

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -FEBRUARY 19, 2019- -7:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 7:16 p.m.

ROLL CALL - Present: Councilmembers Daysog, Knox White, Oddie, Vella,  
and Mayor Ezzy Ashcraft – 5.

Absent: None.

AGENDA CHANGES

(19-\_\_\_) Mayor Ezzy Ashcraft the Nautilus lease [paragraph no. 19-\_\_\_] was withdrawn from the agenda.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(19-\_\_\_) Mayor Ezzy Ashcraft did a reading for the Season of Non-Violence on forgiveness.

(19-\_\_\_) Proclamation Declaring February 2019 as Black History Month.

Mayor Ezzy Ashcraft read the proclamation.

(19-\_\_\_) Presentation by the Alameda County Mosquito Abatement District.

Ryan Clausnitzer, Mosquito Abatement District, gave a Power Point presentation.

ORAL COMMUNICATIONS, NON-AGENDA

(19-\_\_\_) Eric Strimling, Alameda Renters Coalition, outlined the last Rent Review Advisory Committee meeting; noted more tenants are fighting back against 5% increases.

(19-\_\_\_) Catherine Pauling, Alameda, Renters Coalition, stated March 31<sup>st</sup> is the 3<sup>rd</sup> anniversary of Ordinance No. 3148 and she has had an increase of \$610 per month; the housing crisis is getting worse from no-cause evictions; urged Council to conduct a review and make changes.

CONSENT CALENDAR

Councilmember Daysog stated that he is recusing himself from the Island City Landscaping and Lighting District resolution [paragraph no. 19-\_\_\_].

Councilmember Vella moved approval of the Island City Landscaping and Lighting District resolution.

Mayor Ezzy Ashcraft seconded the motion, which carried by the following voice vote: Ayes: Councilmembers Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 4. [Absent Councilmember Daysog – 1.]

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

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

(\*19- ) Minutes of the Special and Regular City Council Meetings Held on January 15, 2019; the Special Meetings Held on January 21, 2019, January 31, 2019 and February 1, 2019; and the Continued January 31, 2019 Special City Council Meeting Held on February 1, 2019. Approved.

(\*19- ) Ratified bills in the amount of \$4,399,789.29.

(\*19- ) Recommendation to Authorize the Interim City Manager to Execute a Fourth Amendment with Parsons Transportation Group, Inc., to Increase Compensation by \$40,000, for a Total Aggregate Compensation Not to Exceed \$134,999, to Continue Providing Technical and Strategic Engineering Support for Major Transportation Projects. Accepted.

(\*19- ) Recommendation to Accept the Quarterly Report for the Period Beginning July 1, 2018 through December 31, 2018, on 1) Litigation and Liability Claims Settlements, and 2) Whether Any Records Previously Withheld from Disclosure Have Now Become Available to the Public. Accepted.

(\*19- ) Recommendation to Authorize the Interim City Manager to Execute a One-Year Agreement, with the Option of Four One-Year Extensions, for an Amount, Including Contingency, not to Exceed \$366,178, for a Total Five-Year Expenditure not to Exceed \$1,905,604.88 to Schaaf & Wheeler for Engineering Design Services for Storm Drain Pump Station Electrical Upgrades. Accepted.

(\*19- ) Recommendation to Authorize the Interim City Manager to Execute a First Amendment in the Amount of \$9,500 with NBS for a Total Expenditure Under the Agreement, as Awarded, of \$28,000 for Phase 2 of the Process to Ballot Property Owners for Assessment Increases in the Island City Landscaping and Lighting District 84-2, Zone 4; and

(\*19- B) Resolution No. 15490, “Amending Fiscal Year 2018-19 Operating Budget for the Island City Landscape and Lighting District Zone 4 Fund.” Adopted.

(19- ) Resolution No. 15491, “Appointing an Engineer-of-Work and an Attorney-of-Record for Island City Landscaping and Lighting District 84-2.” Adopted.

[Note: Councilmember Daysog recused himself.]

(\*19- ) Resolution No. 15492, "Appointing an Engineer-of-Work and an Attorney-of-Record for Maintenance Assessment District 01-1 (Marina Cove)." Adopted.

