

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

In Re Complaint of Shelby Sheehan,

Complainant;

City of Alameda,

Respondent

DECISION OF THE

OPEN GOVERNMENT COMMISSION

OF THE CITY OF ALAMEDA

The above-entitled matter came on for hearing and decision by the Open Government Commission of the City of Alameda (“OGC”) under the Sunshine Ordinance of the City of Alameda, Sections 2-93.2(b) of the Alameda Municipal Code (“AMC”). After deliberating at the hearing, the Commission denied the complaint as unfounded. This written decision now follows.

Background

At its December 11, 2023, meeting, the City’s Planning Board considered Item 5-D (File #2023-3663) entitled “PLN23-0368 – 700 Essex Drive – Administrative Use Permit & Design Review – Applicant: Zum Services, Inc.” The purpose of the item for the Planning Board to consider (1) authorizing an administrative use permit to establish permanent parking for small school buses, school bus driver parking, and a new perimeter fence; and (2) approve Design Review for an office trailer and restroom for school bus drivers and administrative staff, all within an existing parking lot located at 700 Essex Drive. Four documents were attached to Item 5-D’s staff report:

- Exhibit 1: Memorandum from Alameda Unified School District (“AUSD”) to City planning staff regarding its plan with ZUM Services to update and utilize the property at 700 West Essex Drive to park ZUM vehicles and ZUM employees’ vehicles, accompanied by diagrams of the site, office trailer, and toilet trailer, and site photos.

- Exhibit 2: Draft resolution for the Planning Board.
- Exhibit 3: Public correspondence received by the City regarding the item.
- Exhibit 4: Additional public correspondence received as of December 11, 2023.

All exhibits were available to the public by clicking on the relevant hyperlinks on the agenda. Individuals could attend the meeting in person, by utilizing a Zoom URL published on the agenda, or by using dial-in information also published on the agenda. According to the City, the Zoom URL's last two characters appeared on a subsequent line in the agenda, which caused the link to not function properly; however, if an attendee copied and pasted the entire address into their browser, it worked correctly, evidenced by seven attendees via Zoom when the issue was brought to staff's attention.

Ms. Sheehan filed her complaint with the Open Government Commission ("OGC") on December 13, 2023.

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.*

The City filed a position statement asking OGC to reject the complaint as unfounded. In addition to filing the complaint, Ms. Sheehan submitted additional reference materials via email in support of her complaint on January 29, 2024, prior to the hearing. Both parties appeared at the Commission's January 29 hearing. Ms. Sheehan represented herself, and Steven Buckley,

Planning Services Manager for the City, represented the City. All Commissioners except Vice Chair Chris Miley were present.

Discussion

After considering the arguments and events presented, the Commission concludes that the complaint is unfounded. Ms. Sheehan made six distinct claims, which are summarized and addressed below.

Claim No. 1: Violations of AMC § 2-91.6 Public Notice Requirements

AMC § 2-91.6 specifies what information must be included on a public notice that is mailed, posted, or published by the City. Ms. Sheehan's first claim alleges three violations of § 2-91.6, which are addressed in order as Parts A, B, and C, below.

Part A alleges a violation of the notice requirements because the notice and materials published by Planning staff allegedly stated that the application was being reviewed pursuant to AMC § 30-21.4, when it should have stated AMC § 30-21.3. However, the draft resolution (Exhibit 2 to the Staff Report) specifically states that the Planning Board was making findings "relative to the Use Permit application (AMC Sections **30-21.3**).” Because the record shows that staff cited the appropriate municipal code section, part A of Ms. Sheehan's first claim is deemed unfounded.

Part B alleges that the notice itself was "faulty" because (1) it lacked an "identification of parcel ownership," which Ms. Sheehan alleges was required, (2) it included "irrelevant and/or other false information" on the "effect of the proposal or activity" as required by § 2-91.6(b), and (3) because the notice "was not posted on the property itself." The notice was attached to the City's response memorandum (page 6 of the PDF).

