

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

In Re Complaint of Shelby Sheehan,	DECISION OF THE
Complainant;	OPEN GOVERNMENT COMMISSION
City of Alameda,	OF THE CITY OF ALAMEDA
Respondent	

On November 6, 2023, the City of Alameda’s Open Government Commission heard this matter under the City’s Sunshine Ordinance. Alameda Municipal Code (“AMC”) § 2-93.2(b). After deliberating at the hearing, the Commission denied the complaint as unfounded. This written decision now follows.

**Background**

On September 5, 2023, the Alameda City Council introduced an ordinance authorizing the City Manager to execute a lease with Pyka, a designer and manufacturer of autonomous electric airplanes, for Building 39 at Alameda Point. The ordinance was on the agenda, and City staff issued a staff report on the proposed lease.

Two weeks later, on September 19, the City Council approved the ordinance by a vote of 4-1. The ordinance appeared as Item 5-J on the agenda. The description of Item 5-J reads:

Final Passage of Ordinance Authorizing the City Manager to Execute a Lease with Pyka Inc., a Delaware Corporation, for Building 39, Located at 950 West Tower Avenue at Alameda Point, Alameda, California, for an Eight Year Lease Term with an Additional Three Year Extension Option for Research and Development of Autonomous Electric Aircraft. In accordance with California Environmental Quality Act (CEQA), this action is categorically exempt from further environmental

review pursuant to CEQA Guidelines Section 15301  
(Existing Facilities). (Base Reuse 29061822)

The webpage for Item 5-J included a link to the staff report.

On September 30, 2023, Shelby Sheehan filed her complaint in this matter. The complaint alleged that in connection with the September 19 hearing, City staff and City officers violated various provisions of the Sunshine Ordinance regarding agenda requirements, public testimony, public comment, and public information.

### **Procedure**

Under the Sunshine Ordinance, once a timely complaint is filed, the Commission will hear the complaint and render a formal written decision. AMC § 2-93.2. The parties may file written materials and present evidence. *Id.* The parties also may argue and answer the Commission's questions at a hearing. *Id.* The Commission considers the parties' evidence and arguments at the hearing before making its decision. *Id.*

Here, the City filed a position statement against the complaint. In addition to filing the complaint, Ms. Sheehan filed a reply to the City's position statement. Both parties appeared at the Commission's November 6 hearing. Ms. Sheehan represented herself, and Strategic Advisor Andrew Thomas represented the City. All Commissioners except Klinton Miyao were present.

### **Discussion**

First, the Commission concludes that the City did not violate the Sunshine Ordinance's agenda requirements in AMC § 2-91.5(b), § 2-91.5(e), and § 2-91.5(e). Ms. Sheehan alleged that the City violated these provisions principally because the description of Item 5-J and the staff report allegedly failed to include or misstated various alleged information about the historic nature of the site, the applicable land-use regulations, and the California Environmental Quality Act. However, in the Commission's view, the City's description of Item 5-J was "sufficiently clear and

specific” to alert the general public about the matter, while remaining “brief, concise, and written in plain, easily understood English.” AMC § 2-91.5(b). Additionally, the City did not violate § 2-91.5(e) because City staff have discretion to determine what documents are “material” to an agenda matter, and in light of the arguments and evidence presented by the parties, they did not exceed that discretion here. The City also did not violate § 2-91.5(f) because that provision applies when an item is absent from the posted agenda; here, Item 5-J was on the posted agenda. And any alleged deficiencies in the staff report did not violate the Sunshine Ordinance’s agenda requirements because those provisions do not regulate staff report content.

Second, the Commission concludes that City officials and staff did not violate the Sunshine Ordinance while discussing Item 5-J during the September 19 hearing. Ms. Sheehan’s claims—that City officials and staff made misstatements or failed to raise issues—fall outside of the Commission’s jurisdiction because the Commission is not entrusted to assess the underlying merits of the ordinance at issue.

Third, the Commission concludes that City officials and staff did not violate the public testimony and public comment provisions in AMC § 2-91.15(c), § 2-91.15(e), and § 2-91.17. Section 2-91.15(c) generally provides that a “public body shall not abridge or prohibit public criticism” on any basis other than reasonable time constraints. The City did not violate this section because no City official or employee limited or prohibited public criticism. Section 2-91.15(e) provides that the City should take “reasonable steps” to ensure that “staff reports, presentations, comments from parties with a direct connection to the agenda item, and council questions are to be presented before the public has an opportunity to speak so as to provide the fullest opportunity for public input on all issues.” Based on the arguments and evidence presented, the City took those “reasonable steps” here. Section 2-91.17 provides that every member of a policy body “retains the

full constitutional rights of a citizen to comment publicly on the wisdom or propriety of governmental actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove, or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with perceived inconsistency of non-public discussions.” The alleged actions do not violate this section because the City Council as a public body did not sanction, reprove, or deprive a Councilmember’s constitutional rights.

Fourth, the Commission concludes that the City did not violate AMC § 2-92.7, which provides that, generally speaking, every policy body shall maintain a communications file containing a copy of any letter, memorandum or other writing pertaining to the body’s duties “which the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body’s agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days.” This provision does not apply here because the evidence fails to show that the records sought were in fact distributed to a quorum of the City Council. Additionally, Ms. Sheehan’s public records request remains open, which means the City may provide her additional responsive documents later.

Fifth, the Commission has considered Ms. Sheehan’s remaining arguments and concludes they are without merit or fall outside of the Commission’s jurisdiction. The Commission also notes that at the hearing, Ms. Sheehan withdrew her claims about the links being inaccessible and the City’s alleged failure to include an attachment to the September 19 agenda.

Finally, by a 3-1 vote, the Commission finds that the complaint is unfounded because the complaint essentially seeks to contest the underlying merits of the enacted ordinance. AMC § 2-93.2(c). Under the Sunshine Ordinance, the Commission is not the right forum for that dispute.

DECISION

For the foregoing reasons, the Commission denies Ms. Sheehan’s complaint as unfounded.

Dated:

Commissioners Voting to Deny the Complaint as Unfounded

DocuSigned by:  
Seren Chen, Chair

DocuSigned by:  
Chris Miley, Vice Chair

DocuSigned by:  
Ruben Fios, Commissioner

Commissioner Voting to Deny the Complaint

DocuSigned by:  
Brenden Sullivan, Commissioner