

From: ps4man@comcast.net
To: [Lara Weisiger](#)
Subject: [EXTERNAL] FW: Item 6-G on July 20 Regular Council Agenda-Amendments to Sunshine Ordinance Enforcement Provisions
Date: Monday, October 4, 2021 2:54:55 PM

Lara,

Below is the letter I sent to city council on July 17 which is now pertinent to tonight's OGC meeting. Please forward this to the OGC members and include in the correspondence file for Items 3-A and 3-C.

Paul

From: ps4man@comcast.net <ps4man@comcast.net>
Sent: Saturday, July 17, 2021 4:11 PM
To: Marilyn Ashcraft <mezzyashcraft@alamedaca.gov>; Malia Vella <mvella@alamedaca.gov>; John Knox White <jknoxwhite@alamedaca.gov>; Tony Daysog <tdaysog@alamedaca.gov>; 'tspencer@alamedaca.gov' <tspencer@alamedaca.gov>
Cc: 'Eric Levitt' <elevitt@alamedaca.gov>; 'yshen@alamedacityattorney.org' <yshen@alamedacityattorney.org>; 'Lara Weisiger' <lweisiger@alamedaca.gov>
Subject: Item 6-G on July 20 Regular Council Agenda-Amendments to Sunshine Ordinance Enforcement Provisions

Dear Mayor Ashcraft, Vice-Mayor Vella & Council Members Knox-White, Herrera Spencer and Daysog:

The City Attorney's June 1 statement that an OGC enforcement proceeding is a quasi-judicial process renders all three of the enforcement alternatives presented as inappropriate and unlawful. I believe a fresh look at the issue from this new quasi-judicial perspective is required. The basis for this conclusion follows.

Late in 2018 the City Attorney determined that a OGC "null and void" order was a usurpation of the legislative authority of Council, thus rendering it advisory only. On Feb. 4, 2020, Council amended Section 2-93.8 of the ordinance to provide that in response to complaints, the OGC "may recommend to the originating body steps necessary to cure or correct the violation."

At the same Feb. 4, 2020, meeting, Council directed the OGC and the City Attorney to collaborate in drafting additional language in section 2-93.8 to give the OGC recommendations some "teeth". In the course of that process a good faith proposal was made by Council Member Knox-White and refined by OGC Commissioner LoPilato which the OGC approved on May 3, 2021, and is now submitted to Council.

On June 1, 2021, when the City Attorney adopted a view that I had urged since 2018, that the enforcement function of the OGC is quasi-judicial, not legislative, it entirely changed the legal topography, so to speak.

Council can choose to accept or reject advice from City agencies recommending policies. However, a quasi-judicial decision is not a policy decision. It is an application of City law as expressed in our Municipal Code to a particular fact situation. Thus, it is a legal determination that Council cannot accept or reject by a simple majority vote. The City is required to implement the decision or amend Sec. 2-93.8 to provide an appeal to Council, that requires a de novo hearing that performs the same legal analysis required of the OGC. The city already has ordinances to guide this process in the quasi-judicial functions of other named city agencies. AMC Sec. 30-25 et. sec. That section also needs to be amended to add the OGC to the list of city agencies to whom it applies. I suggest that in the case of an OGC appeal no fee should be required from any party.

This still leaves the thorny issue of the status of any City action while the Complaint against it is pending. I believe that the language contained in the Exhibit 2-REVISED Newly Installed Commission's Proposal adequately deals with the issue. The suggestion of the City Attorney that the ordinance should simply "encourage" maintaining the status quo puts the OGC right back in the toothless position it has been in since late in 2018 and wastes the good efforts of Council Member Knox-White and Commissioner LoPilato.

I suggest that the issue be referred back to the OGC and the City Attorney for the development of alternatives that are consistent with the quasi-judicial nature of the complaint process.

Sincerely,

Paul Foreman