

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 18, 2011- -7:00 P.M.

Mayor Gilmore convened the meeting at 7:10 p.m. Councilmember Johnson led the Pledge of Allegiance.

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

Absent: None.

AGENDA CHANGES

(11-489) Mayor Gilmore announced that the introduction of ordinance [paragraph no. 11-500] would be addressed after the resolutions of appointment.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(11-490) Receive the Annual Presentation on the Façade Assistance Program for Fiscal Year 2010-2011.

The Development Coordinator gave a Power Point presentation.

Mayor Gilmore stated the Façade Assistance Program presentation is one of her favorites; Park Street and Webster Street look a lot better because the program has been consistently funded over the last five years; the City has contributed \$250,000 per year; inquired how much has been leveraged through public sector investments.

The Development Coordinator responded \$3 has been invested for every dollar invested by the City; outlined next year's projects.

Vice Mayor Bonta stated that he is impressed with the program's ability to transform facades; thanked staff for the good work.

Councilmember Johnson stated staff has done an excellent job; the City needs to ensure that funding is preserved.

The Development Coordinator noted the program creates jobs.

Councilmember Tam echoed appreciation for the presentation; stated that she looks forward to future presentations; the program outlines how the City leverages limited resources and shows the visual, dramatic bang for the buck.

Councilmember deHaan inquired whether most of the buildings are historical, to which the Development Coordinator responded in the affirmative.

Proponents: Robb Ratto, Park Street Business Association (PSBA); and Judi Friedman, West Alameda Business Association.

#### ORAL COMMUNICATIONS, NON-AGENDA

(11-491) Mary Anderson, Alameda, discussed the golf course land swap.

(11-492) Ariane Paul, Alameda; Carol Fairweather, Alameda; Mary Elena Goodan, Alameda; Bonnie Petheram, Alameda; Gesine Lohr, Alameda; Willow Liroff, Alameda; Trish Spencer, Alameda; and Ruth Smiler, Alameda urged the Council to keep the animal shelter open.

#### CONSENT CALENDAR

Mayor Gilmore made a correction to the September 20, 2011 Special Meeting Minutes and noted that she would abstain from voting since she was absent.

Councilmember Tam moved approval of the Consent Calendar.

Councilmember 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.]

(\*11-493) Minutes of the Special City Council Meeting held on September 13, 2011; the Special and Regular City Council Meetings and Joint City Council and Community Improvement Commission Meeting held on September 20, 2011; the Special City Council Meeting held on September 26, 2011, and the Special City Council Meeting held on September 27, 2011. Approved.

[Note: Mayor Gilmore abstained from voting on the September 20, 2011 minutes.]

(\*11-494) Ratified bills in the amount of \$2,315,190.10.

(\*11-495) Recommendation to Authorize the City Manager to Execute an Amendment to the Associated Community Action Plan Joint Powers Authority. Accepted.

(\*11-496) Resolution No. 14624, “Superseding and Rescinding Resolution 14537 Designating the Person to Perform the Duties of the City Manager in the Event of His or Her Absence or Disability.” Adopted.

(\*11-497) Resolution No. 14625, “Authorizing the City Manager to Submit a FY11-12 Transportation Fund for Clean Air Regional Fund Application to the Bay Area Air Quality Management District for \$200,000 to Continue an Estuary Crossing Shuttle, Provide \$80,000 in Transportation Systems Management/Transportation Demand Management Funds for the Local Match, and Execute All Necessary Documents.” Adopted.

(\*11-498) Resolution No. 14626, “Amending the Management and Confidential Employees Association Salary Schedule.” Adopted.

### REGULAR AGENDA ITEMS

(11-499) Resolution No. 14627, “Appointing Emani Pollard as a Member of the Youth Advisory Commission.” Adopted;

(11-499A) Resolution No. 14628, “Appointing Mackenzie Prince as a Member of the Youth Advisory Commission.” Adopted;

(11-499B) Resolution No. 14629, “Appointing Angus Storm as a Member of the Youth Advisory Commission.” Adopted; and

(11-499C) Resolution No. 14630, “Appointing Sonia W. Xu as a Member of the Youth Advisory Commission.” Adopted.

Councilmember Tam moved adoption of the resolutions.

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

The City Clerk administered the Oath of Office and presented certificates of appointment to Ms. Pollard, Ms. Prince, Mr. Storm and Ms. Xu.

(11-500) Introduction of Ordinance Amending the Alameda Municipal Code by Adding Article VIII (Sunshine Ordinance) to Chapter II (Administration) Establishing Local Standards to Ensure Public Access to Public Meetings and Public Records. Introduced.

The Acting City Attorney gave a brief presentation.

