

MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
TUESDAY- -APRIL 16, 2018- -5:00 P.M.

Mayor Spencer convened the meeting at 5:01 p.m.

Roll Call – Present: Councilmembers Ezzy Ashcraft, Matarrese, Oddie, Vella and Mayor Spencer – 5.

Absent: None.

Public Comment

Mayor Spencer stated there are 34 speakers; inquired whether Council wants to consider limiting the time to two minutes.

Councilmember Ezzy Ashcraft stated the Council is considering a serious matter; that she would prefer to keep three minutes and speakers be held to three minutes.

Mayor Spencer requested speakers not go over the three minutes.

Councilmember Ezzy Ashcraft requested speakers not be able to cede time.

Mayor Spencer stated none of the speakers have requested time be ceded; noted she would call the speakers in the order submitted.

Expressed concern over Councilmembers Oddie and Vella participating in the Closed Session; urged the Jenkins report be released or at least the determination whether Councilmembers Oddie and Vella violated the Charter and the recommended action; read the March 9 Closed Session announcement; noted Ms. Keimach has not seen the report: Paul Foreman, Alameda Citizens Task Force.

Expressed concern over special interests running the City and decisions being made in secret; urged Council to reconsider firing Ms. Keimach, Councilmembers Oddie and Vella to recuse themselves, and to release the report and refer it to the Grand Jury: Cameron Bateman, Alameda.

Urged Councilmembers to proceed with caution; stated the public should hear the alleged tapes and be involved in the decision making process: Camille Khazar, Alameda.

Urged Councilmembers Oddie and Vella to recuse themselves and the report be released to the public: Jim Sweeney, Alameda.

Requested that all versions of the investigative report be released and the tape recording be made public: Former Councilmember Karin Lucas, Alameda.

Stated the City Manager was trying to fulfill her responsibilities in a professional manner; two Councilmembers were out of bounds in trying to influence the hiring of a new Fire Chief; Councilmembers Oddie and Vella should not be permitted to vote to fire the City Manager and should not be able to continue serving if the City Manager cannot continue serving: Colleen Pimentel, Alameda.

Stated the Council needs to be open and transparent; she is concerned about the process; terminating the City Manager should follow the correct process in order to prevent a lawsuit: Evelyn Kennedy, Alameda.

Expressed concern with Councilmembers Oddie and Vella voting, the integrity of the process, and potential lawsuits; urged Council to reinstate Ms. Keimach: Lisa Brown, Alameda.

Stated the full results of the investigation should be released in an un-redacted form with all drafts; the citizens paid for the report and deserve the full story so that speculation can cease, which goes for the tapes as well; urged any decision regarding the City Manager be postponed: Michelle Morgan, Alameda.

Stated that he is a retired prosecutor; he secretly tape recorded people when the circumstances called for it; urged the report be revealed and the matter be referred to the Grand Jury: Rockne Harmon, Alameda.

Expressed concern with the City Manager and Police Chief releasing information to the news media; stated that he resents the attacks on the two Councilmembers: Marty Frates, Alameda.

Urged Council to release the recording and everything provided as a result of the investigation, to not take further action related to the City Manager and elevate the matter to the Grand Jury for resolution: Ron Bain, Alameda.

Stated the lack of information is cultivating a breeding ground for rumors; expressed concern over the impacts on the City; suggested Council consider negotiating the City Manager's return: Michael McDonough, Chamber of Commerce and Downtown Alameda Business Association.

Discussed Ms. Keimach's qualifications; suggested Council consider retaining Ms. Keimach: Rob Wonder, Alameda.

Requested the report and tape be released prior to a decision about the City Manager; urged Councilmembers Oddie and Vella to recuse themselves: Karen Miller, Alameda.

Expressed concern over hiding behind Closed Sessions; stated ethically, the two Councilmembers involved should recuse themselves; urged the unedited report and tape be released: Catherine Bierwith, Alameda.

Stated that she is outraged over the lack of transparency; the accused should not vote on the termination of the accuser and should recuse themselves for ethical reasons: Cornelia Grunseth, Alameda.

Expressed how upset he is: Eric Grunseth, Alameda.

Stated the information has not come out; discussed the legal issues of the Charter, eavesdropping, extortion and whistleblowing; stated taking action involves serious liabilities; urged the issue be resolved: Kenneth Peterson, Alameda.

Stated Councilmembers Vella and Oddie voting is a clear conflict of interest and both should recuse themselves: Heinrich Albert, Alameda.

Expressed concern about the process, which required an employee evaluation; stated the City Manager taped the meeting to protect herself; suggested calling the City Manager in for evaluation and give her 6 to 12 months to correct her performance; urged the tape and January 30<sup>th</sup> investigator's report be released: William Norton, Alameda.

