

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -JULY 20, 2010- -7:00 P.M.

Mayor Johnson convened the meeting at 7:25 p.m. Councilmember Matarrese led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam and Mayor Johnson – 5.

Absent: None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(10-354) Presentation by the Park Street Business Association on the 26th Annual Art and Wine Faire.

Robb Ratto, Park Street Business Association, presented glasses to the City Council; thanked the City for supporting the Wine Faire; stated the Wine Faire is this weekend from 9:00 a.m. to 6:00 p.m.

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Mayor Johnson called a recess at 7:28 p.m. and reconvened the meeting at 1:10 a.m.

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AGENDA CHANGES

None.

CONSENT CALENDAR

Mayor Johnson announced that the Resolution Amending Resolution No. 9460 [paragraph no. 10-364] was removed from the Consent Calendar for discussion.

Vice Mayor deHaan moved approval of the remainder of the Consent Calendar.

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

(*10-355) Minutes of the Special Joint City Council and Public Utilities Board Meeting and Regular City Council Meeting Held on July 6, 2010; and the Special City Council Meeting Held on July 7, 2010. Approved.

(*10-356) Ratified bills in the amount of \$1,852,757.95.

(*10-357) Recommendation to Award Contract in the Amount of \$88,974, Including

Contingencies, to Roto Rooter for Citywide Sewer Mains Video Inspection, Phase 3, No. P.W. 02-10-08. Accepted.

(*10-358) Recommendation to Amend the Consultant Contract in the Amount of \$38,682, Including Contingencies, to Noll & Tam for Construction of Administration for the Neighborhood Library Improvement Project, No. P.W. 10-09-29. Accepted.

(*10-359) Recommendation to Adopt Plans and Specifications and Authorize a Call for Bids for the Upgrades to the Northside Storm Drain Pump Station, No. P.W. 02-10-06. Accepted.

(*10-360) Recommendation to Adopt Plans and Specifications and Authorize a Call for Bids for the Repair of Portland Cement Concrete Sidewalk, Curb, Gutter, Driveway, and Minor Street Patching, Fiscal Year 2010-2011 Phase 11, No. P.W. 06-10-14. Accepted.

(*10-361) Recommendation to Authorize a Request for Proposal to Provide Turnkey Design-Build Services for Photovoltaic (Solar) Generation System, No. P. W. 05-10-12. Accepted.

(*10-362) Resolution No. 14473, "Authorizing the Interim City Manager to Apply for Regional Measure 2 Bridge Toll Funds for the Operating Subsidy and Capital Projects for the City of Alameda Ferry Services." Adopted; and

(*10-362 A) Resolution No. 14474, "Resolution of Intention to Transfer the Alameda/Oakland and Harbor Bay Ferry Services to the San Francisco Bay Area Water Emergency Transportation Authority." Adopted.

(*10-363) Resolution No. 14475, "Authorizing the Public Works Director to Submit Grant Applications to the California Department of Resources and Recovery, Formerly the Integrated Waste Management Board, for All Available Grants Under the California Oil Recycling Enhancement Act for the Period of July 1, 2010 Through June 30, 2015." Adopted.

(10-364) Resolution No. 14476, "Amending Resolution No. 9460 to Reflect Current Positions and Entities to be Included in the City of Alameda's Conflict of Interest Code and Rescinding Resolution No. 14400." Adopted.

Councilmember Gilmore inquired whether new positions have been added or deleted.

The City Attorney responded the Conflict of Interest Code is reviewed periodically; stated staff requests each department, including departments that represent various boards and commissions, to review the Conflict of Interest [designated positions].

Councilmember Gilmore inquired whether changes could be related to employees, and new or deleted boards or commissions.

The City Attorney responded in the affirmative; stated changes could have been made to an employee's title.

Councilmember Gilmore moved adoption of the resolution.

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

(*10-365) Ordinance No. 3019, "Revising the City's Sewer Service Charges." Finally passed.

CITY MANAGER COMMUNICATIONS

None.

REGULAR AGENDA ITEMS

(10-366) Resolution No. 14477, "Approving Proceedings to Refinance Installment Payment Obligations of Alameda Municipal Power, Approving Issuance of Revenue Bonds by the Alameda Public Financing Authority for Such Purposes, and Approving Related Documents and Actions." Adopted.

The Alameda Municipal Power (AMP) General Manager and Paul Thimmig, Bond Counsel, gave a brief presentation.

Councilmember Tam stated pages 34 and 35 of the Preliminary Official Statement show the ten largest electricity customers count for 21.8% of total sales; commercial revenue for energy sales is almost half of the total generated revenue; inquired whether there is a great sensitivity to what happens with the top ten as it affects commercial revenue.

The AMP General Manager responded the rating agencies look at revenue concentration; stated Alameda is considered medium concentration; very few customers contribute a large portion of the revenues; Fitch mitigated the concern by talking about the federal government being one of the highest customers.

Councilmember Tam inquired whether sensitivity would be acceptable if MARAD leaves.

The AMP General Manager responded in the affirmative; stated AMP did a bottom up risk analysis as part of the financial review over the year; the analysis looked at recourse risks as well as load risk; revenue impacts due to customer loss, aggressive energy efficiency programs, and lost sales has been included the amount of reserves appropriate to hold; reserves accommodate for load loss.

Councilmember Gilmore stated page 5 of the Escrow Deposit and Trust Agreement is an indemnification clause and states: "...whether or not any of the transactions

contemplated hereby are consummated”; inquired whether the clause is typical because it appears as though AMP would be indemnifying the bank if the transaction does not go forward.

Mr. Thimmig responded the Agreement is a standard Escrow Agreement; stated the document would be signed at the bond closing so the transaction would be moving forward; escrows would be very short and gross funded; enough money would be put in without reinvestment risk to repay the debt; excess money would come back to AMP; one of the two escrows is very sophisticated in that the taxable debt would be floating rate debt; a thirty-day notice would need to be given to bond investors; the taxable rate would be set every week; extra money would need to be put in at the maximum rate; the transaction fee is very little; the indemnity is over encompassing and strong; the City would have very little risk; the Agreement language is customary.

Councilmember moved adoption of the resolution.

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

(10-367) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Subsection 8-7.11 (Recreational Vehicles, Trailers, and Boat Trailers) of Section 8-7 (Parking Prohibitions) of Chapter VIII (Traffic, Motor Vehicles and Alternative Transportation Modes). Introduced.

Sergeant Lynch gave a brief presentation.

Vice Mayor deHaan moved introduction of the ordinance.

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

Councilmember Gilmore requested that Council receive an Off Agenda Report on how the permit process is working in six months.

Mayor Johnson inquired how people would get a permit.

Sergeant Lynch responded permits would be issued by dispatchers; the permit number would be keyed to the date and would be based on a twenty-four hour clock; officers would be able to call dispatch to see if a vehicle has a permit for a certain date.

