evaluating compliance with the Sunshine Ordinance by the City or any Department, Office, or Official thereof.

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The Commission is scheduled to meet on the first Monday of the month at 7:00pm, as needed.

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What is the Sunshine Ordinance?

The Sunshine Ordinance is an ordinance to ensure easier access to public records and to strengthen the open meeting laws. It is an affirmation of good

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government; and a continued commitment to open and democratic procedures. The Sunshine Ordinance also ensures that the citizens of Alameda have timely access to information, opportunities to address the various legislative bodies prior to decisions being made, and easy and timely access to all public records.

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What are the open meeting requirements?

Agendas for meetings that are open to the public are posted on the City's website and posted at the Alameda Public Library 12 days prior to meetings of the City Council and 7 days prior to all other policy body meetings. All open meetings are subject to the requirement that the public is entitled to comment on each item.

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How do I make a public records request?

While not required, a written request is recommended in order to create a paper trail for the convenience and reference of the requestor. [Include new info about NextRequest!](#)

When does the City have to respond to my public records request?

The City has 10 days to respond to a public records request. If the Custodian of Records believes the record requested is exempt from disclosure, he/she will state in writing the express provisions of law that justify withholding the record. If the requested records are voluminous, in off-site storage or several different departments have the records, the time to respond to the request can be extended by the City responding in writing to the requestor within 3 business days that additional time is needed. Citizens may also make an "Immediate Disclosure Request". Departments must respond to Immediate Disclosure requests within 3 business days unless the requestor is advised in writing within 2 business days that additional time is needed because of the volume of records sought.

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I made a public records request and did not receive the records. What should I do?

You should first follow up with the department to ensure that the request was received. If the department still has not responded, you should contact the [City Clerk](#) at (510) 747-4800. [Include new info about NextRequest!](#)

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Can the City charge me for copies of documents?

No fee shall be charged for making public records available for inspection or for a single copy of a current meeting agenda. A fee may be charged for non-digital copies of requested documents at a rate of 10 cents per page. If requested records can be made available in electronic format, they will be provided as such at no cost. Electronic

documents will be delivered via e-mail or by posting on the City website. Additional fees may apply for postage or other services such as a request for certified copies.

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What documents are exempt from disclosure?

Under the California Public Records Act and the City of Alameda Sunshine Ordinance, some records are exempt from disclosure. Examples of records that do not have to be disclosed are:

- Personnel records
- Medical records
- Home telephone numbers and addresses
- Social Security numbers
- Documents subject to the attorney-client privilege
- Trade secrets
- Documents protected from disclosure by the State Constitutional Right to Privacy
- Certain law enforcement records
- Records protected from disclosure by state and federal laws

How do I file a complaint with the Open Government Commission?

You may fill out a Complaint Form and submit it to the Open Government Commission and the City Attorney by returning it to the City Clerk at 2263 Santa Clara Avenue, Suite 380, Alameda, CA 94501 (510) 747-4800; email. **A Complaint must be filed no more than fifteen (15) days after an alleged violation of the Sunshine Ordinance.**

Deleted: Once your complaint is received, the Open Government Commission verifies that the Open Government Commission has jurisdiction. The complainant is then notified if the Open Government Commission has jurisdiction, and if so, the complaint is scheduled for a hearing before the next meeting of the Commission.

Can I audiotape, videotape or take photographs at a public meeting?

Yes, provided that the meeting is not disrupted.

Can I get a copy of the audiotape or videotape of a board or commission meeting?

The audio and video recordings made at the direction of a policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250) and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. [add info about availability of video on Legistar]

Can I get a copy of the minutes for a board or commission meeting?

Yes. The draft minutes of each meeting will be made available for inspection and copying upon request no later than 10 working days after the meeting. The officially adopted minutes shall be available for inspection and copying no later than 10

working days after the meeting at which the minutes were adopted. [add info about availability of minutes on Legistar]

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