

Nancy McPeak

From: Lara Weisiger
Sent: Tuesday, October 3, 2023 8:13 AM
To: Nancy McPeak; Erin Garcia
Subject: FW: [EXTERNAL] Please include this as a public comment for the upcoming HAB meeting--Sunshine Complaint submitted today
Attachments: Pyka lease Sunshine Ordinance complaint attached.pdf

Please also add the below and attached to the HAB Oral Communications from Shelby Sheehan.

From: Shelby S <sheehan.shelby@gmail.com>
Sent: Monday, October 2, 2023 6:25 PM
To: City Clerk <CLERK@alamedaca.gov>
Subject: [EXTERNAL] Please include this as a public comment for the upcoming HAB meeting--Sunshine Complaint submitted today

Hello clerk-

Unless it is not allowed, please add my recent sunshine complaint regarding the Pyka lease to the public comments for the upcoming HAB meeting. It is directly related to the other comment I submitted.

Also I would like this figure included with this comment, as the one I sent with my other comment was inadvertently cropped.

Thank you.

This is an aerial looking north of the existing fencing on the exterior of the Hangars.



"PYKA" Sunshine complaint 010/02/23

RE 09/19/2023 City Council Meeting pulled consent Item 5-J 2023-3378 "Final Passage of Ordinance Authorizing the City Manager to Execute a Lease with Pyka Inc., a Delaware Corporation, for Building 39,..."

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Violations of one, some or all sections of Sunshine Ordinance noted below occurred during the meeting including but not necessarily limited to:

AGENDA REQUIREMENTS; REGULAR MEETINGS

2-91.5 b. *A description ... shall 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 ...".*

2-91.5 e. *All documents material to a matter anticipated for discussion or consideration or the proposed action of an agenda item must accompany the agenda...*

2-91.5 f. *... members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.*

PUBLIC TESTIMONY

2-91.15 c. *A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one (1) or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision b. of this section.*

2-92.15 e. *The City shall take reasonable steps to ensure staff reports, presentations, comments from parties with a direct connection to the agenda item, and council questions are to be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues before the board, commission or council. This subsection should not be construed to constrain a policy body's authority to consider or pose*

questions concerning any reports, presentations, comment, or testimony following public comment.

PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

2-91.17 Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of governmental actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with perceived inconsistency of non-public discussions.

PUBLIC INFORMATION

2-92.7 - Public Review File—Policy Body Communications. Every policy body shall maintain a communications file, ..., containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. ...

As follows:

1. AGENDA ITEMS

SUMMARY REPORT INADEQUACIES

- A. The link to the staff reports for the ordinance did not work and no additional identifying information was provided such as the date and item number of the staff report.
<https://alameda.legistar.com/LegislationDetail.aspx?ID=6325034&GUID=DF9FF216-0B0E-4047-9F45-AF94FC627EE0&Options=&Search=&FullText=1>
- B. The Description fails to mention that Building 39 is: (1) a Historic Hangar, and (2) is subject to the Tidelands Trust Regulations.

- C. The Description fails to mention what the applicable regulations are for: (1) the Historic District, and (2) the Tidelands Trust, and (3) exterior alterations would have to undergo a Certificate of Approval Process by the Historical Advisory Board.
- D. The Description errs in the CEQA determination because it misapplies the statute, because part of the lease includes an irrevocable right to alter the exterior of the existing Historic facility within the Tidelands Trust Property.
- E. The Description fails to mention that the fencing will block public rights to the portions of the property and the protected Historic viewscape.
- F. The Description fails to mention that the applicable land use plans, the Historic Preservation Ordinance, and the Tidelands Trust regulations all prohibit view-obstructing fences, and the fences would be ineligible to receive a Certificate Approval from the Historical Advisory Board.

DISCUSSION VIOLATIONS

- G. Upon discussion and questioning by the public and Councilmember Spencer: The City Attorney, City Manager, and other knowledgeable City Officials failed to disclose the above regulations and facts that were omitted from the Staff Report description.
- H. City Attorney Shen even erroneously stated that there are NO protections for the viewscape in the Historic District and referred legal questions to the Planning staff—in violation of his duty to provide the public with “accurate, complete, and objective information. (at 1 hour 41 minutes+)

ATTACHMENTS ERRORS

- I. Attachment Lease Redline---what does that mean? There were no “redlines”. Were there changes after the meeting? If so that means the public didn’t get to hear them and it shouldn’t be on the consent calendar unless it can be established the changes were immaterial.

2. PUBLIC TESTIMONY RIGHTS VIOLATIONS

(G and H also are relevant to this section)

J. Councilmember Spencer was deprived of full constitutional rights when:

- a. At 1 hour 38+ minutes, City Manager Jennifer Ott mocked CM Spencer and provided factually incorrect answers regarding land use regulations.
- b. At 1 hour 39+ minutes, it was a shocking impropriety to watch Mayor Ashcraft find City Manager Ott's "I don't know" answer to a question of fact to be acceptable, and even more shocking that the Mayor then further prevented Mr Thomas from providing an answer to the question. That one is a really disgraceful display of misconduct-against their own colleague no less.
- c. At 1 hour 40+ minutes, Councilmember Malia Vella improperly reproved fellow Councilmember Spencer when she insinuated impropriety by CM Spencer and admonished CM Spencer about making "inappropriate comparisons" between the Pyka fence and the next door neighbor Saildrone fence; then she herself used her time to make an actual inappropriate and inaccurate comparison to former tenant Rockwall in a different area with a different issue than the one at hand.
- d. At various times throughout the item discussion and throughout the whole meeting, various members on the dais disrespected their colleague's (as well as the publics) legitimate concerns with complicit silence, outright false statements, and with obvious impressions of disdain with negative body language--including eye rolls, looks askance, and inappropriate comments and tone of voice. The conduct seemed to be collectively agreed upon and gave the appearance of coordinated malfeasance.

For example, such conduct was also apparent during Item 7B for the former Alameda Food Bank parcel.

K. Members of the public were smeared when:

- a. In her same comment, CM Vella further smeared former tenant (Rockwall) because she also insinuated that the former tenant violated City laws—without proof—which could be considered slander, and she should be censured
- b. CM Vella further smeared members of the public who had commented on the item by accusing them of alleged violations of City use-permits and/or

attending establishments that violate them--without any proof whatsoever (and in fact is false). Such comments about members of the public could be considered slander and she should be censured. She should certainly apologize and correct the record publicly.

- c. At 1 hour 58+ minutes into the City Council meeting, Mayor Ashcraft abridged and/or violated the public's right to criticize aspects of the City's activities when she commented afterward and admonished the speaker (me) for daring to criticize City activities, even mischaracterizing it as "insults", among other things.

3. PUBLIC DOCUMENTS NOT PROVIDED

- K. The public is still being deprived of records of communications related to the adjacent building's fencing and lease that are germane to the Pyka lease items for related fencing in the Hangars area—via 09/09/2023 PRA 23-411.

With this complaint, I hereby request that the full effect of the Sunshine Ordinance be implemented.

Thank you.