

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -OCTOBER 20, 2009- -7:30 P.M.

Mayor Johnson convened the Regular Meeting at 7:45 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore,
Matarrese, Tam, and Mayor Johnson - 5.
Absent: None.

AGENDA CHANGES

(09-402) Mayor Johnson announced that Resolutions of Appointment [paragraph no. 09-404] would be addressed before the Consent Calendar.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(09-403) Proclamation Declaring October as Domestic Violence Awareness Month.

Mayor Johnson read and presented the proclamation to the Economic Development Director.

The Economic Development Director stated that she is accepting the proclamation on behalf of the City's domestic violence partners; the issue has been a high priority of the Community Development Block Grant Program and Social Service Human Relations Board; thanked Council for continued support and recognition.

REGULAR AGENDA ITEM

(09-404) Resolution No. 14391, "Appointing Nielsen Tam as a Member of the Commission on Disability Issues." Adopted;

(09-404 A) Resolution No. 14392, "Appointing Suzanne Whyte as a Member of the Library Board." Adopted;

(09-404 B) Resolution No. 14393, "Reappointing Michael B. Cooper as a Member of the Recreation and Park Commission." Adopted; and

(09-404 C) Resolution No. 14394, "Reappointing Terri Bertero Ogden as a Member of the Recreation and Park Commission." Adopted.

Councilmember Gilmore moved adoption of the resolutions.

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

The City Clerk administered the Oath of Office and presented certificates of appointment to Nielsen Tam and Suzanne Whyte.

Mr. Tam thanked Council for the opportunity to serve; stated that he is looking forward to Saturday's event [Special Services Resource Faire].

CONSENT CALENDAR

Mayor Johnson announced that the Ordinance No. 3008 [paragraph no. 09-409] was removed from the Consent Calendar for discussion.

Councilmember Gilmore moved approval of the remainder of the Consent Calendar.

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

(*09-405) Minutes of the Special and Regular City Council Meetings held on October 6, 2009. Approved.

(*09-406) Ratified bills in the amount of \$2,356,538.45.

(*09-407) Recommendation to Award the Abandoned Vehicle Towing Contract to A&B Towing. Accepted.

(*09-408) Resolution No. 14395, "Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of the Seller's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith." Adopted.

(*09-409) Ordinance No. 3008, "Amending Ordinance No. 2497, New Series, By Amending Subsection 19 (a) (Medical Insurance) and By Amending Subsection 19 (b) (Dental) of Section 19 (PERS Pension Fund) Regarding Public Safety Employees Hired After November 1, 2009." Finally passed.

The City Attorney suggested changing the November 1, 2009 date to January 2, 2010, which is the date both, the International Association of Fire Fighters (IAFF) and Alameda Police Officers Association (APOA) Memorandums of Understanding (MOUs) expire.

Councilmember Tam stated that she appreciates the clarification for changing the date; she abstained on the first reading of the ordinance because she needed more information; she opposes the ordinance; she agrees that pension reform is very much needed; IAFF and APOA have been very cooperative in establishing a committee to review reform for post retirement benefits; the ordinance is

premature because firefighters and police officers are not being hired right now; the 1079 and 1082 provisions do not apply to future employees; the MOUs include a collaborative process; that she agrees with the majority of voters polled last week regarding changing pension benefits; public safety employees deserve more generous benefits.

Mayor Johnson inquired what polling was done.

Councilmember Tam responded the State conducted a poll on October 16.

Mayor Johnson inquired whether the poll provided an understanding of public safety benefits.

Councilmember Tam responded in the affirmative; stated voters endorsed the idea of continuing more generous pension benefits for public safety employees; voters oppose a more stringent proposal to impose a surtax on retiree income exceeding \$50,000.

Mayor Johnson stated the public has a misunderstanding of the reality of public safety pay and benefits; lifetime benefits are also provided to the spouse [in Alameda]; inquired whether a new spouse would receive medical benefits after an employee retires, to which the City Attorney responded in the affirmative.

Mayor Johnson inquired whether a former spouse would receive the benefit, to which the City Attorney responded the benefit would be lost through divorce; other cities are not as generous [as Alameda].

Councilmember Gilmore stated amending the ordinance is a condition precedent to having the committee get together and having a meaningful work product; an ordinance would be needed for a new agreement.

The City Attorney stated that Councilmember Gilmore is correct; City staff and bargaining units have no jurisdiction to negotiate if the ordinance already sets benefits; Council has the legislative freedom to change the ordinance; future employee benefits would be whatever results from the meet and confer process under the Meyers-Milias Brown Act.

Vice Mayor deHaan inquired whether the four public safety unions have agreed to meet and confer.

The City Attorney responded in the affirmative; stated the unions have agreed to specifically review medical benefits for future

employees with the understanding of creating a second tier system.

Councilmember Matarrese inquired whether other public safety MOUs expire on January 2, 2010.

The Human Resources Director responded that the IAFF and APOA MOUs expire on January 2, 2010; Fire and Police management MOUs expired on January 1, 2008.

Councilmember Matarrese stated the proposed amendment would suspend the Other Post Employment Benefits, to which the City Attorney responded in the affirmative.

Councilmember Matarrese moved final passage of the amended ordinance with the January 2, 2010 date.

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

CITY MANAGER COMMUNICATIONS

(09-410) Civic Center Plan (Carnegie Referral)

The Interim City Manager gave a brief presentation.

The Planning Services Manager provided a handout and gave a Power Point presentation.

Mayor Johnson inquired whether Option B would allow the basement and main level to be open but not the mezzanine.

The Planning Services Manager responded the mezzanine could be used as office space, but not for assembly use.

The Planning Services Manager continued the presentation.

Mayor Johnson inquired whether the City's Assets Management strategy is limited to assets within the identified areas or assets in general.

