

MINUTES OF THE SPECIAL CITY COUNCIL MEETING
TUESDAY- -FEBRUARY 4, 2020- -6:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 6:02 p.m.

Roll Call – Present: Councilmembers Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5.

[Note: Councilmembers Daysog and Vella arrived at 6:03 p.m.

Absent: None.

Consent Calendar

(20-050) Recommendation to Approve Eric Levitt, City Manager, Lisa Maxwell, Assistant City Attorney, and Debbie Potter, Community Development Director, as Real Property Negotiators for the Potential Sale or Lease of the Carnegie Library Building at 2264 Santa Clara Avenue and the Foster House at 1429 Oak Street. Accepted.

Councilmember Oddie moved approval of the staff recommendation.

Vice Mayor Knox White seconded the motion.

In response to Councilmember Oddie's inquiry, the City Attorney responded State law requires local agencies to appoint negotiators prior to commencing negotiations to allow the public to understand who would be stepping into closed session with the City Council to discuss the negotiations; the open session item is being approved prior to the closed session being held.

The meeting was adjourned to Closed Session to consider:

(20-051) Conference with Real Property Negotiators (Pursuant to Government Code Section 54956.8); Property: 2264 Santa Clara Avenue (the Carnegie Building) and 1429 Oak Street (Foster House); City Negotiators: Eric J. Levitt, City Manager, Lisa N. Maxwell, Assistant City Attorney, and Debbie Potter, Community Development Director; Negotiating Parties: City of Alameda and Carnegie Innovation Hall; Under Negotiation: Real property negotiations price and terms

(20-052) Conference with Legal Counsel – Existing Litigation (Pursuant to Government Code § 54956.9); Case Name: Boatworks v City of Alameda, et al.; Court: Superior Court of the State of California, County of Alameda; Case Numbers: RG16823346, RG16841240, RG19041531

Councilmember Daysog left the closed session at 6:12 p.m. and returned at 6:15 p.m.

(20-053) Following the Closed Session, the meeting was reconvened and Mayor Ezzy Ashcraft held a moment of silence in memory of Wansiri Panyapong.

The City Clerk announced that regarding Real Property and Existing Litigation staff provided information and Council provided direction with no vote taken.

Adjournment

There being no further business, Mayor Ezzy Ashcraft adjourned the meeting at 6:41 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- - FEBRUARY 4, 2020- -7:00 P.M.

Mayor Ezzy Ashcraft convened the meeting at 7:04 p.m. Boy Scout Troup 3 led the Pledge of Allegiance.

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

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(20-054) Mayor Ezzy Ashcraft did a reading for the Season for Non-Violence: Connection.

(20-055) Proclamation Declaring February 2020 as Black History Month.

Mayor Ezzy Ashcraft read the proclamation and presented it to Reverend Betty Williams.

Ms. Williams made brief comments.

(20-056) Proclamation Declaring February 14, 2020 as the League of Women Voters' 100th Anniversary Day.

Mayor Ezzy Ashcraft read the proclamation and presented it to Susan Hauser, League of Women Voters (LWV).

Ms. Hauser introduced other LWV members made brief comments.

Anne McKereghan, LWV, invited everyone to attend an upcoming social at Tuckers Ice Cream.

ORAL COMMUNICATIONS, NON-AGENDA

(20-057) Eric Grunseth, Alameda, expressed concern over the rent registry.

(20-058) Kurt Peterson, Alameda, stated that he would comment on the proposed amendments to the Sunshine Ordinance [paragraph no. 20-067].

Mayor Ezzy Ashcraft stated the comments need to be given when the item is called.

CONSENT CALENDAR

Vice Mayor Knox White requested the vehicle purchase [paragraph no. 20-061] be removed from the Consent Calendar for discussion.

Councilmember Oddie moved approval of remainder of the Consent Calendar.

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

(*20-059) Minutes of the Special and Regular City Council Meetings Held on January 7, 2020. Approved.

(*20-060) Ratified bills in the amount of \$8,739,647.57.

(20-061) Recommendation to Authorize Purchase of Vehicles, Consistent with Revised Vehicle Replacement Policy, in an Amount Not to Exceed \$227,404 from Folsom Lake Ford, \$1,175,165, from Downtown Ford Sales, and \$123,099 from National Auto Fleet Group.

Vice Mayor Knox White stated a number of vehicle providers have chosen to fight the State of California over fuel economy standards, including Nissan; expressed support for the three Nissan Leaf vehicles being electronic vehicles (EV); stated that he cannot support the company Nissan; requested the Ford and Nissan purchases be bifurcated.

Mayor Ezzy Ashcraft inquired whether emissions restrictions are still in place.

The City Attorney responded that he does not know; stated the restrictions are being challenged by the federal government.

The Public Works Fleet Supervisor outlined the restrictions on liquid fuel vehicles and internal combustion engines; stated the restrictions are not related to EVs.

Councilmember Oddie inquired why the report does not mention climate impacts.

The City Manager responded the Nissan Leaf is not part of the prohibition and does not impact the Climate Action Plan.

