

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 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 of the Interim City Attorney’s opinion (disputed by the Commission) that the Sunshine Ordinance had not been violated and his further opinion (also disputed by the Commission) 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.

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.

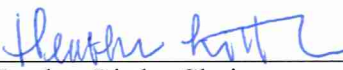
On January 25, 2019, Ms. Chen filed the current complaint ("Chen II"). Ms. Chen alleges two violations. First, she contends a violation of subdivision (b) of section 2-93.2(b) of the Sunshine Ordinance occurred because staff "did not include the formal written decision of the Open Government Commission 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."

Decision

There was a violation of sections 2-93.2(b) and 2-91.5 of the Alameda Municipal Code because the Commission's written decision in Case no 18-02 was not part of the City Council agenda materials for its January 15, 2019 meeting and because the agenda title for item 6-B on the Council's January 15, 2019 agenda would not have informed a person of average intelligence and education that if the City Council took no action on the item, that the ordinances in question (previously decreed null and void by this Commission) would remain in full force and effect. In other words, a reasonable person would have been confused about the potential impact of approving, or not approving, item 6-B. The Sunshine Ordinance requires greater transparency to the citizenry than what occurred in this case.

The provisions of Ordinance Nos. 3227 and 3228 should be re-introduced, with the Commission's decisions concerning this item included in the agenda materials, and with the agenda title providing clarity concerning the outcome if such provisions are or are not re-introduced.

Dated: February 5, 2019



Heather Little, Chair

[NOT PRESENT]

Mike Henneberry, Member

Bryan Schwartz, Member

Rasheed Shabazz, Member

Ruben Tilos, Member

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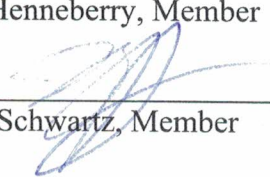
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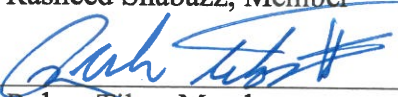
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