Mayor Johnson inquired whether people could obtain information on the City’s website.

Sergeant Lynch responded that he is planning on launching information on the website in addition to a press blitz.

ORAL COMMUNICATIONS, NON-AGENDA

None.

COUNCIL REFERRALS

(10-368) Consideration of Establishing a Foreign Trade Zone (FTZ) in Alameda.

Councilmember Matarrese gave a brief presentation.

Speakers: Former Councilmember Karin Lucas, Alameda; and Alex Chen, Alameda.

Mayor Johnson stated that she has had the opportunity to learn about free trade zones; renewed interest in foreign trade zones has been due to a significant increase in tariffs on certain items; lower taxes would apply to items assembled in the United States and would create jobs and benefits; that she appreciates Councilmember Matarrese's Council Referral; she thinks Council should move forward on the matter.

Vice Mayor deHaan stated the City has run through the exercise once before, but it is time to revisit the matter.

Councilmember Matarrese moved approval of giving the Interim City Manager direction to bring a report back on establishing a Foreign Trade Zone.

Vice Mayor deHaan seconded the motion, which carried by unanimous voice vote – 5.

(10-369) Consider Suspending the Sunshine Task Force until the District Attorney has Taken Action regarding the Investigatory Reports.

Mayor Johnson stated issues have come up regarding, lack of clear Council direction and an unclear understanding regarding tasks and Council expectation; that she is very supportive of the Sunshine Task Force; Council needs to take a step back and give better direction regarding roles and expectations; Council gave direction to not have the Sunshine Task Force come back until after January 2011.

Councilmember Gilmore stated the Council Referral is not the same rational that Mayor Johnson is stating; that she is confused; the Council Referral has to do with allegations; Mayor Johnson is discussing Council direction; Council was clear about Council direction the last time the issue came up; the Sunshine Task Force was to do whatever needed to be done and report back to Council.

Mayor Johnson stated events have occurred that make her think Council needs to step back and give more thought on how Council wants the Sunshine Task Force to proceed and whether Council wants the same Sunshine Task Force or wants things done differently; issues could be discussed in more detail if the matter is brought back to Council.

Councilmember Gilmore inquired what events Mayor Johnson is referring to; further inquire whether Mayor Johnson is referring to the email received from Ms. Lipow and the testimony given at the last meeting or whether Mayor Johnson is referring to something else.

Mayor Johnson responded that she is referring to the information that one of the Sunshine Task Force members received; stated the whole Sunshine Task Force needs to be revisited by Council and not for any specific reason; clearer direction is needed before the Sunshine Task Force is sent off to do their job.

Vice Mayor deHaan stated one task referred back to the Sunshine Task Force has been campaign reform; campaign reform was not to be finalized until January 2011.

Councilmember Gilmore stated campaign reform could be finalized before January 2011 but would not go into effect into January 2011.

Vice Mayor deHaan stated mixed signals were received regarding having three meetings; Council needs to be more specific on directions; the Sunshine Task Force could be suspended until issues have a better feel; that he is not against referring the matter to the Interim City Manager or taking action.

Speakers: Jon Spangler, Alameda; Ann Spanier, League of Women Voters; and William Smith, Alameda.

Mayor Johnson stated the Sunshine Task Force needs to be beyond question regarding open government, accountability, and ethics; because of current events, Council cannot say to the public that the Sunshine Task Force has met said standards and there is reason to suspend the Sunshine Task Force and reconvene the Sunshine Task Force after Council discussion.

Councilmember Matarrese stated Council can act appropriately when the District Attorney's investigation is completed; the Sunshine Task Force will not be meeting until September; Council can agendize direction, composition, and mission at a future meeting; there is no risk now because there is no meeting [until September]; the Sunshine Task Force is an advisory body that would make recommendations; Mr. Smith brought up a good point regarding how email is used; that he would not support suspending activity because the Sunshine Task Force is self-suspended; he would welcome additional discussion to clarify the Sunshine Task Force's role.

The City Attorney stated the City has an email policy which states that City email has no privacy expectation; City email is to be used for City purposes; the email policy has been fairly long standing; every employee and official signs a receipt of the policy; that she sent a written request to John Knox White requesting the return of the confidential Closed Session packet comprised of 698,000 bites of information that clearly shows that Councilmember Tam forwarded information to Mr. Knox White; that she has not received any response.

Mayor Johnson inquired whether Mr. Knox White would be complying with the request.

Mr. Knox White responded that he received the City Attorney's request last week; stated that his attorney would be sending a response tomorrow; that he would not comply with the request given that the investigation is open; however, he wants to state for the record that he believes Councilmember Tam inadvertently sent the email to him; the email was never read; Councilmember Tam also sent the public agenda; that he will maintain confidentiality until the District Attorney's investigation is finished.

The City Attorney inquired whether Mr. Knox White admits that he is in receipt of the email, to which Mr. Knox White responded in the affirmative.

The City Attorney inquired whether it did not occur to Mr. Knox White to call the City or advise the City Attorney that the email was received inadvertently and inquire what to do with the email although the email was clearly marked "Attorney-Client Privileged".

Mr. Knox White responded that he is not in the position to discuss the matter right now.

Mayor Johnson stated issues need to be resolved before any future Sunshine Task Force meetings; Council needs to have a discussion on the matter.

Vice Mayor deHaan stated that he prefers to suspend the Sunshine Task Force until January 2011.

Councilmember Gilmore stated the recommendation seems to be backwards; suspending the Sunshine Task Force before the District Attorney acts and makes findings is exactly the opposite of Sunshine principles and justice; Council should wait and let the District Attorney speak on the matter; the Country has been built on the principles of innocent until proven guilty; the Council Referral indicates that a Sunshine Task Force member is guilty; the individual has not been charged with anything; everyone at some point in time has been a passive recipient of emails.

Mayor Johnson stated that she is not saying the Mr. Knox White is guilty of anything, but is saying that the issue casts a shadow over the Sunshine Task Force's credibility because of events that have occurred; the investigative report notes that Mr. Knox White received an email that he was not a passive recipient of; conduct has been questionable; people believe receiving and sending the email is wrong.

Councilmember Gilmore inquired whether Council would be receiving a Council Referral regarding campaign reform because the Sunshine Task Force is suspended.

Mayor Johnson responded that she does not know why a Councilmember would request a Council Referral on campaign reform.

Vice Mayor deHaan stated that he reserves the right to ask Councilmembers if

contributions over \$250 have been received; Councilmembers would have the option to answer or not.