The Public Works Fleet Supervisor stated the goal is to move forward with EVs in place of liquid fuel vehicles.

Vice Mayor Knox White inquired whether Ford also makes EVs.

The Public Works Fleet Supervisor responded in the negative; stated Chevrolet does

not make EVs either; large corporate manufacturers are anticipated to come to market in 2023 with more EVs.

Vice Mayor Knox White inquired whether the Nissan Leaf is available for fleet use, to which the Public Works Fleet Supervisor responded in the affirmative.

Vice Mayor Knox White moved approval of the staff recommendation.

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

(*20-062) Recommendation to Authorize the City Manager to Execute an Amendment to an Agreement with ENGEQ, Incorporated to Increase the Compensation by an Amount Not to Exceed \$23,800 for a Total Contract Amount of \$98,500 for Geotechnical Services Related to the Seaplane Lagoon Ferry Terminal. Accepted.

REGULAR AGENDA ITEMS

(20-063) Introduction of Ordinance Approving a Lease and Authorizing the City Manager or Designee to Execute Documents Necessary to Implement the Terms of a One-Year Lease With Four One-Year Extension Options, Each Subject to Reasonable Discretionary Approval of the City Manager, with Shelter In Peace, Inc., a California Non-Profit Corporation, for 2815 San Diego Road Located at Alameda Point to Operate Transitional Housing for Refugees; and Recommendation to Approve the Finding that the Short-Term Lease Transaction with Shelter in Peace, Inc. is Exempt from the Surplus Lands Act, as Amended. Introduced.

The Community Development Director gave a brief presentation.

Councilmember Oddie moved introduction of the ordinance.

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

Anna Rossi, Shelter in Peace, thanked Council and members of Shelter in Peace introduced themselves.

(20-064) Recommendation to Accept Update on Recently Installed and Ongoing Traffic Safety and Traffic Calming Activities.

The City Engineer and Principal Engineer gave a Power Point presentation.

Mayor Ezzy Ashcraft inquired whether the presentation can be made available since it was not included in the packet, to which the Principal Engineer responded in the affirmative.

The City Engineer concluded the presentation.

Discussed accidents at the corner of Lincoln Avenue and Walnut Street: Jeff Knoth, Alameda.

Mayor Ezzy Ashcraft stated this is a big issue for the City.

Councilmember Oddie requested clarification on the accidents reported by Mr. Knoth.

The Principal Engineer stated plans for Walnut Street and Lincoln Avenue have been received and work needs to be scheduled; the work is expected to begin in spring.

Councilmember Oddie inquired the long-term plan; stated all of Lincoln Avenue is a speedway.

The Principal Engineer responded Lincoln Avenue needs a full corridor analysis; stated community outreach is required and expected; additional funding and design are also needed to move forward; narrowing four lanes to two lanes with bulb-outs is a possibility; stated the lane-shift option would offset some of the traffic signal heads; modifications are needed along the corridor; each signal modification costs a few hundred thousand dollars; the goal is to review and determine what is needed for the full Lincoln Avenue corridor.

Councilmember Oddie inquired whether things can be done to lower the speed limit on an emergency basis due to child collisions.

The Principal Engineer responded a Request for Proposals (RFP) is being put together to conduct a Citywide speed survey; stated the Police Department is determining street segments to be surveyed; once the data is obtained, the agency can lower speed limits around school zones; noted Sacramento has completed the task; stated the speed survey must be completed prior to moving forward.

Councilmember Oddie inquired whether it is possible to time lights and crosswalks for pedestrians.

The Principle Engineer responded the concept is being considered; stated timing is not possible for some intersections with obsolete technology; outlined equipment purchases required to install the desired features; stated additional pedestrian timing advancements are being considered in certain business districts, such as Park Street and Webster Street.

Councilmember Oddie noted the urgency of the item; stated that he is intrigued by the Harbor Bay roundabout concept; a number of streets in the City could benefit from roundabouts; roundabouts are a safer way to handle intersections; expressed support for continuing to prioritize the item.

Councilmember Daysog stated all identified areas need ample data to compare significant approaches for improvements; the public needs to know that the tools being adopted are going to be effective; expressed concern for actions that divert traffic to parts of town that do not exhibit high traffic incidents; stated the data needs context and statistical analysis; once techniques are put into place, there will be no way to truly measure the significant impact for three to four years; expressed support for effective remedies being put into place.

Vice Mayor Knox White discussed a neighbor feeling unsafe while riding a bike in Alameda; stated there is desire for all to feel safe while riding in Alameda; decades of decisions have left many feeling unsafe; the decisions must be fixed; the word of the year is transformational; repaving projects are transforming City streets; he witnessed the first protected intersection with bollards in Alameda; bollards are not being used to update Lincoln Avenue; some people park in red zones and obstruct bikeways with impunity; through Vision Zero, all traffic fatalities are avoidable; it is not a shock that many fatalities happen on the fastest City streets; expressed support for Citywide speed limit of 25 miles per hour (mph) with lowered speeds at schools; Alameda's population is aging quickly and a slower pedestrian crossing time will be beneficial; expressed support for Councilmember Daysog's call for evaluation; stated that he would like to ensure the correct metrics are being used and behaviors are changed; noted there is the possibility of reducing, but not eliminating, collisions; stated emergency measures being implemented may not be enough for the long-term; there is strong support from Council.