Regarding the alleged lack of information Ms. Sheehan believes was required, § 2-91.6 has no requirement for an “identification of parcel ownership.”

Regarding the alleged lack of information on the “effect of the proposal or activity,” the notice on its face specifies that the activity is to establish permanent parking for small school buses and a new perimeter fence within an existing parking lot located at 700 Essex Drive, and Design Review for an office trailer and restroom. Ms. Sheehan’s arguments did not rebut the City’s position that this statement was adequate for purposes of § 2-91.6.

Regarding the alleged lack of information on the location of the meeting, the notice appears to contain a hyperlink to the City’s calendar, which specifies the location of the Planning Board meeting as being in Council Chambers at City Hall, 2263 Santa Clara Avenue, 3rd Floor, Alameda, CA 94501.

For the foregoing reasons, part B of Ms. Sheehan’s first claim is deemed unfounded.

Part C alleges that the notice stated that Planning Staff would assist Ms. Sheehan with seeking additional information but that staff did not provide information she requested. § 2-91.6 does not have an “assistance” requirement for notices; rather, it only requires that contact information be provided for questions (§ 2-91.6(b)), and that the notice provide information on how written comments can be submitted (§ 2-91.6(c)).

The City flagged in its response that Ms. Sheehan may be referring to her December 19, 2023, Public Record Request #23-583. That request appears to have been fulfilled as of January 3, 2024, according to the entry on NextRequest:

<https://cityofalamedaca.nextrequest.com/requests/23-583>. In any event, Ms. Sheehan does not appear to be making a complaint about Request #23-583. Rather, she claims she did not receive

information in response to inquiries she made prior to that request and prior to the meeting, but she is framing this lack of response as a violation of the Public Notice Requirements in § 2-91.6, rather than a violation of § 2-92.1 (Release of Documentary Public Information). Failing to respond to Ms. Sheehan's questions does not violate § 2-91.6, and therefore, part C of Ms. Sheehan's first claim is deemed unfounded.

**Claim No. 2: Violation of AMC § 2-91.3 – Meetings to be Open and Public;
Application of Brown Act**

AMC § 2-91.3 requires all meetings of policy bodies (including the Planning Board) to be "open and public" and governed by the provisions of the Brown Act, Government Code §§ 54950 et seq.

Ms. Sheehan alleges that "the Planning Board was made aware within the first 15 minutes of the Hearing that the Zoom link did not work, and phone-caller(s) were unable to 'raise their hand.'" She further alleges that a friend texted her to alert her of the problem, and that she reported the issue to the Planning Board. She also alleges that the person affected "still did not get access, so public access was inadequate."

The City's response notes that although the URL had two characters on the next line, resulting in the Zoom hyperlink not working when clicked with a mouse cursor, the URL worked if it was copied and pasted, and that there were seven attendees present via Zoom at the time Ms. Sheehan reported this problem during the meeting. The City states it also promptly addressed the issue with the URL when it was raised by Ms. Sheehan and updated the agenda online.

Even if the Zoom hyperlink did not work, the record shows that the agenda and notice provided teleconference information as required by the Brown Act, Government Code § 54953(b)(3). The City states that the individual who was unable to "raise their hand" via teleconference was able to do so later in the meeting. One individual testified at the hearing that

the person had difficulty participating and submitted a video purporting to demonstrate this difficulty to the Clerk. No other evidence was presented showing that individuals could not participate in the meeting. Based on the available evidence, the Commission finds that the Planning Board's meeting was open to the public for attendance in-person and via Zoom, and therefore Ms. Sheehan's second claim is deemed unfounded.

Claim No. 3: Violation of AMC § 2-91.5 – Agenda Requirements; Regular Meetings

AMC § 2-91.5 specifies the requirements for the substance and publication timing of agendas for policy bodies such as the Planning Board.

Ms. Sheehan claims that the agenda materials and application materials are “not consistent,” and that “Agenda materials aren't included in the Permit submission.” The latter claim (that the “Agenda materials aren't included in the Permit submission”) is not a violation of the Sunshine Ordinance, which does not regulate what should be contained in a “Permit submission.”

