Complainant's Response to Special Counsel to Recreation and Parks Commission and Alameda Recreation and Parks Department

The ad hoc exception: The response to my complaint filed by Special Counsel indicates that only the Recreation and Parks Commission and Department are responding to my complaint. However, I also complain of two actions of City Council that Special Counsel's response does not address:

1. On Jan. 19 City Council continued this violation of the Sunshine Ordinance and Brown Act by presenting and accepting the report of the Renaming Committee which contained the fruits of meetings of said committee conducted in violation of said laws.
2. The provision of the ad hoc exception to the definition of a policy body in Sec. 2-91.1(d)(6) is a continuing violation of Sec. 54952 (b) of the Brown Act that specifically includes temporary committees as subject to the Act and sec. 2-91.3 of the Sunshine Ordinance that provides that, "In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply."

While my complaint must necessarily raise the issue of the Commission's failure to require the renaming committee to adhere to the Brown Act requirements for legislative bodies and the Sunshine Ordinance requirements for policy bodies, the source of said failure is the Feb. 4, 2020 amendment of Sec. 2-91.1(d)(6) which can too easily be misread – as occurred here - as excepting ad hoc committees formed by City policy bodies other than City Council from the category of a policy body.

As asserted in my Statement of Complainant and in item #2 above this amendment violates the Brown Act. That is why my suggested cure and correct action is the repeal of the amendment. Special Counsel argues that repeal is unnecessary because to Ordinance, by its own terms requires that it be construed consistent with the Brown Act. Secs. 2-91.1 (d), cited by Special Counsel and Sec. 2-91.3. cited in item #2 above do so require. However. that does not "cure" the fact that the ad hoc exclusion included in Sec. 2-91.1 (d) (6) violates the Brown Act and that it was Director Wooldridge's admitted basis for deciding not to require the renaming committee to adhere to the Act.

It is essential that that the Sunshine Ordinance speak in clear, understandable English to both City officials and, more importantly, to the public. It is unfair and totally inappropriate to expect a City official or the public to read the ad hoc exclusion without concluding that any ad hoc committee other than one formed by City Council appears to be exempt from open meeting rules. To suggest that they need only to read the Ordinance like a lawyer and compare it to the Brown Act itself to reach the correct conclusion is asking a lot and invites the type of violation that occurred in this case.

Special counsel also argues that your Commission does not have authority to "order" legislative changes. I agree. However, I have not asked you to "order" anything. I am asking you to render a decision recommending these changes as a proper cure and correction of the issue.

Special Counsel's Defense of Substantial Compliance: Special Counsel argues that the Recreation and Park Commission has substantially complied with the Brown Act and Ordinance and that *Olson v. Hornbrook Cmty. Servs. Dist.*, 33 Cal. App. 5th 502, 517 (2019) provides that such substantial compliance is a defense to this complaint. Hornbook involved a complaint concerning the inadequacy of an agenda item posted to a Brown Act meeting covering the payment of routine bills that were approved in a different amount by the legislative body. That is not analogous to the current facts where no Brown Act

meetings whatsoever – much less meetings that met the enhanced standards set by the Sunshine Ordinance - were convened. However, we do not have to argue that issue. The Hornbook Court was applying Sec. 54960.1 of the Brown Act which allows the defense of substantial compliance only to actions seeking a "null and void" remedy to invalidate a legislative body action.

"The District contends that because it substantially complied with the Act, plaintiffs are barred from relief. We agree with this standard but only for causes of action under section 54960.1 and not for those under section 54960."

Special Counsel acknowledges that I am not seeking such a remedy, but only seeking to prevent future violations of the Brown Act which is the relief covered by Sec. 54960, which does not allow such a defense.

Special Counsel's "Cure and Correct" Defense: This defense contains the same flaw as the substantial compliance defense. Counsel cites the same Sec. 54960.1 as his authority. Thus, it is only applicable to a null and void remedy. Such a defense is not provided in Sec. 54960 covering prevention of future violations.

Even without the legal bar to this defense, the proposition that an ad hoc committee can "cure" its non-compliance with the Brown Act, or the Ordinance, by presenting a summary of committee conclusions to a properly convened meeting of a policy body, if true, would render the Ordinance and Brown Act inapplicable to any ad hoc committee that chose to ignore the law.

Special Counsel's Draft Decision That Complaint is Unfounded: The Proposed Decision (Exh. 7) asks you to determine that the complaint is "unfounded". This is a deliberate attempt to inhibit me from filing future complaints. Sec. 2-91.8 (d) of the Ordinance provides that:

"A person who makes more than two (2) complaints in one (1) 12-month period that are determined by the Commission to be unfounded shall be prohibited from making a complaint for the next five (5) years."

Webster's Dictionary defines "unfounded" as "having no basis in fact : groundless". That cannot be the case here when the Draft Decision itself, in essence, concedes that there was a non-de minimis violation of the Sunshine Ordinance. Special Counsel, after citing the Brown Act exempting an ad hoc committee consisting solely of less than a quorum of a legislative body, goes on to say:

"*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…. 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."*

As conceded, the Commission, (and City Council), "went further than that". A violation plainly occurred. Whether or not you agree that the relief requested in the complaint is warranted or should be denied, there is certainly no basis for a finding that it is "unfounded".

Respectfully Submitted,

Paul S Foreman