Councilmember Vella expressed support; stated staff turnaround has been quick; noted she witnessed multiple vehicle collisions at her previous residence; stated many changes are a long time coming; Council policy is changing how vehicle collisions are looked at from a problem-solving standpoint; many pedestrians tend to walk against the pedestrian light due to not activating the crossing signal; expressed support for crossing signals that do not have to be activated by pressing a button, and for looking at zones near major parks and thoroughfares; inquired whether areas near parks are being considered.

The City Engineer responded in the affirmative.

Councilmember Vella inquired the plan for the intersection of Central Avenue, Encinal Avenue, and Sherman Street.

The City Engineer responded the intersection does not have long term plans; stated the active Transportation Plan will be presented to Council in the next month which discusses longer corridor projects; the specified intersection is being addressed at the end of the Central Avenue project; a roundabout solution has been proposed and is to be evaluated.

Councilmember Vella stated that she witnesses many people illegally double parking which causes bicyclists to maneuver around in an unsafe manner; expressed support

for evaluating and addressing double parking and ample parking in the business districts to allow deliveries without double parking; stated business districts do not have short term parking spaces for deliveries.

Mayor Ezzy Ashcraft inquired whether there are plans for the intersections of Central Avenue and 9th Street and Central Avenue and Page Street; whether it is possible to install a scramble intersection in the downtown area of Park Street and Central Avenue; stated staff must ensure there is funding for the changes and improvements when the budget is presented to Council; safety is the top Council priority.

Councilmember Vella moved approval of the staff recommendation.

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

Vice Mayor Knox White inquired whether the item coming to Council in March will be the response to the Council direction from September 2019, to bring back an intersection equity access policy and street lane widths for traffic calming.

The Assistant City Manager responded not all topics will be returning; stated several topics are currently being addressed, including lane widths; the Active Transportation Plan Annual Report will be presented at the March 17th Council meeting.

Councilmember Vella left the dais at 8:31 p.m. and returned at 8:49 p.m.

(20-065) Mayor Ezzy Ashcraft suggested hearing the Sunshine item next [paragraph no. 20-067] since it has the most speakers.

Councilmember Oddie moved approval.

Vice Mayor Knox White seconded the motion, which carried by unanimous voice vote – 4. [Absent: Councilmember Vella – 1.]

Mayor Ezzy Ashcraft called a recess at 8:33 p.m. and reconvened the meeting at 9:02 p.m.

(20-066) Recommendation to: 1) Direct Staff to Conduct a Four-Week Request For Qualification (RFQ) Solicitation Process for the Development of the West Midway Project; 2) Approve Debbie Potter, Community Development Director; Michelle Giles, Base Reuse Manager; Lisa N. Maxwell, Assistant City Attorney; and Eric Levitt, City Manager, as Designated Real Property Negotiators for the West Midway Project; 3) Approve the Finding Related to the Surplus Lands Act that the Property Constitutes Exempt Surplus Land; and 4) Direct Staff to Include a \$350,000 Appropriation for the RESHAP Project Backbone Infrastructure Design in the Mid-Year Budget. Not heard.

Mayor Ezzy Ashcraft inquired whether Council wants to proceed with the item.

Councilmember Oddie stated that he would like to hear the item.

Councilmember Daysog stated that he supports continuing the matter.

Mayor Ezzy Ashcraft stated that she would like to continue the item to a date certain.

Vice Mayor Knox White stated that he would like to hear the item.

Councilmember Vella moved approval of continuing the matter; inquired whether there is a date certain.

The City Manager stated that he suggests March 3rd.

Councilmember Vella stated the motion is to continue the item to March 3rd.

Councilmember Daysog seconded the motion, which carried by the following voice vote: Ayes: Councilmembers Daysog, Vella and Mayor Ezzy Ashcraft – 3. Noes: Councilmembers Knox White and Oddie – 2.

(20-067) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Various Provisions of Article VIII (Sunshine Ordinance) of Chapter II (Administration), including Provisions Related to Public Access to Public Meetings and Public Records, and Sunshine Ordinance Enforcement, Including Recommendations to Eliminate the “Null and Void” or “Order to Cure” Remedies and Replace Such Remedies With the Authority for the Open Government Commission to Issue Recommendations to Cure and Correct. Introduced.

The Assistant City Attorney gave a brief presentation.

Councilmember Vella inquired who recommended the null and void provision be added to the ordinance and how the provision came to be.

The Assistant City Attorney responded that he tried to research the issue, but does not know the definitive answer; stated he has heard City Attorney department staff drafted the provision.

Councilmember Vella inquired whether other Charter cities have a similar commission or body with the same type of power.

The Assistant City Attorney responded research has been conducted; stated the First Amendment Coalition keeps record of all Sunshine cities; a survey conducted six months ago of the 14 jurisdictions yielded no null and void provisions.

