

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
THURSDAY- -MAY 11, 2023- -7:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 7:01 p.m. Vice Mayor Daysog led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, Herrera Spencer, Jensen, and Mayor Ezzy Ashcraft – 4.
Absent: Councilmember Vella – 1.

AGENDA ITEM

(23-286) Adoption of an Uncodified Urgency Ordinance Imposing a Temporary Moratorium on Submitting Capital Improvement Plan Applications for Properties that have 25 or More Rental Units and Directing the Rent Program Administrator to Reject All Capital Improvement Plan Applications Filed On or After April 27, 2023; and

(23-286 A) Introduction of an Uncodified Ordinance to Impose a Temporary Moratorium on Submitting Capital Improvement Plan Applications for Properties that have 25 or More Rental Units and Directing the Rent Program Administrator to Reject All Capital Improvement Plan Applications Filed On or After April 27, 2023. Introduced.

The Rent Program Director gave a Power Point presentation.

In response to Mayor Ezzy Ashcraft’s inquiry, the Rent Program Director outlined the Capital Improvement Plan (CIP) application submitted by South Shore.

Mayor Ezzy Ashcraft inquired whether the Rent Program staff is in the final stages of reviewing the application, to which the Rent Program Director responded in the affirmative; stated staff is finalizing a draft letter and making a determination.

Vice Mayor Daysog stated the impact would be a rent increase that translates into roughly 5.18%; inquired whether amount is actually 3.3% given State legislation.

The Rent Program Director responded the combination of rent increases would be subject to the State cap; looking forward to September, the CIP could not be more than 3.3% without exceeding the State cap.

Councilmember Herrera Spencer inquired whether the City Attorney’s legal opinion is that any moratorium or new CIP plan cannot be retroactive to apply to South Shore.

Special Counsel responded in the negative, stated if the Council decided to adopt a moratorium that would be applicable to the application, it could do so; it is not the staff recommendation because of the legal risk.

Councilmember Herrera Spencer stated that she appreciates there are legal risks; she is looking for a legal opinion as to what would happen if the Council decided to adopt a moratorium.

Special Counsel responded staff does not know what would happen with respect to what the applicants could do; stated all the City Attorney's office can do is advise the Council based on existing law; the applicant would have some legal argument; the City Attorney's office cannot say definitively that they would win or that the City would win; it is within Council's discretion to make a decision.

Councilmember Herrera Spencer inquired whether the City Attorney was able to find any case law regarding retroactivity of a new ordinance.

Special Counsel responded there is a body of law dealing with issues concerning estoppel, which could arguably be applied to a local agency; an applicant could make a number of legal arguments; the legal concept of an estoppel is often difficult to assert against a public agency.

Councilmember Herrera Spencer inquired whether an urgency ordinance requires four votes, and a regular ordinance requires three votes, to which the Special Counsel responded in the affirmative.

Councilmember Herrera Spencer inquired whether Councilmember Vella is attending the meeting online, to which the City Clerk stated that Councilmember Vella is not present.

Councilmember Jensen asked the Rent Program Director to talk about the relationship between CIP improvements and Fair Return; stated that she is trying to determine if a landlord would be able to make improvements and use the Fair Return principle to increase rent if no CIP is allowed.

Special Counsel responded the process under a fair return petition includes using a number of different methodologies to make a determination; the most common one is the Net Operating Income (NOI) Analysis; staff would compare the NOI in the base rent year; the NOI is a product of the income the landlord receives less expenses; when it comes to capital improvements, the cost of the capital improvements are amortized and added to the expenses for the year in question; all the expenses are subtracted from the income to determine whether or not the owner's NOI is less than what it was before; if so, case law says a rent increase needs to be granted in order to equal out the NOI.

Councilmember Jensen stated it sounds like it would be difficult for the landlord to use fair market value under a CIP moratorium.

Special Counsel stated it is not a fair market value; it is a fair return based on the typical NOI analysis method.

The City Attorney stated that he would like to emphasize one point about fair return; fair return petitions are constitutionally required; neither State nor local law can impose caps on fair returns.

Councilmember Jensen stated Special Council's response does not seem to indicate that a fair return petition would be an effective way to replace the opportunity to raise rents under the proposed CIP; despite being amortized in the same way, the landlord would have more of a challenge to prove operating income was reduced.