(\*19- ) Resolution No. 15493, "Approving a Compensation Plan Between Alameda Municipal Power Unrepresented Management (AMPU) Employees and the City of Alameda for the Period Commencing December 27, 2018 through June 30, 2022." Adopted.

(\*19- ) Resolution No. 15494, "Approving a Memorandum of Understanding (MOU) Between the City of Alameda and the Electric Utility Professionals Association of Alameda (EUPA) for a Forty-Two Month Term Commencing December 27, 2018, and Ending June 30, 2022." Adopted.

(\*19- ) Resolution No. 15495, "Approving Parcel Map No. 10924 - A Parcel Map for the Proposed Subdivision on a 2.81 Acre Parcel at 2175 North Loop Road into Two Commercial Condominium Units and to Create One Common Area Parcel for Associated Parking and Landscaping." Adopted.

(\*19- ) Resolution No. 15496, "Authorizing the Interim City Manager to Execute the Landing Rights Agreement License to Land at Harbor Bay Ferry Terminal by and Between San Francisco Bay Area Water Emergency Transportation Authority and Tideline Marine Group." Adopted.

(19- ) Introduction of Ordinance Authorizing the Interim City Manager to Negotiate and Execute a Fifteen-Year Lease with Ten- and Five-Year Options to Extend, Substantially in the Form of the Attached, with Nautilus Data Technologies, Inc., a Delaware Corporation, for Building 530, an 82,251-Square Foot Building Located at 120 West Oriskany Avenue, and the Adjacent Building 600, an 343-Square Foot Building, at Alameda Point. Not heard.

### REGULAR AGENDA ITEMS

(19- ) Public Hearing to Consider the Formation of the Otis/Broadway Underground Utility District (UUD); and

(19- B) Resolution No. 15497, "Establishing the Otis/Broadway Underground Utility District." Adopted.

The Alameda Municipal Power (AMP) Project Manager gave a Power Point presentation.

Mayor Ezzy Ashcraft inquired whether there is other value added to undergrounding utilities besides aesthetic.

The Project Manager responded in the affirmative; outlined the safety benefits of undergrounding.

Mayor Ezzy Ashcraft inquired whether underground wiring could be damaged due to seismic shifting from an earthquake.

The Project Manager stated damage is possible based on the earthquake magnitude.

Mayor Ezzy Ashcraft stated property owners are concerned about the cost of maintenance for underground wiring; inquired whether the homeowner is responsible for the cost.

The Project Manager responded current service laterals are owned by the property owner; outlined accessibility differences between above-ground utilities and underground utilities; stated encountering a failure of service laterals is rare.

Mayor Ezzy Ashcraft stated AMP will cover the cost of undergrounding except in instances where the service lateral exceeds 100 feet; requested an example of when the service lateral would exceed 100 feet.

The Project Manager stated the exception would be very rare in Alameda.

Mayor Ezzy Ashcraft inquired whether the property owner would bear the entire cost of undergrounding or just a portion if the service lateral exceeds 100 feet.

The Project Manager responded the property owner would pay for the amount beyond 100 feet.

Mayor Ezzy Ashcraft inquired whether there has been report of damage to a home foundation from undergrounding utilities, to which the Project Manager responded in the negative.

Councilmember Vella inquired about increases to insurance costs.

The Project Manager responded AMP has been contemplating having insurance for service laterals, but is not moving forward at this time.

Councilmember Daysog stated the service area is specific to Otis Drive and Broadway.

Councilmember Oddie inquired whether the survey responses from the staff report only included responses from Webster Street.

The Project Manager stated responses should have included both Webster Street and Broadway.

Councilmember Oddie inquired whether the response rate of 10 to 15% is common.

The Project Manager responded the previous program was suspended in 2012; stated the response rate is consistent for the year.

Discussed working with policy established by Council to get an underground district; outlined Public Utilities Board (PUB) meetings; urged support from Council; Jerry Serventi, PUB.

Vice Mayor Knox White moved adoption of the resolution.

