

October 4, 2021

ATTN: Open Government Commission of the City of Alameda, California

RE: Items 3B and 3C - Agenda of the October 4, 2021 meeting of the Open Government Commission

Dear Members of the Open Government Commission,

After reviewing the proposed changes to the OGC Bylaws and Complaint Procedure, and having had many years of leadership experience in organizations that adhered strongly to the practices mandated by Robert's Rules of order which are nearly identical to those of Rosenberg's Rules which are the rules official adopted for governance by the City of Alameda, it is my considered opinion that since the mandates of the State's Brown Act and Alameda's Sunshine Ordinance are to optimize transparency related to the operations of our government, and since oversight of this function has been assigned to the Open Government Commission, I believe that the Commission's governing documents and procedures should be crafted in such a manner as to optimize the effectiveness of the Commission which depends in large part on the participation of the Citizens of Alameda.

To this end, I am suggesting changes to the documents currently under consideration for revision which, in my opinion, will better facilitate optimal participation of the Public in carrying out the mandates of the Brown Act and Sunshine Ordinance.

Some of the changes I am offering are fairly minor. But others incorporate enhancements that I believe deserve careful and thoughtful consideration by the members of the OGC and members of the Public. I am, therefore, suggesting that deliberation and decisions related to Items 3B as related to the OGC Bylaws, and Item 3C as related to the Complaint Procedure, be tabled until a future meeting of the OGC so as to allow sufficient time for a careful review of these suggested modifications to the revisions of these documents currently under consideration by this body and members of the public

Thank you for considering the attached modifications I am submitting and for my proposal to defer deliberation and action for the purpose of allowing time for their proper evaluation.

Jay Garfinkle

**CITY OF ALAMEDA
OPEN GOVERNMENT COMMISSION
BYLAWS**

I. GENERAL PROVISIONS

A. These Bylaws shall be known as "Bylaws of the Open Government Commission, City of Alameda." A copy of these Bylaws and amendments thereto shall be filed in the Office of the City Clerk for examination by the public.

B. These Bylaws, and any revisions or amendments thereto, shall be effective on the date of the adoption hereof and shall govern the conduct of the Open Government Commission (OGC).

C. These Bylaws may be amended hereafter by a **SUPER** majority vote of the OGC except for the rules of membership (Section III) and purpose of the commission (Section II), which require City Council action.

II. PURPOSE OF THE COMMISSION

The purpose, scope, duties and authority of the OGC was approved by the City Council at the Council meeting on November 1, 2011. Generally, the commission shall enforce the Sunshine Ordinance. The OGC shall advise the City Council on appropriate ways in which to implement the Sunshine Ordinance; develop goals to ensure practical and timely implementation of the Sunshine Ordinance; propose to the City Council amendments to the Sunshine Ordinance; report in writing to the City Council at least once annually on any practical or policy problems encountered in the administration of the Sunshine Ordinance; from time to time as it sees fit, issue public reports evaluating compliance with the Sunshine Ordinance by the City or any Department, Office, or Official thereof. In addition, the Commission shall review public notices to ensure conformance with the Sunshine Ordinance and work to improve publicly accessible information and databases to ensure consistency, equity, timing, and extent of noticing for meetings and other matters of public interest; periodically review the Public Records Index; and publish an annual report on the City's website.

III. MEMBERSHIP

A. Appointment and Term of Office. The Commission shall consist of five (5) members, full-time City residents. Each member of the City Council will appoint an Alameda resident to serve on the Commission for a term that is concurrent and linked with the service of the appointing City Councilmember, but in no event shall exceed four years. Should the appointing City Councilmember term out of office, resign, be removed or otherwise retire from office, the appointment of his or her appointee on the Open Government Commission shall also end. All

members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government.

B. Maintenance of Membership. Persons appointed members shall continue to serve except for:

- a. Expiration of their term and appointment of their successor.
- b. Voluntary resignation.
- c. Failure to attend 75% of meetings held during any 12 month period, whether excused or not excused.
- d. Members who are no longer residents of the City.

In accordance with the above, Chair is authorized to communicate with individual members whose absences exceed the 75% standard to seek their resignation if they cannot attend the prescribed number of meetings and, if unsuccessful, to remind them that one subsequent missed meeting will mean an automatic dismissal from the Commission.

IV. OFFICERS

A. The officers of the Commission shall be:

Chair: who shall preside at all meetings of the Commission, call special meetings, appoint committees, and perform other proper duties of a presiding officer. Except as otherwise authorized by the Commission, the Chair shall sign all correspondence, reports and other instruments approved by the Commission and perform other activities as directed by a majority of the Commission.

