

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -DECEMBER 20, 2011- -7:00 P.M.

Mayor Gilmore convened the meeting at 7:14 p.m.

ROLL CALL - Present: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore - 5

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(11-594) Presentation of Certificate of Service to Social Service Human Relations Board Member Reginald James.

Mayor Gilmore presented the certificate to Mr. James.

ORAL COMMUNICATIONS, NON-AGENDA

(11-595) Jim Franz announced the Community Needs Survey is available on-line in English, Chinese, and Spanish.

CONSENT CALENDAR

Mayor Gilmore announced that the minutes [paragraph no. 11-596] and the resolution Ceasing the Transfer of the Surcharge [paragraph no. 11-606] were removed from the Consent Calendar for discussion.

Councilmember moved approval of the remainder of the consent calendar.

Councilmember seconded the motion, which carried by unanimous voice vote – 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(11-596) Minutes of the Special Joint City Council, Alameda Reuse and Redevelopment Authority, and Community Improvement Commission and Regular City Council Meetings held on November 15, 2011. Approved.

Councilmember deHaan moved approval of the minutes with an amendment to page 10 to change his vote from abstaining to present not voting.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5.

(*11-597) Ratified bills in the amount of \$3,297,337.39.

(*11-598) Recommendation to Accept the Special Tax and Local Bond Measure Annual Report. Accepted.

(*11-599) Recommendation to Accept the Citywide Development Fee and Fleet Industrial Supply Center/Catellus Traffic Fee Report. Accepted.

(*11-600) Recommendation to Accept the Police and Fire Services Fee Report. Accepted.

(*11-601) Recommendation to Accept the Annual Report for the Public Art Fund as Required by the Public Art Ordinance and Accept a Status Update on the Public Art Program. Accepted.

(*11-602) Recommendation to Conduct the Affordable Housing Ordinance Annual Review Consistent with Section 27-1 of the Alameda Municipal Code and California Government Code Section 66001 and Accept the Annual Report. Accepted.

(*11-603) Resolution No. 14637, "Setting the 2012 Regular City Council Meeting Dates." Adopted.

(*11-604) Resolution No. 14638, "Authorizing the City Manager to Execute a Grant Funding Agreement with the Transportation Fund for Clean Air Program Manager Fund for \$230,900 for the Local Match for the Highway Safety Improvement Program Grant for the Park Street Safety Improvement Project and to Execute all Necessary Documents." Adopted.

(*11-605) Resolution No. 14639, "Approving the Northern California Power Agency Market Purchase Agreement." Adopted.

(11-606) Resolution No. 14640, "Ceasing the Transfer of the Surcharge From the Golf Enterprise Fund to the General Fund." Adopted; and

(11-606 A) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Subsection 3-28.9 (Payment In-Lieu of Taxes) of Section 3-28 (Payment of Taxes) of Chapter III (Finance and Taxation) to Exempt the Golf Fund from the Payment In-Lieu of Taxes. Not introduced.

The Assistant City Manager gave a brief presentation.

Councilmember Tam stated that she has no problem with adopting the resolution; however, she has a problem with exempting the Golf Fund from the Payment In-Lieu of Taxes (PILOT); Alameda Municipal Power (AMP) could use money to pay for [increased] costs in medical benefits for their employees if Council would allow an exemption for AMP; implications on other Enterprise Funds should be reviewed and consideration should be given to delay the PILOT exemption until the day that Golf is no

longer an Enterprise Fund.

Mayor Gilmore inquired whether the Enterprise Fund would still pay into Internal Service Funds, but not cost allocation, to which the Assistant City Manager responded cost allocation is internal service and would cease administratively.

Mayor Gilmore stated services would still be provided; the City should continue to charge the Golf Enterprise Fund for overhead costs until a decision is made about outsourcing to an operator or until a cost allocation study is done to see if costs need to be allocated differently.

The City Manager stated the issue could be handled administratively after the internal study has been completed.

Councilmember Johnson stated that she does not think Council's intent has been to cease cost allocation; other departments would have to subsidize the Golf Course if the Golf Course did not pay cost allocation.

The City Manager stated staff would come back to Council after the study is completed.

Mayor Gilmore stated that she has a problem with treating one Enterprise Fund differently from others.

