

MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
TUESDAY- -SEPTEMBER 24, 2013- -7:00 P.M.

Mayor Gilmore convened the meeting at 7:07 p.m. Councilmember Daysog led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Chen, Daysog, Ezzy Ashcraft, Tam and Mayor Gilmore – 5.

Absent: None.

ORAL COMMUNICATIONS, NON-AGENDA

(13-418) Rose Sandoval, SEIU 1021, discussed BART employees working conditions and urged people to contact the City's BART Board representative.

AGENDA ITEM

(13-419) Provide Comments on Possible Project Labor Agreement (PLA) Policy.

Urged adoption of a PLA: Assemblymember Rob Bonta.

The City Attorney gave a brief presentation.

Michael Viaming, Viaming and Associates, gave a Power Point presentation and addressed Council questions.

Mayor Gilmore stated Alameda Point is in the forefront; the project will take 20 to 30 years; multiple projects will be built over a long period of time; inquired whether Mr. Viaming would argue for a Project Stabilization Agreement (PSA) instead of a Project Labor Agreement (PLA); further inquired whether perhaps 5 or 10 years would be a reasonable check in point; noted attracting initial projects might be difficult.

Mr. Viaming responded a PSA makes more sense and is a more cost effective solution than a PLA, which would take considerable time to negotiate; stated a PSA makes more sense because of the long term and multiple constructions types that will be done; his recommendation would be a PSA or a policy which would require developers to negotiate with the building trades; the same thing can be accomplished in different ways; estimating when the check in evaluation should be depends on the amount of construction; there would be nothing to evaluate if a 5 year timeline were selected and nothing happens; the time should be shorter, such as three years, if there is lot of construction up front; the City should gauge the construction economy and developer interest to select a good timeline.

Vice Mayor Ezzy Ashcraft inquired when a PSA should be negotiated; whether a PLA or PSA ever delays the start of a project; and how far in advance discussion should begin.

Mr. Viaming responded the City would not want to have a hard deadline and have to race to be covered by a project agreement; stated bid specifications have to be done right and bidders need to be notified that an agreement exists which has required terms and conditions; lead time is needed; encouraged starting as early as possible because what will happen in negotiations is not known; further stated more time is needed if hard elements are being negotiated; not getting an Agreement done in time and running into a problem is an unacceptable risk; the City may run out of time and not reach an Agreement or end up making a concession.

Vice Mayor Ezzy Ashcraft inquired whether negotiations should start six months or a year prior to construction in the example of a new bond funded facility.

Mr. Viaming responded other agencies often start in advance of a bond measure vote and have the agreements in place; stated six months, or slightly longer, should be provided for negotiations; six months is more than enough time for most agreements, unless there is something particularly difficult.

Councilmember Chen inquired whether there is an overlapping common denominator in most PLAs, such as hiring local, minority or women contractors.

Mr. Viaming responded in the affirmative; stated typical provisions include: scope, strike/lock out, referrals, dispute resolution, and safety; said items are typically covered at a macro level; then, local matters include start times, daily machinations and paydays; the agreement standardizes certain things; social progress provisions are generally included in more urban Project Agreements and are becoming more typical in the interior Bay Area, but not rural areas.

Councilmember Chen stated the City of Berkeley addressed a citywide PLA a year and a half ago; inquired what is the general trend and whether any other cities are considering citywide PLAs.

Mr. Viaming responded that he does not know.

Councilmember Chen stated an argument against PLAs is the inability for non-union workers and contractors to compete; inquired how to respond to said argument.

Mr. Viaming responded the argument comes up all the time; inability to bid on a "union" project is fundamentally not true; stated PLAs for public entities are open to union and non-union; the California Supreme Court in a San Francisco Airport case determined a contractor can decide whether or not to bid on a project; whether union or non-union specific work conditions are required of any bidder; projects are open and available to all contractors; provided an example of a bond funded community college project with a large number of non-union contractors performing work under a Project Agreement; the other argument is cost claiming non-union contractors have to add money to bids because they will have to pay more; reviewed how benefits are structured and

associated costs; stated the argument costs are increased is not necessarily true.

Councilmember Tam stated Mr. Viaming is recommending more of a hybrid approach; a PSA makes sense for something as complex, multifaceted, and long term as Alameda Point; regular Public Works projects would fall under the category of a shorter term PLA; inquired what happens when the two types of projects dovetail; stated utilities and infrastructure will be needed at Alameda Point; inquired how the two types work with Disposition and Development Agreements (DDAs); stated the City is going to be conveying parts of Alameda Point.