Vice Chair: who shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or other permanent absence of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Commission shall select a new chair.

Secretary: who shall keep a written record of all business transacted by the Commission, notify members of meetings, maintain the official records of the Commission, and perform such other duties as the Commission may direct.

(The Secretary/City Clerk should not be listed as an "officer" of the Commission. There's no need for her/him to be an "Officer", and such designation could, although unlikely, potentially result in unintended consequences and confusion sometime in the future.)

B. Chair and Vice Chair. The Chair and Vice Chair shall be elected by the

Commission from its membership at the first meeting after January 1 of each year when the Commission is fully constituted. The Chair and Vice Chair shall typically only serve in each role for a period of 1 year, but there is no prohibition on re-election. Commissioners are encouraged to consider factors like length of service on the Commission, organizational skills, interest in a leadership role,

subject matter familiarity, ethics and leadership skills, and other relevant qualifications when selecting the Chair and Vice Chair. The Chair and Vice Chair shall familiarize themselves with Rosenberg's Rules of Order and these Bylaws prior to chairing any meetings in order to ensure an efficient meeting flow.

C. Secretary. The Secretary of the Commission shall: (a) supply the Commissioners with such information and make such recommendation as deemed necessary to carry out the purposes of the Commission and to properly administer its affairs; and (b) keep the records of the Commission. The City Clerk, or designee, shall serve as the Secretary to the Commission.

D. Additional Duties. The officers of the Commission shall perform such other duties and functions as may from time to time be required by the Commission.

V. MEETINGS

A. Regular Meetings.

The Commission shall meet semi-annually, or as needed based on receipt of an alleged complaint at 7:00 p.m. on the first Monday of the month. When the meeting falls on a holiday, the Secretary may schedule an alternate date consistent with procedures for Special Meetings or defer to the subsequent meeting date. In compliance with the Sunshine Ordinance and the Brown Act, all meetings shall be open and public. An agenda will be prepared and posted seven (7) days before a meeting.

(Meetings should be scheduled monthly if only to permit timely evaluation of the PRA requests and responses. It would be inappropriate and suboptimal to restrict PRA evaluations to a bi-annual schedule simply because there have been no complaints submitted for the Commission's adjudication.)

B. Special Meetings.

Special meetings may be called at any time by the Chair or by a majority of the Commissioners, by delivering personally or by mail written notice to each Commissioner and the local media who have requested written notice of special meetings in writing. The Secretary shall poll Commissioners and attempt to arrange a date and time convenient to all Commissioners. If all Commissioners agree to date and time of a special meeting, the public will be given a minimum of seven (7) days before the time of such meeting as specified in the notice, consistent with the Sunshine Ordinance and Brown Act.

If special meetings are called, members of the public whose names are on the OGC notification email list shall receive appropriate email notification as soon as the time and date of the special meeting have been established.

C. Meeting Location.

Meetings shall be held in the City Hall Council Chambers or other appropriate location (including virtual meetings when authorized, e.g. on Zoom). When the City Hall Council Chambers are unavailable and in exceptional circumstances, the Commission may change this meeting location by notice on its agenda.

(May not want to tie the OGC to ZOOM even as an e.g..)

D. Adjournment.

(1) No new items will begin after 10:30 p.m. unless a supermajority of the Commission votes to allow the items to be heard. Announcements and communications may continue to be heard after 10:30 p.m. whether or not a supermajority of the Commission has voted to extend the meeting.

(2) A motion is required by ?PM to continue a meeting past 11:00 p.m. If the Commissioners extend three meetings in a row past 11:00 p.m., the Commissioners shall also be required, as a part of the motion to extend the meeting, to increase the number of regular meetings of the Commission to accomplish the business before the Commission before 11:00 p.m.

(The public should be made aware that the meeting will go past 11PM as soon as practical. So, the vote should be taken as early as practical.)

(3) If two or more meetings are adjourned prior to the Staff Update, Commissioner Agenda Requests, or Commissioner Communications items being heard, the Commission is encouraged to review potential revisions to these Bylaws to adjust the Order of Business on Commission agendas.

(Perhaps, if this becomes an issue, Commissioners should be admonished if/when they ramble on or prospectively at the start of each meeting. It may also be advisable to shorten time limits for each Commissioner on some or all topics.)

