

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

In Re The Complaint of	DECISION OF THE
John Brennan et al.	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**

The complaint at hand was filed by John Brennan and 27 additional signatories. It concerned the City Council’s approval of the redesign of a portion of Grand Street.

On October 4, 2022, the City Council considered Item 7-B during its regular meeting. That agenda item was entitled “Recommendation to Authorize the Interim City Manager, or Designee, to Proceed with the Grand Street Resurfacing and Safety Improvement Project Final Concept, Including Preparation of Final Design and Construction Documents, Consistent with the Recommended Final Concept Plan.” After discussion, the Council voted (by 3 votes, with 2 councilmembers absent) to approve a modified version of the design presented by City staff, consisting of construction of two-way, separated bikeway in front of Wood Middle School from Shoreline Drive to Otis Drive; traditional bike lanes north of Otis Drive with enhanced

crosswalks, including flashing beacons at two intersections, San Jose Avenue and San Antonio Avenue; adding ADA accessible parking; and speed cushions.

On October 18, 2022, the City Council considered Item 5-I on its consent calendar, entitled “Adoption of Resolution Appropriating \$126,618 in Transportation Development Act, Article 3 Grant Funding by Amending the Fiscal Year 2022-23 Capital Budget to Increase Budgeted Revenue and Expenditures in Capital Improvement Program C14000 by \$50,000 and in Capital Improvement Program C11000 by \$76,618 for Grand Street Improvements.” During the discussion of this agenda item, Mayor Ezzy Ashcraft made a motion to direct staff to review the Grand Street improvement project in light of new information and bring the back on November 1, 2022. There was discussion that Mayor Ezzy Ashcraft’s motion was not a motion for reconsideration but rather a request to review new information on a particular matter. This motion was approved on a 3-2 vote.

On October 31, 2022, Mr. Brennan and 29 other individuals sent a joint letter to the City Council, the City Manager, the City Clerk and the City Attorney entitled “Objection To Agenda Item 7-F On The City Council’s November 1, 2022 Regular Agenda Seeking To Effect Reconsideration Of The City Council’s October 4, 2022 Final Vote In Support Of The Alternative Plan For Grand Street.”

On November 1, 2022, the City Council considered Item 7-F during its regular meeting. That agenda item was entitled “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept.” The agenda was timely posted on October 20, 2022, 12 days prior to the meeting. See AMC 2-91.5. The City asserted that the City

had not received any correspondence on Item 7-F prior to the agenda publication so no correspondence was published on October 20, 2022. The City Clerk also stated in her declaration that the City Clerk's office later received nine pieces of correspondence on this agenda item: one on October 28th, four on October 31st, and four on November 1st, the last of which was received at 2:54 p.m. On November 1, 2022, the City Clerk stated that she reposted the agenda for the meeting that evening several times, including at 4:25 p.m., to ensure that all correspondence that had been received had been posted. Mr. Brennan alleged that not all of the correspondence was posted to the agenda prior to the commencement of the meeting.

During the discussion of Item 7-F at the November 1, 2022 Council meeting, which was held via Zoom, there were seven public speakers. Once the last of the seven speakers concluded, the City Clerk's declaration states that she reviewed the Zoom screen and no one else had "raised their hand" using that feature on Zoom. Accordingly, the Mayor closed public comment. Mr. Brennan alleged that four speakers had their hand raised on Zoom as the Mayor asked if there were additional public speakers, but that these four speakers were not recognized nor given an opportunity to comment.

City staff presented information regarding traffic calming chicanes, noting that this information had not been presented during prior City Council meetings or associated staff reports. After discussion, the Council voted (3-2) to approve the Grand Street improvement plan as proposed by City staff.

Mr. Brennan filed his complaint with the Open Government Commission ("OGC") on November 14, 2022, alleging five separate claims, which are detailed below.

## 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.

Both parties filed written materials prior to the hearing, which was held on December 19, 2022 before the five OGC commissioners. The parties both appeared at the hearing, which was held via teleconference, pursuant to Section 54953 of the California Government Code.

Attorney Paul Justi spoke on behalf of the Complainants. Special Counsel Michael Roush spoke on behalf of the City.

## Discussion and Decision

The OGC considered each of the five claims within the complaint. As a preliminary matter, the OGC determined that the Complainants' allegation that the City Council had violated its own procedural rules, even were it true, did not constitute a violation of the Sunshine Ordinance.

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**Claim No. 1: Did the City fail to post all correspondence for agenda Item 7-F at its November 1, 2022 meeting and if so, did this violate the Sunshine Ordinance?**

The OGC considered the Complainants' first claim: whether the City failed to post all correspondence for agenda Item 7-F at its November 1, 2022 City Council meeting, and if so, did this violate the Sunshine Ordinance.