Ms. Sheehan further alleges the following:

- Unspecified “numerous deficiencies and falsehoods in the application.” Because the Sunshine Ordinance does not regulate what should be in the application itself, this is not a violation of § 2-91.5.
- “CEQA exemption determination needs to include documentation of “substantial evidence provided to the public,”; “its also faulty as no exemptions are allowed in Historic District per CEQA,”; “also ignores existing CEQA NOE.” The California Environmental Quality Act (Public Resources Code §§ 21000 et seq.) is a wholly separate and unrelated state law that is not enforced via the Sunshine Ordinance.

Even assuming all of Ms. Sheehan's CEQA allegations are true and are actual CEQA violations, they would not be violations of the Sunshine Ordinance.

- "Agenda materials not consistent with the Permit application—eg [sic] permit application says 16 employees but the Agenda materials do not include anything about it." The City's response notes that AMC § 2-91.5(e) requires staff to determine which documents are "material" to each Planning Board item and attach them to the staff report. The Commission finds that the specific number of employees noted in the permit application is not material and therefore was not required to be attached to the agenda item.
- "Permit application not included in the agenda materials." This also goes to the question of whether a document was "material" to the agenda item. The Commission finds that the permit application itself is not material and therefore was not required to be attached to the agenda item.
- "Both Presentation and agenda materials do not include the three 45 foot buses that are parking at the lot (I have pictures)." Similarly, this claim goes to the question of whether a document was "material" to the agenda item. There is no evidence in the record that the City had photos of "three 45 foot buses," in which case the City is not obligated to attach documents that do not exist.

Based on the available evidence, the Commission finds that the Planning Board's agenda did not violate § 2-91.5, and therefore Ms. Sheehan's third claim is deemed unfounded.

Claim No. 4: Violations of §§ 2-90.1 – Goal and 2-90.2 – Findings.

Ms. Sheehan's fourth claim consists of three allegations: first, that "the Planning Board failed to evaluate the project properly according to regulatory guidelines set forth in those

codes,”; second, “the Planning Department did not provide the required Certificate of Approval from HAB,”; and third, “the Planning Department did not provide the required CEQA documentation for the (erroneous) CEQA determination.”

As noted by the City’s response, these sections of the Sunshine Ordinance are general statements of the legislative intent of the Sunshine Ordinance and do not set forth specific requirements or rules for City staff. For this reason alone, the Commission finds that Ms. Sheehan’s fourth claim is deemed unfounded.

Claim No. 5: Violation of § 2-91.15 – Public Testimony

AMC § 2-91.15(b) requires that “every agenda . . . shall provide . . . an opportunity for each member of the public to directly address the body concerning that item before taking action.”

AMC § 2-91.15(e) requires the City to “take reasonable steps to ensure 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 before the board, commission or council. This subsection should not be construed to constrain a policy body's authority to consider or pose questions concerning any reports, presentations, comment, or testimony following public comment.”

Ms. Sheehan alleges “there is little chance for the public to speak, but staff and the applicant speak as long as they want, and get to answer clarifying questions, which the public does not have the chance to refute. I don’t call that much hearing from the Public at these hearings.”

Ms. Sheehan’s own claim appears to admit that the public did have a chance to speak, and the Sunshine Ordinance specifically does not constrain the Planning Board’s authority to consider or pose clarifying questions. There is no evidence in the record suggesting the public did not have a chance to speak. Based on the available evidence, the Commission finds that the public did have a chance to speak at the Planning Board’s December 11, 2023, meeting regarding Item 5-D, and therefore Ms. Sheehan’s fifth claim is deemed unfounded.

Claim No. 6: Violation of § 2-92 – Public Information

AMC §§ 2-92 et seq. governs the process of requesting and disclosing the City’s public records, in tandem with the California Public Records Act, Government Code §§ 7920 et seq.