The City Manager stated the Golf Course has not always been an Enterprise Fund; staff anticipates handling services in different ways, such as the Animal Shelter; by character, the Golf Course is a recreation facility; treating the Golf Course differently from other sports does not make a lot of sense from a policy standpoint; AMP and the Sewer Fund have lots of reasons to be separate Enterprise Funds; the idea of the PILOT is to capture the amount that the land could have generated in property taxes; the same logic applies to every piece of City land.

Councilmember Tam stated that she disagrees with the City Manager; historically, the golf complex had been a part of the Recreation and Parks Department and then became an enterprise fund; the Golf Course should absorb costs like any other department.

The City Manager stated function should be the issue, not form.

Councilmember Tam stated that she chooses not to exempt the Golf Enterprise Fund from the PILOT.

The City Manager stated the issue is whether it is more important to be consistent in terminology versus form; the Golf Course is underwater from an asset perspective; shutting down the Golf Course is not an option.

Councilmember deHaan inquired when the PILOT was established, to which the

Assistant City Manager responded 1993.

In response to Councilmember deHaan's inquiry, the Assistant City Manager stated Council has taken a number of steps to change the surcharge over time; cost allocation was reset in 2004; the Return on Investment was eliminated a couple of years ago.

Councilmember Johnson stated the Golf Course is different from other recreational facilities because most recreation facilities are available to the entire public; inquired whether the City could expect a PILOT or similar payment from a lessee under a long-term lease.

The City Manager responded that he does not know if the market would support the idea at this time; questioned whether a PILOT would be required if the City built a swim center.

Councilmember Johnson stated that she would not want to set a precedent requiring a PILOT for any facility with a lock.

Councilmember deHaan stated the Golf Course is an integral part of Alameda.

Mayor Gilmore suggested that bring back a discussion on the PILOT for the Golf Course and other Enterprise Funds; inquired whether there is a deadline for a decision on the PILOT, to which the City Manager responded in the negative.

Vice Mayor Bonta stated there is some logic in having consistency for all Enterprise Funds; however, Council is not locked into treating all Enterprise Funds the same; making a decision on the PILOT should wait until March; direction should be provided on Councilmember Tam's suggestion [to look at implications on other Enterprise Funds and consider delaying the PILOT exemption until Golf is no longer an Enterprise Fund].

Councilmember Tam stated the issue is not one of form over function but is an equity issue in dealing with all Enterprise Funds and opportunity costs; possibly, the PILOT could be directed to a reserve or capital fund for Golf; the funds have a fundamental use beyond consistency.

The City Manager stated the Golf Course is the only facility being charged property tax; a PILOT is not being charged to the senior facility; that he does not understand the AMP health benefit issue noted by Councilmember Tam.

Councilmember Tam stated funds have an end use; AMP might be able to pay for employee's increased health benefits if an exemption to the PILOT was given.

Mayor Gilmore stated the issue should be part of a longer discussion to review all of the Enterprise Funds.

The City Manager stated there is a \$6 million capital need at the Golf Course; the

money has to come from somewhere.

Mayor Gilmore stated the operation of the Golf Course is still in limbo.

Councilmember Tam moved adoption of the resolution with direction to investigate issues raised with respect to the PILOT and consistency across the board for all Enterprise Funds and bring everything back in March.

Councilmember Johnson seconded the motion.

On the call for the question, adoption of the resolution carried by unanimous voice vote – 5.

On the call for the question, the direction to staff carried by the following voice vote: Ayes: Councilmembers Bonta, Johnson, Tam and Mayor Gilmore – 1. Noes: Councilmember deHaan – 1.

(*11-607) Ordinance No.3039, “Authorizing the City Manager to Execute a Lease Agreement with the Friends of the Alameda Animal Shelter for the Operation of the Alameda Animal Shelter.” Finally passed.

REGULAR AGENDA ITEMS

(11-608) Recommendation to Approve Modifications to the Tree Removal Policy Contained in the Master Street Tree Plan.

The Public Works Director gave a brief presentation.

In favor with amendments: Robb Ratto, Park Street Business Association (PSBA); and Christopher Buckley, Alameda.

Discussed bike parking: Jon Spangler, Alameda; and Marilyn Ezzy Ashcraft, Planning Board President.