Proponents: Gretchen Lipow, Sunshine Task Force Member; Jon Spangler, Alameda; and Carol Gottstein, Alameda.

Proponents with suggestions to revise the ordinance: Tracy Jensen, League of Women Voters; John Knox White, Sunshine Task Force Member; and Robb Ratto, PSBA.

Councilmember Tam commended the Acting City Attorney, City Manager, and City Clerk for helping with community efforts; stated finding ways to encourage people to be informed and participate is important; encouraged people not to let perfect be the enemy of good.

Vice Mayor Bonta thanked staff and community volunteers; applauded the City Manager's efforts to implement items in the ordinance early.

In response to Vice Mayor Bonta's inquiry, the City Manager stated a twelve-day noticing period is being practiced; the ordinance states eleven days.

The Acting City Attorney stated the ordinance states having at least an eleven-day noticing period.

Vice Mayor Bonta stated that he would prefer consistency in the noticing period and would prefer twelve days.

Mayor Gilmore stated the proposed ordinance is historic for the City; efforts have been monumental for all parties involved; the City owes the Sunshine Task Force and staff an incredible debt; that she looks forward to implementing the ordinance and making government more transparent and accessible; putting things in plain language is important.

Councilmember deHaan stated other cities would be looking at the ordinance as a model; thanked staff for stepping up to the plate.

Councilmember Tam stated documents should not be limited; that she supports the League of Women Voters' recommendation to review the direct cost for duplication; there seems to be some confusion with respect to special circumstances regarding an Open Government Commission (OGC) member's term.

The Acting City Attorney suggested adding language to state no more than a four-year term.

Councilmember Tam stated Council should strive not to preclude public access to meetings; Council is not always in the best state of mind to deliberate on issues after 10:00 p.m.; that she does not think requiring a supermajority vote to go past 10:30 p.m. would be a problem.

Mayor Gilmore stated limiting meetings to 10:30 p.m. would allow the public to attend and participate in a meaningful way; having Councilmembers put full effort and energy into making decisions would be in the best interest of the City; that she does not see Council abusing a supermajority vote to go past 10:30 p.m.

Councilmember Tam stated that she agrees with Mr. Knox White regarding ensuring that a chosen electronic format could be viewed in a variety of mainstream computing platforms and exhausting all remedies before a law suit is filed; the proposed schedule makes a lot of sense; there was a question whether the OGC decision could be appealable to the Council; having a Council watchdog group ask Council for permission on their decision seems odd.

Vice Mayor Bonta inquired whether Councilmember Tam is suggesting that there would be no appeal to the Council.

Councilmember Tam responded Mr. Knox White commented that there is an avenue to go through the Courts after exhausting the OGC process.

The Acting City Attorney suggested a sentence be added stating that the time limits of the Brown Act shall not be tolled pending any action to cure an alleged violation of the Sunshine Ordinance; stated there is a very short time window for curing and correcting an action under the Brown Act; the remedy would be to declare a decision null and void.

The City Manager stated most appeals would be from people unhappy with the OGC not finding the City in violation; allowing an appeal to Council would not add value to the process; people need a venue to complain about lack of transparency, but accountability is also needed; urged that Council stay away from appeals.

The City Clerk noted Sections 2-91.8, 2-92.8(g), and 2-93.2 address appeals to the Council.

Mayor Gilmore stated that she does not think Council is the right body to hear appeals; suggested striking all references regarding appeals to Council.

Vice Mayor Bonta stated there might be exceptions; that he does not think Council would be inherently compelled to recuse itself; that he understands the discomfort in some areas; other situations might make sense for Council to be an appellate body.

Mayor Gilmore stated Council would know the result of the OGC's finding if noticing was not done correctly; noticing provisions could be changed; clerical errors have occurred in the past and re-noticing has been done.

In response to Vice Mayor Bonta's inquiry about whether self-curing eliminates the discretion to issue a fine, the Acting City Attorney stated the OGC could have the discretion to order the matter null and void, cure and correct, and impose a fine.

Councilmember Johnson stated fines should go into a specific fund.

Mayor Gilmore stated as the ordinance is written now, a cure and correct action would be placed on a subsequent meeting agenda; language should be clarified that the matter should be placed on the next available meeting agenda; a subsequent meeting agenda could be three months out.

Councilmember Tam stated sometimes a body has difficulty getting a quorum.

Mayor Gilmore stated a special meeting could be called, if needed.

In response to Councilmember deHaan's inquiry regarding appeals, the City Manager stated that he does not see the issue as a recusal problem; the courts could remedy the situation if a person believes that the law has been violated; a swift and just process is important; that he does not think it is in the interest of Council to become an appeal court for the Sunshine Ordinance.