The OGC considered both Section 2-91.6 and Section 2-91.5a(e). The relevant portions of Section 91.6 are as follows:

**2-91.6 - Public Notice Requirements.**

- a. Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.
- b. The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.
- c. If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

The relevant portion of Section 2-91.5 are as follows:

**2-91.5 - Agenda Requirements; Regular Meetings.**

- a. Twelve (12) days before a regular meeting of City Council, and seven (7) days for all other policy bodies, the policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. These time requirements shall apply to posting on the internet.
- b. A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted with the agenda or, if such documents are of more than one (1) page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

c. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

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e. All documents material to a matter anticipated for discussion or consideration or the proposed action of an agenda item must accompany the agenda.

On a 5-0 vote, the OGC determined that there was no violation of Section 2-91.6. The Commissioners found that Section 2-91.6 did not apply to the facts at hand because there was no evidence that the Grand Street project necessitated the special geographic notices described in Section 2-91.6.

On a 3-2 vote, the OGC found that Section 91.5(e) does not impose upon the City an obligation to continually update the correspondence on an agenda item after the agenda is posted. Based on this finding, the OGC determined that there was no violation of Section 2-91.5 of the Sunshine Ordinance.

The OGC recommended that the City offer training to the public about how and when to submit correspondence in advance of public meetings.

**Claim No. 2 Did the City fail to allow four speakers to provide public comment on Item 7-F at the November 1, 2022 City Council meeting, and if so, did this violate the Sunshine Ordinance?**

The OGC next considered the second claim, which was whether the City had failed to allow four speakers to provide public comment on Item 7-F at the November 1, 2022 City Council meeting, and if so, had this violated Subsection 2-91.15(b) of the Sunshine Ordinance.

On a 5-0 vote, the OGC determined that there was no violation. The OGC found that there was credible evidence that members of the public believed that they had raised their hand to speak, but that there was also credible evidence that City staff was not able to see the raised

hands, and that there was no violation of the Sunshine Ordinance due to what appears to have been a technological glitch.

**Claim No. 3: Does the Sunshine Ordinance require the City to have posted information about the November 1, 2022 City Council meeting on the City's Grand Street informational page, and if so, did the City fail to do so?**

The OGC next considered the third claim: whether the City was required by the Sunshine Ordinance to post information about the November 1, 2022 City Council meeting on the City's Grand Greet informational page, and if so, had the City failed to do so. The Complainants cited to Section 2-92.4(g) of the Sunshine Ordinance, which reads as follows:

Meetings on matters related to or actions taken in anticipation of a potential development project or other land use matter, such as but not limited to grant applications, project funding, and ordinance changes, including but not limited to, General Plan and area plan amendments or rights transfers, shall be noticed at least as extensively as is required for meetings on said projects.

The OGC determined, by a 5-0 vote, that there was no violation of the Sunshine Ordinance on the third claim, finding that Section 2-92.4(g) does not require the City to post notice of meetings on an informational page.

**Claim No. 4 Did the agenda for the October 18, 2022 City Council meeting fail to contain a meaningful description for Item 5-I, thereby violating Section 2-91.5 of the Sunshine Ordinance?**

The OGC next considered the fourth claim: whether the agenda for the October 18, 2022 City Council meeting failed to contain a meaningful description of Item 5-I, thereby violating the Sunshine Ordinance.

By a 3-2 vote, the OGC determined that the claim was time-barred, and should be dismissed on procedural grounds, because the complaint was filed on November 14, 2022 although the alleged violation occurred on October 18, 2022. Section 2-93.2 of the Sunshine

Ordinance requires a complainant to file a complaint no more than 15 days after an alleged violation of the Sunshine Ordinance.

**Claim No. 5: Did the agenda for the November 1, 2022 City Council Meeting fail to contain a meaningful description for Item 7-F, thereby violating the Sunshine Ordinance?**

Finally, the OGC considered the fifth claim: whether the agenda for Item 7-F at the November 1, 2022 City Council meeting failed to contain a meaningful description, thereby violating Section 2-91.5 of the Sunshine Ordinance. The agenda description was as follows: “Recommendation to Consider New Information Regarding the Grand Street Resurfacing and Safety Improvement Project and Authorize the Interim City Manager, or Designee, to Proceed with Construction Documents for the Grand Street Resurfacing and Safety Improvement Project Final Concept.”

By a 4-1 vote, the OGC determined that the agenda description failed to contain a “meaningful description” as required by Subsection 2-91.5(b) and that the City had therefore violated the Sunshine Ordinance. Those commissioners voting to sustain the claim found that the description did not indicate to the public that the City Council would be voting again on the Grand Street project.

Dated: January 23, 2023

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Ruben Tilos, Commissioner



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Melodye Montgomery, Commissioner

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