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

(19-\_\_\_) Resolution No. 15498, “Approving a Change in Dental Benefits for Public Safety Retirees Who Currently Receive Dental Benefits Through Memorandas of Understanding with the City of Alameda’s Four Public Safety Bargaining Units (International Association of Firefighters, Alameda Fire Chiefs Association, Alameda Police Officers Association and Alameda Police Management Association) Effective January 1, 2019.” Adopted.

The Interim City Manager gave a brief presentation.

Mayor Ezzy Ashcraft stated there is a liability cost to the City’s Other Post-Employment Benefits (OPEB) of roughly \$630,000 for 2019 that will continue to grow if not funded; the goal is to help the City remain solvent.

The Interim City Manager stated the Actuary is present to answer questions.

Councilmember Daysog inquired whether the \$600,000 liability figure is annual or over time.

Luis Murillo, Nyhart Consulting, responded the figure is over time.

Councilmember Daysog inquired whether the amount is cumulative over the long-term and over how many years.

Mr. Murillo responded in the affirmative; stated approximately 30 years at roughly \$25,000 per year.

Mayor Ezzy Ashcraft stated the amount continues to increase over time if not regularly paid.

Mr. Murillo stated the figure is an estimate; the actual figure will vary based on how many retirees take the dental benefit; assets will offset the \$630,000 liability if funded.

Councilmember Daysog noted \$630,000 over 30 years is roughly \$21,000 annually.

Councilmember Oddie moved adoption of the resolution.

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

(19- ) Introduction of Ordinance Amending the Alameda Municipal Code by Amending: (1) Section 2-17 of Chapter II (Administration) to Revise the Housing and Building Code Hearing and Appeals Commission; (2) Section 1-7.9 of Chapter I (General) to Revise Hearing Procedures for General Municipal Code Violations; and (3) Section 2-44.1 of Chapter II to Change the Title Chief Building Inspector to Building Official. Not heard.

(19- ) Recommendation to Discuss and Potentially Take Action Concerning the Open Government Commission's (OGC) Decision Directing that Ordinance Nos. 3227 and 3228 (Relating to Cannabis Businesses) are "Null and Void", including Without Limitation Any Combination of the Following: (1) Take No Action, thereby Confirming that Ordinance Nos. 3227 and 3228 Remain in Full Force and Effect, (2) Adopt a Motion to Implement the Open Government Commission's Null-and-Void Decision, thereby Expressing Council's Concurrence that the Ordinances are Null and Void, (3) Direct Staff to Notice a Public Hearing Concerning the Repeal (if necessary) of Ordinance Nos. 3227 and 3228 and/or the Replacement of Such Ordinances With the Same or Similar Provisions, (4) Direct Staff to Prepare Amendments to the Sunshine Ordinance to Address Concerns Noted in this Agenda Report, including the Exhibit Files, or Raised at the Meeting, or (5) Any Other Related Actions Proposed by Council.

Councilmember Daysog recused himself; requested the Interim City Attorney explain why he does not have to recuse himself.

The Interim City Attorney stated while Councilmember Daysog had been previously advised to recuse himself from the item due to the location of a specific applicant relative to Councilmember Daysog's personal residence, an exception to that from the California Fair Political Practices Commission (FPPC), called a Public Generally Exception, allows participation; outlined the Public Generally Exception.

Councilmember Daysog stated the phrase "Public Generally" conflicts with the Request for Proposals (RFP) process; the situation is unique, with a limited number of cannabis operations selected in the City of Alameda falling below the FPPC 25% Public Generally threshold, he should recuse himself; left the dais.

The Interim City Attorney gave a brief presentation.

Councilmember Vella inquired whether Councilmember Daysog's recusal is not mandated and would be treated as an effective abstention; what is the impact on the overall vote.

The Interim City Attorney responded it is considered an abstention.

Councilmember Vella inquired whether three votes are needed to affirmatively take action, to which the Interim City Attorney responded in the affirmative.

Councilmember Oddie stated that he would like an explanation of the complaint filed.

The Interim City Attorney outlined the previous complaint filed and the Open Government Commission (OGC) meeting discussion.

Councilmember Oddie stated the staff report contains pertinent information related to the agenda topic.

The Interim City Attorney stated the Sunshine Ordinance outlines the required agenda title, as opposed to the content of the staff report.