Vice Mayor Bonta stated government needs to be held accountable; there could be instances where Council could be the arbitrator enforcing the sunshine ordinance.

The City Manager stated Council could always require correction by giving direction to the City Manager, who would direct staff to take care of the problem; that he does not want Council to be tangled in formality.

The Acting City Attorney stated the ordinance could be amended from time to time; inquired whether Council does not want to hear appeals, to which Council responded in the affirmative.

Councilmember Johnson inquired whether there could be circumstances of an individual violation but the City would be the entity in violation, to which the Acting City Attorney responded in the affirmative.

The City Manager stated an individual could be subject to discipline if the individual has a track record causing the City to be in violation.

Councilmember Johnson stated staff is committed to the ordinance; a situation involving non-compliance would most likely be a mistake.

The Assistant City Manager stated training would be needed.

Councilmember Johnson stated the copy fee should not be open to whatever Council decides.

Mayor Gilmore stated the fee would be based upon cost recovery.

Councilmember Johnson stated cost recovery could be interpreted in different ways.

The Assistant City Manager stated the cost would be in the fee scheduled adopted each year; now, the cost is \$0.10 per page.

Mayor Gilmore stated many documents are in electronic format and would be free.

The Acting City Attorney stated charges could be for copying only, not staff time.

Mayor Gilmore inquired where the fine would go.

The Acting City Attorney responded the fine could go toward acquiring the best technology for openness and transparency.

The City Manager stated the money could be given to the contestant or could be directed to the records retention program.

Vice Mayor Bonta inquired about training, education, and workshops.

The City Manager stated Council could direct staff to utilize the funds for record retention or public training and outreach.

Councilmember Tam stated the records retention program is ideal; educational workshops should occur regardless of generating fines.

Councilmember Johnson stated a supermajority vote should be required for going past 10:30 p.m. and there should be an absolute end time of midnight.

The Assistant City Manager stated an item not addressed could be brought up after 10:30 p.m. subject to the supermajority vote of Council.

Mayor Gilmore stated Council and Oral Communications could still be addressed.

Councilmember Johnson stated a final end time should be set.

Councilmember Tam stated some items might have deadlines, which would require that action be taken.

Councilmember Johnson stated people do not think clearly when it is very late; the public does not want to stay late; staff has already put in a full day and should not have to stay too late.

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Councilmember Tam left the dais at 9:21 p.m. and returned at 9:23 p.m.

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The Acting City Attorney stated staff would be mindful to have Council address items that have deadlines earlier in the meeting.

Mayor Gilmore stated the issue is agenda management; that she is in favor of the supermajority vote; she does not see the need for a time limit because items that must be done would be addressed early; the 10:30 p.m. time limit would be for only one item.

Councilmember Johnson stated one item could last several hours.

Mayor Gilmore suggested adopting the supermajority vote to go past 10:30 p.m. but not putting an end time yet.

Councilmember Johnson stated that she does not see how things would change from how things are done now without an end time; that she does not recall Council ever voting not to go past midnight.

Mayor Gilmore stated choosing to go past 10:30 p.m. would be for one item; that she can remember meetings where there was only one item on the agenda and the item

caused a lot of community concern; questioned whether Council would like to tell the community that a meeting would stop at midnight and be continued to another date.

Councilmember Johnson stated the community has requested not going until 1:00 or 2:00 a.m.

The Acting City Attorney stated the League of Women Voters has pointed out that Section 2-90.2(g) is redundant with Section 2-90.1; Section 2-90.2 addresses findings; Section 2.90.1 addresses definitions; that she feels the Sections are appropriate as is; inquired whether the Brown Act would be running concurrently on the cure and correct, to which Councilmember Tam responded in the affirmative.

In response to Vice Mayor Bonta's inquiry about the statute of limitations introduced by Mr. Knox White, the Acting City Attorney stated the Sunshine Ordinance would have a separate statute of limitations; stated the Brown Act timing provisions would not be tolled for the Sunshine Ordinance.

Councilmember Tam moved introduction of the ordinance with revisions discussed and including the provision about the supermajority vote for considering items past 10:30 p.m.

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

(11-501) Recommendation to Authorize the City Manager to Execute an Emergency Medical Services First Responder Advanced Life Support and Ambulance Transport Service Agreement with the County of Alameda.

Mayor Gilmore stated the negotiating team has done a good job; the County has given the City two additional first responder advanced life support unit credits and the exclusive right to provide first responder Advanced Life Support (ALS) services, which are both very important.

The Interim Fire Chief congratulated the negotiation team; stated the City has re-established a good working relationship with the County.

Mayor Gilmore stated a provision has been included for non-emergency ambulance transport; having as many options as possible is nice.

