

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

In Re The Complaint of	DECISION OF THE
Jean Sweeney Open Space Park Fund,	OPEN GOVERNMENT COMMISSSION
Complainant	OF THE CITY OF ALAMEDA
The City of Alameda,	
Respondent	

The above entitled matter came on for hearing and a decision by the Open Government Commission of the City of Alameda (“OGC”) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b), Alameda Municipal Code (“AMC”).

Facts

On September 19, 2018, the City of Alameda filed an eminent domain action in Alameda County Superior Court against Union Pacific Railroad Company (“Union Pacific”) to acquire a portion in fee of a railroad corridor adjacent southerly to Jean Sweeney Open Space Park between Constitution Way and Sherman Street.

On September 7, 2021, the City Council noticed a closed session conference with legal counsel regarding the case. After closed session, the City Council reported out regarding its approval of a settlement agreement with Union Pacific. The report out read as follows:

The City Council met in Closed Session to discuss: This case involves an ongoing eminent domain litigation against Union Pacific, where the City seeks to acquire portions of abandoned Union Pacific Railroad right-of-way on the south side of Jean Sweeney Open Space Park; the property to be acquired will be approximately 23,489 square feet plus 2 easement acquisitions of

approximately 7,532 square feet (as generally depicted in the attached map); the property will be used to provide public access to the southern neighborhood, connect with critical infrastructure and properly route the Cross Alameda Trail; the parties have reached a tentative agreement to finalize the eminent domain process without trial, whereby the City would pay approximately \$1.2 million for the acquisition, and agree to cooperate for the next three to six years with any application for R-2 residential zoning of the remaining UP property; for clarity, this cooperation is not a pre-commitment for approval; the Council authorized the City Attorney to resolve this litigation consistent with the tentative agreement by the following roll call vote ...

After its execution, the settlement agreement between the City and Union Pacific was made available. The settlement agreement contained various terms, including the City's purchase of real property and a commitment by the City to cooperate on rezoning.

The Complainant filed a complaint with the OGC, alleging that the City Council violated the Brown Act and the Sunshine Ordinance in discussing and approving the settlement with Union Pacific, especially the provision of the settlement that authorized the City to acquire real property.

Procedure

Under the Sunshine Ordinance, when an official complaint has been filed, the OGC hears the complaint and renders a formal written decision. The Complainant and the City shall appear at a hearing, during which the OGC considers the evidence and the arguments of the parties before making its decision. AMC §2-93.2 (b), (c). The parties have the opportunity to file written materials and present evidence.

In this case, both parties filed written materials prior to the hearing, which was held on November 1, 2021 before all five OGC commissioners. The parties both appeared at the hearing, which was held via teleconference, pursuant to Section 54953 of the California Government

Code. Dorothy Freeman and Paul Foreman spoke on behalf of the Complainant. Attorney Bradford Kuhn spoke on behalf of the City.

Discussion and Decision

The OGC finds that it was permissible under both the Brown Act and the Sunshine Ordinance for the City Council to discuss and approve a settlement of the City’s litigation against Union Pacific in closed session. Specifically, the OGC finds that the City Council’s closed session discussion and approval of the settlement was permitted under Section 54956.9 of the California Government Code and Section 2-91.10 of the AMC, both of which permit the City Council to call closed sessions to confer with legal counsel regarding pending litigation. The OGC further finds that it was permissible for the City Council to approve the City’s acquisition of property, as it was a term of the settlement.

For all of the above reasons, the complaint is rejected.

Dated: November 15, 2021

Commissioners Voting to Reject Complaint:

DocuSigned by:
C5AUS/7...445B...

Ruben Tilos, Chair

DocuSigned by:

Serena Chen, Commissioner

DocuSigned by:
k

Krystal LoPilato, Commissioner

DocuSigned by:
i

Melodye Montgomery, Commissioner

Commissioner Voting to Affirm Complaint:

DocuSigned by:
<

Carmen Reid, Commissioner