The Interim City Manager responded assets in general; stated the Carnegie Building would be packaged with a combination of sites for a blended pro forma; the City has some unique assets to bring to the table and/or sell for development uses; the bottom line pro forma could facilitate bringing additional money to the Carnegie Building; the recovery would be a little easier on the capital outlay because more tenants would be in a larger pool.

Vice Mayor deHaan inquired whether the overall Civic Center could be a catalyst, which could stimulate the economy.

The Interim City Manager responded in the affirmative; stated the employee parking lot has been considered for infill development; the property value is approximately \$1 million; cash could be brought to the table in terms of a blended pro forma if the parking lot was sold to the Housing Authority; the same situation would hold true for other sites within the Civic Center plan.

Vice Mayor deHaan stated the Carnegie Building has been dormant for quite a while; inquired whether the buildings could lay dormant for another three or four years because State funding would be needed.

The Interim City Manager responded that she does not think the Carnegie Building would be dormant for another three or four years; bundling the Carnegie Building with City owned public assets as well as other private sites could create a blended pro forma with capital infused in the Carnegie Building sufficient to get a nominal recovery in terms of potential rents or free space for public activity; opportunities exists; the intent would be to have a concept plan and staff would be prepared to bundle something up in the spring.

Mayor Johnson stated the concept would result in rehabilitating the Carnegie Building sooner.

The Interim City Manager stated that she would like to have a very targeted, limited vision plan with pictures and graphics, not a lot of narrative; the City has approximately \$55,000 in predevelopment money among different funds; everything needs to be tied together; interest in the downtown area is picking up considerably.

Vice Mayor deHaan inquired whether three months is an adequate amount of time; stated the idea sounds exciting.

The Planning Services Manager responded in the affirmative; stated staff would work with professionals; a draft could be provided within three months; community meetings would not take place within the three months; the first community meeting would be in March.

Vice Mayor deHaan stated it appears as though staff has already reviewed the issue.

Councilmember Matarrese stated that he was involved in the 2000 Vision Plan which started in 1991; that he is confident staff can provide something to Council within three months; the pieces are

already in place; the Library, theater, and parking structure have been built; that his preference is a public gathering place; direction should be given to proceed and hold to the three month timeframe.

The Interim City Manager stated there is an opportunity to create a concept plan based on today's fiscal reality.

Councilmember Tam stated that she appreciates all the hard work; presentations were made two years ago when there was a potential funding stream from building and permit fees; part of the RFP would be to look at financial sustainability beyond capital costs and could be bundled up with public and private partnerships such as Towata Florist and the gas station across from City Hall; bundling up would help to provide capital outlay and long-term financial revenue streams.

The Interim City Manager stated critical mass is needed in order to bundle things up.

Councilmember Gilmore stated the City has been very focused on development and construction costs in the past; on-going maintenance costs have not been taken into account.

The Interim City Manager stated the process would involve having a concept plan and a RFP for different sites that would include maintenance costs, etc.

Vice Mayor deHaan stated costs have been provided for rehabilitating the Veterans Building; inquired whether the matter would be part of the equation; leasing opportunities exist.

Mayor Johnson stated the Veterans Building is crumbling away.

Councilmember Matarrese stated rehabilitating the Veterans Building would cost more than \$4 million; the Carnegie Building has the benefit of a retrofit.

The Interim City Manager stated the matter would be reviewed.

REGULAR AGENDA ITEMS

(09-411) Recommendation to accept the Annual Investment Report for fiscal year 2008-2009.

The City Treasurer gave a brief presentation.

Councilmember Tam stated Council adopted a resolution tonight on

the securitization of the \$2.28 million that the State will borrow from the City under Proposition 1A and return with interest of 2% within three years; the City expects to get 2.4% on investments; inquired whether it is possible to get up to 3.5% in the same investments.

The City Treasurer responded in the negative; stated 3.5% is the current yield on owned securities; new securities would be purchased at the current interest rate.

Councilmember Tam inquired whether the rate is more along 2.4%, to which the City Treasurer responded possibly for a three-year term.

Councilmember Tam stated that securitizing is a good idea; moved approval of the staff recommendation.

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

(09-412) Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by Amending Subsection 30-5.14 (Barriers and Fences) of Article I (Zoning Districts and Regulations) by Adding Subsection 30-5.14 (e) to Require Administrative Use Permits in Non-Residential Districts for Temporary or Permanent Barriers or Fences Within a Required Setback or Along a Property Line that Faces a Public Street or a Public Access Easement. Applicant: City of Alameda.

The Planning Services Manager gave a brief presentation.

Mayor Johnson inquired how long a fence could remain, to which the Planning Services Manager responded the timeframe could be conditioned through the use permit process.

Mayor Johnson stated the ordinance should include an outside time period; property owners should not consider a fence as a long-term situation; a distinction should be made between an on-going business and vacant lot.

Councilmember Matarrese stated a time limit is needed.

The Planning Services Manager stated the administrative use permit could have a time limit of six months; the property owner would have the ability to come back and request another six months under unusual circumstances; a year may be too long.

Mayor Johnson stated six months is sufficient.

The Planning Services Manager stated the administrative use permit limit of six months would be included for the second reading.

Mayor Johnson inquired whether the proposed ordinance includes boarded up windows.

The Planning Services Manager responded in the negative; stated the City has some control over boarded up windows.

Proponents (In support of Ordinance): Robb Ratto, Park Street Business Association (PSBA); Kathy Moehring, West Alameda Business Association (WABA).

Following Mr. Ratto's comments, Mayor Johnson inquired whether a fee would be included.

The Planning Services Manager responded in the affirmative; stated the use permit process allows situations to be reviewed individually.

Mayor Johnson stated renewals would not be automatic and should be limited to one.