The Interim Fire Chief stated staff would be providing the City Manager and Acting City Attorney with the framework for a business plan to determine if there is an interest in pursuing non-emergency ambulance transport.

Vice Mayor Bonta inquired why the prior contract was missing some points important to the City.

The Interim Fire Chief responded the County cannot provide a non-emergency



Exclusive Operating Area (EOA) for Basic Life Support (BLS); stated the ALS service is contractual; BLS allows for free competition.

Vice Mayor Bonta inquired whether the Contract is silent on not having an EOA for BLS services, to which the Interim Fire Chief responded in the affirmative.

Vice Mayor Bonta inquired whether the City might consider offering BLS services.

The Interim Fire Chief responded the City could pursue the matter; stated the process would be competitive.

Vice Mayor Bonta inquired whether a pro forma would be done; stated that he understands revenue could be generated and the service could be profitable.

The Interim Fire Chief responded a pro forma would be done.

The City Manager stated the matter would need to be reviewed; Council could make a decision in sufficient time to impact next fiscal year.

In response to Vice Mayor Bonta's inquiry, the Interim Fire Chief stated Palo Alto and South San Francisco provide the [BLS] service in a competitive environment.

Councilmember deHaan stated the Contract has a lot of requirements for the City to meet.

The Interim Fire Chief stated requirements are no different than the last fourteen years.

Councilmember Tam expressed her appreciation to the negotiating team; thanked Supervisor Wilma Chan for her help; stated more ALS first responder credits would accelerate debt repayment; the City has worked with the Local Agency Formation Commission (LAFCO) on a funding stream to pay future Emergency Medical Services (EMS) via taxes; inquired whether the City would not have an obligation to transport a patient to a psychiatric facility if the patient does not require medical clearance at an emergency department.

The Interim Fire Chief responded patients would need to self-transport; staff is drafting a policy.

Councilmember Johnson stated supplying medications for ambulances is very expensive; expired medications are thrown away; inquired whether the City could work with the County to pool purchase of medications.

The Interim Fire Chief responded staff is working on the issue; costs have been brought down significantly; the new County ambulance provider has asked the City if there would be interested in pooling to purchase medications; staff wants to ensure that the same quality would be available.

The City Manager thanked Supervisor Chan for her intervention; stated the City still has an obligation to repay the debt owed to the County; the debt payment plan was reduced and stretched; the City is on more collaborative footing with the County in a field that is constantly changing; the most important takeaway is the establishment of a collaborative relationship.

Vice Mayor Bonta echoed thanks to Supervisor Chan for her efforts; stated Supervisor Chan has always looked out for the City's interest as well as the County in general.

Councilmember Tam moved approval of the staff recommendation.

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

#### CITY MANAGER COMMUNICATIONS

(11-502) The City Manager encouraged the public to attend the budget workshop on October 25<sup>th</sup> and to take a survey regarding the City's website.

#### ORAL COMMUNICATIONS, NON-AGENDA

(11-503) Joyce Larrick, Alameda, discussed the animal shelter.

(11-504) Jon Spangler, Alameda, encouraged attendance at a bike workshop.

#### COUNCIL REFERRALS

None.

#### COUNCIL COMMUNICATIONS

(11-505) Vice Mayor Bonta discussed the animal shelter.

(11-506) Mayor Gilmore reported on the Association of Bay Area Governments (ABAG) general assembly; provided materials to the City Clerk for Councilmembers to review.

(11-507) Mayor Gilmore requested that any Councilmember interested in serving on the Oakland Airport Community Noise Forum contact her.

(11-508) Councilmember Tam announced that Wastemanagement/Stopwaste.org would be holding community workshops.

## ADJOURNMENT

There being no further business, Mayor Gilmore adjourned the meeting at 9:52 p.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- -OCTOBER 18, 2011- -6:00 P.M.

Mayor Gilmore convened the meeting at 6:00 p.m.

Roll Call – Present: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore – 5.

Absent: None.

The special meeting was adjourned to Closed Session to consider:

(11-487) Public Employment; Title: City Attorney

(11-488) Conference with Legal Counsel – Existing Litigation (54956.9); Name of case: City of Alameda v. Kaluris; Case number: 786763-1

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Mayor Gilmore called a recess to convene the regular meeting at 7:00 p.m. and reconvened the closed session at 10:00 p.m.

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Following the closed session, the meeting was reconvened and Mayor Gilmore announced that regarding Public Employment, no action was taken and regarding Existing Litigation, Acting Legal Counsel informed the City Council of the status of the matter.

Adjournment

There being no further business, Mayor Gilmore adjourned the meeting at 10:30 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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