Ms. Sheehan’s sixth and last claim has two subparts: first, she alleges “Planning staff hid the permit application from the Public until Project was fully operational,”; and second, she alleges that “PRA #23-512 request records are being improperly withheld from me.”

As to the first subpart, Ms. Sheehan makes a series of factual claims about City staff without any accompanying evidence.

- Specifically, Ms. Sheehan alleges that the permit application was filed on August 21, 2023, but it allegedly did not appear on [Accela](#) (the City’s permit records database) until October 27, 2023. Neither Ms. Sheehan’s complaint nor the City’s response contain any facts to prove or negate this allegation. No evidence was presented at the hearing to support Ms. Sheehan’s allegation.
- Ms. Sheehan alleges that City staff Allen Tai and Steven Buckley lied to her and to the Planning Board about the timing of the project. Neither Ms. Sheehan’s complaint nor the City’s response show any facts to prove or negate this allegation, and Ms.

Sheehan does not specify how any such alleged deceit demonstrates a violation of § 2-92 (which mandates disclosure of public records, not honesty of public employees).

- She alleges that AUSD officials (a public agency) did not respond to her inquiries.

AUSD is not subject to the City's Sunshine Ordinance and is not bound by the OGC.

As to the second subpart, Ms. Sheehan alleges she only received "one email string conversation" as of the date of her complaint (December 13, 2023) in response to her November 6, 2023, records request. She also alleges that some records were withheld, and some were redacted, "the reason for which is not sufficient." The City's response notes that it provided her 374 pages of responsive documents and closed the request on December 14, 2023.

Based on a review of Ms. Sheehan's request on NextRequest (<https://cityofalamedaca.nextrequest.com/documents/26919666>), Ms. Sheehan made her request on November 3, 2023. The request was initially assigned to Planning, Building, and Transportation, and subsequently on November 20, the City Attorney, Base Reuse and Economic Development, Public Works, and the City Clerk were assigned as well. On December 11, 2023, the City provided its responsive records (which are 374 pages, in one 177-megabyte PDF file) and noted the reasons for its redactions and withheld documents in the cover message. Those reasons were:

- Government Code § 7927.705 (exempting records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege). The City's citation further cites to Evidence Code §§ 952 and 954, which address attorney-client privilege and confidential attorney-client communications.

- Government Code § 7922.000 (exempting records where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record). The City’s citation to this exemption notes in parentheses “privacy.”

As to the claim that Ms. Sheehan only received “one email string conversation,” the 374-page PDF shows multiple email strings, including some of Ms. Sheehan’s own emails with City staff.

As to the claim that the reasons for redactions and withholding of documents were “not sufficient,” the Public Records Act does not require a “privilege log” or list that identifies the specific records being withheld. *See Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1075; AMC §§ 2-92.11 and 2-92.12. Specifically, the Sunshine Ordinance only requires the following:

Any withholding of information shall be justified, in writing, as follows:

- a. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.
- b. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.
- c. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

The City’s response in NextRequest appears to comply with these requirements with citations to relevant exemptions in the Public Records Act, and for the catch-all exemption, a parenthetical noting that the basis for non-disclosure is “privacy.” For the exemption based on prohibition by law, the City cites portions of the Evidence Code addressing attorney-client

privilege. At the hearing, Ms. Sheehan offered no further evidence as to how her public records request was not adequately fulfilled or how the City failed to adequately substantiate its reasons for withholding records. Because the evidence shows Ms. Sheehan received a complete and Sunshine Ordinance-compliant response to her public records request, her sixth claim is deemed unfounded.

DECISION

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

Dated: March 6, 2024

Commissioners Voting to Deny the Complaint as Unfounded

DocuSigned by:

 9FD0C8AA65A1452
 Sheila Chen, Chair

DocuSigned by:

 11A531D36A7D493
 Ramin Malyao, Commissioner

DocuSigned by:

 AD3DC8852FF845B...
 Ruben Pross, Commissioner

Commissioner Voting Against Denying the Complaint as Unfounded

DocuSigned by:

 D7558E69A06A4F7
 Brendan Sullivan, Commissioner