Councilmember Tam read the following statement for the record: the bottom line is that she has done nothing wrong; make no mistake – these letters are from a hired gun lawyer, and the Mayor and the Interim City Manager are using the lawyer to try to silence her in her effort to keep Alameda City government open and honest; that her correspondence shows that she has diligently followed up on tough questions posed to the Interim City Manager; correspondence also shows that she has pushed for those important questions to be set on the Council's agenda; apparently some would have preferred that questions go unanswered; that she will not be intimidated in her effort to serve the people of Alameda and looks forward to her name being cleared in this investigation; she will submit for the record to the City Clerk the press release she sent regarding her attorney being the contact person; the question she has regarding the Council Referral is when did the City of Alameda become allergic to sunshine and open and honest government; when did every conversation and email between the City's partners, the community, the hard working women and men of the fire department, or upstanding members of the Sunshine Task Force become suspect; the public should know this; suspending the Sunshine Task Force when just given an assignment is totally inconsistent with Council direction; that she does not support the Council Referral for obvious reasons.

Mayor Johnson stated that she does not think getting into discussions regarding the investigative report is appropriate; her intent is not to make Alameda government less open; issues cannot be confused regarding releasing confidential, attorney-client documents to parties that the City is in negotiations with and making the information available to the public.

Councilmember Tam stated said allegation is with no basis or fact.

Mayor Johnson stated Councilmember Tam has indicated that there is intent on her part to make Alameda government less transparent, which is not the case; the Sunshine Task Force should be suspended until Council can get rid of the cloud over the Sunshine Task Force.

Vice Mayor deHaan inquired whether Council wants to go forward with deferring the Sunshine Task Force until September; that he would suggest deferring the Sunshine Task Force until January, 2011.

The Interim City Manager stated a motion is needed; staff has been criticized that tea leaves have not been read correctly; that she wants a clear understanding of Council direction.

Councilmember Matarrese stated the matter is nebulous on some level; the Sunshine Task Force would meet in September and Council can make a judgment then.

Councilmember Matarrese moved approval of the Sunshine Task Force holding its September meeting and that the matter returns to Council if anything is raised in response to the investigation.

Councilmember Gilmore seconded the motion, which carried by the following voice vote: Ayes: Councilmembers deHaan, Gilmore, Matarrese, and Tam – 4. Noes: Mayor Johnson – 1.

Vice Mayor deHaan requested feedback on progress made.

The Deputy City Manager – Administrative Services stated the Sunshine Task Force had a meeting last week; staff was unable to attend the meeting due to other commitments; the Sunshine Task Force intended to have a workshop on July 17th; but more prep time and publicity was needed and the workshop has been moved to September.

Vice Mayor deHaan inquired how much work would be left after the workshop.

The Deputy City Manager – Administrative Services responded that she thinks the Sunshine Task Force could rap up in one to two meetings but would not want to make a promise.

Vice Mayor deHaan requested feedback on the matter.

(10-370) Discuss/Review City Contributions to 4th of July Parade and Determine, If Necessary, Any Rules Regarding Participation, Signs, Campaigning, etc.

Councilmember Gilmore gave a brief presentation.

Mayor Johnson stated last minutes issues will always surface; every year the Parade Committee has issues that are a crisis on the morning of the Parade.

Councilmember Gilmore stated that she hopes some universal issues could be cut.

Councilmember Matarrese moved approval of the referral.

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

COUNCIL COMMUNICATIONS

(10-371) Consideration of Mayor's nominations for appointment to the Housing Commission, Planning Board, Public Utilities Board, and Oakland Chinatown Advisory Committee.

Mayor Johnson nominated Ian Couwenberg for appointment to the Housing Commission and Michael Krueger for appointment to the Oakland Chinatown Advisory

Committee.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the meeting at 2:12 a.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -JULY 20, 2010- -6:00 P.M.

The Special Joint Meeting was cancelled. The following items Closed Session items were not addressed:

(10-352) Conference with Real Property Negotiators; Property: 2221 Harbor Bay Parkway; Negotiating parties: City of Alameda and SRM Associates; Under negotiation: Price and terms. Not heard.

(10-353) Conference with Legal Counsel – Existing Litigation (54956.9); Name of case: Collins v. City of Alameda (Boatworks). Not heard.

Lara Weisiger
City Clerk

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

MINUTES OF THE REGULAR ALAMEDA PUBLIC FINANCING AUTHORITY (APFA)
TUESDAY- -JULY 20, 2010- -7:01 P.M.

Chair Johnson convened the meeting at 2:12 a.m.

Roll Call - Present: Authority Members deHaan, Gilmore, Matarrese, Tam and Chair Johnson – 5.

Absent: None.

MINUTES

(10-07) Minutes of the Special Joint City Council, Alameda Public Financing Authority, Alameda Reuse and Redevelopment Authority, and Community Improvement Commission Meeting Held on June 24, 2010; and the Regular Alameda Public Financing Authority Meetings Held on July 6, 2010 and July 7, 2010. Approved.

Board Member Matarrese moved approval of the minutes.

Board Member deHaan seconded the motion, which carried by unanimous voice vote – 5.

Agenda Item

(10-08) Resolution No. 10-22, “ Authorizing the Issuance and Sale of Revenue Bonds to Refinance Installment Payment Obligations of Alameda Municipal Power and Approving Related Documents and Actions.” Adopted.

Board Member deHaan moved adoption of the resolution.

Board Member Matarrese seconded the motion, which carried by unanimous voice vote – 5.

Oral Communications

None.

Board Communications

None.

Adjournment

There being no further business, Chair Johnson adjourned the meeting at 2:13 a.m.

Respectfully submitted,

Lara Weisiger
Secretary

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

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND
COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING
TUESDAY- -JULY 20, 2010- -6:59 P.M.

Mayor / Chair Johnson convened the meeting at 7:29 p.m.

ROLL CALL - Present: Councilmembers / Board Members / Commissioners deHaan, Gilmore, Matarrese, Tam and Mayor/Chair Johnson – 5.

Absent: None.

MINUTES

(10- 372 CC/ARRA/10-54 CIC) Minutes of the Special Joint City Council, ARRA, CIC Meeting Held on June 19, 2010; the Special Joint City Council, Alameda Public Financing Authority, ARRA, and CIC Meeting Held on June 24, 2010; and the Special Joint CIC and Housing Authority Board of Commissioners Meeting Held on July 6, 2010. Approved.

Councilmembers/Board Members/Commissioners Gilmore and Tam stated that they would abstain from voting on the June 19th minutes.

Councilmember//Board Member/Commissioner Tam provided corrections to page 14 of the June 24th meeting.

Vice Mayor/Board Member/Commissioner deHaan moved approval of the minutes.

Councilmember/Board Member/Commissioner Matarrese seconded the motion.

On the call for the question for the June 19th meeting, the motion carried by the following voice vote: Ayes: Councilmembers/Board Members/Commissioners deHaan and Matarrese and Mayor/Chair Johnson – 3. Abstentions: Councilmembers/Board Members/Commissioners Gilmore and Tam – 2.

On the call for the question for the June 24th and July 6th meetings, the motion carried by unanimous voice vote – 5.