Councilmember Matarrese stated renewals should escalate, should not be administrative, and should be a [Planning Board] hearing.

Vice Mayor deHaan inquired how existing fences would be handled.

The Planning Services Manager responded businesses would be advised that a use permit would now be needed; stated that he cannot commit to finding every fence on a commercially zoned property that does not have a use permit; any non-conforming use would be addressed.

Mayor Johnson stated the Planning Department would need to prioritize enforcement; the Planning Department needs to do a better job of prioritizing, particularly in the downtown area; other areas cannot be neglected.

The Planning Services Manager stated that staff would work with WABA and PSBA.

Vice Mayor deHaan stated the Collins property is fenced and also has graffiti.

Mayor Johnson stated the City has been too passive in dealing with blight.

Vice Mayor deHaan inquired whether additional language needs to be

added to the ordinance.

The Planning Services Manager responded direction is clear; stated the ordinance does not need additional language; Council has asked for better enforcement.

Mayor Johnson stated Council has requested staff to find better ways to deal with blight.

Councilmember Matarrese moved introduction of the ordinance with amendment to include an outside six-month time limit and an escalation beyond the six months.

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

(09-413) Public Hearing to Consider Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter XIII (Building and Housing) by Adding Article I, Section 13-13 (Alameda Green Building Code) to Adopt the 2008 Edition of the California Green Building Standards Code. Introduced.

The Building Official gave a brief presentation.

Mayor Johnson stated the ordinance would put Alameda in line with other Alameda County cities that have adopted a Green Building Ordinance.

Councilmember Tam stated that she is concerned with water usage; inquired what would be the baseline for the 20% indoor water usage reduction, to which the Building Official responded the 20% reduction would be based upon existing usage.

Councilmember Tam inquired what if water saving fixtures and flow restrictors are already used.

The Building Official responded the State made the ordinance voluntarily so details could be addressed.

Mayor Johnson inquired whether the solar panels issue has been resolved.

The Building Official responded in the affirmative; stated the Fire Department needs to have access around panels.

Councilmember Tam moved introduction of the ordinance.

Councilmember Matarrese seconded the motion, which carried by

unanimous voice vote - 5.

ORAL COMMUNICATIONS, NON-AGENDA

(09-414) Ben Delaney, Chief Executive Officer of Reliatech, stated Reliatech is the social venture of the Stride Center, which is a ten-year program that trains low-income individuals to become technicians; Reliatech is located within the St. Vincent de Paul space.

Mayor Johnson inquired whether people can bring in computers and other electronics for service repair.

Mr. Delaney responded computer related equipment can be brought in for service; stated St. Vincent de Paul accepts e-waste; Reliatech refurbishes computers.

Mayor Johnson inquired whether people can buy computers at Reliatech, to which Mr. Delaney responded in the affirmative.

COUNCIL REFERRALS

(09-415) Analysis of SunCal Initiative

Mayor Johnson stated that she has received questions from the School District; suggested having a special joint meeting with the School District so that questions can be addressed.

Vice Mayor deHaan inquired whether Mayor Johnson was referring to the two-part executive summary, which outlined financial and transportation impacts.

The Interim City Manager responded in the affirmative; stated the two reports are on the website; scheduling a joint meeting with the School District would require three [affirmative] votes since the item is a Council Referral.

Speakers: Honora Murphy, Alameda; John Knox White, Alameda; Diane Lichtenstein, Home Ownership Makes Economic Sense (HOMES); Doug Linney, Alameda.

Mayor Johnson requested an update on on-going efforts with SunCal.

The Interim City Manager stated that both sides are working to meet the terms of the Exclusive Negotiating Agreement; the purpose of the Council Referral is to focus on the two election reports only; staff meets with SunCal every Thursday from 9:00 a.m. to 4:00 p.m. along with other Technical Advisory Committee meetings.

Councilmember Gilmore inquired what are the available election dates.

The City Clerk responded the matter would be on the next agenda; the upcoming election dates are February, April, June and November 2010.

Councilmember Gilmore stated educating the public in advance is vital; that she is concerned about the potential for voter confusion; that she is not sure how advanced information would be provided to the public if the City and SunCal reach an agreement over what is being discussed in negotiations; that she would like to have a holistic presentation to the community.

Mayor Johnson inquired whether Councilmember Gilmore is stating that Council should set a time limit for negotiations.

Councilmember Gilmore responded perhaps a tentative date could be set for January and then check back.

Mayor Johnson stated a meeting could be set in January and adjustments could be made if something changes.

Vice Mayor deHaan stated that staff has already completed a detailed, two-part analysis of the initiative; a presentation and review is lacking.

Mayor Johnson stated the Interim City Manager could provide a status of discussions if something happens.

Councilmember Gilmore stated questions from the public have more to do with on-going negotiations and how the negotiations tie into the initiative.

Mayor Johnson stated perhaps SunCal would agree to allow public discussions.

Councilmember Tam stated the City received two letters today from SunCal as well as earlier correspondence indicating SunCal's willingness to be open and transparent about negotiation points; a lot of the negotiation points arise from fiscal issues as well as traffic mitigation; Councilmember Gilmore is suggesting to combine the two to ensure that the public understands the full context of the negotiations.

Councilmember Gilmore stated the City Clerk stated the ballot date would be set at the next City Council meeting; perhaps the ballot date should be set and work backwards from there.

Councilmember Matarrese stated the fiscal impact report published in May had a number of items stating there was not enough information to make a determination; the landscape of the fiscal situation has changed since May; the report needs to be updated; the State has taken away close to \$5 million in the last two fiscal years; the administration in Washington, D.C. said that a no cost or low cost conveyance would not occur; the initiative put a lot of numbers out in the public arena; inquired whether said numbers or staff's evaluation of the numbers can be discussed in public.