Special Counsel stated it would largely depend on expenses, which would drive the NOI.

In response to Councilmember Jensen's inquiry, the Rent Program Director stated the CIP amount that could be imposed will be reduced in September when the City's new Annual General Adjustment (AGA) goes into effect; State Assembly Bill (AB) 1482 bringing the cap down from 10% to 9.2% would happen almost immediately; the combination of AGA, banked rent increases, and CIP fall under the State's AB 1482 cap.

Councilmember Jensen inquired whether the landlord has any discretion to impose a higher CIP and not impose a banked rent increase, to which the Rent Program Director responded in the affirmative; stated that is another option available to landlords; regardless of the different buckets, they have to add up to no more than the State's cap.

In response to Councilmember Jensen's inquiry, the Rent Program Director stated currently, the rule is landlords can do AGA; if there are banked amounts, 3% could be added to the AGA; the AGA is currently 3.5%; in September when AGA will be reduced to 2.9%, 3% could be added for a total increase of 5.9%; most landlords have significant banked amounts due to the moratorium during COVID; if there is a new tenancy, the banked amount is not carried over.

Councilmember Jensen inquired whether tenants in units occupied since the pandemic would likely be facing a 6% increase without CIP included, to which the Rent Program Director responded in the affirmative.

Councilmember Jensen inquired whether rent increases under the rent program can be imposed only one time per year, to which the Rent Program Director responded in the affirmative; stated the ordinance states rent can only be increased once every 12 months; the CIP pass through needs to be implemented along with the annual rent increase.

Vice Mayor Daysog inquired whether residents of South Shore Apartments would be eligible for the 3.3% pass through amount, to which the Rent Program Director responded in the affirmative; stated landlords need to pay attention to the AB 1482 cap and will need to either reduce the banked amount or the CIP pass through; the CIP maximum is essentially 5.2%.

Vice Mayor Daysog stated whatever improvements are made to the CIP pass through rules would not apply to South Shore Apartments; inquired whether a mechanism could be applied on a one-time basis to lessen the impacts on the South Shore Apartment residents.

The City Attorney responded there are regulatory options; stated Council can exercise its proprietary powers; since it is not agendaized, he advises Council to only give staff brief direction to quickly return with more information; the State cap is dynamic and changes with CIP; there will be fluctuation every year; it will not go over 10% and could be lower.

Councilmember Jensen inquired whether relocation is allowed for any rent increase or just CIP.

The Rent Program Director responded the CIP policy includes a provision that allows tenants to advise the landlord of their intent to leave the unit, not pay the CIP increase receive the same relocation payment afforded to tenants terminated for no-fault.

In response to Councilmember Jensen's inquiry, the Rent Program Director stated tenants who receive a rent increase, such as AGA or banked amounts not including a CIP pass through, are not eligible to receive a relocation payment.

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated last summer, staff came to Council with proposed CIP Amendments, which included three major components; the staff recommendation would have imposed an 8% overall cap on CIP, AGA and banked increases; rather than relying on the State 10% cap, staff's recommendation was 2% lower; the recommendation also included a provision that allowed low income tenants to be exempt from a CIP pass through; the third major component would have permitted more improvements; landlords could essentially pass through more, but be limited by the 8% cap and tenants of limited means being exempt.

Mayor Ezzy Ashcraft inquired whether there was any consideration of reducing the CIP passed through amount from 100% to 50% or less.

Special Counsel responded the staff report indicated several jurisdictions have such a provision depending on the number of units; stated a landlord could recover 90%, 75% or 50%, which was not the staff's recommendation; the information was provided in case Council wished to go in said direction.

Mayor Ezzy Ashcraft inquired whether landlords are allowed to charge tenants for the cost of borrowing money to pay for improvements.

Special Counsel responded it was not part of the staff recommendation in 2021 or 2022; stated Council discussed whether finance charges should be included; Council included it as an amortized cost if the applicant could demonstrate they borrowed money.

(23-287) Councilmember Herrera Spencer moved approval of allowing speakers to have three minutes to speak.

Mayor Ezzy Ashcraft stated she would not support that; a lot can be said in two minutes; it is really important to her to hear from all speakers and at a reasonable time; inquired about the number of speakers.