Councilmember Vella inquired whether the meeting minutes from when the ordinance was enacted have been reviewed.

The Assistant City Attorney responded in the affirmative; stated the meeting video was also reviewed.

Councilmember Daysog inquired whether the concept of null and void was included in the original ordinance resulting in the creation of the Open Government Commission (OGC).

The Assistant City Attorney responded that he was not here when the Sunshine Ordinance was adopted; stated the Sunshine Ordinance was adopted at the same time as the duties and powers of the OGC.

Councilmember Daysog inquired the harm in keeping the null and void provision.

The Assistant City Attorney responded it is difficult to tell; stated should the null and void remedy be used again, there will be a risk of incongruence with the City Attorney's office.

Mayor Ezzy Ashcraft requested clarification be provided on the precedence set.

The Assistant City Attorney stated the null and void remedy was only used recently; general rule states that a policy making body, vested with various legislative powers to make local law, cannot delegate its authority; the basis for the rule is to ensure the policy making body makes the fundamental policy decisions; the refinements of the general rule discusses delegation; the delegation authority is separate from the general rule; where null and void falls is a question; outlined the refinement process; the Council may make regulations, similar to rent and cannabis, where a decision is made and staff fills in the blanks; the null and void remedy does not fall into the area of filling in blanks, it is a fundamental policy decision; the power to make local law includes the power to repeal the law.

Councilmember Daysog stated Charter Section 3-2 contains language that allows policy making boards to establish concepts such as null and void; noted Section states: the Council may confer upon any board or officer powers and duties additional to those set forth in this Charter; the Council may confer powers and duties upon boards and policy making bodies, but it must be consistent with the City Charter; noted Section 3-1 says the ultimate power making authority rests with the City Council.

Councilmember Oddie inquired whether the Housing Authority Board falls under Section 1, part D beginning: "Policy bodies shall mean the following..." of the draft ordinance.

The Assistant City Attorney responded the Board would not due to the lack of the Board creating policy; stated the Board is subject to the Brown Act and the parallel requirements of the Sunshine Ordinance related to agenda posting.

Councilmember Oddie inquired what Government Code Section 54952 states.

The Assistant City Attorney responded it is the portion of the Brown Act that defines a legislative body.

Councilmember Oddie stated a policy body that is subject to the Brown Act should be subject to the Sunshine Ordinance as well.

The Assistant City Attorney stated the connection is sensible, yet has not previously been made.

The City Attorney stated the Housing Authority is a separate legal entity from the City, similar to the School District, and is not subject to the Sunshine Ordinance.

Councilmember Oddie expressed support for recommending the Housing Authority adopt the Sunshine Ordinance; inquired whether Section 2-91.5 requires all documents material to an item accompany the agenda; noted a previous item lacked the presentation, which is material to the item; questioned whether the presentation is exempt from being included; inquired where the presentation fits under Section 2-91.5.

The Assistant City Attorney responded that he is unsure; stated the intent of the amendment is to not have the language ensure general materiality, but more related to the action of the item.

Councilmember Oddie inquired whether the OGC determines the materiality of the item.

The Assistant City Attorney responded the OGC would make a determination should there be an alleged violation.

Councilmember Oddie expressed concern about the language being unclear and potentially causing open interpretation.

The Assistant City Attorney stated the OGC is staffed by the City Attorney's office and has resources to determine whether or not a violation has occurred.

Councilmember Oddie inquired whether Resolution 15382 prohibits ceding time and Section 2-93.7 states that all local laws inconsistent with the ordinance are superseded; stated the Sunshine Ordinance allows time to be ceded and a spokesperson appointed; Resolution 15382 removed the option of ceding of time; the Sunshine Ordinance states it takes precedence causing a conflict.

The Assistant City Attorney responded that he is not aware of any other conflicts; stated any subsequent areas of conflict may be addressed in an amendment; the goal is consistency with the Council adopted resolution.

The City Attorney stated the Sunshine Ordinance allows speakers to cede time and Resolution 15382 does not; since Council adopted Resolution 15382 after adopting the Sunshine Ordinance, the resolution is the policy Council wants to effectuate; the proposed amendment allows consistency between the Sunshine Ordinance and Council's will; additional changes can be made if so desired.

Councilmember Oddie inquired whether Section 2-93.7 will be applied prospectively or retrospectively only.

The Assistant City Attorney responded prospectively; stated unless a provision specifies retrospectively, the general rule is against applying retrospectively.

Councilmember Oddie noted the process seems retrospective.

Read a letter submitted by the League of Women Voters; urged Council to reject amendments to Section 2-93.8: Susan Hauser, League of Women Voters.

Urged the amendments be tabled: Steve Slauson, Alameda.

Stated Council should earn back trust by keeping the Open Government Commission's enforcement provision; outlined other options: Bill Smith, Alameda.

Discussed the Open Government Commission adoption of its bylaws; stated the Council is taking the teeth away from the Open Government Commission: Kurt Peterson, Alameda.

Stated the October 18, 2011 minutes on page 4 state the Council should not police its own process; suggested a task force be formed to address the matter: Paul Foreman, Alameda Citizens Task Force

Stated that she supports the City Attorney's opinion, which is correct: Former Mayor Trish Spencer, Alameda.

