

MINUTES OF THE OPEN GOVERNMENT COMMISSION MEETING
TUESDAY - - - JULY 11, 2023 - - - 7:00 P.M.

Chair Chen convened the meeting at 7:00 p.m.

ROLL CALL - Present: Commissioners Miley, Miyao, Sullivan, Tilos and Chair Chen – 5.

Absent: None.

[Staff present: Chief Assistant City Attorney Elizabeth Mackenzie;
City Clerk Lara Weisiger; Chief Planning Counsel Celena Chen]

NON-AGENDA PUBLIC COMMENT

None.

COMPLAINT HEARINGS

3-A. Hearing on Sunshine Ordinance Complaint Filed on May 12, 2023

Chair Chen outlined the hearing process.

Chris Lloyd, Complainant, gave an Opening Statement and Presentation of Facts.

Chief Planning Counsel, City/Respondent, gave an Opening Statement and Presentation of Facts.

Mr. Lloyd gave a Reply to the City/Respondent Opening Statement and Presentation of Facts.

The Commissioners asked questions and responses were provided by the Chief Planning Counsel and the Complainant.

Mr. Lloyd gave a Closing Statement.

Chief Planning Counsel gave a Closing Statement.

Expressed concern regarding the way the City Attorney's office presented and how votes are dealt with; stated in her opinion, Councilmember Jensen was treated poorly and felt pressured to go with the flow; it is emotional and heartbreaking to see how the City Council is operating; to say it is political is an understatement; she lives here and her group pays more taxes than other residents because of Mello Roos; Council should come back and have a clear vote: Kelly Kistner, Alameda.

Stated her concerns about the confusion during the meetings, including tonight's OGC

meeting regarding exactly what the rules are; it does not feel impartial or like open governance and feels wrong; urged the Commission to review the secret connection between the City and Pulte: Abby Caldwell, Alameda.

Stated that she asked the City Attorney how many votes it would take to pass a motion for reconsideration at the May 2, 2023 meeting and his answer was four; based on that, the item would unlikely be in the same place because the substantive motion was a 3 to 2 vote: Trish Herrera Spencer, Alameda.

The Commission discussed and debated potential decisions and findings.

Vice Chair Miley moved approval of denying the complaint based on the following findings: A) the City Council's final passage of the ordinance complied with the Sunshine ordinance, and B) Councilmember Jensen's motion for final passage of the ordinance was approved by the City Council.

Chair Chen seconded the motion.

Under discussion, the Commission further discussed other potential decisions and findings, with Commissioners Sullivan and Tilos expressing support for sustaining the complaint with cure and correct and Commissioner Miyao expressing concern about the findings in the motion.

Vice Chair Miley amended his motion to deny the complaint based on the finding that strictly based on compliance with the Sunshine Ordinance, the action taken by the Council that evening, final passage of the Ordinance, complied with Sunshine Ordinance noticing requirements.

Vice Chair Miley stated that he would find it hard to vote to sustain the complaint because he does not find grounds within the Sunshine Ordinance.

Commissioner Miyao stated that he struggles between equity and a strict reading of Sunshine Ordinance Section 2-91.5; in many ways, he wants to find a way to rule in favor of the Complainants, but struggles to find the path for that with the strict reading of the ordinance; he feels squarely in the middle between Commissioner Tilos and Commissioner Miley and is unprepared to vote.

The Commission discussed what occurs if a complaint is sustained with cure and correct and the role of the Commission and debated whether or not the complaint could be sustained.

Commissioner Miyao stated the confusion bar is too low; he does not think the Sunshine Ordinance is intended to ensure no confusion; the goal of the Sunshine Ordinance is to ensure access and opportunity to participate; if the Commission were to rule in favor of any complainant who represented confusion, it would result in many, many sustained complaints; he does not see where in the ordinance confusion is a violation; if the

Commission cannot rule on procedures, he wonders if the option here is jurisdictional that it is not within the Commission's purview.

Commissioner Tilos concurred and made brief comments regarding procedural grounds.

Chair Chen stated there is agreement that something happened at the City Council meeting; the Commission could decide not rule on the Complaint because it has no jurisdiction.

Vice Chair Miley stated that he would be willing to withdraw his motion.

Chair Chen inquired whether anyone wants to make a substitute motion.

In response to Commissioner Miyao's comments and inquiry, Vice Chair Miley repeated the motion.

Commissioner Miyao stated that he would like to make a friendly amendment to narrow the motion to deny the complaint only with the finding that there was not a violation of Section 2-91.5.

Vice Chair Miley and Chair Chen accepted the friendly amendment to the motion.

The Commission discussed whether unanimity could be achieved and discussed addressing the issue in the next annual report, with Commissioners Sullivan and Tilos continuing to express a desire to sustain the Complaint with cure and correct.

The City Clerk noted that in addition to the City Charter, the Council Rules of Order also address Counting Votes.

Chair Chen asked that the motion be repeated.

Vice Chair Miley and Commissioner Miyao provided clarification that the motion finding is due to the fact that if a violation of Section 2-91.5 cannot be found, then the Sunshine Ordinance was not violated; there is a failure to find a violation.

On the call for the question, motion carried by the following roll call vote: Commissioners Miley: Aye; Miyao: Aye; Sullivan: No; Tilos: No; and Chair Chen: Aye. Ayes: 3. Noes: 2.

REGULAR AGENDA ITEMS

4-A. Minutes of the April 3, 2023 Meeting

Vice Chair Miley moved approval of the minutes.

Commissioner Sullivan seconded the motion, which carried by unanimous voice vote – 5.

STAFF UPDATE

The City Clerk made an announcement about a complaint filed on May 4, 2024 that was not heard by the Commission because it did not allege a violation of the Sunshine Ordinance and a complaint filed on June 26, 2023 was time barred.

COMMISSION AGENDA REQUESTS

None.

COMMISSIONER COMMUNICATIONS

Commissioner Sullivan announced that he attended his first Alameda 4th of July Parade, which was fantastic.

Commissioner Miyao inquired what the next step is regarding the Complaint, to which the Chief Assistant City Attorney responded that she will prepare a draft and circulate it to Commissioners with a reminder to not hit “reply all” with any proposed revisions; then, she will circulate another version, which will ultimately be signed via Docusign.

ADJOURNMENT

Chair Chen adjourned the meeting at 9:39 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.