

**BEFORE THE OPEN GOVERNMENT COMMISSION
OF THE CITY OF ALAMEDA**

In re The Complaint of Jay Garfinkle

Case No. 21-3

Jay Garfinkle,
Complainant

DECISION OF THE

The City of Alameda,
Respondent

OPEN GOVERNMENT COMMISSSION
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 compliance with the Sunshine Ordinance, the City Clerk timely published the agenda and supporting materials for the City Council's meeting on February 16, 2021. In relevant part, the agenda explained that items on the consent calendar were routine and would be approved by one motion unless an item is removed from the consent calendar at the request of the Council or the public. Specific to

Agenda item 5-E, Recommendation to Approve the 2021-22 Legislative Agenda for the City of Alameda, the staff report explained the City's longstanding practice of adopting an annual Legislative Agenda to guide the City's legislative advocacy efforts and enable staff, the Mayor, and the City Council to respond quickly to most legislative issues as they arise, rather than considering legislative policy on a bill-by-bill basis. The 2021-22 Legislative Agenda describes the City's policy position in eleven discrete subject matter areas; the City uses the Legislative Agenda as a roadmap to take positions on legislation or legislative matters. In 2020, for example, the City took a position on 43 bills and seven state budget items pursuant to the authority delegated to the City's advocacy team in the Legislative Agenda for that year. The staff report noted that significant or urgent issues not defined in the Legislative Agenda would be brought to the Council for consideration. The Council has annually adopted prior versions of the Legislative Agenda since 2013. The agenda and supporting documents for the February 16 item are attached as Exhibit 1.

At the City Council meeting on February 16, 2021, the Council pulled Agenda item 5-E from the Consent Calendar for discussion of various changes to the 2021-22 Legislative Agenda, including inclusion of SB 271, SB 314, and the correction of typographical errors. SB 271, introduced in the 2021-22 legislative session, would eliminate the statutory requirement that candidates for the office of

the county sheriff have law enforcement experience to be eligible to run for the office. *See* Exhibit 2 (SB 271 [Weiner]).

In response to a written request from a community member to support SB 271, Vice Mayor Malia Vella inquired during the February 16th meeting whether the City Council would consider adding support of SB 271 to the 2021-22 Legislative Agenda. The Vice Mayor stated that the legislation would eliminate the requirement that individuals have law enforcement background prior to running for the sheriff's office and noted that the election of a sheriff is a public process, which voters should decide rather than limiting who may be eligible for the sheriff's office. Thereafter, the City Council heard public comments on Agenda item 5E. A community member speaking on behalf of Secure Justice, a large organization comprising over 41 member organizations representing thousands of Alameda residents, urged the Council to add support of SB 271 to the 2021-22 Legislative Agenda and stated that he had submitted a resolution in support of SB 271 for the Council's consideration. *See* Exhibit 2 (Resolution in Support of SB 271). The Council also discussed the inclusion of SB 341 and other changes to the legislative agenda. In response to a question about whether the Brown Act permits two legislative measures to be added to the 2021-22 Legislative Agenda, the City Attorney advised that it did because the City Council's meeting notice included consideration of the City's legislative agenda for the current legislative session.

The Council voted 3 to 2 to approve the inclusion of SB 271 in the 2021-22 Legislative Agenda. The Council also voted 4 to 1 to approve the 2021-22 Legislative Agenda with the inclusion of SB 314, the correction of typographical errors, and direction for staff to return in the future with an economic development legislative recommendation.

On February 25, 2021, Jay Garfinkle filed a Sunshine Ordinance Complaint (“the Complaint”) against the Alameda City Council alleging that the City Council violated the Brown Act by taking formal action on February 16, 2021, to add support of Senate Bill (“SB”) 271 to the 2021-22 Legislative Agenda without noticing the consideration of SB 271 in the meeting agenda. The Complaint contends that the Council’s discussion and action on SB 271 violated the Brown Act because the Council failed to provide public notice that Agenda item 5-E concerning the 2021-22 Legislative Agenda included consideration of SB 271, and as a result, the public was not given the opportunity to participate in the decision-making process. The Complaint does not take a position on SB 271, but requests that the Open Government Commission (the “OGC”) require the City and its contracted lobbyists to cease support of SB 271 until Alameda residents have an opportunity to review the bill. A copy of the Complaint is attached as Exhibit 3.

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 City 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 April 5, 2021, and considered the evidence and arguments of Mr. Garfinkle and the City.

Discussion and Decision

The OGC finds that the City Council complied with the Sunshine Ordinance and the Brown Act, providing the public adequate notice and a fair chance to participate in the discussion and action to approve the 2021-22 Legislative Agenda relating to the City's position on policy matters, including SB 271. The Sunshine Ordinance requires that the Council's published agenda contain a "meaningful description" of each item of business to be transacted or discussed at the meeting. Sunshine Ordinance, § 2-91.5. The OGC finds that the description of the agenda item was sufficiently clear and specific to notify the public that the Council would be taking action on the recommendation to approve the 2021-22 Legislative Agenda, which includes the Council's position on legislative issues, including

public safety and criminal justice reform issues such as those addressed in SB 271, and any community member interested in the City's position on these legislative matters could have attended the meeting or offered public comment on any of the policy matters addressed in the Legislative Agenda. The same is true under the Brown Act. Gov. Code, § 54954.2.

The OGC further finds that the City Council's action to add support of SB 271 to the 2021-22 Legislative Agenda complied with the Sunshine Ordinance and the Brown Act and did not require that SB 271 be expressly noticed. SB 271 does not concern distinct issues apart from the 2021-22 Legislative Agenda, which includes the City's position on a wide variety of policy matters, including public safety and criminal justice reform, topics addressed by SB 271.

For all of the above reasons, the complaint is determined to be unfounded.

Dated: April __, 2021

Ruben Tilos, Chair

Rasheed Shabazz, Vice Chair

Serena Chen, Member

Krystal LoPilato, Member

Carmen Reid, Member