The City Attorney responded in the affirmative; stated the numbers and financial information extracted from the initiative is public.

Councilmember Matarrese stated the City has a good plan and the financial means to deliver the plan; the matter needs to come back to Council sooner rather than later; the proprietary nature of the Exclusive Negotiation Agreement is driven by SunCal's status as a private company; the City's negotiating team should explore having an agreement with SunCal on how to release information regarding the negotiations so the public would have a better chance of reviewing the initiative with an educated eye.

Councilmember Tam read an excerpt of SunCal's October 19, 2009 letter addressing confidentiality; stated SunCal has no problem releasing information other than proprietary information.

Mayor Johnson stated an agreement should be formalized with SunCal to make information public.

Councilmember Tam stated SunCal could be present at the presentation.

Mayor Johnson stated the public needs full access to all information, not just information that SunCal or the City is willing to release.

The Interim City Manager stated the focus is to stay very targeted on the election report and what the Election Code requires; staff needs to have discussions with SunCal.

Councilmember Matarrese suggested that staff talk with SunCal about what to disclose; stated SunCal is a private company and wants to keep some things from public view; staff could explore the matter with SunCal and bring information back to Council.

Mayor Johnson stated further analysis is needed because the scope of the election review is limited to the initiative.

Councilmember Tam stated some things have been overtaken by events because of the Mayor's press release and what is posted on the website; it is clear that the City has been in negotiations with SunCal for the last five months; information needs to be provided to the public on whether or not issues are fixable; problems identified in the election report can be addressed by the City and SunCal.

Councilmember Gilmore stated if SunCal is willing to release some of the information, a comprehensive review would be needed.

Vice Mayor deHaan inquired whether Council received the October 19 letter, to which Councilmember Gilmore responded that she received the letter via email.

Vice Mayor deHaan stated some of the issues have been addressed and allows for dialogue.

The Interim City Manager stated SunCal's signature needs to be on the bottom line to ensure the City is not at risk.

Vice Mayor deHaan inquired whether the City Attorney has reviewed the letter.

The City Attorney responded that she has not read the letter; stated SunCal controls the financials of the pro forma; SunCal's willingness to make the pro forma public would not be a problem; the terms of the initiative cannot be negotiated; the initiative is going forward; the City cannot change what is in the initiative; the terms of the Disposition and Development Agreement, which is a separate document, could be negotiated.

Mayor Johnson stated a date does not to be picked; the City does not have a problem with releasing information; having a fair characterization on all information is important; released information should be by topic.

Councilmember Gilmore stated having the information by topic makes sense.

Vice Mayor deHaan stated for the briefing, the two-part analysis needs to be updated with SunCal's input to provide a better understanding of the initiative as written.

Mayor Johnson stated staff needs to check with the School Board about having a joint meeting to address concerns.

The Interim City Manager stated three [affirmative] votes are needed in order to schedule a joint meeting with the School District; that she wants to ensure that the City is not placed at risk with disclosure.

Councilmember Tam stated Council seems to be very supportive of the Mayor's desire to have the community informed about what is in the initiative; the community needs the full context of issues Council has identified; that she would like the City Attorney to interpret Section 14-A (2) that addresses an amendment to the initiative if an agreement is reached with SunCal.

Mayor Johnson inquired whether the City Attorney's analysis could be made public.

The City Attorney responded the City Attorney's office would provide the analysis and make it public if possible.

Councilmember Tam moved approval of providing direction for staff to return with a presentation to Council [that includes: 1) the election reports; 2) a summary of the status of negotiation issues between SunCal and the City; and 3) a report on working with SunCal to release more information that the City has, but which was not included in the Election Reports; also, requested that the City Attorney's office make public the opinion on what can and cannot be negotiated; lastly, the motion included Councilmember Matarrese's request to update the City's financial report on the project with recent economic assumptions related to the impending loss of redevelopment money].

Councilmember Gilmore seconded the motion.

Under discussion, Councilmember Matarrese stated that he wants the motion to be clear that information would be updated and financials would be measured in today's environment in order to reasonably predict the costs associated with figures identified in the public domain, not just the initiative.

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

(09-416) Consider Supporting Proposed AC Transit Board Resolution 09-51 Setting Policy for Buying American Goods.

Councilmember Matarrese stated AC Transit Board Member Elsa Ortiz requested support for the resolution; AC Transit's fleet is largely made in Europe; the AC Transit Board adopted the resolution on October 14, 2009; no action needed.

Mayor Johnson stated a Hayward company manufactures and sends buses to all parts of the United States.

COUNCIL COMMUNICATIONS

(09-417) Councilmember Gilmore stated that she attended the California Redevelopment Association briefing last week; the two major topics of discussion were potential actions the Association will take as a result of State takeaways; filing a lawsuit was discussed; another item addressed was revamping the Association in order to have a personal face present; the Association is trying to motivate and educate members to be a more effective lobbying tool; Mike Madrid, League of California Cities Public Affairs Director, will help guide the Redevelopment Association along the path.

The Economic Development Director stated the lawsuit was filed today.

(09-418) Councilmember Matarrese requested a Call for Review of the Planning Board decision last Monday regarding a convenience store Use Permit at 1623 Park Street.

(09-419) Councilmember Tam stated that she attended the League of California Cities East Bay Division dinner; an update was provided regarding efforts to place a ballot initiative on the November 2010 election; the proposed ballot measure would be on track if each Councilmember within the 488 cities gets 100 signatures; Lisa Vorderbrueggen, Contra Costa Times Political Columnist, discussed how difficult times are in the news media; the Contra Costa Times will charge for on-line subscriptions.