AGENDA ITEM

(10-373 CC/ARRA/10-55 CIC) Resolution No. 14472, “Denying a Modified Optional Entitlement Application (MOEA), Including a General Plan Amendment, Zoning Amendment, Master Plan, and Development Agreement Proposed by SCC Alameda

Point LLC. (PLN10-0012).” Adopted.

The Deputy City Manager – Development Services gave a Power Point presentation.

Stan Brown, SunCal; Nick Cosla, SunCal; Jim Daisa, Kimley-Horn and Associates; gave a Power Point presentation; Phil Tagiami and Skip Miller gave brief presentations.

Mr. Brown stated page 2 of the staff report states: “Alameda did not want to be committed beyond July 20, 2010 to development entities that prove incapable of utilizing the property”; SunCal has submitted a 2010 Alameda Point project and staff has deemed the submittal complete; SunCal has funded and the City has commenced the Environmental Impact Report (EIR), including retention of the EIR technical consultants; the City and SunCal have also had initial scoping meetings and completed the project description; this week, \$720,000 has been deposited into the Escrow Account; the money covers City staff salaries, cost of the EIR, and other expenses associated with redevelopment; the application will be ready to be considered by the Planning Board and Council in the next fifteen to eighteen months; now is the time to complete the process; the draft resolution sets out the reasons why SunCal should be removed from the project and the application denied; clause A-4 states: “The modified OEA provides minimal certainty about how the property will ultimately be developed; many specifics about number, location, and density of residential units, amount, and type of commercial development, site design, the transportation system, and sustainability measures have not been provided”; the statement is not true; the plan is highly detailed, sophisticated plan use documents which include an exhaustive engineering analysis, transportation planning, adaptive reuse planning, commitment to the LEED neighborhood development goal, and green building standards; sustainability, design, unit layouts, and highly detailed land plans are before Council tonight; Clause A-5 states: “There is also substantial uncertainty regarding the relative timing of development of the residential and commercial components of the project”; again, the statement is not true; detailed cash flows that identify the timing of the project and project elements have been done and shared with the City; the cash flows are part of the Disposition and Development Agreement (DDA) and are included in the business plan; a detailed land plan clearly sets forth timing and how residential, commercial, parks, and transportation routes come into the project; Clause A-7: states “a balance needs to be struck between flexibility and provision of meaningful commitments to the community”; that he agrees the statement is correct; unfortunately, in all the weekly meetings he has attended, this is the first time he has heard that SunCal’s plan is inadequate because a balance has not been struck; an open, honest dialogue is part of the entitlement process that occurs as the project is made ready for public hearings; that is why the action is premature; Clause C-4 indicates the economic development strategy for the development of commercial businesses within Alameda Point is a critical flaw in the Modified Optional Entitlement Agreement (MOEA); SunCal agrees with the City that there is a well

developed strategy for development of commercial businesses within Alameda Point; SunCal has advised staff several months ago of SunCal's retention of RCO, SunCal's child lesser company, to conduct a study and provide a Phase 1 report; however, at no time, until he read the staff report and resolution, has there been any indication that failure to include such a report would be a critical flaw in the 2010 Alameda Point project; staff found the application to be complete; Clause C addresses transportation; SunCal's transportation plan is robust; Clause D addresses the Biological Opinion (BO); over the past several years, SunCal has worked closely with staff, consultants, the Navy, and Veterans' Affairs Department to review and amend the existing BO; the results of the process will determine appropriate mitigation of land uses adjacent to the property; staff has been engaged in the process; full disclosure has been provided with staff's concurrence; SunCal agrees that the 2010 Alameda Point project and 2008 Master Plan are very similar in design; the 2008 Master Plan was submitted to the Navy along with the joint project pro forma as the City's and SCC Alameda joint submittal of 2008; the joint pro forma was submitted after exhaustive review by the City and SCC Alameda; the joint pro forma was prepared by Economic & Planning Systems (EPS), the City's consultant; the City, SCC Alameda, and EPS reviewed and discussed with the Navy the joint pro forma submitted for the first quarter of 2009, at which point the City cut off any further contact between SCC Alameda and the Navy; in 2009, the City and EPS agreed with SunCal's plan, and a joint pro forma and plan were submitted to the Navy; a year later, EPS and City staff claim that SunCal's assumptions are overly optimistic; in 2009, EPS and City staff agreed with SunCal's revenue assumptions and now do not; inquired what has changed; stated in 2009, EPS and City staff agreed with SunCal's home construction costs and now do not; inquired what has changed; in 2009, City staff agreed with SunCal's revenue and cost escalation assumptions and now do not; inquired what has changed; stated in 2009, EPS and City staff agreed with SunCal's premium analysis and now do not; the change between the current and joint pro forma is that the sale has increased to \$108,500,000 at the Navy's request; said amount is what the Navy wants and the amount that SunCal is committed to pay; that he is sure the City's consultants will point to the recession's impacts on the development industry; the recession started in early 2007 and was already a year old when the joint pro forma was prepared and submitted; the Lehman Brothers' bankruptcy occurred in September 2008, well before the joint pro forma was submitted to the Navy; the joint pro forma assumptions and 2010 Alameda Point project pro forma were reasonable and appropriate; the development will take twenty years to development; having the project pro forma reflect concerted, long-term trends is important; EPS and City staff agreed with assumptions that were appropriate and concerted in 2009; assumptions are still appropriate today; SunCal knows that serving government is a lot of work; the law and the Exclusive Negotiating Agreement (ENA) specify a very critical process that has repeatedly been ignored and violated; the decision is simple – let the process continue.

Mr. Miller stated that he is new [to the project]; he is a litigation lawyer; he read the ENA and he respectfully submits that terminating the ENA is premature; a vote should not take place today and would not be legally valid; the judgment is rushed; ENA's are legally enforceable in California; SunCal has spent almost four years and close to \$15 million pursuant to the Agreement and relies on the Agreement; SunCal is entitled to the completion of a good faith negotiation process; the issue is about due process of law, fundamental fairness and providing an opportunity; the project is very important to the City; ultimately, Council would have the vote but the vote should not occur until the process has been completed; that he strongly believes the process has been set up; tonight's vote would not be legal or valid; that he wrote a letter last week saying that the term sheet with the Navy was frustrating because SunCal could not get cooperation from the City; City officials recognize that he is right; the milestone was prevented; the next step, after admitting that the milestone with the Navy was not met, has been to have a vote on the whole project; the EIR and California Environmental Quality Act (CEQA) process is not complete; the matter has not gone through the Planning Board process; SunCal has bargained for a full, fair hearing on the development; SunCal has invested a tremendous amount of time and money; SunCal requests that the matter not be voted on today; the process should run its course; otherwise, SunCal will be in court to enforce its rights under the Agreement seeking very substantial damages, if necessary; the choice is not his; SunCal will enforce its rights under the Agreement, if necessary; SunCal is entitled to the benefit of the deal and is not getting any benefit by virtue of voting the project down tonight; the vote is premature; requested that SunCal and SCC Alameda have the benefit of a full CEQA process and let everything play out; the former Naval Base needs to be redeveloped; SunCal has done a lot of big land developments over the years; that he has represented SunCal for several years; he is hearing that one City official, who came on the scene about a year ago, has voiced an opinion that having a public project, instead of a private developer, would be better; SunCal made a deal in the ENA to complete the full process, go the full way, not to be truncated, and stopped in midstream; the decision is up to Council; SunCal is entitled to go to the end of the road and should not be co-opted or prevented by somebody who wants to do things differently; the matter will be the subject of litigation, lawsuits, and claims if the resolution is adopted.