Discussed her Sunshine Ordinance complaint; outlined her experience as a public advocate for tobacco control laws: Serena Chen, Alameda.

Expressed support for civic engagement; discussed the Open Government Commission position; outlined potential harm from the change: Bryan Schwartz, Open Government Commission.

Councilmember Vella stated Section 9 notes a timeline that begins when a complaint is filed of 30-business days, which is roughly six weeks to schedule a hearing; a formal written decision on the matter may be placed on a continued meeting within 30 business days of the conclusion of the hearing; expressed concern for due process and extended timelines; inquired whether the timeline makes sense for ordinances.

The Assistant City Attorney responded by discussion the staff report drafting process.

Councilmember Vella expressed concern for not having a meeting date similar to other boards and commissions; inquired whether it is possible to establish a regular meeting date; stated not having a regular meeting date is not transparent and both parties may not understand when meetings may be held.

The City Clerk responded meetings are typically scheduled on the first Monday based on past practice; sometimes the complainant, who is required to attend, cannot make the hearing date, therefore flexibility in scheduling is needed to accommodate all parties.

Councilmember Vella noted a date held on the calendar could assist the complainant in hearing preparation; stated the process is similar to the Rent Review Advisory Committee (RRAC) or Planning Board; expressed concern for allowing delays in hearing matters; expressed support for a more expeditious process; inquired about the remedy and process if null and void is removed; questioned why someone would go the OGC as opposed to filing a case in court.

The City Attorney responded the process will still allow the OGC to hear the matter; should the OGC find a violation, a recommendation would be issued to the originating body detailing OGC findings; stated the recommendation being issued serves a number of purposes, including an open and transparent process in which the original policy body can reconsider the decision made; in the unfortunate event a decision is ignored, there would be significant accord for judicial review.

Councilmember Vella stated the City Attorney's office represents the City, but also oversees and advises the OGC; inquired the result and outcome should the OGC make a recommendation against the City or process.

The City Attorney responded there are well established judicial precedence which allows a government office to establish ethical walls when appropriate should conflicting bodies be represented; outlined an example regarding an appeal to a personnel board.

Councilmember Vella expressed concern about the transparency of the process; stated emergency ordinances have been passed; questioned whether there could have been delays in passing emergency ordinances; stated some of the issues are process issues; there should be procedural ways to streamline and reagendaize an item sooner; expressed concern for removing the ability to have the decision to call the question on the Council without going to court; stated the null and void provision allows a decision to be made and hold the Council's feet to the fire without having to go through a long court process; expressed concern for future Council's not abiding by the OGC's recommendations.

Councilmember Daysog stated a tool is needed for Council to catch instances where decisions are made without proper notice; public noticing is key to ensure the public can

weigh-in on matters and provide opinions on issues; the null and void provision is meant to be said tool; null and void can supersede Council decisions and represents a power that is above the Council; noted the problem with null and void is that there is no basis in the City Charter; stated Section 3-1 of the Charter vests all power in the City Council; Section 3-2 states Council may delegate powers to commissions in a manner only consistent with the Charter; expressed support for being consistent with the Charter and for understanding the basis of how the null and void provision aligns; stated the City Charter Sections 3-1, 3-2 and 1-2(D) are vested in Council making rules and having powers; Council can delegate rules to commissions and boards; the rules cannot be delegated in a way that places the Council in an inferior position; the City should come up with a tool to address situations in which the public has not properly been noticed; null and void is not the only tool available; members of the public and the OGC can come up with a variety of other tools that checks the City Council if a decision is made that was not properly noticed; noted Council can create an ordinance which allows the OGC to flag situations that clearly show a decision being made which has not been adequately noticed; stated penalties could require a 4-1 Council vote in order to move the item forward; there will be times when the Council makes a mistake; when checks are created, it should align with the City Charter; there are many ways to create remedies similar to null and void.

Vice Mayor Knox White expressed support for Councilmember Daysog's comments; noted that he was previously on the Sunshine Task Force; discussed meetings developing the Sunshine Ordinance; stated each member of the Task Force desired the OGC to have teeth, not just alerts; the one violation yielded a battle-mode response from the City and prompted reconsideration of the null and void provision; stated there should have been an easy cure to the issue; that he agrees with Councilmember Daysog's, as well as staff's, comments; null and void is not a legal finding and is problematic; there will always be a legal implication; expressed concern for removing the provision in hopes that OGC findings are considered; stated actions of Council take time to implement; should violations be found, the Sunshine Ordinance should dictate the violation be agendized on the next reasonable agenda for consideration of either concurrence or non-concurrence with the OGC's findings; there should be a reasonable way to cure the issue; the simplest path would be to re-hear the item and cure; the public is given an opportunity to come back to the policy making body, at a properly noticed meeting and weigh in on the topic; outlined his experience related to the Transportation Commission improperly noticing an item; expressed concern about the finding being perfunctory; expressed support for something that replaces null and void with an acceptable alternative; stated that he does not support staff's recommendation of removing null and void.