Mr. Viaming responded his answer is going to seem a lot like a dodge; stated the issue would probably best be considered by having a discussion with the City Attorney; the mechanism and scope depend on a lot of different factors; a number of different elements go into in the matrix; that he would suggest deferring until real input is provided regarding the direction in which Council wants to go; next, staff would establish the best model to achieve objectives, which would be used to create the policy agreement; then, negotiations could begin; providing an opinion now would be premature because he does not know all the elements well enough, and gets the City too far down the road too fast.

Councilmember Tam stated the things in a PSA, such as no strike, no lock out, jurisdictional dispute resolution process, referral procedures, and having mentorship program, are all things the City wants and values.

Mr. Viaming stated one option is to come up with a PSA and another option is to put together a policy which indicates the City is not going to negotiate the Agreement, instead negotiation will be left to the developer; the City policy would include the required elements and direct developers to negotiate with the building trades; there are different ways to accomplish the goal; the City could have a template Agreement and an accompanying policy.

Mayor Gilmore inquired whether it would be possible to treat Alameda Point as its own animal, because it is being rebuilt from the ground up; stated perhaps some sort of PLA that applies to Alameda Point could be done and some other kind of Agreement could be prepared for the rest of the City's built environment projects, such as replacing sewer mains, regular maintenance, or road work; inquired whether having one type of Agreement that covers both is better or whether the City could carve out Alameda Point and treat it differently.

Mr. Viaming responded the decision is the Council's prerogative; stated the Council could decide to take care of one element first as a separate area; an Agreement could require that Public Works projects over a certain amount of money would have a PSA with specific elements that must be negotiated by the contractor; the most cost efficient way might be to have different approaches; the City probably will need multiple approaches.

Councilmember Tam stated inquired how the City of Berkeley deals with private entities; and how Berkeley's citywide policy for public works projects translates in terms of requirements.

Mr. Viaming responded the City of Berkeley set a threshold; stated projects with an estimated value over \$1 million qualify and require a PLA to be included in bid documents.

Councilmember Daysog stated City leases in building requiring significant rehabilitation could be one potential project category; an example would be Bladium making \$2 million in improvements; questioned putting a threshold in place and subjecting an entity to a PLA; inquired whether Mr. Viaming has encountered a situation where there is not simply a threshold with regard to the value of the project, but something about the entity that is going to have to implement the PLA.

Mr. Viaming responded that he has dealt with the issue; however, it was not an existing tenant doing an improvement; stated the 835 Westfield Project in San Francisco renovated commercial shopping space; a provision in the Agreement required the tenant improvement work for a specific period of time to be covered under the Agreement and after period of time, the Agreement did not apply; having an existing tenant do improvements on a property is difficult; new construction is different; that he would be cautious about imposing a PLA on existing tenants, which might create some challenges; there could be a discussion between the tenant and the building trades.

Provided input on the standards to include in an agreement: Doug Biggs, Alameda Point Collaborative.

Stated entering into an agreement is a partnership: Andreas Cluver, Building Trades Council of Alameda County.

Stated Alameda has a skilled labor force which looks forward to building Alameda Point: Jason Bates, IBEW and Alameda resident.

Vice Mayor Ezzy Ashcraft provided an example of Target taking interest in residents who attended a Housing Authority seminar put on by a retail executive recruiter and trainer, which was a creative example of how the City can help residents acquire jobs in Alameda with new businesses; everyone would love to see a jobs/housing balance in Alameda.

Councilmember Daysog stated Alameda Point cannot just be a real estate project; there is some larger meaning in converting a military base into something more peaceful and positive, contributing to the wellbeing of residents; the possibility of a PLA is exciting; one component is learning from the Mandela Center, Oakland Army base, Alameda Point Collaborative or the building trades; the construction trades can help figure out ways to make economic security tailored specifically to helping homeless families or others in the system, which fulfills a 1995 promise made under the Standards of

Reasonableness; stated that he looks forward to seeing said details.

Mayor Gilmore stated Council needs to provide direction to staff; suggested separating Alameda Point from the rest of the Island; stated one agreement should cover regular maintenance and projects which come up in the City's regular course of business and Alameda Point would be treated as its own animal; recommendations should be provided on how to address existing tenants using their own capital to upgrade and expand businesses; the historic district is challenging in and of itself and may need to have special consideration; social justice aspects should be reviewed; people live at Alameda Point and there should be some mechanism to allow them to participate in the great and wonderful projects that are going to happen around them; the City should be mindful of ways to get Alameda Point residents to participate in the upside of whatever happens.

Vice Mayor Ezzy Ashcraft concurred with the Mayor; stated the four items in the staff report [project category, project parameters, cost added to the project and impacts on public policy goals] need to be fleshed out; project parameters could be narrowed down; Berkeley has a \$1 million minimum; leaseholders doing their own improvements and the historic core could be treated differently; regarding cost added to the project, perhaps some research could be provided regarding projects in the area; public policy goals include: historic preservation, marine preservation, competitiveness to attract new commercial users and to retain and expand existing companies, local hiring, and social justice issues, including apprenticeship opportunities; that she would like to hear some specifics about apprenticeship opportunities, especially with an eye to Alameda Point Collaborative residents.