Proponents (In Favor of Staff Recommendation Denying MOEA): Former Councilmember Barbara Thomas, Alameda; Jean Noroian, Alameda; Ashley Jones, Alameda; Robbie Delio, Alameda; Dorothy Freeman, Alameda; Bob Sikora, Alameda; Birgitt Evans, Alameda; Jean Sweeney, Alameda; Jim Sweeney, Alameda; Reyla Graber, Alameda; Eugenie Thomson, Alameda; Nancy Gordon, Alameda; Jay Ingram, Alameda; Mary Fetherolf, Alameda; Gretchen Lipow, Alameda (submitted document); Rosemary McNally, Alameda; Chuck Millar, Alameda; Former Councilmember Lil Arnerich, Alameda; Dave Needle, Alameda; Robb Ratto, Park Street Business Association; Michael Karayasales, Alameda; Karen Miller, Alameda; Karen Bey,

Alameda; Janet Davis, Alameda; Gail deHaan, Alameda; Noel Folsom, Alameda; Adam Gillitt, Alameda; Alan Tubs, Alameda; Kevin Frederick, Alameda.

Opponents (Not In Favor of Staff Recommendation Denying MOEA): Former Councilmember Tony Daysog, Alameda; Andreas Kluever, Building Trades Council; Andre Slivka, Carpenters Union Alameda County and Alameda Resident; Jon Spangler, Alameda; Richard Tren, ULI & Swingrton Builders; Lois Pryor, Alameda; Irwin Huebsch, Alameda and Local 2850; Wilhelminia Slater, Alameda; Nischit Hegde, Local 2850; Auram Gurarye, Berkeley; Jeremy Madsen, Greenbelt Alliance and Alameda resident (submitted comments); Diane Lichtenstein, Alameda; Ajit Rana, Alameda resident and Painters Local 3; Fernando Estrada, Laborers Union 304; Kathy Moehring, Alameda; Honora Murphy, Alameda; DG Blackburn; Sally Faulhaber, Alameda; Mike Henneberry, Alameda and Local 5; Mark Chandler, Veterans Administration and Alameda; Amy Freilich, SLL Alameda Point LLC (submitted letter); Carl Chan, Alameda; William Smith, Sierra Club and Renewed Hope; Bruce Knopf, Alameda.

Neutral: Irma Garcia Sinclair, Alameda.

* * *

Mayor/Chair Johnson called a recess at 11:03 p.m. and reconvened the meeting at 11:32 p.m.

* * *

Vice Mayor/Board Member/Commissioner deHaan stated SunCal wants to retain only certain [historic] buildings, which is not what the Navy is recommending; removing the buildings would remove close to \$2 million of lease revenue; the Sports Complex became SunCal's centerpiece and is almost identical to the one built in 1997; the original study shows what type of resources would be needed; Council had the wisdom to put use of union labor in the Request for Proposal (RFP); Council is not anti union in any way; long-term jobs should be considered, not short-term jobs; traffic impact has always been a major concern; SunCal has not brought a consultant on board until five weeks ago; the community is brighter now and has made it loud and clear that it understands the process, desires, and needs; that he had been supportive of SunCal; later, he realized that he might be over his head; SunCal insulted him by offering two tickets to the Warriors playoff; staff and the community has gelled and has come a long way.

(10-374 CC/ARRA/10-56 CIC) Councilmember/Board Member/Commissioner Matarrese moved approval of continuing the meeting past 12:00 midnight.

Councilmember/Board Member/Commissioner Gilmore seconded the motion, which

carried by unanimous voice vote – 5.

* * *

Councilmember/Board Member/Commissioner Matarrese stated tonight's discussion has been good and spirited; the most important issue in the City is to maintain solvency; the next important issue is what to do with the future of one-third of the island that still belongs to the Navy; that he sees the same flaws in the MOEA as in the project Development Agreement (DA), Charter amendment, and General Plan Agreement change in Measure B; he would be willing to move forward if he thought an extension would provide some hope that issues could be resolved and there would be a downscaled project that would fit Alameda and be solvent; however, he does not see such a thing; that he does not have any faith the City will see anything come out of the ground or jobs forthcoming within a reasonable amount of time; concurred with Vice Mayor/Board Member/Commissioner deHaan regarding the project labor agreement always being a condition of the project and always being a future condition; SunCal took three years to get on board regarding the matter; the fit is not good; that he would like the City to go forward unencumbered; the ENA expires today because all mandatory milestone have not been met; the City has a chance to go forward and take a different direction that fits the times.

Councilmember/Board Member/Commissioner Gilmore thanked everyone for the time, energy, effort, and passion regarding the issue; stated former Councilmember Arnerich stated that the decision is monumental for the City; ensuring that homework and due diligence is done is important; that she can satisfy herself as she gets ready to take the vote; many of the MOEA problems come down to financing; questioned when solid financial assurance would be provided and whether the assurance would be in writing; stated the City received a last, best, and final offer from SunCal last week which she presumes has financial terms that could have some bearing on the matter; that she has not seen the document, a staff report analyzing the document, or a staff recommendation regarding the document; financial assurances seem to have a hole on both sides.

Mr. Brown responded this week, SunCal made another deposit to escrow; SunCal has never missed a payment; SunCal has spent a lot of time reviewing the DDA's terms and elements with City staff; the DDA provides a mechanism to ensure financial assurances are set forth prior to each stage of close of escrow so that the City would be assured that the money to acquire the property and develop the property would be available to fully develop each phase of the property; said assurances are not in the last, best, final offer.

The Deputy City Manager – Development Services stated SunCal's last, best, and final offer was delivered on July 15, 2010 after 6:00 p.m.; the offer was on file in the City

Clerk's office by 3:00 p.m. the following day; the offer was reviewed over the weekend; nothing in the last, best and final offer changes staff's recommendation; inquired whether Councilmembers/Board Members/Commissioners want to focus on financial issues.

Councilmember/Board Member/Commissioner Gilmore responded in the affirmative; stated that she understands the timing but is uncomfortable with not having a chance to review the offer and ask questions; the public has not been able to review and digest the offer.