Councilmember Oddie expressed support for Councilmember Daysog's comments; noted there are restraints at the State level; stated the City can pass any law; however, if the law is unconstitutional, it should not be passed; expressed support for replacing null and void with something that allows for the ability to call out Council in the event an item is passed which violates the Sunshine Ordinance; stated the opinion of the OGC will have weight; expressed concern for someone using null and void to try and overturn

particular items; discussed his first meeting addressing the Del Monte project; stated discussions have yielded decisions that are different from agenda titles and caution should be taken; stated the change in housing units for the Del Monte project was a worse violation than the change in the cannabis item; expressed support for a safeguard being put in place and for providing direction to staff and the OGC to develop a replacement that meets the needs discussed by Council.

Mayor Ezzy Ashcraft quoted the adage: “bad facts make bad law;” stated that she recalls the item which generated Ms. Chen’s complaint; Council must follow the law and respect the authority that has been delegated; the order to cure remedy is adequate and sufficient; the OGC should come up with something that incorporates Council’s suggestions; stated the City Attorney’s office takes great pride in doing good legal work in advising the City and its boards and commissions; all are capable of making mistakes true to human nature; the particular item has been heavily scrutinized; the harm in leaving null and void as-is, allows someone to apply the provision to a law that someone does not like; Councilmembers were elected into positions; those elected must have thick skin, a sense of humor and a backbone; all Councilmembers come from different backgrounds and disagree at times, but also work hard for those represented; quoted former President Barak Obama; stated that she wished more people would serve on boards and commissions as a stepping stone to elected office; there is great representative government in the City; expressed support for all recommended amendments; stated that she would entertain a further remedy to ensure the intent of null and void is honored; expressed concern about the Commission stating that it would not support any similar amendment; stated that she expects boards and commissions to work cooperatively and collaboratively with the City Attorney’s office and vice versa; additional guidelines should be taken seriously for those that have a complaint; any order to cure should be taken seriously and not buried under the rug.

Councilmember Vella stated a task force has been suggested, similar to the original Sunshine Task Force, as well as the item returning to the OGC for input, options and recommendations; there should be a process for holding meetings on regular dates; stated a quick turnaround may not always be possible; a clause should be in place to expedite reagendaing.

Vice Mayor Knox White inquired whether staff is proposing language.

The City Attorney responded staff has drafted language to address Council comments; stated the item should return to the Commission or Council as soon as practical; the amendment requires the originating body to make a decision based on the OGC recommendation, which may involve agreeing or disagreeing and curing; the amendment provides that the City would take all necessary actions, to the extent authorized by law, to maintain the status quo.

Councilmember Oddie expressed concern for maintaining status quo; expressed support for regularly scheduled OGC meetings; stated the OGC is the best body to come up with alternate ideas to effectively enforce violations; inquired whether the

Sunshine Ordinance supersedes any ordinance prior or in the future.

The City Attorney responded laws cannot anticipate future Council actions nor bind future Councils; the ordinance supersedes laws that were in existence at the time of adoption; when an ordinance is adopted, there is always a provision included called “implied repeal;” new law will always take precedence.

Councilmember Oddie stated that he would like the information clarified.

Councilmember Daysog stated that it is difficult for him to tell whether the proposed language has teeth; expressed support for input from the OGC.

(20-068) Mayor Ezzy Ashcraft moved approval of giving Councilmembers an additional 5 minutes time.

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

Councilmember Daysog stated the OGC understands Council’s broad parameters; expressed support for input from the OGC members consistent with the Charter parameters, which is not the null and void provision.

Mayor Ezzy Ashcraft expressed support for the item to be heard by OGC members.

Councilmember Vella expressed support for the item to be heard by the OGC at a properly noticed meeting; expressed concern for drafting an ordinance at the current meeting; stated a process for call to review will be helpful, while keeping in mind the Sunshine Ordinance agenda posting requirements; discussed an instance of passing an emergency ordinance; stated it is possible for the OGC to suspend certain rules for noticing and still comply with the Brown Act.

Mayor Ezzy Ashcraft stated tonight is the first reading of the proposed ordinance and the amendments may be beyond what was first contemplated; another first reading will be needed; expressed support for sending the item back to the OGC for consideration; stated the OGC should work with the City Attorney’s office; questioned whether the draft language is a good starting point.

Councilmember Oddie stated that he does not support the inclusion of status quo.

Mayor Ezzy Ashcraft stated that she would like the item to be heard by the OGC; direction to staff can be provided to change the sentence beginning with: “The City shall take all necessary action...”

Councilmember Oddie stated the item can be adopted as-is with direction to staff

provided from the current discussion.

The City Attorney stated that Councilmember Oddie may move to adopt the staff recommendation with direction to review.

Councilmember Oddie moved approval of the staff recommendation [introduction of the ordinance], with direction for staff to work with the OGC to find an effective replacement to the null and void remedy based on Council discussion.

Councilmember Daysog seconded the motion.