The City Clerk responded that there are 14 in person and three remotely have raised their hands, 17 total; stated that the motion requires four ayes.

Councilmember Herrera Spencer stated this is a very important issue with huge impact on community members; when the rent issue was addressed while she was Mayor, each speaker was allowed three minutes; speakers have taken the time; not all of them are going to need that time, but some of them will.

Mayor Ezzy Ashcraft stated that she agrees it is a very important topic and she wants to get to the speakers; she remembers the rent meeting went until 4:00 in the morning, which does not serve anyone well.

Vice Mayor Daysog seconded the motion, which failed by the following voice vote: Ayes: Councilmembers Daysog and Herrera Spencer – 2. Noes: Councilmember Jensen and Mayor Ezzy Ashcraft - 2.

Stated the increase is a pay raise for landlords; discussed and expressed concern about the increase, conditions and landlords: Keegan Tatum, Alameda.

Expressed concern about work not being done on his building and improvements being done on non-rent controlled units: Eric Kozak, Alameda.

Discussed a potential apartment renters union and petition with over 240 signatures; expressed concern about the maintenance and upkeep of existing affordable residential housing: Stacey Rodriguez, Alameda.

Expressed concern about the urgency ordinance: Jay Garfinkle, Alameda.

Discussed capital improvement projects; expressed concern about rents not being used to pay for the projects: Jason Peavich.

Stated California Apartment Association (CAA) opposes the ordinance; stated there is not a citywide emergency and the process is not being abused: Rhovy Lyn Antonio, CAA.

Urged Council to adopt the urgency ordinance and include South Shore Apartments; discussed habitability issues; expressed concern about conditions: Nancy Lewis, Alameda.

Inquired about the CIP being applied only to occupied units; discussed property conditions; urged Council to support tenants: Mariana Grajales, South Shore Tenants.

Discussed her rent increase; submitted a petition; expressed concern about South Shore not being included in the ordinance; urged South Shore be included: Diane Appelbaum, Alameda.

Urged the CIP regulations and proposed moratorium be applied to floating homes: Robert Houlihan, Alameda.

Expressed concern about the job market impacting overpriced rents: Doyle Saylor, Alameda Renters Coalition.

Urged Soutshore Apartments be included in the CIP; discussed prior CIP program amendments; stated residents come before any large residential: Efrem Williams, Alameda.

Discussed correspondence submitted by Gregory Michael; outlined the advantages of passing a moratorium that includes South Shore: Ryan Alipo, South Shore Tenants.

Expressed concern about the CIP policy; urged the Council to enact a moratorium for all properties, including South Shore; discussed unsustainable rent increases: Darcy Morrison, Alameda.

Stated that she is in favor of a mortarium, but not exempting buildings under 25 units and South Shore Apartments; the City should focus on the size of landlords; discussed the lack of data on landlords: Toni Grimm, Alameda.

Stated that he is a South Shore resident; urged Council to approve a moratorium that includes South Shore and buildings with under 25 units; discussed the matter being raised because of the CIP at South Shore: Amos White, Alameda.

Expressed support for the pass throughs; expressed concern about conditions at South Shore; outlined being a small landlord; urged the matter be further reviewed: Leslie Carter.

Discussed tenants at South Shore; stated tenants and landlords do not support the CIP; discussed her living conditions; stated a cumulative rent cap is needed: Laura Woodard, Alameda.

Urged Council to approve a moratorium and include South Shore; expressed concern about tenants not being able to afford rents: Tamika Bowman, Alameda.

Mayor Ezzy Ashcraft stated that she is troubled by a couple of things, including whether the CIP is even the right instrument or program for Alameda; she thought it was right when she could make a cogent argument that it is needed to help rental property owners provide habitable housing, which is important to everyone; over time, and during the pandemic, there was very little use of the program; she is weighing why tenants should be responsible for 100% of the cost of improving a property; homeowners have expenses and do not look to anybody to do the improvements; none of the value goes to the tenants, so why should they be bearing the cost, let alone 100% of the cost; perhaps she could be persuaded to support a lower percentage; finance charges can also be passed on to the tenant, which does not seem right; rent increases should be used for ongoing cost and also to sock away some reserves; she would like the Council to consider extending the moratorium to the South Shore Apartments; the rent program staff still has not finalized the application; a significant percentage of the amount that was submitted was not even acceptable; when the issue returns, Council will deliberate what to do with the CIP going forward; there are other ways to protect properties, property owners and tenants; discussed unhoused people and new housing opportunities; stated that she would really like to extend the moratorium to the South Shore Apartments and consider a range of options when that matter returns.

Vice Mayor Daysog stated it is important to discuss matters with eyes wide open, so the public understands the full ramifications of the Council decision; he is concerned about extending the moratorium to the South Shore Apartments; he understands the concerns raised by the residents; unfortunately, it seems City staff has been working with the South Shore Apartment owners in a good faith manner over some period of time under the current rules; he is concerned about the risk to the City; to lessen the impacts to residents, Council would have to analyze some form of mitigations; he has a sense of numbers and needs to express concerns about the risk of losing in court; there are alternative ways to address the concerns of the residents; he is looking at a separate solution to lessen impacts.

In response to Councilmember Jensen's inquiry about the definition of discretionary authority, the City Attorney stated with respect to this issue, the Council is exercising legislative authority and has discretion to find the best policy solution to solve the problem, weighing the pros and cons of the various approaches.

In response to Councilmember Jensen's further inquiry, the City Attorney stated generally, when Council legislates, it is bound by the Constitution and City Charter; previous legislative actions on a particular topic can be changed by subsequent legislation, if the law is local.

Councilmember Jensen inquired whether it is within the Council's discretionary authority to retroactively rescind a local law adopted by another Council.

The City Attorney responded that is the crux of the risk; stated when a legislative body exercises legislative authority retroactively, there is always some risk; the Council has done so; an example is Barnhill Marina; the retroactivity was limited; the legislation provided to Council tonight is retroactive only to the publication date of the staff report; staff did that calculating the amount of risk, but the Council is the ultimate decision maker and may choose to take greater risk than the staff recommendation.

Councilmember Jensen inquired whether the CIP could be retroactively imposed on tenants if the landlord prevailed in court, to which the City Attorney responded it is theoretically possible that a court would enjoin the legislation and authorize the landlord to impose the CIP under existing law.

Councilmember Jensen stated the Mayor, Vice Mayor and Councilmember Herrera Spencer have had opportunities to either amend or rescind the CIP requirements in the past; a landlord is using an option that is legally available; she is concerned members of Council are suggesting it is not appropriate for the landlord to have done so; she was not part of the decision making and is trying to get all the information now; the law was in place; the landlord used the existing law to make a decision.

Mayor Ezzy Ashcraft inquired whether there is any existing case law that Council would be going against by issuing the moratorium, to which the City Attorney responded in the negative, stated there is no case directly on point; if there was, he would have brought it to the Council's attention.

Mayor Ezzy Ashcraft stated as far as previous Council decisions, there is also always changing circumstances; as more information is learned, the Council is not bound to what was done before; she was part of the Council that asked for this to come back after staff had the opportunity to meet with stakeholders; that part of the process has happened and will be folded into when it comes back, maybe in the early fall; in the meantime, she is listening and hearing concerns; there is always risk and some is worth taking.

Councilmember Herrera Spencer stated that she is interested in trying to figure out a moratorium; inquired how many votes it would take to adopt the ordinances tonight.

The City Attorney responded it takes three or four votes, depending upon which ordinance is adopted tonight; stated repealing the ordinance takes three votes.

Councilmember Herrera Spencer stated that she now has concerns about fair return, which is very different from the previous Council action; repeal takes three votes; it could remain in place indefinitely because there are not three votes, which has been the problem and reason it keeps coming back; she would rather start with a with a moratorium or something that could be more long term; inquired when staff plans to bring the CIP back to Council.

The City Attorney responded staff hopes to come back either late September or October.

Councilmember Herrera Spencer stated having three Councilmembers agree has not happened in several years; she is interested in the tiers proposed before, which was 50%, 70%, and 90%.

Special Counsel stated the report that went to the Council last July indicated other jurisdictions have capped the percentage which can be recovered through a CIP depending on the number of units.

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated if the CIP is eliminated for 25 or more units, the only option available to landlords with 25 or more units would be fair return.

Councilmember Herrera Spencer stated if Council could go ahead and try for a moratorium, doing something like that might be more successful.

The City Attorney inquired whether Councilmember Herrera Spencer is suggesting reaching back to include South Shore Apartments tenants and reducing the percentage, to which Councilmember Herrera Spencer responded in the affirmative; stated the tiers are based on the number of units; suggested the highest number of units have 50% or 70% recovery instead of 100%; stated the percentage should be reduced as opposed to having just fair return, which is much more likely to draw a litigation from the landlord.

In response to Councilmember Herrera Spencer's inquiry, Special Counsel stated if the Council is interested in a revision to the CIP policy having 50%, 75%, or 90%, staff would have to bring back the matter; if the Council imposes the moratorium, then, landlords would be able to file a fair return petition; until the CIP is revised, the fair return petition is always available, regardless of whether or not there is a CIP.

In response to Councilmember Herrera Spencer's inquiry regarding tweaking the CIP, Special Counsel stated it cannot be done tonight because it is not on the agenda; the Council could direct staff to bring it back on a later agenda; tonight's agenda deals is addressing a moratorium with respect to the CIP policy.

In response to Councilmember Herrera Spencer's further inquiry, Special Counsel stated the concern is the agenda title does not encompass the items Councilmember Herrera Spencer is discussing.

Councilmember Herrera Spencer inquired how soon the matter could come back with an urgency ordinance modifying the amount of the return or the pass through.

Special Counsel responded it needs to be agendized and noticed; if Council gives direction to bring it back as soon as possible, staff would certainly do so.

Councilmember Herrera Spencer stated that she would not be supportive of an urgency ordinance that is just fair return; she would much rather do either 50% or 70% recovery.

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated staff would appreciate Council giving tonight, whatever it might be; with respect to what can happen tonight, a moratorium is proposed; the range of discretion the Council has is to reach further back, not reach further back, increase the number of units, or decrease the number of units; staff is proposing 25 units; the Council could reasonably decide the right cut off; these are the areas that are decision points for the Council.

Vice Mayor Daysog stated that he recognizes there are 200+ households at South Shore Apartment complex amounting to maybe 400 to 500 individuals who feel very strongly about the situation and want to be included in the moratorium, such that they might vote against him if he runs for anything; even in the face of this, he still has to make recommendations based upon what he feels is right, which is to adopt staff's recommendation with regard to the moratorium; particularly with regard to the 25 units threshold and not including the South Shore Apartment complex; he feels strongly that Council can mitigate the impacts in a separate manner; part of his direction would be for staff to come back with a mitigation program to lessen impacts; the purpose of the moratorium is to figure out how to improve CIP rules that are in place, so that there is not another South Shore Apartment complex situation; his recommendation is to address it in a separate manner.

Mayor Ezzy Ashcraft stated Vice Mayor Daysog recognizes the South Shore Apartment situation is problematic and wants to modify the rules so the situation does not happen again; Council and staff are so close to being able to modify the rules; like Vice Mayor Daysog, she also does not base her decisions on the number of votes she thinks it will garner from the public; she follows her instincts and also listens to people; the Council has an appetite for some risk; she tries to weigh the risk and does not want to shy away from something for fear of what might happen; there is opportunity to do something now to avoid a harm; also, when she weighs the two items, the scales are not equal; Council has taken some courageous stands, including Barnhill Marina; Barnhill took Alameda to court but the City is doing fine; she was up to Sacramento to argue for special legislation, which was granted; it is a lot of work, but it is worth it.

Councilmember Herrera Spencer stated that she would not be supporting the current moratorium

Councilmember Herrera Spencer moved approval of bringing the item back to Council soon, with a moratorium that includes the South Shore Apartments with tiers that reduce the amount of the pass through based upon the number of units.

Mayor Ezzy Ashcraft stated that she appreciates Councilmember Herrera Spencer's motion but has trouble with it because time is of the essence; the application has not received the final approval from the rent program; if Council does nothing tonight and waits for the matter to come back, the process would proceed, which would be a higher hurdle to surmount.

Councilmember Herrera Spencer inquired staff's estimate of when the application will be processed, to which the City Attorney responded the application may be ready to issue tomorrow.