Stated Jill Keimach's tape recording of the meeting was lawful in every respect and more than justified given the circumstances she was placed in at the time; Penal Code Section 633.5 clearly provides that the recording could be made for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping bribery or any felony involving violence against the person; the person taping the conversation must have had a purpose rooted in the reasonable belief that she was gathering evidence in the commission of a certain crime; Ms. Keimach consulted with the City Attorney; the City Attorney said it was alright; 59 minutes of the meeting pertained to telling Ms. Keimach what to do with her decision, telling Ms. Keimach how to make her decision and trying to interfere in her performance as a City Manager; when she finished the meeting, she went back to the City Attorney, said she tape recorded the meeting and said they did exactly what she feared they would do; the tape recording was no secret; it was not discovered during the independent investigation; it was known; this is not about the recording; it is about the pervasive misconduct by two sitting Councilmembers to exert improper and unlawful influence on behalf of their union supporters over the hiring decision of a City Manager; the Council should be investigating that misconduct; the tape recording was not illegal and is a red herring; consider not the fact of the recording, but what is on the recording: Therese Cannata, Attorney for Jill Keimach.

Stated any decision to terminate Ms. Keimach would violate Labor Code Section 1102.5, which is the whistleblower retaliation statute; it prevents an employer from retaliating against an employee who discloses information about a violation of local, State or Federal law; Ms. Keimach reported to the City, back in October, that in violation of City Charter Section 7-3, Councilmembers Oddie and Vella had attempted to direct her selection of a new Fire Chief and had essentially directed her to hire the preferred candidate of the Firefighter's Union; the Firefighter's Union had been a major contributor

to their campaigns and is helping fund their legal defense; requested Councilmembers Oddie and Vella recuse themselves from participating in this matter; stated recusal under these circumstances is well supported by the law because they have an obvious conflict of interest; their conduct is clearly an issue; their conduct amounted to extortion and bribery; they should not be allowed to serve as judge and jury in their own case; under 1102.5, a public employee does not have to prove that the law was violated, she only has to show a reasonable belief that the information she disclosed showed a violation of law; both of these laws have been construed very broadly; he and Ms. Cannata represented a whistleblower in a suit against the City and County of San Francisco last year, which resulted in a verdict of \$2.6 million, plus fees; he hopes it does not come to that, but as many citizens have told Council tonight, the City would be exposing itself to serious liability if it went ahead with the ill-advised decision which seems to be on the agenda; he supports the release of the tapes and all versions, drafts and redactions of the investigative report; Ms. Keimach has nothing to hide and wants the tape released: Karl Olson, Attorney for Jill Keimach.

Stated that she is the City Attorney for five cities in the Bay Area and on the League of California Cities Board of Directors; in her capacity as Town Attorney for the Town of Moraga, she worked with Jill Keimach for over five years; Ms. Keimach is one of the finest City Managers that she has ever worked with; despite the fact that there are noticing problems with the meeting tonight and that complaints and charges are going to be heard without the 24 hour notice, urged Council to take a reasoned, tempered approach; the decision is very difficult; asked Council to consider the fact that there are a lot of options, other than the drastic, unnecessary measure of terminating Jill Keimach; urged Council to think of other options: Michelle Kenyon, Attorney for Jill Keimach.

Stated that she has worked her entire career in the public sector; a key core of her value system is to enhance the public's trust of government; trust that its elected and appointed officials will put the interest of the larger community in the forefront of every decision; trust that even behind closed doors officials will make decisions based on what is best for the community and not their self-interest; she was put to the test in Alameda to take the easy road and maintain the past practices or to make her life a little more difficult by exposing unethical behavior; she chose the harder road and although it was obviously difficult for all of us, her ethics and good governance would require her to make all the same decisions again; she feels she has been successful in moving the needle a little bit so that the residents are more aware of what is going on in Alameda and the public's trust can be enhanced in the future; she worked hard and well with an exceptional group of department heads and staff; stated a number of community and Council priorities were accomplished; the controversy was created when she held to an open and transparent process to hire a Fire Chief which resulted in the selection of a Chief who is a good fit with the Fire Union and is working to increase departmental revenues and improve processes; outlined her work on a Project Labor Agreement, the animal shelter, the CalPERS unfunded pension liability, and the budget; stated whether Council directs staff to schedule a mediation, decides to terminate her after she asked

to see the investigative report or decides to reinstate her, she will continue to appreciate the dedicated staff of Alameda: Jill Keimach.