Under discussion, Vice Mayor Knox White stated that he will not support the motion; expressed support for removing null and void, but only in the event where the remedy is known; stated removing null and void with no remedy removes any remaining teeth; the fine for violation will be laughable and will have no real impact.

Mayor Ezzy Ashcraft inquired whether Vice Mayor Knox White would like staff direction to include fines and penalties provision be revisited.

Vice Mayor Knox White responded in the affirmative; stated that he would like to ensure direction provided includes accepting the City Attorney's position on the item; a balance should be maintained without repealing maintaining the status quo; in order for him to support repeal, there should be a remedy in place.

Mayor Ezzy Ashcraft stated that she will not support any motion which keeps the null and void remedy; the remedy is not valid, given the Charter and Council authority.

Councilmember Vella stated that she will not be supporting the motion for reasons similar to Vice Mayor Knox White; the issue has been known; there has been legal research; there is no harm in waiting another month or 60 days for the OGC to weigh-in and provide a remedy recommendation.

Councilmember Oddie stated the remedy is not authorized under the Charter or the constitution.

Councilmember Daysog stated the items raised by Vice Mayor Knox White and Councilmember Vella are valid; taking a vote risks removing leverage; expressed support for Councilmember Oddie's motion; stated a contradiction to a higher role should not be left unaddressed; expressed support for the City Attorney to work in good faith with the OGC and the public in creating the language that is akin to null and void that provides some teeth but is aligned with how the City Charter is interpreted.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmembers Daysog, Oddie and Mayor Ezzy Ashcraft – 3. Noes: Councilmembers Knox White and Vella – 2.

(20-069) Introduction of Ordinance Amending the Alameda Municipal Code by: (1) Adding New Section 23-9 (Personal Wireless Service Facilities in the Public Right-Of-Way); and (2) Amending Section 2-59.3 (Limitation and Power to Make Contracts) to Exempt Master License Agreements for Use of Public Assets for Personal Wireless Service Facility Installation. Introduced; and

(20-069A) Recommendation to Authorize the City Manager, or Designee, to Negotiate and Execute Master License Agreements for Use of Public Assets Consistent with Local Law.

The Deputy Public Works Director gave a brief presentation.

Mayor Ezzy Ashcraft inquired whether there is a legal challenge to Senate Bill (SB) 649 moving through the courts.

The Deputy Public Works Director responded in the affirmative; stated the City Attorney's office can provide further information; stated there is a legal challenge to the 2018 Federal Communications Commission (FCC) ruling.

Mayor Ezzy Ashcraft inquired how a ruling in favor of cities would impact current decisions and discussions.

The City Attorney responded the legal challenge is still working through the court system; stated there is no current pending injunction against the particular federal legislation; staff has proposed the best comprehensive local regulation that a local agency is able to implement at this time; should a judicial ruling be received overturning the federal regulation, staff would return in cooperation with the Public Works Department to provide additional local control to the maximum extent possible.

Councilmember Daysog noted cell towers were proposed in 2015 at the corners of Lincoln Avenue and Saint Charles Street, and Shore Line Drive and Grand Avenue; stated there was much involvement from Planning Department staff at the time; inquired whether the Planning Department is still involved or if the responsibility has shifted to the Public Works Department.

The City Attorney responded local regulation of cell towers originate from two places: regulation of the local right of way and regulation of private property cell towers; stated in both instances, local control is significantly circumscribed by federal legislation; the item presented relates to the public right of way regulations; should Council desire for the City to implement further review of the zoning regulations on private property very brief direction may be provided to staff.

Councilmember Daysog stated that he does not recall seeing references to the Recreation and Parks Commission in the report; many cell towers are being placed in parks; inquired about involving the Recreation and Parks Commission.

The Deputy Public Works Director responded the ordinance is strictly related to items within the public right of way; stated the City has more discretion when a tower is located on private or City-owned property; the Recreation and Parks Department is open to the possibility of placing wireless facilities, such as antennas.

Councilmember Daysog stated public right of way is in reference to streets and sidewalks.

The Deputy Public Works Director stated the item does not include City buildings.

Stated Verizon is interested in entering into a partnership with the City and is interested in proposed changes that were outlined in a letter: Cris Villegas, Verizon Wireless.

Mayor Ezzy Ashcraft inquired whether there was a reason for the delay in submitting a letter to Council.

Mr. Villegas responded part of the delay was due, in part, to awaiting documents from City staff.

Mayor Ezzy Ashcraft stated the draft ordinance is attached to the staff report and is available 12 days prior to the meeting.

Mr. Villegas stated comments provided are strictly related to the design and permitting guidelines; both are referenced in the draft ordinance, but not specifically called out in detail; design and permitting elements will determine the deployment.

The Deputy Public Works Director stated the design and permit submittal guidelines were discussed by the Planning Board in April 2019; the guidelines have remained relatively unchanged, with the exception of needing to update a carriers need to consult with XG Communities for a sublicense agreement; the design and permit submittal guidelines have been available on the City's website since April 2019; the item presented relates just to the ordinance, which vests the authority to update the administrative documents as needed with the Public Works Director.

Councilmember Oddie expressed support for working with the industry.