Councilmember Tam stated the City is actively engaging in discussions about the Master Infrastructure Plan (MIP), the Environmental Impact Report (EIR), and the phasing and disposition strategy for Alameda Point; Alameda Point has some unique issues beyond a garden variety PLA or PSA; starting with Alameda Point might make sense; then, regular maintenance projects could be addressed down the line.

Mayor Gilmore stated the staff report project category 1b, "City Project," represents more predictable, maintenance projects done on a schedule; said projects would be parked for a while and the City would start with Alameda Point based on the comments tonight; requested further information be provided to Council regarding having a construction dollar amount which would trigger a PLA, which seems really important to building trades; more information is needed about whether having a dollar amount be a triggering event is reasonable and what the amount should be; that she is not particularly concerned about project complexity because she assumes anything at Alameda Point is going to be fairly complex, involve multiple trades and take over six months; Vice Mayor Ezzy Ashcraft raised questions about the timeframe because projects could be entitled in early 2014.

The City Manager stated the EIR comment period ends October 21<sup>st</sup>; staff is probably going to start bringing proposals early November; staff has been talking to the trades for

a long time and has discussed, for example, the problem of historic buildings; the building's value is pretty much nil; imposing a PLA on a tenant might be a problem if a new roof is needed; there is agreement that all new construction should be subject to a PLA; backbone infrastructure should be subject to a PLA; a decision needs to be made about a threshold; Berkeley's is \$1 million; the trades would like \$250,000; backbone infrastructure and new construction projects are going to reach either threshold; urged that the matter be addressed in the next two or three months since staff would be bringing Exclusive Negotiation Agreements (ENAs) to Council pretty soon; stated staff wants to be able to address whether or not the project requires a PLA during negotiations.

Councilmember Daysog stated that he suspects the historic district or buildings with negative value would not generate a rent or sale price which would recoup the investment; however, the possibility of a PLA should not be discounted altogether; requested staff to provide an analysis that includes parameters under which a PLA might or might not work.

The City Manager stated staff provided a report a year ago which indicated historic buildings are never going to be worth the amount repairs will cost; a private sector deal will not allow the buildings to be redone; when the buildings are leased, the City gives a dollar for dollar rent credit for any tenant repairs; stated that he would provide the report to Councilmember Daysog.

Councilmember Chen stated that he supports moving forward with the two prong approach: one PLA specifically for Alameda Point and a second Citywide PLA; the wheel should not be reinvented; the City can pick and choose from existing models to determine what works for Alameda; Berkeley could be the starting point.

Mayor Gilmore clarified that she would prefer to move forward on the Alameda Point PLA and park the City projects for a little while; stated the Alameda Point PLA should focus on backbone infrastructure and new construction and the historic district should be carved out; the sticking point is what, if anything, to require of existing tenants.

The City Attorney inquired whether Council would like her come back with a policy or try to start to negotiate something with the unions.

Vice Mayor Ezzy Ashcraft responded that she wants answers to questions posed in the staff report to allow the Council to craft a policy; stated a sample agreement and categories could be provided when the matter returns.

Mayor Gilmore stated the actual policy should be provided which addresses backbone infrastructure and new construction when the matter is brought back.

Councilmember Tam stated the City Attorney should work in consultation with the building trades council in developing the language.

The City Manager stated the City Attorney should not be in the position of taking a position if there are items which cannot be agreed upon; the City Attorney should bring back a proposed policy and include what the trades want which differs; then, the Council can decide what to do.

Vice Mayor Ezzy Ashcraft questioned whether Council should direct the City Attorney to consult with various stake holder parties, such as trades representatives, contractor representatives, or others who would be a party to a PLA, as well as Mr. Viaming.

Councilmember Daysog stated that he would also like the Alameda Point Collaborative included.

#### CITY MANAGER COMMUNICATIONS

(13-420) The City Manager reminded everyone to attend the Joint City Council and Planning Board meeting tomorrow night.

#### COUNCIL COMMUNICATIONS

(13-421) Councilmember Tam announced that all Councilmembers attended all or a portion of the League of California Cities conference last week; discussed the sessions she attended.

The City Manager noted the City's bond rating increased.

Councilmember Tam continued her review of the sessions.

Councilmembers Chen and Daysog discussed the sessions they attended.

#### ADJOURNMENT

There being no further business, Mayor Gilmore adjourned the meeting at 9:26 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Sunshine Ordinance.