E. Communications and Work Between Meetings

Commissioners must follow the requirements of the Brown Act and Sunshine Ordinance when discussing or deliberating upon any item within the purview of the Commission. However, Commissioners are encouraged to individually raise any questions to Staff that may be appropriate for resolution by Staff before meetings.

(Best to specify what might constitute a violation of the Brown Act in this context.)

From time to time, the Commission may also establish subcommittees or appoint an individual Commissioner to move forward with Commission business between meetings. For example, the Commission may opt to form a Subcommittee to Prepare the Commission's Annual Report on Practical and Policy Problems Encountered In Administration of the Sunshine Ordinance to ensure that work on the report is carried forward between meetings.

(Although the Brown Act would permit closed door meetings when limited to one or two Commissioners, it might enhance openness if a member(s) of the public were to be invited/permitted to participate in the work of the subcommittee.)

To the extent that matters directly pertinent to the Commission arise before other policy bodies (e.g. City Council), Staff ~~is encouraged to~~ **shall** advise the Commission of such matters, even if such communication would happen between meetings. Commissioners must remain mindful of Brown Act and Sunshine Ordinance requirements before engaging in any discussion of such matters between meetings.

(Would Commissioners be permitted/encouraged to identify themselves as Commissioners of the OGC, specifying that they are not speaking for the Commission? Or would it be preferable for a Commissioner who chooses to address another body such as the City Council or Planning Board, for example, to simply speak as a member of the public without drawing attention to his/her participation on the OGC?)

VI. AGENDA

A. Order of Business:

1. Roll Call
2. Non-Agenda Public Comment (first 15 minutes)
3. Complaint Hearings
4. Review and analysis of PRA requests,
5. Regular Agenda Items
6. Staff Update
7. Commissioner Agenda Requests
8. Commissioner Communications
9. Non-Agenda Public Comment
10. Adjournment

B. Summary of Agenda Sections

1. Roll Call.

This section of the agenda allows the Chair and Secretary to identify present and absent Commissioners and confirm a quorum.

City Staff including Non-Commission Staff and other participants present in an official capacity shall be identified by name and title.

2. Regular Agenda Items.

This section of the agenda shall include standard Commission business. Typically, this section will commence with review of the minutes of the prior meeting to allow Commissioners an opportunity to request technical corrections to the draft prepared by the City Clerk's office to ensure an accurate record. A preliminary review and possible editing of the minutes will have been conducted by the Chair of the OGC in consultation with the City Clerk prior to presentation to the OGC.

3. Non-Agenda Public Comment.

The Open Government Commission is committed to serving the community and furthering the Sunshine Ordinance's goals of ensuring the public "has 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." (Alameda Municipal Code § 2- 90.1.) Subject to specified time limits, members of the public are therefore invited to speak during Non-Agenda Public Comment to share with the Commission any information or concerns they may have about the City's implementation of the Sunshine Ordinance and the performance of the OGC. Time will be allowed to permit response from the Chair and/or other members of the OGC to the public comments as may be appropriate. Discussion among the members of the OGC with the invited participation of the commenting member of the public will be encouraged as may be appropriate to optimize the understanding and significance of the comments and concerns for the purpose of further optimizing the performance of the OGC. Public comment received by the Commission and related discussion during this agenda section may inform the Commission's reporting to City Council on practical and policy problems encountered in the implementation of the Sunshine Ordinance.

4. Complaint Hearings.

This section of the agenda shall include hearings on any Sunshine Ordinance complaints filed pursuant to Alameda Municipal Code section 2-93.2. The procedures for complaint hearings can be found at

[\[REDACTED\]](#) .

5. Public Records Act Analysis.

This section shall include review and analysis of written reports of current PRA requests and their status and of cumulative relevant data compiled as of January 1, 2019. The cumulative report shall include, but not be limited to the date of filing, the date(s) that the requested information has been provided to the person(s) requesting it, the number and nature of any redactions. The latter shall include the names of the individuals involved in the redacted item and the subject of the redacted item. The OGC is encouraged to evaluate the appropriateness of the redaction. A notation of the OGC's opinion regarding the appropriateness of the redaction shall be noted in the continuing compilation and shall be reported in the minutes of the current meeting.

6. Staff Update.

This section of the agenda shall include any updates from the City employees staffing the Commission on items that directly pertain to the Open Government Commission which do not require a decision or action by the Commission. When Staff is aware of matters pertinent to the Commission being raised before other policy bodies (e.g. City Council), Staff **shall include such relevant information in this section of the published meeting agenda and be prepared to discuss it if requested by the OGC** ~~encouraged to provide notice to the Commission~~ during the Staff Update section, with the exception of time-sensitive matters that may require a between-meeting communication.