Councilmember Oddie moved approval of the staff recommendation [including introduction of the ordinance].

Councilmember Vella seconded the motion.

Under discussion, Councilmember Daysog stated the proposed ordinance has many moving parts; inquired whether Council would be willing to include a sunset to the ordinance after five years.

Mayor Ezzy Ashcraft inquired whether the item is possible to sunset.

The City Attorney responded if the item sunsets, the City would lose local control due to not having local regulation guidelines governing the deployment of small cells on the public right of way.

Mayor Ezzy Ashcraft inquired whether the regulation would fall to the federal government for enforcement.

The City Attorney responded in the affirmative; stated there would be default rules and no further local control or ability to enter into licenses and authorize or charge fees; the option is not recommended by staff.

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

CITY MANAGER COMMUNICATIONS

(20-070) The City Manager provided an update on the coronavirus.

ORAL COMMUNICATIONS, NON-AGENDA

None.

COUNCIL REFERRALS

(20-071) Consider Requiring Paid Parking at Any Future City Owned or Operated Parking Lots, Including the Main Street Ferry Terminal. (Councilmember Vella).

Councilmember Vella made brief comments regarding the referral.

In response to Mayor Ezzy Ashcraft's inquiry, Councilmember Vella stated the request is to direct staff to come back to Council to have any projects that include City parking provide options for how to charge and include options and a cost analysis.

Councilmember Oddie inquired whether the parking lot located at the Seaplane Lagoon Ferry Terminal has already included such analysis, to which Mayor Ezzy Ashcraft responded in the affirmative.

Stated encouraging people to get out of their cars is not enough; people should be discouraged by charging for parking; free parking is not a right: Denyse Trepanier, Bike Walk Alameda.

Stated Community Action for a Sustainable Alameda (CASA) submitted a letter and is in support; discussed the Climate Action Resiliency Plan (CARP) requirements and paid parking reducing greenhouse gas emissions: Debi Ryan, Community Action for a Sustainable Alameda (CASA).

Stated CASA supports putting the matter on a future agenda; staff should look at a blanket policy: Ruth Abbe, CASA.

Stated not charging for parking is a subsidy; people have to pay to ride bus: Bill Smith, Alameda.

Councilmember Oddie inquired whether the parking lot near the Seaplane Lagoon Ferry Terminal will be paid parking.

The City Manager responded the intent is to have parking be paid at the opening; stated comments can be provided; a parking staff report will be brought forth for consideration in March.

Councilmember Oddie expressed support for the item; stated the item could be expanded to neighborhood parking permits; outlined neighborhood parking generating revenue; questioned whether there is a street parking charge solution; stated there are too many cars in Alameda; public transit is an option when priced out by parking; charging for parking can help subsidize bus rates, similar to Line 19.

Mayor Ezzy Ashcraft stated paid parking requires enforcement; parking enforcement will be up for Council consideration in the coming month.

Councilmember Daysog stated single occupancy vehicle drivers are not bad people; trends are pointing to moving away from gas powered vehicles; encouraged residents to avoid rhetoric that depicts single occupancy vehicle drivers as bad people.

Councilmember Vella stated any new parking or changes to the parking at Main Street Ferry Terminal should be included; expressed support for considering paving the Main Street Ferry Terminal.

Vice Mayor Knox White expressed support for the item; stated paid parking policies is already in all upcoming projects; the Main Street Ferry Terminal use will likely fade significantly; expressed concern for encouraging spending of money on paid parking infrastructure at a place with diminished use; expressed support for paid parking if the Main Street Ferry Terminal is upgraded; stated a parking policy for street parking is under development; questioned giving direction to staff; stated there are many current transportation projects; requesting the item to return quickly will not have a huge impact; expressed support for providing direction when issues arise related to City owned lots; stated residential parking permits cause privatized streets for neighborhoods, barely pay for themselves, and State law does not allow for higher rates.

Mayor Ezzy Ashcraft stated that she believes people will still continue to use the Main Street Ferry Terminal; there is a matter of prioritizing staff time and funding for projects; the Seaplane Lagoon Ferry Terminal should have a big push for paid parking; expressed support for the item and for incentivizing people to move away from single-occupancy vehicles; stated all must strive to do better.

COUNCIL COMMUNICATIONS

(20-072) Councilmember Vella discussed the League of California Cities (LCC) Housing Policy Committee meeting; announced that she attended a dinner with students from Yeongdong.

(20-073) Councilmember Oddie expressed gratitude for the City Manager's report on the coronavirus; expressed concern for targeted violence against Asian Pacific Island people; discussed two dinner events; announced Stopwaste's food container ordinance will yield a pilot program.

(20-074) Mayor Ezzy Ashcraft discussed the LCC Housing Policy Committee; announced that she attended the following meetings: the City and County task force on homelessness, the LCC East Bay Division dinner, the Korean exchange student delegation, Alameda Academy students' homelessness discussion and with the BART General Manager.

ADJOURNMENT

(20-075) There being no further business, Mayor Ezzy Ashcraft adjourned the meeting and had each Councilmember make brief comment about Barbara Kahn's contributions at 11:28 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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