The Deputy City Manager – Development Services stated staff requested that the financing plan be attached to the DDA, including the pro forma; the pro forma submitted with the last, best and final offer did not include the financing plan; the financing plan would be due before the close of Phase 1.

Councilmember/Board Member/Commissioner Gilmore inquired whether SunCal has made promises to pay without a document showing how payment would be made.

The Deputy City Manager – Development Services responded in the affirmative; stated the pro forma was the same as the pro forma attached to previous staff reports; Section 7.8 contains the financial assurances of the last, best, and final offer; staff wants to have financial assurances up front; SunCal has provided financial assurances that cover the period of time from the execution of the DDA up until the close of Phase 1; staff wants to ensure that SunCal has enough money to get through the project, not just the development period.

Councilmember/Board Member/Commissioner Gilmore inquired how terms would be written to prevent land banking.

The Deputy City Manager – Development Services responded terms would be written in the DDA; stated scheduled performances would be included in addition to default provisions; fiscal neutrality would be guaranteed; SunCal would provide a guarantee from an entity that has a net worth of \$100 million; the guarantee would not be for project implementation; staff wants more than guarantees for fiscal neutrality; staff does not think the financial assurances are sufficient.

Councilmember/Board Member/Commissioner Gilmore inquired who would the shortfall fall on if the project is fiscally neutral and there are no guarantees for the rest of the project.

The Deputy City Manager – Development Services responded the project might not be built; stated nothing guarantees that milestones would be met; scheduled performances

are not backed up with strong commitments to meet performance milestones; Footnote 4 of the scheduled performances addresses a milestone for vertical development that would apply to each water parcel in a phase and sixty months after the day the developer would transfer a lot or parcel to a vertical builder; stated there is no date for when the transfer has to occur; an initial phase could be taken down and a subsequent phase could be taken down but nothing requires SunCal to finish the first phase or to develop a commercial phase; timelines build off of phantom dates; force majeure, things beyond control, provisions are very broadly worded and allow way too much flexibility; Section 17.8.1 discusses changes in laws which could be broadly interpreted; a provision addresses actions of public agencies that regulate land use, development, or the provision of services to Alameda Point property that prevents, prohibits, or delays either the construction funding or development of the Alameda Point project under the conveyance of the property to developers; the City is a public agency that regulates land use; some of the provisions undermine the whole concept of the scheduled performance.

Councilmember/Board Member/Commissioner Gilmore inquired whether SunCal would need to abide by whatever is in the last, best, and final offer if the City decides to accept said offer, to which the Deputy City Manager – Development Services responded in the affirmative.

Councilmember/Board Member/Commissioner Gilmore inquired whether the offer would need to be accepted or rejected, and there would be no room for negotiations.

The Deputy City Manager – Development Services responded DDA negotiations would continue if the MOEA is not denied and Councilmembers/Board Members/Commissioners direct staff to move forward and negotiate with SunCal.

Councilmember/Board Member/Commissioner Gilmore inquired whether the offer is a take-it-or-leave-it offer for the City.

The Deputy City Manager – Development Services responded not if the City continues with SunCal; stated Section 7.6.12 addresses modifications to development phasing requested by the developer; the developer wants to be able to request modifications to the phasing plan; Section 7.6.12 further states that the DDA would continue to give SunCal broad authority to change both the phasing and the context of any particular phase in response to new information, change in market conditions, improved technologies or techniques, new funding strategies, and opportunities; “new information” is so broad; staff thinks that the City’s ability to enforce certain commitments is undermined by the provisions.

The Interim City Manager/Executive Director stated there are very specific City

expectations with respect to guarantees.

The Deputy City Manager – Development Services stated the DDA has hurdle rates whereby SunCal wants to be able to meet a 25% Internal Return Rate (IRR) and 25% profit; the CIC would not be participating in the profits until SunCal meets both the 25% IRR and 25% profit.

The City Attorney/Legal Counsel stated Section 7.5.2.3.1 requires the CIC to make up the difference in the event that SunCal does not receive the 25% IRR.

Mayor/Chair Johnson inquired whether the last, best, and final offer is a public document, to which the Deputy City Manager – Development Services responded in the affirmative.

Jim Musbach, EPS, stated five determination dates have been established; any cash flow over the 25% goes to the City; the City would get 30% of the cash flow; half would go to a reconciliation account; at the fifth reconciliation date, the City would have to remit money from the account to make SunCal whole at 25%; the City would have a 15% participation subordinate to a 25% return with some upside potential to get to 30%.

Councilmember/Board Member/Commissioner Gilmore inquired whether the City would be coming up with new cash or cash would be coming out of the project, to which Mr. Musbach responded cash would come out of the project.

Councilmember/Board Member/Commissioner Tam inquired what staff would like to see in the DDA.

The Deputy City Manager – Development Services responded staff would recommend starting to participate sooner than both of the 25% hurdle rates.

Councilmember/Board Member/Commissioner Tam inquired whether said information has been communicated with SunCal.

The Deputy City Manager – Development Services responded staff has not had detailed discussions with SunCal regarding profit participation; the pro forma attached to the DDA shows a 20% return, which would not meet the hurdle rates; provisions were incomplete in the first draft that staff received.

The Public Works Director stated staff expected to see the last, best and final offer sooner rather than later and expected that all concerns would be addressed; some concerns were addressed; the last, best, and final offer became more restrictive, is in the best interest of SunCal, and is against what the City was negotiating for.

Councilmember/Board Member/Commissioner Tam requested clarification on SunCal's intent and interpretation.

Mr. Brown stated the form is complicated and is based on a prior DDA; staff has a misunderstanding of many elements; SunCal's intent is to continue a process with the City to get to a final public hearing; the document could be modified through the process; completion bonds, subdivision bonds, cash collateral, firm financing commitments, capital stack of debt, equity, all come together to deliver financial security at the close of every escrow so that the property could be acquired and fully developed; the financing plan is contained in the document; the financial plan cannot identify the loaning bank two years in the future; the financial plan shows how much cash would be coming from equity and debt to acquire and make infrastructure improvements; SunCal has provided the best estimate at this time; figures may be different down the road; the estimate is a good faith, solid estimate today; the scheduled performance states that the horizontal development would be completed within a specified time, that all residential land would be transferred to builders within a specified timeframe, and that vertical builders, who would build residential and commercial buildings, would all build within five years of the time the property is acquired; all schedules build and tee off one another in case of a delay or acceleration; SunCal cannot predict unexpected events that would change the schedule; the penalty for not achieving the schedule would be that SunCal would not have the right to proceed on the project; SunCal feels that providing for force majeure is fair.

Councilmember/Board Member/Commissioner Tam stated it is difficult to give policy direction on the fly on a document that she has not seen based upon interpretations that seem different for each party.