Councilmember Oddie inquired how Council will ensure the decision is “bulletproof” for the next agenda.

The Interim City Attorney responded there is no guarantee of being “bulletproof.”

Vice Mayor Knox White stated the agenda item itself is not about cannabis; inquired whether staff’s opinion is if no action is taken, which is Option 1, the October 16<sup>th</sup> Council action continues to stand, to which the Interim City Attorney responded in the affirmative.

Vice Mayor Knox White outlined the history of the Sunshine Ordinance and the OGC; stated that he is unclear of staff’s legal authority to decide that the null and void provision in the Sunshine Ordinance did not happen; inquired whether staff may arbitrarily decide that an action did not happen.

The Interim City Attorney responded this is the first time since adoption of the ordinance that the null and void remedy was used by the Commission; stated the City Attorney’s office is obligated to provide the best legal advice at the given time.

Councilmember Vella stated the agenda requirements do not state “title” under the Sunshine Ordinance; outlined Alameda Municipal Code Section 2-95.5 of the Sunshine Ordinance; stated the reason for enacting the Sunshine Ordinance was to help alleviate overly legalese agenda titles; inquired why agenda titles should be listed in long-hand form in order to be compliant.

The Interim City Attorney responded it is a matter of interpretation; stated staff advised the OGC that the title did satisfy the Sunshine Ordinance, but the Commission concluded differently; titles should be brief and concise that people with average intelligence can comprehend.

Councilmember Vella stated there is a disconnect between what is being conveyed from

the OGC versus what is being said at Council; outlined the OGC's decision and staff report exhibit provided; inquired where in the 450 page exhibit the conversation of title requirement comes up.

The Interim City Attorney responded the decision of the OGC related to title is shown on pages 452-455.

Vice Mayor Knox White stated the OGC's upholding of the complaint was not because the title was not specific enough, it was due to the title being so specific that a reasonable reader would not expect that the decision would consist of additional items; the idea of having more specific agenda items is the opposite of what is being requested.

Councilmember Oddie inquired whether the issue is being too specific or not specific enough; discussed the February 4<sup>th</sup> and December 17<sup>th</sup> OGC meeting agenda titles.

The Interim City Attorney responded that his understanding is that the agenda title was not specific enough; concerning the first complaint, it did not adequately describe the action Council eventually took; the lack of specificity also related to the second complaint, because the agenda did not indicate that if Council took no action, the ordinances in question would remain in full force and effect.

Councilmember Oddie stated that he recalls asking the City Attorney for an opinion on whether or not the discussion points being reviewed were compliant with the Brown Act.

The Interim City Attorney stated the City Attorney responded and Council proceeded.

Councilmember Oddie inquired how disputes are resolved.

The Interim City Attorney responded if the violation falls under the Brown Act, a complaint may be filed asking Council to reconsider its action; if Council does not reconsider, there is a judicial proceeding that follows, and if the court finds there was not substantial compliance with the Brown Act, the court can set aside the action.

In response to Councilmember Oddie's inquiry, the Interim City Attorney stated it is a judicial court proceeding.

Councilmember Oddie inquired the basis of the opinion for the repeal of the null and void being not authorized.

The Interim City Attorney responded the State constitution and the City Charter vest in the City Council the authority to both adopt and repeal ordinances.

Councilmember Oddie stated nothing could stop Council from putting something in an ordinance that violates either the City Charter or the Constitution and would not be repealed until brought to attention.



The Interim City Attorney stated that is where Council is today.

Councilmember Oddie stated just because something is passed, it does not make it legal and legitimate.

Discussed being an advocate of the Sunshine Task Force; expressed concern that the ruling on the ordinance is premature; urged Council to separate the items and have independent counsel review to avoid a conflict of interest: Karen Butter, League of Women Voters.

Urged Council to reaffirm the ordinances as written to avoid litigation: Mark Hersman, Portman Enterprises.

Expressed a desire to file a complaint against the Sunshine Ordinance; stated the issue is a political attack on cannabis: Phil Redd, Alameda.

Stated Council must keep things straight; there has been confusion created by Council and staff; urged Council to solve the problem, gain clarity and move forward: Don Sherratt, Alameda.