(09-420) Vice Mayor deHaan stated that he attended a Good Citizen recognition for Jim and Jean Sweeney given by the Alameda Public Affairs group; Senator Hancock, Assembly member Swanson, Congressman Stark, and Supervisor Lai-Bitker were present to recognize the Sweeney's for Alameda Beltline efforts; Council should do likewise.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 9:57 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

Agenda for meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL AND
PUBLIC UTILITIES BOARD (PUB) MEETING
TUESDAY- -OCTOBER 20, 2009- -6:00 p.m.

Mayor Johnson convened the Special Joint Meeting at 6:05 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore, Matarrese, Tam, and Mayor Johnson: Board Members Gallant, Hamm, Holmes, McCahan, McCormick - 10.

Absent: None.

(09-398) Conference with Legal Counsel - Existing Litigation (54956.9); Significant Exposure to Litigation Pursuant to Subdivision (b) of Section 54956.9; Name of Cases: Vectren Communication Services, Inc. v. City of Alameda; Nuveen Municipal High Income Opportunity Fund, et al. v. City of Alameda, et al, Bernard Osher Trust v. City of Alameda, et al.

(09-399) Conference with Legal Counsel - Anticipated Litigation; Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; Number of Cases: One.

(09-400) Conference with Legal Counsel - Existing Litigation (54956.9) Name of Case: Safeway v. City of Alameda.

(09-401) Workers' Compensation Claim (54956.95); Claimant: Arthur Brandt; Agency claimed against: City of Alameda.

Following the Closed Session, the Special Meeting was reconvened and Mayor Johnson announced that regarding Vectren, the City Council and PUB received a briefing on the status of the litigation and gave direction in advance of a scheduled settlement conference; regarding Anticipated Litigation, Legal Counsel discussed a matter of potential litigation with the City Council; no action was taken.

Mayor Johnson called a recess at 7:35 p.m. and reconvened the Closed Session at 12:15 a.m.

Following the Closed Session, the Special Meeting was reconvened and Mayor Johnson announced that regarding Safeway, the City Council gave direction to the City Attorney regarding settlement parameters; regarding Workers' Compensation Claim, the City Council gave direction to Legal Counsel regarding potential settlement of claim.

Adjournment

There being no further business, Mayor Johnson adjourned the Special Meeting at 12:35 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 JOINT CITY COUNCIL,
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA),
AND COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING
TUESDAY- -OCTOBER 20, 2009- -7:31 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 9:58 p.m.

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

Absent: None.

CONSENT CALENDAR

Mayor/Chair Johnson announced that the Recommendation to Authorize the Interim Executive Director to Sign a Letter of Agreement [paragraph no. 09-40 CIC] and the Recommendation to Authorize the Interim Executive Director to Enter into a Contract in the Amount of \$40,000 [paragraph no. 09-43 CIC] were removed from the Consent Calendar for discussion.

Councilmember/Authority Member/Commissioner Tam moved approval of the remainder of the Consent Calendar.

Councilmember/Authority Member/Commissioner 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.]

(*09-421 CC/*09-39 CIC) Minutes of the Special Joint City Council and Community Improvement Commission Meeting held on October 6, 2009. Approved.

(09-40 CIC) Recommendation to Authorize the Interim Executive Director to Sign a Letter of Agreement in the Amount of \$11,400 with the Greater Alameda Business Association for Fiscal Year 2009-2010.

The Economic Development Director gave a brief presentation.

Commissioner Matarrese inquired whether the lack of reliability in CIC funds comes from tax increment.

The Economic Development Director responded in the affirmative; stated the lack in reliability is not a relationship to how the organization is run but is a direct relationship to what is happening in the State.

Special Joint Meeting
Alameda City Council, Alameda Reuse
and Redevelopment Authority, and
Community Improvement Commission
October 20, 2009

Speaker: Harry Hartman, Greater Alameda Business Association.

Commissioner Tam moved approval of the staff recommendation.

Commissioner deHaan seconded the motion, which carried by unanimous voice vote - 5.

(*09-41 CIC) Recommendation to Authorize the Interim Executive Director to Enter into a Contract in the Amount of \$96,089 with the West Alameda Business Association for Fiscal Year 2009-2010. Accepted.

(*09-42 CIC) Recommendation to Authorize the Interim Executive Director to enter into a Contract in the Amount of \$105,874 with the Park Street Business Association for Fiscal Year 2009-2010. Accepted.

(09-43 CIC) Recommendation to Authorize the Interim Executive Director to Enter into a Contract in the Amount of \$40,000 with the Alameda Chamber of Commerce for Fiscal Year 2009-2010.

The Economic Development Director gave a brief presentation.

Commissioner Tam inquired what the Chamber is doing differently than the business associations other than magazine ads.

The Economic Development Director responded the Chamber is often the first place people contact for information regarding places to stay, restaurants, etc; stated the City has not supported the Chamber, which is unusual; the City has benefited from the Chamber; businesses believe there is a big advantage to being linked to other business associations; staff would review progress.

Commissioner Tam stated the Park Street Business Association ads highlight Alameda, not the Association; hopefully, capacity building would occur and duplication would not take place.

Speakers: Robb Ratto, Park Street Business Association (PSBA); Melody Marr, Alameda Chamber of Commerce.

Following Mr. Ratto's comments, Commissioner deHaan stated the League of California Cities has discussed California travel and tourism; individual cities are marketing themselves extremely well.

Chair Johnson stated perhaps placing advertising money in a pool

would be better; reviewing the best way to spend money for the community as a whole is important.

Commissioner Matarrese stated that he is glad money is being invested in the website which can be used as a tool to measure success; the internet has become the first search avenue; that he would like to receive an interim report and not wait until the end of the year to see how things are going; the City needs to be agile because of the current, unsettled financial environment; milestones need to be established.

