

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING SECTION 2-22 (OPEN GOVERNMENT COMMISSION) AND ARTICLE VIII (SUNSHINE ORDINANCE) OF CHAPTER II (ADMINISTRATION) TO ESTABLISH A HEARING OFFICER FORM OF ADJUDICATION OF SUNSHINE ORDINANCE COMPLAINTS, CLARIFY ENFORCEMENT PROVISIONS, AND REVISE THE DUTIES OF THE OPEN GOVERNMENT COMMISSION

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES ORDAIN AS FOLLOWS:

Section 1: Section 2-22.1 (Commission Created; Purpose) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.1 - Commission Created; Purpose.

There is hereby created a Commission which shall be known as the Open Government Commission, whose purpose shall be to advise the City Council on administration of the Sunshine Ordinance, ~~and hear and decide complaints of violations of the Sunshine Ordinance.~~

Section 2: Section 2-22.4 (Duties of Commission) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.4 – Duties of Commission.

It shall be the duty of the Open Government Commission to:

- a. Provide assistance to the Council or the City on matters or tasks specifically assigned to the Commission by the Council, consistent with the Commission's purpose~~Hear and decide complaints by any person concerning alleged non-compliance with the Sunshine Ordinance;~~
- b. Advise City Council on appropriate ways to implement the Sunshine Ordinance;
- c. Develop goals to ensure practical and timely implementation of the Sunshine Ordinance;
- ~~d. 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;~~
- e-d. _____ From time to time as the Commission sees fit, issue public reports evaluating compliance with the Sunshine Ordinance by the City or any Department, Office, or Official thereof.

- ~~f. Consider ways to informally resolve those complaints and make recommendations to the Council regarding such complaints;~~
- ~~g. The Commission shall approve by laws specifying a general schedule for meetings, requirements for attendance by its members, and procedures and criteria for removing members for non-attendance as well as all enforcement petition and complaint procedures. The schedule shall provide for monthly meetings. A meeting shall be canceled if there is no matter pending.~~
- ~~fe. The commission will meet at least semi-annually or as needed based on the receipt of an alleged complaint of violation of this ordinance.~~ Members of the Commission shall serve without compensation.

Section 3: Section 2-22.5 (Composition of Commission; Special Terms, Qualifications, and Conditions) of Article II (Boards and Commissions) of Chapter II (Administration) of the Alameda Municipal Code is amended, as follows (in redline; otherwise no change):

2-22.5 – Composition of Commission; Special Terms, Qualifications, and Conditions.

- d. The Commission shall be assisted, advised and generally staffed at ~~all~~ meetings and functions by a licensed attorney from or designated by the City Attorney's Office, when legal services are necessary, and by a representative of the City Clerk's office.

Section 4: Section 2-91.14 (Video and Audio Recording, Filming, and Still Photography) of Section 2-91 (Public Access to Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended as follows (in redline, otherwise, no change)

2-91.14 Video and Audio Recording, Filming, and Still Photography

- c. Every city policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room, except to the extent that such facilities may not be available for technical or other reasons. Such meetings held outside City Hall may not be available for livestreaming. All recordings will be archived indefinitely in digital form at a centralized location on the City's website within seventy-two (72) hours of such meeting or hearing. Each recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code, Section ~~7920.0006250~~ et seq.), and shall not be erased or destroyed. Inspection of any such recording shall also be provided without charge on an appropriate playback device made available by the City. This subsection c shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 2-91.8 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection b above.

Section 5. Section 2-92.1 (Release of Documentary Public Information) of Section 2-92 (Public Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline form; otherwise no change.)

2-92.1 – Release of Documentary Public Information

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section ~~7922.570 through 7922.585~~ 6253-9 are incorporated herein by reference.

Section 6. Section 2-92.8 (Non-Exempt Public Information) of Section 2-92 (Public Access to Information) of Article VIII (Sunshine Ordinance) of the Alameda Municipal Code is amended, as follows (in redline form; otherwise no change).

