

City of Alameda • California



MEMORANDUM

To: Honorable Members of the Open Government Commission

From: Len Aslanian, Assistant City Attorney

Hearing Date: November 6, 2023

Subject: City's Position Statement Re: October 2, 2023 Sunshine Ordinance complaint filed by Shelby Sheehan

INTRODUCTION

Complainant Shelby Sheehan alleges that City Councilmembers and staff violated the Sunshine Ordinance on multiple grounds at the September 19, 2023 City Council meeting with regarding Item 5-J. Ms. Sheehan alleges 1) the Council agenda and related staff report for Item 5-J contained multiple “inadequacies” and 2) City Councilmembers and staff violated various “discussion” and “public testimony” requirements at the September 19 meeting itself.

As discussed below, Ms. Sheehan's complaint broadly misinterprets the Sunshine Ordinance and fails to identify any violations of it by City Councilmembers or staff. The Commission should therefore reject the complaint with a finding that it is unfounded.

FACTUAL BACKGROUND

At its September 19, 2023 meeting, the City Council considered Item 5-J (File #2023-3378) entitled “Final Passage of Ordinance Authorizing the City Manager to Execute a Lease with Pyka Inc., a Delaware Corporation, for Building 39, Located at 950 West Tower Avenue at Alameda Point, Alameda, California, for an Eight Year Lease Term with an Additional Three Year Extension Option for Research and Development of Autonomous Electric Aircraft.”

The Council agenda for this meeting can be accessed at the following weblink:
<https://alameda.legistar.com/View.ashx?M=A&ID=1088492&GUID=E35C98EB-E049-4ACE-8715-2C406137D686>

The staff report for Item 5-J can be accessed at the following weblink:
<https://alameda.legistar.com/LegislationDetail.aspx?ID=6343432&GUID=6947ADAA-A822-458D-82BF-FFFB4FE75153>

ANALYSIS

Summary report inadequacies¹

CLAIMS 1(A) – (F): Ms. Sheehan claims that weblinks to the ordinance attached to Item 5-J’s staff report did not work. She further claims that either the September 19 Council agenda or the staff report for Item 5-J were missing information regarding “the date and item number of the staff report,” historic resource and Tidelands rules, and CEQA.

CITY RESPONSE: The weblink to the ordinance in Item 5-J’s staff report currently works, and Ms. Sheehan provides no evidence that it did not at the time of the September 19 meeting.

The Sunshine Ordinance contains no specific requirements for the content of staff reports. However, the September 19 agenda fully complied with Alameda Municipal Code (AMC) Sections 2-19.5(a) and (b) which state that Council agendas must contain “a meaningful description of each item of business to be transacted or discussed at the meeting. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English.” Ms. Sheehan fails to make any showing that the September 19 agenda was not “sufficiently clear and specific,” “concise,” and “easily understood”.

AMC 2-91.5(b) further requires agenda descriptions to “refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda... .” The description for Item 5-J complied with this requirement by attaching the lease redline and public correspondence regarding the Pyka lease, which informed Council’s determination on the second reading of the Pyka lease. The staff report for Item 5-J also included a weblink to the staff report and attachment previously made available to Council and the public prior to the first reading of the lease at the September 5, 2023 Council meeting.

AMC section 2-91.5(e) further requires City staff to determine which documents are “material” to each Council item and attach them to the item’s staff report. In theory, dozens if not hundreds of rules, regulations, laws, policies, and plans have potential connection to every item before the City Council. However, the Sunshine Ordinance only requires staff to attach “material” documents to ensure the City Council and public are provided with all clearly relevant documents, but not overwhelmed with extraneous information which would tend to reduce rather than enhance the public understanding of an item. City staff did so here based on their professional expertise and familiarity with the subject matter of Item 5-J.

City staff therefore fully complied with the applicable sections of the Sunshine Ordinance. Ms. Sheehan’s remaining statements in Claims 1(A) – (F), e.g. that the City’s CEQA determination was flawed, do not fall within or otherwise allege violations of the Sunshine Ordinance and therefore are an inappropriate subject matter for her complaint.