Following Ms. Marr's comments, Commissioner Tam stated the City is spending \$250,000 in advertising between the four associations; having a coordinated effort in getting the most bang for the buck is important.

Commissioner Tam moved approval of the staff recommendation.

Chair Johnson inquired whether Economic Development would work with the associations to pool resources.

The Economic Development Director responded in the affirmative; stated efforts are being made to collaborate a holiday event also.

Commissioner deHaan seconded the motion, which carried by the following voice vote - 5.

(*09-44 CIC) Recommendation to Approve and Appropriate a \$200,000 Brownfields Subgrant Agreement to Assist in the Fleet Industrial Supply Center Fire Cleanup. Accepted.

REGULAR AGENDA ITEMS

(09-422 CC) Public Hearing to Consider Introduction of Ordinance Amending Municipal Code by Adding Subsection 30-17 (Density Bonus Regulations) to Article I (Zoning Districts and Regulations) of Chapter XXX (Development Regulations) to Allow Density Bonus Units and Incentives or Concessions to Developers that Voluntarily Provide for Affordable Housing Units as an Element of Their Residential Development Project. Not introduced; and

(09-45 CIC) Adoption of Resolution Amending Resolution No. 04-127 to Reduce the Inclusionary Unit Requirement Policy for Residential Developments in the Business and Waterfront and West End Community Improvement Project Areas from at Least 25% to at Least 15%. Not adopted.

The Planning Services Manager gave a Power Point presentation.

Mayor/Chair Johnson inquired whether waiving development standards are done to make the project financially feasible.

The Planning Services Manager responded financial feasibility is for concessions and incentives; stated waivers allow the project to be developed on the site; a waiver might be needed to get a reduction in a side yard setback.

Mayor/Chair Johnson inquired whether an applicant would need to come forward publicly with a pro forma, to which the Planning Services Manager responded in the affirmative.

Mayor/Chair Johnson inquired whether more information could be requested if there are questions.

The Planning Services Manager responded in the affirmative; stated the City would need to prove the case if it seems that incentives or concessions are not necessary to make a project financially feasible.

Mayor/Chair Johnson inquired whether there is a defined process.

The Planning Services Manager responded the process is similar to other development applications; stated staff would review the pro forma and evaluate whether the requested concession would be necessary to make the project financially feasible.

Mayor/Chair Johnson inquired whether there is a public appeal process.

The City Attorney responded any discretionary decision on a development standard could be appealed to the Planning Board or Council; stated the provision is not in the proposed ordinance but is the general law of the City.

Mayor/Chair Johnson inquired whether there would be a noticing process.

The City Attorney responded a noticing process has not been built into the proposed ordinance.

Councilmember/Commissioner Matarrese stated concessions and waivers would not happen every day; inquired whether all applications for a density bonus or waiver would go to the Planning Board rather than

be decided administratively, to which the City Attorney responded in the affirmative.

The Planning Services Manager stated the proposed ordinance would require that a project requesting a density bonus to go before the Planning Board.

Vice Mayor/Commissioner deHaan inquired whether the density bonus ordinance waivers match the State requirement, to which the Planning Services Manager responded in the affirmative.

Vice Mayor/Commissioner deHaan inquired how other cities handle density bonus ordinances.

The Planning Services Manager responded some cities have adopted density bonus ordinances; stated other cities rely upon State regulations; some cities include more concessions and incentives in an ordinance, some have less.

Mayor/Chair Johnson stated the default is the State's ordinance; cities have the option to tailor a density bonus ordinance.

The Planning Services Manager stated the City is better off adopting its own community regulations.

Vice Mayor/Commissioner deHaan inquired how the density bonus has been handled in the past; stated the Collin's case was not approved.

The City Attorney stated the case is still under litigation.

The Planning Services Manager stated a new Collin's application requests a density bonus; the previous application was denied based on other findings not related to density bonus.

Vice Mayor/Commissioner deHaan inquired whether the City would be safeguarded with the new density bonus.

The Planning Services Manager responded the Collin's project has a variety of issues; stated that he does not think the proposed density bonus ordinance would be the determining factor; issues revolve around open space and lot layout.

Mayor/Chair Johnson inquired whether an application has been submitted and whether the new proposal fits within the density bonus ordinance.

The Planning Services Manager responded staff has been working with the Collin's representatives on a wide range of issues; stated some initial requests have been made for concessions which are not acceptable, such as waiving all fees; the Environmental Impact Report (EIR) is underway.

Mayor/Chair Johnson stated a formalized process is needed to determine whether or not a project is within the density bonus ordinance based upon the economics of the project.

The Planning Services Manager stated staff would have to make a recommendation to the Planning Board regarding the project's concessions, and incentives.

Mayor/Chair stated the first determination should be whether the project qualifies under the density bonus ordinance.

Vice Mayor/Commissioner deHaan stated the issue seems to be open ended in the decision process; controls are needed so that staff ensure consistent decisions are made.

Councilmember/Commissioner Gilmore inquired how a density bonus project would be handled.

The Planning Services Manager responded an applicant would request a meeting with staff to negotiate and review exceptions that would be considered; staff would not approve an applicant's request for a density bonus plus being twenty-five or thirty feet above the height limit; a more reasonable request would be ten feet over the height limit.

Councilmember/Commissioner Gilmore inquired what would happen after the negotiation process.

The Planning Services Manager responded plans would be developed and submitted; stated the process is similar to variance requests.

Councilmember/Commissioner Gilmore stated the noticing should state that the applicant is requesting a density bonus so that everyone is aware that the project is different; developers should be aware that there would be heightened scrutiny within the community.

The Planning Services Manager stated the Council/Commission seems to want some type of pre-application process.