The Public Works Director stated that infrastructure costs have not been agreed upon; the transportation plan is not detailed and is more of a transportation concept; the pro forma shows a plan based upon bus rapid transit used in Eugene, Oregon; staff has not been able to find out if the unit price for the bus rapid transit is applicable; SunCal added \$5 million because its engineer miscalculated the mileage; the Water Emergency Transit Authority [WETA] has not agreed to a ferry terminal cost nor has agreed to relocating the ferry terminal to the seaplane lagoon; issues should have been addressed over the last three years.

The Interim City Manager/Executive Director stated staff does not expect Council to be making decisions on policy without reviewing the document; tonight's focus is on the MOEA; SunCal has been with the City for three years; everyone knows what the agenda process is; submitting a comprehensive DDA at 6:00 p.m. on Thursday after the agenda deadline and having an expectation that a staff report would be submitted in

twenty-four hours is onerous.

The City Attorney/Legal Counsel stated the DDA is not before the Councilmembers/Board Members/Commissioners tonight; Councilmember/Board Member/Commissioner Gilmore's questions regarding the DDA are relevant; staff does not believe that anything in the last, best, and final offer has a cure or changes staff's recommendation.

Mr. Brown stated at a previous meeting, the Councilmembers / Board Members / Commissioners discussed the intent to have a public hearing; the intent of the public hearing would be to discuss whether or not to continue with the ENA, not to deny the application; SunCal wants to work cooperatively with the City; the process needs a partner; the partner [City] has been difficult to come by over the last several months; SunCal wants to reestablish the relationship; that he is convinced that the relationship can be reestablished to move forward to discuss the important project issues and to have the EIR analyze every element of the project; at the end of the day, Councilmembers/ Board Members / Commissioners may vote to deny the project; staff may generate EIR alternatives that would be studied and would be the appropriate time to make judgments regarding the DDA, EIR, and project itself; rushing judgment on the application is inappropriate; SunCal would welcome dialogue with Councilmembers / Board Members / Commissioners and staff regarding the DDA and project itself; that he would like to engage in conversation with the Public Works Director regarding cost estimates and where the line would go; SunCal has a recommended bus rapid transit location in the plan which needs to be discussed; staff did not have enough time to ask questions regarding the DDA; SunCal has achieved the goal of having the DDA meet the requirements under the ENA.

The Deputy City Manager – Development Services stated staff has not changed its recommendation in response to letters provided by Skip Miller; the Councilmembers / Board Members / Commissioners and staff have been discussing potentially denying the MOEA for the last two months; May 18th, June 1st, and July 7th staff reports discuss the matter; staff does not think the EIR would change any issues or recommendations noted tonight; findings for denial are related to the commitment to a transit oriented mixed-use development and comprehensive transportation development strategy that fully funds costs and operations, which is not something that an EIR would study.

The Public Works Director stated SunCal had three years to address the bus rapid transit line; that he has tried to get SunCal to meet with WETA over the last year; he had to force SunCal to initiate dialogue with WETA; the issue is too little too late.

Vice Mayor/Board Member/Commissioner deHaan inquired whether Mr. Brown stated that the last, best, and final offer is a complicated document that would take a long time

to review, to which Mr. Brown responded in the affirmative.

Vice Mayor/Board Member/Commissioner deHaan inquired why the last, best, and final offer was provided five days before the meeting.

Mr. Brown responded SunCal has had weekly meetings with staff on the entire Alameda Point project; stated numerous issues have been addressed; the DDA had to be written to meet the schedule and the schedule was achieved; two or three drafts have been shared with staff.

Vice Mayor/Board Member/Commissioner deHaan inquired whether Mr. Brown has been privy to concerns regarding the job/housing imbalance, economic development strategy, traffic, and endangered species prior to the staff report going out; stated SunCal knew what needed to be tackled; that he does not know whether a requested commercial study has been provided; SunCal's mode of operation has been the 11th hour.

Mr. Brown responded the traffic study has been an on-going effort for the last four years; recently, the public has been engaged.

Vice Mayor/Board Member/Commissioner deHaan inquired what is different from the traffic study developed from the Preliminary Development Concept (PDC).

Mr. Brown responded that he does not know, but SunCal's Transportation Consultant would know.

Vice Mayor/Board Member/Commissioner deHaan inquired when SunCal hired its Transportation Consultant.

Jim Daisa, SunCal Transportation Consultant, responded he was hired approximately 9 months ago or longer.

Vice Mayor/Board Member/Commissioner deHaan inquired when the traffic study was prepared.

Mr. Daisa responded that he has not prepared a traffic study; however, he has developed a transportation strategy.

Vice Mayor/Board Member/Commissioner deHaan inquired how the PDC traffic study differs.

Mr. Daisa responded the PDC study was an impact study, which is not what SunCal prepared; SunCal's transportation strategy is consistent with, and has some level of

change, from the City's 2008 transportation strategy, which has been based upon the evolution of Alameda Point over time; the City has hired other consultants; that he has worked on phase and stage implementation detail from a developer's prospective.

Councilmember/Board Member/Commissioner Gilmore stated lawsuits were mentioned in last week's Alameda Journal headlines; tonight's discussions have included lawsuits potentially being an outcome of tonight's decision; three or four letters were received last week and came too late for the staff report; that she is not sure whether the letters would have been included in the staff report if the letters were received in time; requested feedback from the City Attorney on the matter.

The City Attorney/Legal Counsel inquired whether Councilmember / Board Member / Commissioner Gilmore is talking about the damages issue.

Councilmember/Board Member/Commissioner Gilmore responded in the affirmative; stated that she is a little disturbed about the matter; she had the opportunity to review the City Attorney's opinion for the first time today; the opinion's existence became known to her about a week ago; that she requested a copy of the opinion from the City Attorney and was told to read the opinion in the City Attorney's office; the opinion had to be left at the City Attorney's office because it would not be given out in advance of the meeting; that she asked the City Attorney why she would not give the opinion to her; the City Attorney cited concerns regarding the white elephant in the room; she is disturbed by allegations regarding Councilmember/Board Member/Commissioner Tam, the Interim City Manager, City Attorney, Mayor, and SunCal; the situation has created an unnecessary, adversarial atmosphere around City Hall and the City; at the end of the day, everyone is friends, neighbors, and colleagues' and everyone will have to learn to work together; that she has volunteered for the City for over fifteen years; she has never seen the situation get this bad; the situation has been adversarial between the Councilmembers/Board Members/Commissioners even with general disagreements of opinion in addition to being adversarial between staff and the Councilmembers/Board Members/Commissioners; the whole process has bread an atmosphere of fear and suspicion that has driven some actions such as not letting her see the opinion; the implication that certain members of the Council/Board/Commission could not be trusted with confidential material applied to all the Councilmembers / Board Members / Commissioner; that she wanted the opinion because the opinion is lengthy, and she did not know whether she would want to review the opinion again after reading the lengthy staff report; bouncing back and forth to the City Attorney's office is very inconvenient; the matter is a Charter issue because the Charter states that Councilmembers/Board Members/ Commissioners should be able to get an opinion from the City Attorney if requested in writing; the Charter does not state that an opinion needs to be read in a certain place; requested the City Attorney to provide an opinion that she is comfortable stating in public; stated that she feels the complicated opinion is difficult to digest; a

Closed Session was not held on the matter tonight because of a clerical error; that she does not have the benefit of her colleague's and legal team's thinking.

