

BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

In re:
The Complaint of Paul Foreman

Paul Foreman,
Complainant

The City of Alameda,
Respondent

Case No. _____

DECISION OF THE
OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA

The above entitled matter came on for hearing and a decision 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. (All further references to Section numbers are to the Alameda Municipal Code.)

Facts

In response to a written request from community members to rename Jackson Park, the Recreation and Parks Commission (the “Commission”) discussed the legacy of President Andrew Jackson and the policy and process for renaming Jackson Park at a noticed meeting on May 10, 2018. At its subsequent meeting on June 14, 2018, the Commission discussed the historical background of Jackson Park and the process and criteria for renaming a City park. The Commission did not take action on the renaming request and instead requested the item return for further discussion at a later date. The meeting notices for the Commission meetings were

timely posted and included consideration of the renaming of the Park on the agendas. See Exhibits 1 and 2 for agendas and supporting documents.

Soon after, community members organized an online petition to rename Jackson Park and in 2020 submitted over 1,253 signatures in support of renaming the Park.

At its July 9, 2020 meeting, the Commission reviewed the requirements and process to rename a City park and considered whether to rename the Park. The Commission received ten public comments during the meeting and over 49 written comments from members of the community regarding renaming the Park. After considering this input, the Commission unanimously voted to recommend to the City Council that Jackson Park be renamed. The Commission also requested that the Chair and Vice-Chair facilitate a park naming committee appointed by Director Wooldridge to represent a diverse cross-section of the Alameda community, including representation from youth and from the Park neighbors, and to provide input to Director Wooldridge and the Commission regarding a new name for the Park. The Commission also committed to recommend a new Park name to the City Council by December 31, 2020. The Commission's meeting notice was timely posted and included consideration of the renaming of the Park on the agenda. See Exhibit 3 for the agenda and supporting documents.

On December 10, 2020, the Commission considered renaming the Park at a noticed, public meeting. Agenda item 6-B included consideration of a recommendation to re-name the Park formerly known as Jackson Park. The staff report for the meeting described the park renaming process in detail and included the recommendation

of the Jackson Park Renaming Committee (the “Renaming Committee”). Staff reported that the Renaming Committee had met weekly from September through December to establish its name selection criteria, community outreach plan, and recommendation. The Alameda Recreation and Park Department (the “ARPD”) conducted extensive marketing to solicit public input, resulting in outreach to over 100 cultural groups, community groups, and local programs and businesses throughout the City, including students at Alameda and Encinal High Schools. In addition, the ARPD published a press release in October, posted flyers at City parks and locations in the City’s two main business districts, and conducted online polling. As a result of this outreach, the ARPD gathered over 150 name suggestions from the community before the Renaming Committee made its recommendation to the Commission. Further, members of the public were invited to offer public comment at the Commission meeting. After considering this input, the Commission voted unanimously to recommend renaming the Park as Chochenyo Park. The agenda and supporting documents for the December 10 item are attached as Exhibit 4.

On January 19, 2021, the City Council considered the Commission’s recommendation to rename the Park as Chochenyo Park at a noticed meeting. The Commission presented its recommendation to the City Council, including the process of the community-led park renaming committee. Members of the public were again invited to provide comments. After considering this input, the City Council voted 4 to 1 to accept the Commission’s recommendation and to rename the Park as Chochenyo Park. The meeting notice for the City Council meeting was

timely posted and included consideration of the renaming of the Park on the agenda. See Exhibit 5 for the agenda and supporting documents.

On February 2, 2021, Paul Foreman timely filed a Sunshine Ordinance Complaint against the Alameda City Council and the Commission alleging that the Commission violated the Sunshine Ordinance by taking formal action to establish the Renaming Committee and then, along with ARPD Staff, failing to the notice meetings of the Renaming Committee. The complaint contends that the Renaming Committee was a “policy body” under the Sunshine Ordinance and a “legislative body” under the Brown Act and that the Commission should therefore have provided formal public notice of its meetings. However, the complaint does not seek to undo the recommendation of the Renaming Committee, which was subsequently considered and acted upon by both the Commission and the City Council at properly noticed meetings. Instead, the complaint requests that the Open Government Commission (the “OGC”) require all city bodies to designate committees created by formal action of the originating body as “policy bodies,” except for those bodies that include less than a quorum of the originating body. In addition, the complaint requests that the OGC recommend amendments to the Sunshine Ordinance regarding “policy bodies.” A copy of the complaint is attached as Exhibit 6.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the Open Government Commission, created under the Sunshine Ordinance, hears the complaint and renders a formal written decision. The complainant and the

Commission shall appear at a hearing. During the hearing, the Open Government Commission considers the evidence and the arguments of the parties before making its decision. Section 2-93.2 (b). The Open Government Commission conducted the hearing on March 1, 2021 and considered the evidence and arguments of Mr. Foreman and the Commission.