Expressed support for Jill Keimach remaining the City Manager; stated Ms. Keimach has elicited a sense of enthusiasm and team unity amongst staff; outlined the residents siding with Ms. Keimach on the rent and financial ballot measures; stated firing Ms. Keimach sends a signal that political connections, not professional judgements, matter to City Hall; urged Council to keep Ms. Keimach, Councilmembers to recuse themselves and to release all the information: Former Councilmember Tony Daysog, Alameda.

Stated in the interest of transparency, she requests that Council release the tapes and all uncensored reports regarding the hiring of the Fire Chief: Jeanne Allen, Alameda.

Stated many are shocked about what is occurring at City Hall; verified reports of the tape recording seem to show Councilmembers Oddie and Vella were trying to intimidate, cajole and suggest rewards to get Ms. Keimach to hire their Fire Chief candidate; the victim is wrongly being portrayed as the perpetrator of the problem; discussed squandering tax dollars; urged Ms. Keimach continue as City Manager: Marie Kane, Alameda.

Submitted his comments; expressed concern over Councilmembers interfering with hiring decisions, the legal advice regarding the recording, and the investigative report not being released: Michael Metcalf, Former Moraga Councilmember.

Urged the Council to demonstrate true leadership, admit and correct mistakes and put Ms. Keimach back in service: Jay Ingram, Alameda.

Expressed concern over the public comments being made; stated recording conversations is illegal; expressed support for Councilmembers Oddie and Vella: Mike Henneberry, Alameda.

Stated the meeting is not about politics; it is about a line in the law; personal interests should be set aside: Erik Strimling, Alameda.

Discussed the character of Jill Keimach; urged Council to bring back Ms. Keimach: Christine Chilcott, Alameda.

Expressed concern over Jill Keimach not being evaluated for almost two years and the current evaluation being retaliatory: Sally Rudloff, Alameda.

Discussed sharing the investigative report with Ms. Keimach and releasing it to the public; suggested seeking advice from independent legal counsel; questioned whether the Council has considered progressive discipline; discussed costs: Don Margolis.

Compared Alameda to Washington D.C; stated that she wants hear the recordings and read the original investigative report to make an informed decision; urged Council to not

fire the City Manager and turn the report over to the Grand Jury: Katia Huebner, Alameda.

Stated the process has not been completed; the County District Attorney should rule on the taping before Council takes action against Jill Keimach; discussed Closed Session information being leaked to the press: Joe Loparo, Alameda.

Stated a legal process should be followed; the recording should be released; the facts need to be on the table: Marilyn Schumacher, Alameda.

Stated Councilmembers Oddie and Vella should recuse themselves; stated the three remaining Councilmembers should come up with a unanimous decision about how to move forward: Irene Dieter, Alameda.

Stated the process to keep Jill Keimach as the City Manager should be done fairly and not behind closed doors; the matter should be brought to the District Attorney's office; Councilmembers Oddie and Vella should recuse themselves and not be part of the decision making process because of the conflict of interest; expressed support for keeping Jill Keimach even if she made a small procedural flaw recording the conversation; demanded the tape be released to the public: Rosalinda Fortuna, Alameda.

The meeting was adjourned to Closed Session to consider:

(18-201) Conference with Legal Counsel – Anticipated Litigation; Significant exposure to litigation pursuant to subdivisions (d)(2) and e(2) of California Government Code Section 54956.9 relating to the allegations made in City Manager Jill Keimach's October 2, 2017 letter; Number of cases: Three (As Defendant - City Exposure to Legal Action)

(18-202) Public Employee Performance Evaluation; Public Employee Dismissal/Release; Pursuant to California Government Code Section 54957; Employee/Position: Jill Keimach, City Manager

\*\*\*

Mayor Spencer called a recess at 8:49 p.m. and reconvened the meeting at 8:57 p.m.

\*\*\*

\*\*\*

Councilmembers Oddie and Vella recused themselves and left the meeting at 10:32 p.m. and returned at 10:43 p.m.

\*\*\*

Following the Closed Session, the meeting was reconvened and the City Clerk announced that regarding Litigation, City Council unanimously voted to release, on Wednesday, May 2<sup>nd</sup>, the investigative report compiled by Michael Jenkins; Council unanimously voted to instruct the City Attorney to refer the audio recordings to the

Alameda County District Attorney, the Council unanimously voted to give direction to staff on one item, and with three present, Council voted to give direction to staff [Absent: Councilmember Oddie and Vella – 2]; and regarding Performance Evaluation, direction was given to staff, by the following vote: Ayes: Councilmembers Oddie, Vella and Mayor Spencer – 3. Noes: Councilmembers Ezzy Ashcraft and Matarrese – 2.

#### Adjournment

There being no further business, Mayor Spencer adjourned the meeting at 10:55 p.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

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