

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

In Re The Complaint of  
Christopher Lloyd et al.  
Complainant  
The City of Alameda,  
Respondent

DECISION OF THE  
OPEN GOVERNMENT COMMISSION  
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 (“OGC”) under the Sunshine Ordinance of the City of Alameda, Section 2-93.2 (b) of the Alameda Municipal Code (“AMC”).

**Background**

The complaint at hand was filed by Christopher Lloyd and 10 additional signatories. The complaint concerned the City Council’s May 2, 2023 approval of an ordinance to amend the Alameda Landing Waterfront Master Plan.

On April 18, 2023, the City Council considered Item 7A. The relevant excerpt of the title of Item 7A was “Introduction of Ordinance Amending the Alameda Landing Waterfront Master Plan PLN22-0401 to Replace a Requirement for a 5,000 Square Foot Commercial Retail Lot with Other Land Uses at the Northern Terminus of Fifth Street at Alameda Landing.” The Council, by a 3-2 vote, approved the introduction of the ordinance.

On May 2, 2023, the Council considered Item 5-I on its consent calendar, entitled “Final Passage of Ordinance Amending the Alameda Landing Waterfront Master Plan PLN22-0401 to

Replace a Requirement for a 5,000 Square Foot Commercial Retail Lot with Other Land Uses at the Northern Terminus of Fifth Street at Alameda Landing.” After City staff made a presentation on Item 5-I and responded to questions from Council, Councilmember Vella moved approval of the final passage of the ordinance. The motion did not pass; the vote was 2 in favor, 2 opposed, with Councilmember Jensen abstaining. Councilmembers continued to discuss the item, and Councilmember Jensen then stated “I’m going to move the resolution forward.” Councilmember Vella seconded Councilmember Jensen’s motion. The Council and staff appeared to believe at that point that a motion for reconsideration was needed, until the City Clerk clarified that a motion for reconsideration was not necessary because there was not a “prevailing side” in Councilmember Vella’s motion. The City Clerk was citing to the Rosenberg Rules of Order, which the City Council adopted through Resolution 15382 dated May 16, 2018. Page 6 of the Rosenberg Rules of Order states that “a motion to reconsider may be made only by a member who voted in the majority on the original motion.”

Once it was clear that a motion for reconsideration was not necessary, Mayor Ezzy Ashcraft stated “So Councilmember Jensen made a motion,” and confirmed that Councilmember Vella had seconded the motion. The mayor then asked the City Attorney whether that motion could include also direction to staff to work with the developer. She noted that she didn’t want to change the motion too much “so that it won’t be a second reading.” The City Attorney recommended that the direction to staff be addressed separately from the motion. The Council then approved the ordinance by a 3-2 vote.

At its June 6, 2023 meeting, the Council approved (by a 5-0 vote) the minutes of the May 2, 2023 meeting. Those minutes describe the discussion and vote on Item 5-I, including the initial confusion as to whether a motion for reconsideration was needed.

The Complainants filed their complaint with the Open Government Commission (“OGC”) on May 15, 2023, claiming that the City Council had violated Section 2-91.5 of the Sunshine Ordinance.

### **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, the parties filed written materials prior to the hearing, which was held on July 11, 2023 before the five OGC commissioners. The parties appeared personally at the hearing, which was held in the City Council chambers at 2263 Santa Clara Avenue, Alameda, California.

Christopher Lloyd argued on behalf of the Complainants. Chief Planning Counsel Celena Chen argued on behalf of the City.

### **Discussion and Decision**

The Complainants’ single claim alleged that the City Council violated Section 2-91.5 of the City’s Sunshine Ordinance which provides in part that “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda.” The Complainants argued that the vote taken on Councilmember Jensen’s motion on Item 5-I on May 2, 2023 was actually a vote on a motion for reconsideration, not a vote on the second reading of the ordinance. The Complainants reasoned that to the extent that the City maintains that the ordinance was

approved, that approval must have occurred during a later meeting that was not properly noticed, thereby violating Section 2-91.5 of the Sunshine Ordinance.

Section 2-91.5 of the Sunshine Ordinance provides in relevant part as follows:

- a. [T]he 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. . .
- 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. . .
- f. No action or discussion shall be undertaken on any item not appearing on the posted agenda . . .

The Complainants conceded that that the second reading of the ordinance had been properly agendized for the May 2, 2023 City Council meeting. The Complainants did not present any evidence of the City Council having had a second meeting.

During their deliberations, the Commissioners discussed the events of the May 2, 2023 meeting, including the Council's and staff's confusion over role of the Rosenberg Rules of Order, whether the public understood the City Council's decision-making process during its May 2<sup>nd</sup> meeting, and the general inefficiency of that meeting.

Ultimately, the OGC rejected the claim, on the basis that it failed to find a violation of Section 2-91.5 of the Sunshine Ordinance as presented by the Complainants.

Dated: August 7, 2023

**Commissioners Voting to Reject the Complaint**

[REDACTED]

Serena Chen, Chair

[REDACTED]

Chris Miley, Vice-Chair

[REDACTED]

Klinton Miyao, Commissioner

[REDACTED]

**Commissioners Voting Against Rejecting the Complaint**

[REDACTED]

Brenden Sullivan, Commissioner

[REDACTED]

Ruben Tilos, Commissioner