Discussed facing more delays and uncertainty; urged Council to take no action to keep Ordinances 3227 and 3228 in effect: Tyler Champlain, CN Holdings.

Stated the item is not about cannabis; it is most important for Council to make the item separate from cannabis; urged Council to table item and make it solely about the Sunshine Ordinance: Irene Dieter, Alameda.

Stated the issue came about when a second reading was not re-made to be a first vote; the item would be resolved had that occurred; discussed the importance of open government and transparency: Serena Chen, Alameda.

Stated it is not right to give the OGC authority to question City Attorney decisions and directions: Ryan Agabao, Alamedans for Safe Cannabis Access (ASCA).

Mayor Ezzy Ashcraft stated that she agrees with the public comment related to discussing items separately.

Councilmember Vella stated the item does not direct what Council can do with the OGC complaint itself; there is the active issue of the complaint and the ordinances in question; the discussion should occur; the City Charter has given the power to enact ordinances to the Council, with no provision included that the Council can delegate that to a body; staff should return at a separate meeting to discuss the OGC item.

Mayor Ezzy Ashcraft stated that she will be appointing a subcommittee of the Council to work with City staff to look at the Sunshine Ordinance and possible changes.

Councilmember Vella stated a public workshop should be held instead; expressed concern about the OGC being held to a different standard and a lack of transparency; outlined OGC agenda items and titles which were unclear about the topic to be discussed.

Mayor Ezzy Ashcraft stated there is a priority setting workshop scheduled in less than one month; the issue should be included in the workshop.

Councilmember Vella stated many different issues have been raised by both Council and the public; having a workshop would be worthwhile.

Mayor Ezzy Ashcraft stated that she is looking to expedite the process; a workshop will take longer to schedule; a subcommittee would be a quicker option, but she is open to a workshop; inquired the next steps.

Councilmember Vella responded that she would like staff to notice a public hearing concerning the replacement and/or repeal of the ordinances with the same or similar provisions to be heard at a future meeting; re-agendizing the item as a first reading will allow for public comment; requested holding off on any RFP until direction is clarified through direction of the Council; stated Council can repeal any ordinance.

Councilmember Oddie stated a workshop is needed; finding a remedy is key and a decision needs to be made whether Council has authority to perform the remedy; inquired what Council may do at the workshop; stated if the guidance from the OGC is to not stray from the agenda content and title, then Council does not have authority to make any changes; expressed concern about setting a precedent for an unelected body to designate items as null and void and create political issues; outlined potential future conflicts; expressed concern about confusion related to Council's authority; expressed support of Option 1 and 3, respectively.

Mayor Ezzy Ashcraft stated that she would like the structure of the upcoming workshop thought out.

Vice Mayor Knox White stated the issue is difficult; applicants have invested time and money and should have a response from Council as soon as possible; the OGC is appointed and empowered by Council to oversee decisions as a citizen voice; figuring out rules and process is key to ensure every issue is agendized appropriately and in the same way; suggested the City Clerk and City Attorney offices reach out to the OGC to find out how the Commission interprets the Sunshine Ordinance; inquired whether the risk of litigation is still present if no action is taken.

The Interim City Attorney responded in the affirmative; stated if Council takes no action to implement the OGC's decision of last year, Ordinances 3227 and 3228 remain in full force and effect, leaving to the validity of the ordinances open to legal challenges.

Vice Mayor Knox White stated a decision must be made to move the item forward; inquired whether staff has enough direction to come back with a repeal and replace option.

The Interim City Attorney responded that staff will bring back Ordinances 3227 and 3228 as well as incorporate any amendments made since that time, as part of what Council will review to decide what to do with the ordinances in question.

Vice Mayor Knox White stated that he agrees with Councilmember Vella, but does not want to give direction on the RFP process.

Vice Mayor Knox White moved approval of Option 3, to agendize as quick as possible, repeal and replace to move the item forward and have it on the agenda, and to get to a final copy that everyone agrees has been passed.

Mayor Ezzy Ashcraft stated that she would like to see staff look at a bifurcated definition of youth centers, depending on whether it is denoted by activity, and run by the City or a private entity.