Section 2-92.8 Non-Exempt Public Information

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other laws, the following shall govern specific types of requests for documents and information:

a. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section ~~7927.500~~6254 ~~(a)~~ if said completed preliminary draft or memoranda has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

c. Personnel Information: None of the following shall be exempt from disclosure under Government Code Section ~~7927.700~~6254 ~~(e)~~.

(Subsections 1 through 4, no change.)

Section 7: Section 2-93.1 (Primary Regulatory and Enforcement Body) 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):

2-93.1 – ~~Primary Regulatory and Enforcement Body~~[RESERVED.]

~~The primary regulatory and enforcement body of the Sunshine Ordinance shall be the Open Government Commission formed pursuant to Section 2-22 (Open Government Commission) of Article II (Boards and Commissions).~~

Section 8: 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 file a complaint ~~against~~ concerning any violation of the Sunshine Ordinance no more than fifteen (15) days after the ~~alleged~~ violation. Such complaint shall be heard by the Commission a Hearing Officer consistent with Section 1-8 of 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 Hearing Officer 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.
- c. ~~The Commission Hearing Officer~~ shall provide the parties with the opportunity to file written materials (e.g., briefs), present evidence and make arguments. The ~~Hearing Officer Commission~~ shall issue a written decision ~~concerning affirming or rejecting~~ the complaint and ~~include making~~ a finding ~~on~~ whether the complaint was unfounded. A complaint shall be determined to be unfounded if it was brought without any reasonable basis. The decision shall be issued as soon as practicable, and no later than 30 business days after the conclusion of the hearing. All Hearing Officer decisions shall be posted on the City's website and promptly forwarded to the Commission and the City Council. Within ~~the Commission portion of~~ the City's website, the City shall provide a listing of ~~Hearing Officer Commission~~ decisions on complaints brought pursuant to this section. For decisions in which the ~~Hearing Officer Commission~~ issues a "cure or correct" recommendation pursuant to subsection 2-93.8 of this section, the relevant policy body's action in response to that recommendation shall be listed as well.
- d. The Commission may consider Hearing Officer decisions in support of its duty to provide advice to the City Council on the administration of the Sunshine Ordinance. 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 formal 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 9: Section 2-93.6 (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):

2-93.6 - Annual Public Report.

The Commission shall prepare an annual report to be placed on the City's website and made generally publicly available in printed form of alleged violations of the Ordinance ~~brought to its attention heard by the Hearing Officer~~ during the previous calendar year. The report shall identify the nature of the alleged violation, the relief sought by each petition, the disposition or current status thereof, ~~and~~ the location of all records relevant to each petition, ~~and any practical or policy problems encountered in the administration of the Sunshine Ordinance. With advance notice to City Clerk's Office, the Commission may also request a tally of records requests for statistical or comparative purposes.~~

Section 10: 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~~ Hearing Officer finds a violation of Section 2-91 (Public Access to Meetings), the ~~Commission~~ Hearing Officer may recommend to the originating body steps necessary to cure or correct the violation. The originating body shall consider the Hearing Officer's ~~Commission's~~ recommendation and, as soon as practicable, render a final decision on whether to accept or reject the Hearing Officer's ~~Commission's~~ decision, 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 recommendations, to the extent doing so would not be prejudicial to the City.
- b. If the ~~Commission~~ Hearing Officer finds a violation of Section 2-92 (Public Information), the ~~Commission~~ Hearing Officer may recommend to the City steps necessary to cure or correct the violation. The City Clerk, City Manager and/or the City Attorney, as appropriate, shall promptly consider the Hearing Officer's ~~Commission's~~ recommendations and inform the Council of their final decision. ~~The final decision is not subject to further administrative appeal except for judicial review.~~
- c. A person who makes more than two (2) complaints in one (1) twelve (12) month period that are determined by the ~~Commission~~ Hearing Officer to be unfounded shall be prohibited from making a complaint for the next five (5) years.

Section 11: 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 12: 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 13: 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 14: 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 ____ 2024, 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 ____ 2024.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda