

**From:** [Trish Spencer](#)  
**To:** [Lara Weisiger](#)  
**Subject:** Open Government Commission meeting of December 19, 2022, Agenda Item 3-A, Trish Spencer statement  
**Date:** Monday, December 19, 2022 5:08:47 PM

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1) At the October 18, 2022 City Council meeting, both Mayor Ezzy Ashcraft and Councilmember Knox White raised the issue of Council rehearing matters based on "new facts" and used the Del Monte redevelopment project as an example:

*"Mayor Ezzy Ashcraft discussed a previous Council vote related to the Del Monte project.*

*Councilmember Knox White stated Mayor Spencer requested a development agreement that had been approved for the Del Monte project building be reheard within one week of the vote; Council does occasionally rehear matters based on important, new information."*

See, October 18, 2022 Minutes, p. 6,

<https://alameda.legistar.com/View.ashx?M=M&ID=919194&GUID=9B6A21D2-BEA5-4E78-95C4-C7E1FF480019>

My response: The agenda item regarding revisiting the Del Monte redevelopment approval was based on a new Council being seated, not "new facts." On December 18, 2014, the Final Passage of Del Monte project was approved by the outgoing Council (the mayor, and two councilmembers were not returning) immediately before the swearing in of the new Council (two new councilmembers and myself as mayor). Additionally, as described in the Minutes below, all Councilmembers, including the newly seated councilmembers and myself, voted unanimously to move forward with the redevelopment. None of us voted to repeal or change the outcome of the prior vote by the prior Council of December 15, 2014.

Also, the January 6, 2015 Del Monte agenda item title was, "Introduction of Ordinance Repealing..."

2) In regards to the failure to recognize three members of the public to speak during public comment at the Council meeting on November 1, 2022, I was the only Councilmember who spoke on that issue during that meeting. The Mayor closed public comment and immediately proceeded with her comments. Then the Mayor recognized me and I shared that there were three hands raised from the public, that I wanted to bring that to the Clerk's attention and I'm not sure why they weren't called on. The Clerk responded that they were all raised after public comment closed. Then I continued, "With all due respect, I think there's a problem. I think we do have three members who had their hands up and I think this is an ongoing problem of having members of the public being excluded from public comment and I think that is a serious problem...." No other Councilmembers, including Councilmember John Knox White, at that time and during that meeting offered any statements regarding whether or not members of the public had their hands raised and were not called on to speak.

Sources:

1. I was sworn in as Mayor of the City of Alameda at the City Council meeting of December 18, 2014, after the 8:00 p.m. recess, along with Councilmembers Frank Mataresse and Jim Oddie., during the Regular City Council meeting, which started at 7:00 p.m.

<https://alameda.legistar.com/View.ashx?M=M&ID=281777&GUID=69179068-FF01-41B6-84BB-170216C617E0>

2. The December 18, 2014, Minutes reflect:

"(14-511) Ordinance No. 3115, "Adopting the Del Monte Warehouse Master Plan and Density Bonus Application for Redevelopment and Adaptive Reuse of the Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue." Finally passed; and (14-511A) Ordinance No. 3116, "Approving Development Agreement By and Between the City of Alameda and TL Partners, I, LP Governing the Del Monte Warehouse Project for Real Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue." Finally passed. Mayor Gilmore stated that she would like to limit the hearing to end at 7:00 p.m. Councilmember Tam moved approval of the hearing running from 5:25 p.m. to 7:00 p.m. Councilmember Chen seconded the motion, which carried by the following voice vote: Ayes: Councilmembers Chen, Ezzy Ashcraft, Tam and Mayor Gilmore – 4. Noes:"

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3. The January 6, 2015 Agenda provides, in pertinent part:

"SPECIAL MEETING - CLOSED SESSION - 6:00 P.M.

1 Roll Call - City Council

2 Public Comment on Closed Session Items - Anyone wishing to address the Council on closed session items may speak for 3 minutes per item

3 Adjournment to Closed Session to consider:

3-A 2015-1174 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 Number of cases: One (As Defendant - City Exposure to Legal Action)

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REGULAR CITY COUNCIL MEETING - 7:00 P.M

6-A 2015-1178 Introduction of Ordinance Repealing Ordinance No. 3116 which Approved Development Agreement by and Between the City of Alameda and TL Partners, I, LP Governing the Del Monte Warehouse Project for Real Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue; AND Introduction of Ordinance Repealing Ordinance No. 3115 which Adopted the Del Monte Warehouse Master Plan and Density Bonus Application for Redevelopment and Adaptive Reuse of the Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue.

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4. The Minutes for the January 6, 2015 City Council meeting provide:

"MINUTES OF THE SPECIAL CITY COUNCIL MEETING TUESDAY- -JANUARY 6, 2015- -6:00 P.M.

Mayor Spencer convened the meeting at 6:02 p.m.

Roll Call – Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5. Absent: None.

Public Comment

Stated that he assumes the closed session is to address the Del Monte project; the Housing Element was addressed in closed session in the past; the Housing Element was approved based on a threat of being sued and another lawsuit ended up being filed over the Neptune Point property: Former Councilmember Doug deHaan, Alameda.

Stated hearing the Del Monte matter in closed session is willful dismissal of constituents; urged the matter not be addressed tonight; stated the public needs to know the possible costs of litigation: Li Volin, Alameda.

The meeting was adjourned to Closed Session to consider: (15-001) Conference with Legal Counsel – Anticipated Litigation; Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; Number of cases: One (As Defendant - City Exposure to Legal Action)

Following the Closed Session, the meeting was reconvened and Mayor Spencer announced the Council received legal advice.

Adjournment

There being no further business, Mayor Spencer adjourned the meeting at 7:07 p.m

MINUTES OF THE REGULAR CITY COUNCIL MEETING TUESDAY- -JANUARY 6, 2015- -7:00 P.M.

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

Vice Mayor Matarrese led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Daysog, Ezzy Ashcraft, Matarrese, Oddie and Mayor Spencer – 5. Absent: None

...

(15-022) Introduction of Ordinance Repealing Ordinance No. 3116 which Approved Development Agreement by and Between the City of Alameda and TL Partners, I, LP Governing the Del Monte Warehouse Project for Real Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue. Not introduced; and (15-022 A) Introduction of Ordinance Repealing Ordinance No. 3115 which Adopted the Del Monte Warehouse Master Plan and Density Bonus Application for Redevelopment and Adaptive

Reuse of the Property Located at the Northeast Corner of the Intersection of Sherman Street and Buena Vista Avenue. Not introduced.

...

Mayor Spencer stated that she requested the matter be placed on the agenda to give the new City Council an opportunity to speak on the issue prior to future votes.

Councilmember Oddie stated that he would like to hear Mayor Spencer's rationale for placing the matter on the agenda.

Vice Mayor Matarrese stated that his biggest concern is the project in the context of the Northern waterfront available land inventory; questioned what would happen if the Density Bonus was applied to all available land; stated the 2,245 housing units in the Housing Element would increase to 3,736 units if the Density Bonus is applied; the Encinal Terminals units would increase from 234 units to 398 units under the Density Bonus; to ensure the West End is not gridlocked, he would like Council to direct staff to review placing a moratorium on Density Bonus projects until the numbers are understood and adjusted; the matter is critical for Alameda Point Site A; when he reads the Density Bonus ordinance, there is a list of items that must be in place prior to granting the Density Bonus; the requirements are to protect the City and to ensure the affordable housing is delivered in the best configuration; permits will not be issued until the affordable housing agreement is signed, which accomplishes something similar to the Density Bonus requirements; he would also like Council to direct staff to complete an analysis of the Density Bonus and Planned Development ordinances to clarify language; technically, the notion of a repeal places a halt, but would not stop everything; however, the legal restraints of noticing and the required meeting for a second reading are the same as adopting the ordinance on December 16th; therefore, he will not support the repeal; the staff review should be completed before future projects; that he is interested in Councilmember Daysog's referral; all traffic demands, including Alameda Landing, need to be addressed; data needs to be generated; there will be future votes on the Del Monte project; expressed concern over a homeowners association overseeing the assessment funding that would be used to run the shuttles.

Councilmember Oddie stated the reason for the repeal is not known; provided an overview of the number of people supporting and opposing the project; stated the repeal risks damaging the City's reputation; investors want certainty; expressed concern over Regular Meeting Alameda City Council January 6, 2015 the message that would be sent; stated that he had an opportunity to weigh in on the process and does not need a second bite at the apple; people have concerns, which he shares, especially about traffic; Councilmember Daysog's referral is a positive step for the Council to take responsibility for traffic; the risks of repeal do not outweigh the possible benefits.

Councilmember Daysog stated people are right to be upset about the project being approved on December 16th, which was not right; people are also right to question affordable housing and traffic issues; Mayor Spencer rightfully raised the repeal to hear community questions and concerns; however, his bigger concern is the possibility of litigation; the City needs to be clear when reaching a Development Agreement; that he has raised the concern in the past, specifically with regards to the Mammoth Lakes case; entering into a contract with a developer is high stakes; evaluating the upside benefits against the downside risks means, at best, stymieing the project for the new Council to weigh in and possibly reduce the number of housing units; the benefits have to be contrasted against the downside risks; the downside risk of greatest concern is a lawsuit similar to Mammoth Lakes; outlined the Mammoth Lakes case; stated that he believes the downside risks of rescinding are far out of proportion in an unfavorable manner to the City relative to the possible benefits; traffic issues will have to be addressed outside of the project.

Mayor Spencer stated there was a short window for the new Council to hear the total project; moving forward, Alameda can do it better than having late night decisions and special meetings; good questions have been raised about what the application should look like to gain a Density Bonus; that she agrees everything required was not done; the Council should move forward together; multiple projects will be coming to Council; clarifying the Density Bonus is very important; Councilmember Daysog deserved an opportunity to explain his legitimate concerns regarding transit to the new Council; the State tells the City how many housing units it has to build; the City has to decide what the housing will look like and how to move forward; that she will support the project and looks forward to doing it better; the Council is going to ensure ordinance requirements are met and projects are reviewed in totality; the December 16th vote had legal ramifications; the new Council needed to hear the matter to determine whether future votes on the project would be supported in good faith or whether there were unanswered questions that the new Council did not have the opportunity to address; the new Council plans to address concerns when considering Councilmember Daysog's referral and by looking to staff to completely meet all requirements; expressed concern over late night meetings; stated there are ways to work better; concurred with the League of Women Voters' concern about transparency; stated voting at 2:30 a.m. is not transparent.

Vice Mayor Matarrese moved approval of not repealing the December 16th decision [not adopting the ordinances] and giving direction to staff to return an evaluation of the Density Bonus Ordinance within 45 days, relative to the Planned Development and associated ordinances to allow the Council to provide direction; also within 45 days, having staff return with a moratorium on any new Density Bonus applications until the Regular Meeting Alameda City Council January 6, 2015 ordinance rules are clear and the implications on available land inventory in the Housing Element are discussed in context of additional development across the City.

Councilmember Ezzy Ashcraft seconded the motion.

Under discussion, Councilmember Daysog inquired whether the motion could be framed in the negative. The City Manager responded negative motions can be done. Councilmember Daysog stated that he needs to have clarity that the Council is not directing entering into a moratorium, but would have a discussion about whether a moratorium should be done.

The City Manager stated staff understands the motion as direction to do the research and bring options to Council; the moratorium is not noticed and cannot be voted upon tonight; the work can be completed in 45 days and placed on a Council agenda in 60 days due to the 12 day agenda publication requirement.

Vice Mayor Matarrese agreed that the items could be ready for publication in 45 days.

Councilmember Ezzy Ashcraft expressed that she still seconded the motion.

Mayor Spencer inquired whether staff is clear on the motion, to which the City Manager responded in the affirmative.

Councilmember Daysog stated Council would discuss pros and cons; impacts, such as on the Housing Element, need to be understood.

Vice Mayor Matarrese expressed appreciation for Councilmember Daysog's framing of the motion; stated the matter needs to be addressed in a timely fashion.

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

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5. The November 1, 2022 Minutes, at pages 13-14, provide, in pertinent part:

"Councilmember Herrera Spencer stated three hands are raised; inquired why the speakers were not called. The City Clerk responded all hands were raised after public comment had been closed. Councilmember Herrera Spencer expressed concern about three members having raised hands; stated the issue is an ongoing problem; members of the public are being excluded from public comment...."

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Item 7-F, begins @ 2:24:35 of the video. Public comment ends at approximately 2:53:00. The

mayor closes public comment and speaks until approximately 3:00:12. Then, the mayor recognizes me.

[City Council on 2022-11-01 7:00 PM - The agenda was revised on October 25, 2022 at 7:30 pm to add the 4:59 p.m. continued Closed Session \(granicus.com\)](#)

Submitted December 19, 2022

Trish Spencer, Councilmember