Discussion

Because the Commission took formal action to create the Renaming Committee, Mr. Foreman complains that the Commission violated the Sunshine ordinance by failing to notice the meetings of the Renaming Committee, because it qualified as a “policy body” pursuant to section 2-91.1 of the Sunshine Ordinance and as a “legislative body” under Government Code section 54952.

At the time the Commission took action to establish the Renaming Committee, it believed that it was acting consistent with the Brown Act, because it appointed fewer than a quorum of its members to an ad hoc committee. Under the Brown Act, an ad hoc committee comprising less than a majority of the members of the body is not required to conduct public meetings. Gov. Code, § 54952(b). However, the Commission went further than that by authorizing the two commissioners to work with Director Wooldridge to facilitate an advisory group composed of citizens to make recommendations to the Commission. Director Wooldridge prepared an application for membership on the advisory committee, conducted outreach to the public to solicit applications, reviewed the applications, interviewed applicants, and appointed the members of the advisory group. Furthermore, while the Chair and

Vice Chair attended meetings of the advisory committee, they participated as observers; Director Wooldridge was responsible for running the meetings. Had Director Wooldridge undertaken these actions entirely on her own initiative, rather than at the direction of the Commission, and reported the results to the Commission, there is no question that the advisory body would not be subject to the Brown Act or the Sunshine Ordinance. *See Californians Aware v. Joint Labor/Management Benefits Comm.*, 200 Cal. App. 4th 972, 978 (2011) (a committee or other body of a local agency is created by charter, ordinance, resolution or other formal action of a legislative body and subject to the Brown Act if the legislative body took formal action to bring into existence the committee or other body.)

Furthermore, the Commission substantially complied with the law because the meetings of the Renaming Committee were a matter of public record, members of the public could have participated if they desired to do so, and the Department provided multiple opportunities for the public to provide input into the renaming process. In *Olson v. Hornbrook Cmty. Servs. Dist.*, 33 Cal. App. 5th 502, 517 (2019), the court concluded that any action alleged to have violated certain provisions of the Brown Act would not be null and void if the action was taken in substantial compliance with that section. A body substantially complies with the Act when it provides “the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered by a local agency.” *Id.* at 519. As described above, the Department conducted broad outreach through social media, flyers, press release, online surveys, and in-person

solicitation to ensure Alameda residents provided input on the renaming of the Park. The objective of the Renaming Committee was to obtain more public input, not shield from the public the renaming process.

But even if the involvement of the Commission in the creation of the Renaming Committee made the body subject to the Brown Act and the Sunshine Ordinance, any violation of the Sunshine Ordinance or the Brown Act was cured by the consideration of the Renaming Committee's recommendations at two noticed, public meetings of the Commission and the City Council. The Sunshine Ordinance recognizes that a body can cure a violation by placing the challenged action on a subsequent meeting agenda. Sunshine Ordinance, § 2-93.3. The same is true under the Brown Act. Gov. Code § 54960.1. In this case, both the Commission and the City Council held noticed, public meetings at which the matter of renaming the Park appeared on the agenda and members of the public had the opportunity to provide public comment. Generally, if the legislative body cures or corrects the alleged violation of the Brown Act, an action based on the alleged violation must be dismissed. *Boyle v. City of Redondo Beach*, 70 Cal. App. 4th 1109, 1117 (1999).

In addition, the complainant's proposed remedy is beyond the reach of the OGC. While the OGC has authority to recommend that the Commission take steps necessary to cure or correct the violation and to impose a fine, it does not have authority to order legislative changes as a remedy to an alleged violation of the Sunshine Ordinance. As discussed above, both the Commission and the Council have already cured the lack of notice of the meetings of the advisory body by

considering the renaming of the Park at noticed public meetings, thereby providing the public with multiple opportunities to provide further input.

Finally, the proposed remedy is unnecessary because the Sunshine Ordinance, by its own terms, requires that it be construed consistent with the Brown Act, unless it goes further in providing for public access to meetings. Section 2-91.1(d) expressly provides that “policy body” has the same meaning as “legislative body,” as defined in the Brown Act, unless the Sunshine Ordinance applies to a broader range of bodies than the Brown Act. It is therefore unnecessary to amend the Sunshine Ordinance as it already applies to any body covered by the Brown Act.

Decision

The Renaming Committee did not violate the Sunshine Ordinance of the Alameda Municipal Code as set forth in Mr. Foreman’s complaint of February 2, 2021. The meetings of the Renaming Committee substantially complied with the law given their public nature. Even if the involvement of the Commission in the creation of the Renaming Committee made the body subject to the Brown Act and the Sunshine Ordinance, any alleged violation of the Renaming Committee has been cured by subsequent Brown Act compliant meetings of the Commission and the City Council. Therefore, the complaint is determined to be unfounded. Further, the requested relief exceeds the legal remedies available to the OGC in the case of a violation of the Sunshine Ordinance.

Signatures are on the following page.

Dated: March __, 2021

Ruben Tilos, Chair

Rasheed Shabazz, Vice Chair

Serena Chen, Member

Krystal LoPilato, Member

Carmen Reid, Member