Mayor/Chair Johnson stated a clear, defined application process is needed; a determination should be made as to whether the project would qualify for a density bonus first; a higher burden would be placed on the developer because economic feasibility needed to be provided.

Councilmember/Commissioner Gilmore stated a developer would have to know project details, which would be included in the application.

Mayor/Chair Johnson stated the developer could submit plans simultaneously.

Councilmember/Commissioner Gilmore inquired whether an applicant would need to provide economic feasibility data when a density bonus is presented to the Planning Board.

The Planning Services Manager responded in the affirmative; stated staff would need to provide documentation proving that the project is not economically feasible.

The Planning Services Manager continued with the presentation.

In response to Vice Mayor/Commissioner deHaan's inquiry regarding the Housing Element, the Planning Services Manager stated the Housing Element has been conditionally certified by the State; staff is working with the State to achieve some type of approval; one requirement of the conditionally approved Housing Element is that the City adopt a density bonus ordinance.

Mayor/Chair Johnson stated there is no assurance that the City would receive a certified Housing Element from the State if a density bonus is adopted.

Vice Mayor/Commissioner deHaan inquired how long the State's density bonus ordinance has been around, to which the Planning Services Manager responded since 1979.

Mayor/Chair Johnson stated the reason the City does not have a fully certified Housing Element is because the State wants the City to plan where to put units that would have been built at the former Naval base.

Vice Mayor/Commissioner deHaan inquired what role Economic Development would play in obtaining funding.

The Interim City Manager/Executive Director responded the 20%

housing funds set aside could be used.

Vice Mayor/Commissioner deHaan inquired whether set aside funding would most likely be used.

The City Attorney/Legal Counsel stated there is no requirement to use the funds or otherwise help or subsidize an applicant's affordable housing development.

Vice Mayor/Commissioner deHaan inquired whether the funding has been used in the past.

The City Attorney/Legal Counsel responded sometimes yes, sometimes no; stated the Grand Marina development inclusionary housing was provided with no subsidy from the City; one of the causes of action against the City in the Collin's lawsuit was the failure to have a density bonus ordinance; State law is not a model of clarity; staff has attempted to make the ordinance more user friendly.

Mayor/Chair Johnson stated that she does not have a problem with adopting a density bonus ordinance but ensuring that the ordinance works well is important; inquired whether the State ordinance is used if the City does not adopt its own density bonus ordinance.

The City Attorney/Legal Counsel responded State law requires the City to adopt the State's ordinance by reference.

Mayor/Chair Johnson stated the City is better off adopting a density bonus ordinance tailored to the community.

The City Attorney/Legal Counsel reviewed the one hundred-unit scenario.

Councilmember/Commissioner Matarrese inquired whether a twenty-unit condominium could be built if the requested waiver relates to Measure A.

The City Attorney/Legal Counsel responded the developer would need to request a waiver, not a concession or incentive; stated a Measure A waiver could not be granted unless the developer could prove that the project would be physically precluded from using the density bonus without the waiver.

Mayor/Chair Johnson inquired whether concessions and incentives have limits, but waivers do not, to the City Attorney/Legal Counsel responded in the affirmative.

Mayor/Chair Johnson stated a developer could request additional units [above the limit] because less money would be made on smaller units.

The City Attorney/Legal Counsel stated a developer does not get extra units under State law; State law has certain absolutes; the ordinance provides an application process if a developer requests an incentive, concession, or waiver; the matter would be presented to the Planning Board; the Planning Board would have to make certain findings if the incentive, concession, or waiver is denied.

Mayor/Chair Johnson stated the ordinance should be amended to include comments.

Vice Mayor/Commissioner deHaan stated the Collin's plan did not have setbacks; that he is interested in reviewing the new plan.

The City Attorney/Legal Counsel stated projects would still have to go through the California Environmental Quality Act (CEQA) process even with a density bonus, concession, or waiver request; part of the CEQA process could be preferred alternatives.

In response to Councilmember/Commissioner Tam's inquiry, the City Attorney/Legal Counsel stated State density bonus law pre-empts local agency zoning and development regulations and is specifically applicable to Charter cities; the State density bonus law trumps the City's Measure A requirements; developing a City density bonus ordinance allows the City to articulate a multi-family configuration prohibited under Measure A as a waiver, not a concession; the findings are more stringent for a waiver.

Mayor/Chair Johnson opened the public portion of the hearing.

Proponents: (In favor of ordinance): Jamie Keating, Trailhead Ventures, LLC; Robb Ratto, Park Street Business Association (PSBA); Kathy Moehring, West Alameda Business Association (WABA).

Opponents:(Not in favor or ordinance): Former Councilmember Barbara Kerr; Patsy Paul, Alameda; Christopher Buckley, Alameda Architectural Preservation Society; Corinne Lambden, Alameda;

There being no further speakers, Mayor/Chair Johnson closed the public portion of the hearing.

Following Former Councilmember Kerr's comments, Mayor/Chair Johnson

inquired whether a provision could be made for City identified historical structures.

The City Attorney/Legal Counsel responded a provision has been suggested; stated the problem is inconsistency with State law; State law only recognizes buildings on the State register; adding a historical provision could be challenged.

Mayor/Chair Johnson inquired whether variations could be allowed since the State invites local governments to develop ordinances.

The City Attorney/Legal Counsel responded cities only have discretion to determine whether or not to count its own inclusionary housing requirements toward a developer's count of units.

Councilmember/Commissioner Matarrese stated the State's intent is to protect historic structures; inquired whether the City using its own historic interpretation would meet the intent of State law.

The City Attorney/Legal Counsel responded that she would like to agree with said interpretation.

Councilmember/Commissioner Matarrese stated staff has heard a number of comments; an updated draft should come back to Council.