Mayor/Chair Johnson stated no allegations have been directed toward her; she understands there have been claims and spins regarding the investigative reports.

The City Attorney./Legal Council stated SunCal's attorneys have threatened to sue the City if the City does not do what SunCal wants; having a litigation defense briefing would not change the situation and would have no bearing on the Councilmembers/Board Members'/Commissioners' decision tonight; City staff, including a significant legal team of land use attorneys, CEQA attorneys, and litigators, have done a through analysis of the issues before the Councilmembers / Board Members / Commissioners tonight and have made a recommendation to the Councilmembers/Board Members/Commissioners; SunCal also says that it is entitled to the benefit of the deal that SunCal has made; the deal is the ENA; the ENA specifically states that damages would be limited to return of SunCal's \$1 million deposit in the event of the City's breach of its obligation to negotiate diligently and in good faith.

Councilmember/Board Member/Commissioner Gilmore inquired whether SunCal's damages would be limited to \$1 million if SunCal sues the City and is successful.

The City Attorney/Legal Counsel responded in the negative; stated the benefit of the bargain SunCal made set forth in black and white in the ENA specifically states SunCal's damages would be limited to a return of the \$1 million deposit; that she does not believe tonight's forum is a good time to get into a legal issue debate with SunCal's attorneys.

Councilmember/Board Member/Commissioner Matarrese stated the ENA expired yesterday; the City does not have a Navy term sheet; inquired whether the question on the agenda tonight is whether or not to accept the MOEA.

The City Attorney/Legal Counsel responded the question on the agenda is whether or not to follow the staff recommendation to deny the MOEA which could be done without prior CEQA review; stated Councilmembers/Board Members/Commissioners cannot approve the MOEA without CEQA review.

Councilmember/Board Member/Commissioner Matarrese moved approval of the staff recommendation; stated the project has the same flaws as the project before the voters; the DDA would not change the issue; opening the process up would be beneficial to the City.

Vice Mayor/Board Member/Commissioner deHaan seconded the motion.

Under discussion, Mayor/Chair Johnson stated the process was very thorough when SunCal was selected; that she did not vote for SunCal but supported the position of the majority of the Councilmembers/Board Members/Commissioners; Councilmembers/Board Member/Commissioner Matarrese did not vote for SunCal but also supported the selection of the majority of the Council/Board Members/Commissioners; four Councilmembers/Board Members/Commissioners made an effort to accept the vote to work, support, and cooperate with SunCal; that she appreciates SunCal's community outreach; situations leading to Measure B took a turn for the worse; the relationship between SunCal and the City has gotten worse; the community made an effort to work with SunCal; SunCal has not returned the community's good faith efforts; that she has had an open relationship with SunCal and has expressed community concerns; there is too much development; she does not see how all the traffic could get through two lanes in the Tube in both directions; her family members lived in Alameda at the peak of the former Naval Base; that her grandmother could not get out of her driveway on the 1700th block of Versailles Avenue because Base workers would come over the Fruitvale Bridge; people accepted and supported traffic backups because of Alameda's contribution toward national security and military efforts; allowing an inappropriate development is different; she ran for Council twelve years ago to help guide the former Naval Base redevelopment; the City needs a trustworthy partner; some of the things that SunCal has done questions SunCal's trustworthiness; that she does not think SunCal's threats and bullying is appropriate, particularly when a decision has not been made; she never makes up her mind until there has been a public hearing; that she is very concerned about the project's financial feasibility; she does not think there could be a 25% IRR; now she is learning there would be a 25% profit in addition.

Vice Mayor/Board Member/Commissioner deHaan stated one incident does not change a person's mind; that he has supported and given all to SunCal; having a developer spend more than \$1.25 million on a campaign is bizarre; spending another \$1.5 million on pre-campaign efforts is equally bizarre; the community should be proud that it pushed back with less than \$22,000; money does not buy loyalty and trust; money should not flow inappropriately.

Councilmember/Board Member/Commissioner Tam stated that she is being attacked in her efforts to keep Alameda government open and honest; that she wants to be clear that the correspondence in the documents and allegations, including the ones to the fire fighters, SunCal, and whoever has asked her questions, shows that she has diligently followed up on the tough questions with the Interim City Manager/Executive Director and that she has pushed to have important questions answered; having said that, with the vote this evening, the MOEA may not be the plan the City ultimately wants at Alameda Point; staff has made some assumptions on financial and environmental impacts; the historic resources group has made some findings that are part of the

eligibility of being listed in the National Registry; doing nothing is not a good option; the issue is not really about SunCal in her mind; that she thinks of this as an EIR that should look at the bookends of a project; the EIR should look at doing nothing and doing the ultimate, which is the MOEA being considered this evening; that she thinks the EIR needs to analyze the full range of impacts, and then decide whether the City can afford to pay for the impacts and whether there is some threshold with respect to profit sharing; that she thinks the EIR is the most open, transparent, and fair process, which is what she is trying to underscore in terms of transparency and openness when it comes to communications with the community; she will be abstaining from the vote for said reasons.

Councilmember/Board Member/Commissioner Gilmore stated that the transit plan is one of the most important things to her; everyone would suffer with an unsuccessful transit plan; that she is intrigued by the transit plan and she would like to see an EIR go forward and evaluate the transit plan and impacts; that she has problems with the financials; Alameda Point Community Partners (APCP) wanted a 25% IRR; that she voted down the 25% IRR because 25% seemed high and was something that the City and developer should have gone back to the drawing board to flush out before going down the path to a DDA; the financial assurances and IRR give her pause.

Councilmember/Board Member/Commissioner Matarrese stated in addition to traffic, another concern is the Albuquerque bankruptcy and how the City would protect itself from becoming another Albuquerque; that he does not think the City can protect itself; questioned whether the City wants to do business with a land investor; that he would like the process to be open and get the best deal for Alameda; the Councilmembers/Board Members/Commissioners have a lot of experience and can do better.

On the call for the question, the motion carried by a roll call vote: Councilmembers Gilmore: Aye; Matarrese: Aye; Tam: Abstain; Vice Mayor deHaan: Aye; and Mayor Johnson: Aye. Ayes: 4. Abstentions: 1.

ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the meeting at 1:09 a.m.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, CIC

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