Provided historical background on street trees: Carol Gottstein, Alameda.

Councilmember deHaan inquired how parks would be addressed, to which the Public Works Director responded the draft policy would be presented at the next Recreation and Parks Commission meeting.

Councilmember deHaan stated many park trees are very old, specific species and are often replaced with common trees; inquired whether private properties have removal limitations, to which the Public Works Director responded specific trees are protected, such as Coastal Live Oaks with a ten inch or greater diameter.

In response to Councilmember deHaan’s inquiry, the Public Works Director stated 20-

25 sites have been identified for bike parking.

Councilmember deHaan stated the public wants to have different tree varieties planted in the Park Street area.

The Public Works Director stated a survey was conducted; staff would meet with a landscape architect; the matter is tentatively scheduled for the January 9th Planning Board meeting.

Mayor Gilmore stated park tree inventory was compiled a while back and should be presented to the Recreation and Park Commission along with the guidelines.

Councilmember Tam stated the staff report notes that a property owner would be notified of a newly planted [street] tree and would be responsible for watering; inquired whether the City would step in if proper care is not given, to which the Public Works Director responded in the affirmative.

Vice Mayor Bonta stated the suggested improvements are significant and welcome; that he does not see a material difference between the need to remove a tree for safety to the general public and removing a tree that would present an imminent threat to public safety; a tree that would present an imminent threat to public safety should not require noticing.

The Public Works Director stated the intent would be to notify the property owner prior to removal.

Vice Mayor Bonta suggested adding “notice when feasible or practical”.

The Public Works Director stated “when feasible” would be added to the noticing requirement.

Councilmember Johnson stated the matter could be clarified by not using the term “imminent threat” in both areas; a tree could be dead but not be at risk of falling.

Vice Mayor Bonta stated that he likes Mr. Buckley’s recommendations to delete the three day noticing requirement for trees that are dying and have significant decay and clarifying that 70% decay would be determined by the cross section of a tree.

The Public Works Director stated if noticing is the same [three days], separate sections would not be needed.

Mayor Gilmore inquired whether an email interest list has been established for people interested in tree issues, to which the Public Works Director responded that a list would be developed.

Councilmember Johnson inquired whether every tree is pruned on a five-year; to which

the Public Works Director responded approximately 90% are pruned.

Councilmember Johnson stated a few years ago a ten-year pruning cycle was suggested for Gibbons Drive; inquired whether anything would be noted in the proposed policy that would ensure that a Gibbons Drive crises would not happen again.

The Public Works Director responded that removal is only being addressed tonight; stated the Master Street Tree Plan makes recommendations for pruning; in the last five years, Council has ensured that there is on-going funding to maintain the five-year pruning cycle.

Councilmember Johnson inquired whether the three-week noticing [for an informational community meeting prior to tree removal] would provide enough time to meet the new City Council noticing requirement.

The Public Works Director responded the intent would be to allow someone to address an issue under Oral Communications.

Councilmember Johnson stated Council would not have the ability to act on anything under Oral Communications.

Ms. Ezzy Ashcraft stated the Planning Board felt that people should have been updated before the work started on the Park Street Streetscape Project; having the work start within two years of approval should be fine.

Councilmember Johnson stated updates could be presented at a Council meeting; issues could be addressed at that point.

The Public Works Director stated the informational community meeting could be changed to a Council meeting, and the three-week requirement could be deleted.

The City Manager stated the three-week noticing was added as an abundance of caution based upon the outcry over what happened on Park Street.

Councilmember Tam inquired whether the City Council would have a second bite to reform or change a prior vote.

The Public Works Director responded it would depend upon how the matter was agendized; stated the vote would not be changed if the meeting was informational; Council could agendize the issue at a future meeting.

Councilmember Johnson stated Council would have discretion to send the matter back to the Planning Board for further review.

Mayor Gilmore stated it is important not to go so far off in one direction that it becomes impossible to initiate and implement the plan; the public should be given the opportunity

to provide input; delaying the project would be the issue.

The Public Works Director stated Council approval would be good for two years; after a year, an informational meeting would be held, but the decision would still stand.

Councilmember Johnson stated that she wants to resolve the problem of having the public attend a meeting and Council not being able to do anything about it.