The Planning Services Manager stated staff would develop some type of process that requires an applicant to come before the City for initial approval for concessions, incentives, and waivers; staff will incorporate the Alameda Architectural Preservation Society suggestions in the revised ordinance.

Mayor/Chair Johnson stated commercial areas do not have the same concerns; residential areas should be reviewed differently.

The Planning Services Manager stated staff will develop a draft that compares caps in residential areas versus no caps in commercial areas; a developer could still request a waiver to no caps.

The City Attorney/Legal Counsel stated that she does not see anything in State law that permits a cap, but will speak to Mr. Buckley regarding the matter.

Councilmember/Commissioner Tam requested clarification of reducing the inclusionary unit requirement from 25% to 15% in all

redevelopment areas; questioned whether all redevelopment areas would be treated the same; stated that she needs better context.

Mayor/Chair Johnson stated the housing allocation does not just apply to affordable units, but all allocations; the City met some allocations with Alameda Point because of job generation; the Association of Bay Area Governments did not agree with said argument.

Vice Mayor/Commissioner deHaan stated the project in the 2600 block of Clement Avenue took a lot of liberty with the current ordinance; the building is four stories high.

The Planning Services Manager stated the project is a commercial project with one housing unit within a manufacturing zone height limit; the entire area is being rezoned.

(09-423 CC/ARRA) Recommendation to Authorize the Interim City Manager/Interim Executive Director to Negotiate and Execute a Contract with Environmental Science Associates for the Preparation of an Environmental Impact Report for Alameda Point Redevelopment Project in an Amount Not to Exceed \$2 Million.

(09-424 CC / ARRA / 09-46 CIC) Councilmember / Authority Member / Commissioner Matarrese moved approval of continuing the meeting past midnight.

Vice Mayor/Authority Member/Commissioner deHaan seconded the motion, which carried by unanimous voice vote - 5.

The Planning Services Manager gave a brief presentation.

Mayor/Chair Johnson stated moving forward on the Environmental Impact Report (EIR) is important because Oakland Chinatown organizations are worried that the City is not moving forward.

Councilmember/Board Member Matarrese inquired whether the City would own the EIR even though the cost of the EIR would be reimbursed by SunCal, to which the Planning Services Manager responded in the affirmative.

Councilmember/Board Member Tam stated Oakland Chinatown is urging the City to move forward with the EIR; knowing the type of project would be helpful; the Council received a letter from the same group [Oakland Chinatown] asking the City not place the initiative on the

ballot; inquired what Oakland Chinatown wants.

The Planning Services Manager responded the project that would be analyzed is the project described in the SunCal initiative; stated alternatives would also be reviewed; an EIR is needed; mitigations need to be identified; the primary issue is transportation.

Councilmember/Board Member Tam stated that she has concerns with the \$2 million cost; inquired how much of SunCal's money was spent on Transportation Report #2, to which the Planning Services Manager responded approximately \$70,000.

Vice Mayor/Commissioner deHaan stated the City paid for the report.

Councilmember/Commissioner Tam stated that she is referring to the transportation element part of the initiative.

The Planning Services Manager stated land use and transportation are both in the initiative; the EIR would determine whether traffic at Atlantic Avenue and Webster Street would be unacceptable and would address mitigations; mitigations would be imposed on the project through later approvals.

Vice Mayor/Board Member deHaan inquired how long the EIR would take.

The Planning Services Manager responded a public draft could be provided late May or early June 2010.

The Interim City Manager/Executive Director stated six months seems fast.

Mayor/Chair Johnson inquired what would be a safe timeline for a preliminary EIR, to which the Planning Services Manager responded August.

Vice Mayor/Board Member deHaan stated an EIR would not be available prior to voting on the initiative.

The Planning Services Manager stated the commitment to Chinatown is that there would be an EIR before construction occurs; the Settlement Agreement does not prevent a citizen's initiative.

Mayor/Chair Johnson inquired whether a conflict between mitigation measures and voter approved initiative language could be possible.

The Planning Services Manager responded possibly; stated the initiative is a community plan; community plans differ under the California Environment Quality Act (CEQA) and call for a single EIR upfront; all future phases can rely on the first EIR.

Mayor/Chair Johnson stated have mitigation be in conflict with the language of the initiative would be possible; a dispute could occur on how to resolve the issue.

The Planning Services Manager stated the Disposition and Development Agreement could be used to resolve the conflict.

Councilmember/Board Member Matarrese stated a draft would be presented in August; the Exclusive Negotiating Agreement (ENA) ends in July; inquired what would happen if the City does not finish and the ENA terminates.

The Interim City Manager/Executive Director responded the developer could stop at any point.

Councilmember/Board Member Tam inquired whether Environmental Science Associates understands the issue, to which the Planning Services Manager responded definitely.

Speaker: Helen Sause, Home Ownership Makes Economic Sense (Homes).

Vice Mayor/Board Member deHaan stated the EIR could have been kicked off eight months ago and would have been good business.

The Interim City Manager/Executive Director stated Oakland Chinatown and the City have an agreement that the City and developer would move forward with an EIR at the time the initiative qualified.

Vice Mayor/Board Member deHaan stated a specific plan has not been approved; the ballot initiative was surprising.

Councilmember/Board Member Tam stated the plan took two years of public meetings to develop.

Mayor/Chair Johnson inquired whether the EIR would be consistent with the established timeline, to which the Interim City Manager/Executive Director responded in the affirmative.

ADJOURNMENT

(09-425 CC/ARRA/09-47 CIC) There being no further business

Mayor/Chair Johnson adjourned the meeting at 12:13 a.m. in memory of former Councilmember Tony Daysog's father, Ricardo Daysog.

Respectfully submitted,

Lara Weisiger, City Clerk
Secretary, CIC

Agenda for meeting was posted in accordance with the Brown Act.