

BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

In re:
The Complaint of Serena Chen

Serena Chen,
Complainant

The City of Alameda,
Respondent

Case No. 19-01

DECISION OF THE
OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing by the Open Government Commission of the City of Alameda under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code on February 4, 2019, at which time the Commission rendered a decision not to sustain the complaint. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

This complaint concerns amendments to Ordinance Nos. 3201 (“Regulatory Ordinance”) and 3206 (“Land Use Ordinance”). On October 16, 2018, the City Council introduced two ordinances (Ordinance Nos. 3227 and 3228) to amend the Regulatory Ordinance and the Land Use Ordinance.

On October 30, 2018, Ms. Serena Chen filed an Open Government Commission (“Commission”) complaint (“Chen I”) concerning the agenda description for the item on the Council’s October 16th agenda.

On November 14, 2018, the Commission conducted a hearing on Chen I, sustained it and, as a remedy, held that the Ordinances were deemed null and void. Further,

the Commission held that the Council may consider re-noticing the ordinances following a public hearing.

Prior to the deadline for publication of the Commission's decision in Chen I, the City Attorney's Office noticed a subsequent hearing to be heard on December 17, 2018, for various reasons, including to reconsider the matter and receive additional advice concerning the Commission's legal authority under the Sunshine Ordinance. Specifically, the City Attorney's Office had advised the Commission that the Sunshine Ordinance had not been violated and that the Commission did not have the legislative authority to render a legally adopted ordinance null and void.

The Commission declined to rehear the matter and instead gave direction to staff concerning revisions to the proposed decision attached to the agenda report to finalize their decision. The final decision is attached to this agenda report.

On January 15, 2019, given the Commission's decision and advice of the City Attorney's Office, staff agendized the introduction of two ordinances that tracked the language of Ordinance Nos. 3227 and 3228.

On January 25, 2019, Ms. Chen filed the current complaint ("Chen II"). Ms. Chen alleges two violations. First, she contends a violation of subdivision (b) of section 2-93.2(b) of the Sunshine Ordinance occurred because staff "did not include the formal written decision of the Open Government Commission as an exhibit. . . [to the January 15, 2019 agenda item 6-B]." Second, she contends a violation of subdivision (b) of section 2-91.5 of the Sunshine Ordinance occurred because the agenda description allegedly "did not adequately inform the general public that, if the item was defeated, the council's vote would be meaningless."

Discussion

In relevant part, subdivision (b) of section 2-93.2 of the Sunshine Ordinance provides:

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 no later than thirty (30) business days. During this hearing the Commission will provide

the parties with the chance to present evidence and make arguments.
The Commission will render a formal written decision on the matter within fourteen (14) business days of the conclusion of the hearing.
(Emphasis added.).

The Commission did not order the Council reintroduce Ordinance Nos. 3227 and 3228. The Commission's decision only stated that the Council "may consider" doing so. Additionally, the Commission did not direct that its final decision be included as an exhibit to a future agenda packet where the Council may "consider re-introducing the two Ordinances."

Subdivision (b) of section 2-93.2 of the Sunshine Ordinance provides that each agenda item must include a "meaningful description". The agenda description for this item was prepared in response to the Commission's decision in which the Commission noted that "members of the public may have been confused as to whether or not they should appear to be heard or seek more information" because the agenda description did not explicitly state that the Council would be considering an increase the number of full-service (open to the public) cannabis dispensaries. The January 15, 2019 agenda description addresses this concern. The purpose of this meeting was to carry out the intent of the Commission's decision while recognizing the legal opinion of the City Attorney's Office by repealing Ordinance Nos. 3227 and 3228 and reintroducing them in substance with an amended agenda description that would more explicitly reflect the proposed action by the Council.

The Commission's written decision is not material to the Council's proposed action to repeal and reintroduce Ordinance No. 3227 and 3228 to afford members of the public an additional opportunity to comment. Moreover, any actions taken (or not) to inform members of the public that the "Council's vote would be meaningless" is entirely irrelevant to the consideration of that item.

Decision

There was not a violation of sections 2-93.2(b) and 2-91.5 of the Alameda Municipal Code. The complaint, therefore, is determined to be unfounded.

Signatures are on the following page.

Dated: February 4, 2019

Heather Little, Chair

Mike Henneberry, Member

Bryan Schwartz, Member

Rasheed Shabazz, Member

Ruben Tilos, Member