The Public Works Director stated the Council decision would be final provided that the project commences within two years of Council approval; an informational community meeting would be held three weeks prior to commencement of the project if construction occurs one year after Council approval.

The Assistant City Manager inquired whether an informational item would be presented to Council or a community meeting would be held, to which the Public Works Director responded a community meeting would be held.

Councilmember Johnson stated that she does not think that people know to water their street trees; suggested providing information to the public regarding the matter.

Councilmember Johnson moved approval of the staff recommendation with modifications discussed.

Councilmember Bonta seconded the motion, which carried by unanimous voice vote – 5.

(11-609) Introduction of Ordinance Amending Sections 6-27.4, 6.52.1, and 22-8.1 of the Alameda Municipal Code to Allow Sale of Goods from a Rolling Store with Approval of a Special Event Permit, Conditional Use Permit, or Encroachment Permit; and Adoption of Food Truck Program Guidelines, including Standard Conditions or Approval for Conditional Use Permit or Encroachment Permit for Rolling Stores. Introduced.

The Chief Operating Officer gave a Power Point presentation.

Neutral: Mark Sorenson, Alameda Chamber of Commerce.

Proponent: Jon Spangler, Alameda; Brad Wick, South Shore Center.

Opponent: Ken Dorrance, Alameda; and Kaye Pryor, Alameda.

Suggested a revision: Robb Ratto, PSBA.

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Councilmember deHaan left the dais at 9:00 and returned at 9:01 p.m.

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Councilmember deHaan inquired whether Mr. Wick would have the ability to chose the type of food trucks at the South Shore Center in order not to compete with other establishments, to which Mr. Wick responded in the affirmative.

Councilmember deHaan inquired whether Mr. Wick would utilize food trucks for special events or on a re-occurring basis.

Mr. Wick responded food trucks would be used for summer music concerts or special events; stated the matter would be reviewed on a case-by-case basis.

Mayor Gilmore inquired whether food trucks would be restricted to Alameda Point, the College of Alameda, South Shore Shopping Center, and the Marina Village and Harbor Bay Business Parks.

The Chief Operating Officer responded the five areas would be used for off-street locations not regulated by the State Vehicle Code; the State Vehicle Code states that food trucks cannot be prohibited, but can be regulated on public streets for health and life safety issues.

Mayor Gilmore inquired whether if nothing is done tonight, could a food truck set up shop on Park Street as long as it has a legal parking space and does not encroach on the sidewalk, to which the Chief Operating Officer responded in the affirmative.

Mayor Gilmore inquired whether permits would be good for one year.

The Chief Operating Officer responded in the affirmative; stated an administrative review would be conducted after a year.

Mayor Gilmore inquired how food trucks would not create a disincentive for brick and mortar businesses wishing to relocate at Alameda Point.

The City Manager responded Anaheim is struggling with the issue; there should be a clearer legal landscape on which to operate by the time the City deals with Alameda Point.

Councilmember Johnson questioned whether food trucks would be flooding into Alameda; inquired whether food trucks would pay sales tax, to which the Chief Operating Officer responded that she believes so, but would check.

Councilmember Johnson inquired whether South Shore Shopping Center would be the holder of the permit, to which the Chief Operating Officer responded maybe.

Councilmember Johnson inquired whether the land owner would not be required to take out a permit, to which the Chief Operating Officer responded in the affirmative; stated the property owner would need to agree to allow use of the property.

Councilmember Johnson questioned whether the City could be exempt since Alameda is a Charter City.

The Assistant City Attorney stated the issue is of statewide concern because it is governed by the Vehicle Code.

Councilmember Johnson stated a lot of things could be included in the Vehicle Code that are not specifically vehicle code related; the City should not concede that anything in the Vehicle Code is a matter of State pre-emption.

The Assistant City Attorney stated parking is considered a matter of statewide concern; court decisions, specifically about food trucks, have been made interpreting the Vehicle Code.

Councilmember Johnson stated a lot of businesses would be attracted at Alameda Point if Lawrence Berkeley National Laboratory comes to the area.

The Chief Operating Officer stated the Alameda Reuse and Redevelopment Authority would have to consent to any Conditional Use Permit.