In response to Councilmember Herrera Spencer's inquiry, the Rent Program Director stated staff has been thoroughly reviewing the application for six months and feels confident about arriving at a final decision with amounts that are being passed through meeting the definition of capital improvements; staff is ready to move forward as soon as the decision can be communicated with the tenants and landlord.

Councilmember Herrera Spencer inquired whether the Rent Program Director and staff met with the tenants to hear their complaints and concerns.

The Rent Program Director responded many of the complaints from tenants are more appropriately addressed through another mechanism of the rent ordinance, which is to file for a petition for a downward rent adjustment based on a deterioration of the property; staff has encouraged tenants to file; issues with mold and water leakage can be addressed through a separate process; the work in the CIP application has been verified as going through the permitting process and received final permit approval from the Building Department.

Councilmember Herrera Spencer inquired whether approval could be postponed pending staff returning with a moratorium based on her suggestions to include South Shore Apartments and the tier structure.

In response to Mayor Ezzy Ashcraft's inquiry, the Rent Program Director stated that staff has been working with the applicant in good faith; at this point, the applicant is eager to bring the matter to a resolution; staff has explained which items are not going to be included and documentation must be submitted for any challenges; the applicant has indicated that they would prefer issuing the determination to move forward, even if it is for \$4 million less than the initial application.

Mayor Ezzy Ashcraft inquired whether there is a reason why Councilmember Herrera Spencer would not consider including the South Shore tenants this evening.

Councilmember Herrera Spencer responded it is because she was told the pass through cannot be reduced from 100 to 50 and fair return is the only option.

Mayor Ezzy Ashcraft stated it cannot be done tonight, but can be brought back.

Councilmember Herrera Spencer stated she does not know how many votes she will get; it could end up with something she is strongly against; she is also an attorney and wants to try to come up with something that is less likely to be challenged and is easier to defend; reducing the pass through amount is more defensible than fair return.

Councilmember Jensen inquired whether Councilmember Herrera Spencer is suggesting to continue the item.

Councilmember Herrera Spencer responded in the affirmative, stated that she would like the item to come back soon to include the South Shore Apartments; she thinks it is outrageous to issue the CIP plan tomorrow after hearing all the testimony tonight about things that are wrong; she would like staff to explore issues and look at tweaking the current policy so it is legally defensible.

In response to Councilmember Jensen's inquiry, Councilmember Herrera Spencer stated her motion is to bring back the moratorium including South Shore.

Councilmember Jensen inquired whether Councilmember Herrera Spencer's motion could provide that the moratorium would be passed to include South Shore, and, if passed tonight, staff would come back in two months with to address the issue.

Councilmember Herrera Spencer responded in the negative; stated she does not want to have anything to do with fair return; she wants to keep a CIP.

Councilmember Jensen stated that she understands and agrees; however, tonight's topic is only about the CIP moratorium, nothing is talking about fair return.

Councilmember Herrera Spencer stated document to implement the moratorium is incomplete as far as she is concerned; it only proposes to remove the current CIP, which then, by default, leaves only the fair return option; she would rather hold everything and come back soon with the option of modifying the amount of the pass through to be done on a moratorium basis.

Councilmember Jensen inquired whether there could be a motion to approve the moratorium, include South Shore, and also include a moratorium on fair return.

The City Attorney responded in the negative; stated the fair return process is guaranteed by the federal Constitution; neither the State nor local governments can remove fair return.

Mayor Ezzy Ashcraft stated it is permissible for substitute motions to be made; the motion has not been seconded; she thinks Council is moving towards a decision, but everything cannot be done in one fell swoop; what can be done is to freeze things in time and hit pause; holding off an application that it is ready to be signed off on tomorrow would be more problematic; it also does not seem to be fair dealing with the landlord; she would be looking for a motion that Council accept the staff recommendation of an urgency ordinance, but include the South Shore Apartments with the direction for what staff should come back to consider; if there are good, solid recommendations, it could get four, or even five, votes.

Vice Mayor Daysog inquired whether the City Attorney is in a position to talk about downside risks in the event of litigation by including someone who has gone through the process under one set of rules.

The City Attorney responded if Council introduced the ordinance for first reading tonight, even if the urgency ordinance is not adopted, staff would take that as Council direction to act retroactively and would not issue the approval tomorrow; if Council adopted a regular ordinance tonight that reaches back to July 2022, staff would see that Council is legislatively about to act retroactively and would not administratively get ahead of Council; staff would wait for a second reading and wait for the ordinance to be effective; he wants to be really clear that introducing the ordinance for first reading will cause staff to pause if it affects pending applications.