(How are these between-meeting communications to be handled, including notification of the Public? It seems that it would be appropriate to include some detail related to this process.)

7. Commissioner Agenda Requests.

This section of the agenda shall include requests by Commissioners to place a new topic or item on a future meeting agenda. If the item is time sensitive and sufficiently noticed (see below), Commissioners may take dispositive action on items in this section.

(How is this to be determined – majority vote?, decision of the Chair?, with “permission” of Staff as related to the timing.)

8. Commissioner Communications.

This section of the agenda shall typically include updates from Commissioners about events or issues in the community pertinent to the Commission’s work. Commissioners must avoid discussion or deliberation on non-agendized items in this section **though a deliberation and decision to add it to a subsequent agenda may be taken.**

9. Non-Agenda Public Comment

This section of the agenda shall include any overflow non-agenda public comment not heard at the beginning of the meeting.

10. Adjournment.

This section of the agenda allows the Chair to close the meeting **with the consent of the majority of the members present.**

- C. Placement of items on meeting agenda.** City Staff or City Council may place an item on the meeting agenda by working directly with the Secretary **in consultation with the Chair of the OGC.** Additionally, during the

“Commissioner Agenda Requests” section of the meeting, any Commissioner may request that the full Commission take a vote to place an item on a future agenda for deliberation and action. Requests that receive a simple majority vote shall be placed on the subsequent meeting agenda (or other future meeting, as specified in the prevailing motion).

For time-sensitive matters which may require dispositive action upon first introduction, Commissioner Agenda Requests must be received, in writing, by the Secretary at least ten (10) working days, **which shall include Fridays**, prior to the scheduled meeting date. Legal holidays and weekends will not be considered regular working days. In these time-sensitive instances, the

Agenda shall include all substantive materials necessary for action to be taken, and shall clearly indicate for the public that action may be taken on that specific item in the Commissioner Agenda Requests section.

At the first Commission meeting of each calendar year, the Commission may opt to set a schedule for upcoming agenda items to ensure the statutorily-outlined duties of the Commission are fulfilled in a timely manner.

(It would be appropriate to list such “*statutorily-outlined*” duties here so there will be no uncertainty or confusion as to what specifically is required.)

- D. Public Comment.** Public comment shall not be used to elicit a debate though discussion for the purpose of clarification may be undertaken as detailed in paragraph VI.B.3. above, and speakers shall avoid personal attacks of members of the Commission, City Council, other policy bodies, staff or the public.

(If it is believed by a knowledgeable member(s) of the public that a member(s) of the Council or other formal body have made, and/or repeatedly make, knowingly false statements during a public meeting(s), would such alleged behavior fall under the purview of the OGC, and would comments related to this be permitted during the Public Comment section of the Agenda?)

VII. MINUTES

A. General Policy Statement on Minutes of Meeting.

The Secretary of the Commission shall record the minutes for each regular and special meeting of the Commission. The minutes shall state the:

- Time the meeting was called to order;
- Names of the Commissioners attending the meeting;
- Names and positions of Staff attending the meeting;
- Roll call vote on each matter considered at the meeting;
- Time the Commission began and ended any closed session;
- Names of the Commissioners and the names and titles, where applicable, of any other persons attending any closed session;
- List of those members of the public who spoke on each matter if the speakers identified themselves, and whether such speakers supported or opposed the matter;
- Brief summary of each person's statement during the public comment period for each agenda item;
- Time the meeting was adjourned.

Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes.

Draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting.

B. Method of Documentation.

In general, the minutes will be summary only, and not verbatim recordation of all discussions. However, any Commissioner may request through the presiding officer, the privilege of having a written abstract of said Commissioner's statement on any subject under consideration by the Commission entered in the minutes. If the Commission consents thereto, such statement shall be entered in the minutes.

VIII. RULES OF ORDER AND GOVERNING PROCEDURES

A. Regular Agenda Items (Non-Adjudicatory Matters)

1. Rosenberg's Rules of Order

For regular agenda items coming before the Commission (non- adjudicatory matters), the Commission adopts [Rosenberg's Rules of Order](#), with the following exceptions and additions included below.

A copy of Rosenberg's Rules of Order shall be provided to all incoming Commissioners upon appointment and any member of the public upon request to the Commission or City Clerk.

The Commission's use of Rosenberg's Rules of Order may be suspended for a specific purpose upon a supermajority vote of the Commission. When rules are suspended, the vote to do so should clearly state the purpose for suspending the rules and the scope of items to which the suspension applies.