Vice Mayor Bonta inquired whether the City would have the luxury of making decisions based on a diversified business selection, to which the Chief Operating Officer responded in the negative.

Councilmember Tam stated the conditions would allow for a level playing field; food trucks go where people are; vacant lots do not invite food trucks.

The Chief Operating Officer stated laying the groundwork is important in case something arises.

Councilmember deHaan stated five years ago, Council had discussions regarding a food truck that wanted to be at a park; there was concern that a lot of non-profit groups had their own concessions; there was an outcry from the business community when gourmet food trucks were considered; competition would be a very concerning factor.

Councilmember Johnson stated the City can only regulate food trucks on public streets for health and safety reasons.

Councilmember deHaan stated the City has not been challenged on the issue.

The Assistant City Attorney stated the City could establish regulations pertaining to health and safety; having an encroachment permit is a big process.

Councilmember Johnson stated Council should go forward with the ordinance and not wait until there is a problem.

Councilmember deHaan stated that he is concerned with food trucks in the parks.

The Chief Operating Officer stated the Recreation and Parks Department is concerned also; special events would be the only reason to allow food trucks in parks.

Mayor Gilmore stated the legal landscape has changed and has constrained the manner in which the City can act; food trucks would have an easier time doing business in Alameda if Council does act on the issue; acting on the issue would make the entry barrier for food trucks a little higher which would benefit existing businesses; having the policy framework in place is important so that the landscape and supply and demand can be tested; existing businesses would be protected.

Vice Mayor Bonta moved introduction of the ordinance.

Councilmember Johnson seconded the motion.

Under discussion, Vice Mayor Bonta stated the proposed ordinance is a moderate approach within the balance of the law as it exists; the City cannot change State law.

Councilmember Johnson stated that she does not agree with a lot of things in State law; the City has no control over food trucks now.

Councilmember Tam commended staff for being proactive on the issue; that she appreciates the outreach strategy and robust discussion.

On the call for the question, the motion carried by unanimous voice vote – 5.

(11-610) Introduction of Ordinance Amending the Alameda Municipal Code by Revising Section 2-1.2(a) (Agendas) and 2-1.3 (Special Meeting) of Article I (The City Council); Adding Section 2-5 (Applicability of Sunshine Ordinance) and Section 2-22 (Open Government Commission) to Article II (Boards and Commissions); and Amending Section 2-93.1 (Primary Regulatory and Enforcement Body) of Article VIII (Sunshine Ordinance) of Chapter II (Administration), Making Sections Compatible with the Sunshine Ordinance and Moving the Establishment, Membership and Duties of the Open Government Commission. Introduced.

The City Clerk gave a brief presentation.

Councilmember Tam moved introduction of the ordinance.

Councilmember Johnson seconded the motion, which carried by unanimous voice vote – 5.

CITY MANAGER COMMUNICATIONS

(11-611) The City Manager announced: 1) the City has received the distinguished

Budget Presentation award; the Certificate of Appreciation has been presented to the Controller; 2) the Fire Department is investigating the three alarm fire at the Alameda Beach and Tennis Club; 3) the Animal Shelter will be closed from noon on December 29th through January 2nd and will reopen to the public on January 3rd under the management of the Friends of the Alameda Animal Shelter; 4) starting on January 3rd, the Estuary Crossing Shuttle will include the Wind River campus; and 5) on January 30th, Alameda Municipal Power will have a meeting regarding renewable portfolio issues.

ORAL COMMUNICATIONS, NON-AGENDA

None.

COUNCIL REFERRALS

None.

COUNCIL COMMUNICATIONS

(11-612) Consideration of Mayor's Nomination for Appointment to the Recreation and Park Commission.

Mayor Gilmore nominated Ann M. Cooke for appointment to the Recreation and Park Commission.

(11-613) Councilmember Tam announced that she attended an Alameda County Waste Management Authority meeting.

(11-614) Mayor Gilmore stated the Recreation and Park Commission is interested in reducing members to five.

The Assistant City Manager stated the issue could be discussed at the February 7th Council meeting.

(11-615) Vice Mayor Bonta announced that he attended the Alameda County Transportation Authority meeting.

ADJOURNMENT

There being no further business, Mayor Gilmore adjourned the meeting at 9:57 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.