In response to Mayor Ezzy Ashcraft's inquired what about specifically including the South Shore Apartments, the City Attorney stated if the Council adopts an ordinance that includes South Shore, staff would hold any further administrative decisions because the legislative process has begun; to Vice Mayor Daysog's point without getting into too much specifics in case of any litigation, one of the many remedies that a court might issue is a writ invalidating legislation; if invalidated, then existing law would apply; staff can never predict whether the City would win or lose; if the City loses, the range of things that could include damages and attorney fees.

Councilmember Herrera Spencer inquired whether Vice Mayor Daysog is suggesting that the City pay any rent increase that is the result of the CIP, which could be up to 27 years for the tenants, to which Vice Mayor Daysog responded in the negative, stated that is not his intent; he has already calculated it all out and already has a draft program in mind.

In response to Councilmember Herrera Spencer's inquiry, the City Attorney stated the Council has wide-ranging discretion in proprietary authority; Council could, for example, decide to defray

some of the cost for a year or two recognizing that vacancies continue and costs decrease with inflation; it is wide ranging; he does not want to get too far into it because the topic is not agendized; if Council gives direction, staff will come back with more on the topic.

Mayor Ezzy Ashcraft suggested a substitute motion be made.

Mayor Ezzy Ashcraft moved approval of an urgency uncodified ordinance imposing a temporary moratorium on submitting a capital improvement plan application for properties that have 25 or more rental units, including South Shore Apartments, and reaching back retroactively to July 12, 2022 and directing the Rent Program Director to reject all capital improvement plan applications filed on or after July 12, 2022, and also to be accompanied by direction to staff to incorporate the suggestions that have been raised by Council this evening, which include eliminating CIP altogether; if not eliminating, to have some form of tiered, less than 100% under any circumstances, and including a mitigation program.

Vice Mayor Daysog stated that he would love to see a mitigation program with staff's analysis and recommendations; if it is included he would support it, recognizing his concerns about including South Shore.

Councilmember Herrera Spencer stated that she does not plan to support Mayor Ezzy Ashcraft's motion.

The City Attorney inquired whether there would be any need for further mitigation if South Shore is included.

Mayor Ezzy Ashcraft responded it is being included at this point to be able to come back to the Council to decide whether less than a 100% should be allowed at some future date.

Vice Mayor Daysog stated please include it; provide the analysis and make recommendations; the conclusion could be that it is not needed; his sense is that it is needed.

Vice Mayor Daysog seconded the motion with a comment that Council is making significant compromises on behalf of the residents; stated four votes are needed.

Under discussion, Mayor Ezzy Ashcraft amended the motion to introduction of the regular ordinance.

Vice Mayor Daysog agreed to second the amended motion.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmember Daysog, Jensen and Mayor Ezzy Ashcraft – 3. Noes: Councilmember Spencer – 1. [Absent: Councilmember Vella – 1.]

Mayor Ezzy Ashcraft moved approval of adopting an uncodified urgency ordinance.

Vice Mayor Daysog seconded the motion, which required four affirmative votes and therefore failed but the following voice vote: Ayes: Councilmembers Daysog, Jensen and Mayor Ezzy Ashcraft – 3. Noes: Councilmember Herrera Spencer – 1. [Absent: Councilmember Vella – 1.]

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated Council moved introduction of an ordinance that has retroactivity back to July 12, 2022; staff we will be bringing second reading back to Council at the June 6th meeting; if approved, it will be effective 30 days from that day, which is July 6, 2023; because it is retroactive back to July 12, 2022, it would include the application that is currently pending.

ORAL COMMUNICATIONS

(23-288) Gary Tillman, Alameda, expressed concern about pickle ball courts at Krusi Park.

(23- 289) Camilla White, Alameda, expressed concern about pickle ball courts at Krusi Park.

(23-290) Jay Garfinkle, Alameda, discussed Senate Bill 9 and expressed support for local control.

ADJOURNMENT

There being no further business, Mayor Ezzy Ashcraft adjourned the meeting at 9:38 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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