2. Time Limits and Related Procedural Matters

a. Commissioner Deliberations and Communications

Each Commissioner may ask questions and deliberate for up to nine (9) minutes per regular agenda item. Each Commissioner may ask questions and deliberate for up to five (5) minutes on Commissioner Agenda Requests, and may make statements for up to five (5) minutes during Commissioner Communications. Procedural discussions and clarifications are not timed. These time limits may be waived by a majority vote of the Commission, except in the context of Sunshine Ordinance Complaint Hearings.

b. Opening Presentation by Individual or Organization Sponsoring a Regular Agenda Item

All opening presentations by the sponsor of a regular agenda item shall be limited to ten (10) minutes or less. This time limitation applies regardless of whether the agenda item sponsor is Staff, a Commissioner, a subcommittee of Commissioners, or other individual or organization. The ten (10) minute time limitation may be waived, at any time before or during the presentation, by a majority vote of the Commission

(which may include the item-sponsoring Commissioner, where applicable).

c. Presentations by Commissioners for Commissioner Agenda Requests

Commissioner presentations accompanying an Agenda Request shall be limited to five (5) minutes or less. The five (5) minute time limitation may be waived, at any time before or during the presentation, by a majority vote of the Commission (which may include the presenting Commissioner).

d. Public Comment on Non-Agenda and Agenda Matters

Anyone wishing to speak on matters not on the agenda may do so under Non-Agenda Public Comment. The meeting agenda shall provide up to fifteen (15) minutes for this use at the beginning of the meeting. Any speakers not called during the initial fifteen (15) minutes will be called under the later scheduled non-agenda public comment.

Anyone wishing to speak on agendized items may do so during the public comment period at the time the agenda item is called.

All speakers, under the Non-Agenda Public Comment section or those speaking on a specific agenda item, shall limit public comments to three (3) minutes or less. Speakers may comment only once on the same topic **except to respond to or clarify what he/she believes is a misunderstanding or misinterpretation of a statement(s) made during his/her initial comments. An additional one minute will be allowed for such clarifying comment(s). No A** speaker may cede time to **another** speaker. Written correspondence may also be submitted to the Secretary (City Clerk) in lieu of, or in addition to, oral public comment.

(If a comment(s) is provided as a written submission, might the OGC want it read aloud during the appropriate part of the agenda if the person submitting the written comment chooses not to speak in person? This would make it more available to the listening public audience.)

e. Trainings And Workshops

Trainings and workshops addressing one topic – e.g. Sunshine Ordinance Trainings – shall not be subject to the time limits described herein.

3. Additional Definitions and Clarifications

The following additional definitions and rules shall clarify and govern the proceedings and order of business of the Commission:

A. Motions. The acts of the Commission shall be expressed by motion. To the extent possible, the Chair shall invite

B. Conflict of Interest and Recusals. In situations where there is a conflict of interest and a member of the Commission is required to abstain from voting on the item and participating in the decision-making process, the following procedures shall be followed:

- C. Statement of Position.** When a motion to call for question or table is adopted, each Commissioner may briefly state his/her position on the matter before roll call. ~~or call for the next item of business.~~

E. Division of Question. If the question contains two (2) or more divisible propositions, the presiding officer may, and upon request of a Commissioner shall, divide the same. A motion to divide isn't debatable, requires a second and a majority vote.

(Are there examples of such matters?)

The Complaint Procedures set forth at [REDACTED], are hereby incorporated by reference into these Bylaws and shall govern the procedure for Commission hearings on Sunshine Ordinance Complaints. A copy of the

Complaint Procedures shall be provided to all incoming Commissioners upon appointment and any member of the public upon request to the Commission or City Clerk.

IX ATTENDANCE

It shall be the responsibility of each Commissioner to notify the Secretary, who shall thereupon notify the Chair, of an inability to attend a scheduled Commission meeting.

X. PREEMPTION

The applicable City of Alameda's policies, resolutions and ordinances and state and federal laws shall prevail where a conflict exists between any of them and these Bylaws.

XI. ADDITIONAL RESOURCES

- Sunshine Ordinance
- Alameda Municipal Code Section regarding Open Government Commission Duties
- Rosenberg's Rules of Order
- Sunshine Ordinance Public Complaint Procedure (*once revisions are finalized*)
- Written Training Materials
 - Boards and Commissions Handbook
 - Code of Conduct
 - _____
 - _____
 - _____