¹ For ease of reference, the headings in this memo reflect those used in Ms. Sheehan’s complaint.

Discussion violations

CLAIMS 1(G) – (H): Ms. Sheehan claims that City officials and staff “failed to disclose” certain information and made erroneous statements at the September 19 meeting.

CITY RESPONSE: As noted above, City staff fully complied with the Sunshine Ordinance regarding the agenda description and staff report for Item 5-J. Ms. Sheehan’s remaining statements in Claims 1(G) – (H) do not fall within or otherwise allege violations of the Sunshine Ordinance and should therefore be rejected.

Attachments errors

CLAIM 1(I): Ms. Sheehan claims that no lease redline was attached, and that “it shouldn’t be on the consent calendar unless it can be established the changes were immaterial.”

CITY RESPONSE: The lease redline is the first attachment to the staff report for Item 5-J, in compliance with the Sunshine Ordinance. Ms. Sheehan’s remaining statements in Claim 1(I) do not fall within or otherwise allege violations of the Sunshine Ordinance and should therefore be rejected.

Public testimony rights violations

CLAIMS 2(J)-(K): Ms. Sheehan claims that City Councilmembers and staff violated various public testimony requirements of the Sunshine Ordinance

CITY RESPONSE: Ms. Sheehan cites AMC Sections 2-91.15(c) and 2-91.17’s requirements that City policy bodies like the City Council “shall not abridge or prohibit public criticism” or “sanction, reprove or deprive members of their rights”. But she makes no showing that the City Council failed to comply with these requirements. At the September 19 meeting, the City Council did not cut off any public testimony during the public comment phase based on the contents of the testimony, nor did it adopt a motion or take any other formal action to abridge public criticism or deprive any individual Councilmembers of their rights.

Ms. Sheehan mistakes basic public debate for violations of the Sunshine Ordinance. Robust discussion and criticism by and between elected officials regarding public policy is a fundamental part of the democratic process. Ms. Sheehan’s claims that Councilmembers acted with “coordinated malfeasance” and engaged in slander and misconduct are also wrong and completely baseless. Indeed, her demands that certain Councilmembers be censured and required to apologize for their statements would constitute actual violations of those officials’ Sunshine Ordinance and First Amendment rights.

Accordingly, City Councilmembers and staff fully complied with the Sunshine Ordinance at the September 19 meeting. Ms. Sheehan’s remaining statements in Claims 2(J) – (K) do not fall within or otherwise allege violations of the Sunshine Ordinance and should therefore be rejected.

Public documents not provided

CLAIM 3(K): Ms. Sheehan claims that the public “is still being deprived of records... that are germane” to the Pyka lease pursuant to Public Records Act Request 23-411 (dated 9/9/23).

CITY RESPONSE: On 9/18/23, the City provided several documents to Ms. Sheehan in response to PRA 23-411. The request is currently “Open” which means City staff are still actively searching for additional responsive records and may provide them at a later date. The request can be accessed at the following weblink:

<https://cityofalamedaca.nextrequest.com/requests/23-411>

Since November 2021, Ms. Sheehan has filed 78 separate Public Records Act requests with the City, including 18 requests in September 2023 alone. The City has fulfilled 67 of these requests to date and produced thousands of pages of documents in response. The City has and will continue to fully comply with the requirements of the Public Records Act and Sunshine Ordinance in responding to Ms. Sheehan’s PRA requests, despite the inordinate amount of valuable City resources (including City staff time) that they consume.

CONCLUSION

Ms. Sheehan’s complaint fails to identify any violation of the Sunshine Ordinance by City Councilmembers or staff regarding Item 5-J at the September 19, 2023 City Council meeting. The Commission should therefore reject it; and given Ms. Sheehan’s inflammatory and baseless claims that City Councilmembers engaged in slander and misconduct, and City staff provided the public with false information, the Commission should make a further finding that the complaint is unfounded.