

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” or “Commission”) 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 may attempt to resolve the request or concern. Staff from the City

Attorney’s Office may also assist in this process. ▼

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 As noted below, complaints may be withdrawn any time prior to the Complaint Hearing.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.

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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¶
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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 _____. If a free-standing letter asserting a Sunshine Ordinance violation or concern is received, the City Clerk shall provide the Complainant with a Complaint Form for completion and submission, or with information on how to submit a complaint digitally via _____.

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's Office, as described below. City Staff will determine staffing, if any, for the representation of the City Department or policy body alleged to have violated the Sunshine Ordinance (the "Respondent" or "City").

3. Separately, the City Clerk shall also send the Complaint Form to the Attorney supporting the OGC ("Commission Attorney") to begin the process of preparing any appropriate instructional documents for the OGC. The City Clerk may also advise the Commission 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.

6. Complaints may be withdrawn any time prior to the Complaint Hearing.

C. Pre-Hearing Submissions and Analysis

Once a Complaint is filed, several additional steps may occur:

1. The City Clerk shall promptly provide the Complaint Form and any additional information submitted by Complainant to the City Attorney (counsel for Respondent) and to the Commission Attorney, no later than two (2) business days after receipt of the Complaint.

2. City/Respondent may submit a Position Statement to the City Clerk and the Commission Attorney. The Position Statement, if any, should be submitted within a reasonable time to allow it to be reviewed by the Complainant and Commission Attorney. Upon receiving the Position Statement from City/Respondent, the City Clerk will promptly provide the Position Statement to the Complainant for their review and consideration.

3. Complainant may, but is not expected or required to, provide additional arguments, evidence, or responses to the City's Position Statement at any time before or during the Complaint Hearing. Complainants are encouraged to provide any such additional arguments, evidence, or responses to the City Clerk at least thirteen (13) calendar days prior to the Complaint Hearing if Complainant wishes to have such information included in the initial agenda packet and considered in the Neutral Statement of the Case provided to the OGC (see below).

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Commented [KNL1]: As discussed, I'd like to reject this insertion of "Staff Report." I think it's very important that the City/Respondent's statement does not get titled as a "Staff Report" in order for these revised complaint procedures to be successful. Legitimate concerns have been raised about the optics and impact of the City's position being part of the "Staff Report."

Commented [EM2R1]: We are OK with taking out the reference to "Staff Report" here, with the understanding that the City Clerk's Office will generate the staff report for hearings, which will set out the exhibits.

Commented [KNL3R1]: Confirmed with City Clerk and language requiring City Clerk to prepare the Staff Report is already embedded in section D.

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Information submitted within 13 calendar days of the hearing may still be considered by Commissioners, but Complainants should try to provide information relevant to their Complaint as early as possible in the process.

The Commission Attorney responsible for supporting the OGC shall conduct a prehearing analysis of the materials submitted by both parties, and may further provide a public or confidential written "Neutral Statement of the Case" to the Commission, which may be supplemented from time to time. This document, if provided, is intended to be neutral supportive guidance for Commissioners in their analysis of the Complaint file and is not binding on Commissioners in any fashion.

D. The Complaint Hearing File

In accordance with the Sunshine Ordinance, the written agenda for all Open Government Commission meetings, including Complaint Hearings, must be posted seven (7) days before a regular meeting or twelve (12) days before a special meeting. Whenever a Complaint Hearing is on an Open Government Commission meeting agenda, all documents necessary for the adjudication of the Complaint will be included with the agenda and available to the public.

The agenda will contain a Staff Report prepared by the City Clerk setting forth the dates on which items were submitted and any other significant and undisputed dates relevant to the topic of the Complaint (e.g. date of a City Council meeting in which an alleged violation occurred). The Staff Report shall include a statement alerting the public that additional arguments, information, and evidence may be presented by both sides up to and during the Complaint Hearing. The Staff Report will attach the following exhibits (the "Hearing File") with a notation indicating the source of the materials, as set forth below:

- Complaint and Accompanying Evidence (Complainant)
- City's Position Statement and Accompanying Evidence (City) (if any)
- Complainant's Reply to Respondent's Position Statement (Complainant) (if any)
- Non-Confidential Neutral Statement of the Case for Commissioner Consideration (Commission Attorney) (if any)
- Public Correspondence (if any)

Any additional materials or correspondence submitted by either party or the public will be added to the Hearing File with the date of submission and source of material clearly identified.

All members of the OGC are responsible for being familiar with the complaint issues prior to the hearing.

E. Public Hearing Procedure

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Commented [EM5]: Consider ending the sentence after the word "process," as I think that the additional language suggests that the OGC won't thoroughly analyze or evaluate their claims if the information isn't submitted ahead of the 10-day window.

Commented [KNL6]: Adopted suggestion from E.M.

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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 may render an oral tentative decision on the matter at the conclusion of the hearing, and will render a formal written decision within thirty (30) business days of the conclusion of the hearing.

F. Commission Findings

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

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Commented [KNL8]: Per City Clerk's reminder, revised this language to align more closely with current Sunshine Ordinance language.

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▼ 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”)

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▼ 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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Separate from the decision on the Complaint, upon a majority vote, the OGC may also direct any OGC subcommittees 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.

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

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G. Remedies

The remedies available for a Sunshine Ordinance complaint are set forth in Sunshine Ordinance section 2-93.8:

1. “If the OGC 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.” Sunshine Ordinance Section 2-93.8(a).
2. “If the OGC 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." Sunshine Ordinance Section 2-93.8(b).

▼ If a "cure and correct" recommendation is issued by the Commission, Staff will provide an update in the next meeting's Staff Update section about whether the Commission's recommendation was accepted or rejected.

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H. Documentation and Information Regarding Individual Complaints

▼ 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.

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

Page 2: [1] Deleted **Krystal LoPilato** **9/23/21 2:13:00 PM**

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Page 2: [2] Deleted **Yibin Shen** **9/21/21 11:24:00 AM**

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Page 2: [3] Commented [KNL4] **Krystal LoPilato** **9/27/21 11:46:00 AM**

Per discussion with City Clerk, packet must go out 12 days before any special meetings, so we should make this timeline 13 days.