The Interim City Attorney stated said issue may be added as a topic in the agenda title as well as in the agenda materials if Council so directs.

Councilmembers Oddie and Vella stated that is not Council direction.

Vice Mayor Knox White repeated his motion: to direct staff to notice a public hearing at the next possible meeting concerning the repeal and replacement of Ordinance Nos. 3227 and 3228 with the same or similar provisions, noticed in such a way that Council may have a discussion.

Councilmember Vella seconded the motion.

Under discussion, Councilmember Vella stated that she does not want to undo the item; she would like a clean process, and to re-agendize for first hearing in accordance with transparency that the Sunshine Ordinance requires; she would like to move forward with a second reading at some point.

Councilmember Oddie expressed support for the motion; stated if Council moves forward with a first and second reading, the spirit of the Sunshine Ordinance is recognized without agreeing with the remedy; steps should be taken to re-notice the item in a way critical to the motion.

On the call for the question the motion passed by the unanimous voice vote: 4 [Absent – Councilmember Daysog – 1.]

Councilmember Vella stated having the issue agendized at the priority setting meeting, not to give direction, but to weigh in on what points or portions of the Sunshine

Ordinance Council wants to discuss, would be acceptable.

Mayor Ezzy Ashcraft inquired whether staff needs direction.

Councilmember Vella directed staff to include the topic at the priority setting workshop.

Vice Mayor Knox White stated a new City Attorney is to be hired soon; with this being the first time a Sunshine Ordinance complaint has come forward, it is not expected to be seen again; if it does occur again, the item should come to Council immediately; there is no rush to fix things; waiting for the new City Attorney to be on the same page with Council's intentions might make sense.

Councilmember Vella stated Council should do both: openly speak about where concerns may lie, not necessarily what the conclusions are or what the solution should be and, then, a workshop should be held at a point in time where the new City Attorney is present to have a more robust conversation.

Councilmember Oddie stated that he agrees with the idea of a workshop; the discussion should include all five Councilmembers; he is happy to work with Councilmember Vella as part of a subcommittee, but is also open to a group workshop; guidance is needed from staff to ensure items are agendized correctly; expressed concern over Sunshine Ordinance violations being used as a tool or weapon.

Mayor Ezzy Ashcraft stated the workshop could be a joint meeting with the OGC.

Vice Mayor Knox White stated there is a memo related to null and void that was issued; there have been requests for the memo to be made public; the legal risk is low, but he would like to agendize discussion of the memo ahead of the meeting in closed session to discuss what the OGC can and cannot do.

#### CITY MANAGER COMMUNICATIONS

None.

#### ORAL COMMUNICATIONS, NON-AGENDA

None.

#### COUNCIL REFERRALS

(19-\_\_) Consider Establishing a Finance Commission and an Infrastructure Commission. (Councilmember Daysog)

Councilmember Daysog stated that he is amenable to placing his referral on the Priority Setting workshop in March.

## COUNCIL COMMUNICATIONS

(19-\_\_) Vice Mayor Knox White announced that he and Councilmember Daysog met with Alameda Unified School District (AUSD) Board Members Daley and Williams at the City Council/School Board subcommittee; discussed Emma Hood pool closure, appointing subcommittee members, use of Homeless Emergency Aid Program's (HEAP) funding, partnering on the homeless outreach team Community and Regional Economic Support (CARES) and Social Services Human Relations Board (SSHRB), use of Park and Recreation facilities, and AUSD annual capital work plan.

Councilmember Daysog stated serving on the Subcommittee is a pleasure; the pool issue is a huge upcoming issue.

(19-\_\_) Consideration of Mayor's Nomination for Appointment to the Recreation and Parks Commission, Social Service Human Relations Board (SSHRB) and Transportation Commission.

Mayor Ezzy Ashcraft nominated Aimee Barnes to the Recreation and Parks Commission, Pravda Wright to the Social Service Human Relations Board, and Rebecca Kohlstrand Parsons and Tina Yuen to the Transportation Commission.

## ADJOURNMENT

There being no further business, Mayor Ezzy Ashcraft adjourned the meeting at 9:32 p.m.

Respectfully submitted,

Irma Glidden  
Acting City Clerk

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