

MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL
WEDNESDAY- -MAY 6, 2020- -5:30 P.M.

Mayor Ezzy Ashcraft convened the meeting at 5:33 p.m. and led the Pledge of Allegiance.

ROLL CALL - Present: Councilmember Daysog, Knox White, Oddie, Vella and Mayor Ezzy Ashcraft – 5. [Note: The meeting was conducted via Zoom.]

Absent: None.

AGENDA ITEM

(20-299) Recommendation to Provide Direction on Potential Measures Amending the City Charter Relating to Charter Section 7-3 – Counter Interference.

Mayor Ezzy Ashcraft stated the subcommittee was appointed on December 18, 2018 to address Alameda's serious issues, including housing and transportation; one way to restore public trust and make City government more effective is to bring the Charter in line to current needs and realities; the challenge will be to focus talents, strengths, and energies toward working on the City's best interests; Council made a commitment to the Grand Jury to move forward with reform recommendations; tonight's meeting is about looking forward and good governance moving forward.

Vice Mayor Knox White stated that he would like to suggest one minor change; the current language is so broad; the cities of Oakland and Santa Monica have revised their Charters in recent years to be much more instructive, clear and understandable; the State already provides a remedy for removing a Councilmember; clarifying would be good since the Alameda City Charter is not clear about the remedy; suggested a change in the final sentence of the proposed language: "a violation of any provision in this section shall be prosecuted as identified by State law...", which would allow flexibility; the Charter would not have to be amended as State law changes.

In response to Mayor Ezzy Ashcraft's inquiry, Vice Mayor Knox White stated he would not cite a specific Code section of State law because it could change and any amendment would have to be taken to the voters.

Councilmember Daysog stated his approach is focused on enforcing a City-managed procedure for removing a Councilmember in violation of Charter Section 7-3; presented slides outlining a six-step procedure; stated the process would be open to the public; the accused can defend themselves; addresses issues raised in the Grand Jury report; stated tonight is about looking forward; the recommendation from the Grand Jury was that the Alameda City Charter should outline an enforcement process; highlighted Step 5 of his outline which states the City Council should hold a public meeting to decide if a Special Election should be held to remove a Councilmember; Step 6 allows the people to decide; his additional language in 7-3a is about the procedures for fact finding; 7-3b is the

procedures for enforcement; Council is here tonight to bring forth ideas to improve and strengthen Section 7-3; whatever the decision, the City will come out better; he hopes to his six-step procedure is used.

In response to Councilmember Oddie's inquiry regarding language clarification, Vice Mayor Knox White restated his proposed language: "Violation of any provision of this section by a member of the City Council shall be prosecuted as prescribed by State law, conviction of which shall immediately forfeit..."

Public Comment Read Into Record:

Stated her group is troubled by the last-minute decision to schedule two special Council meetings regarding Charter amendments; the issue has nothing to do with the immediate welfare of Alamedans and is an unnecessary burden on City staff; her network is ready to support Alameda citizens: Catherine Pauling, Alameda Justice Alliance.

Stated making changes to the City Charter during a national emergency is not good governance; urged delaying any Charter changes until the 2022 election for full participation of Alameda citizens: Dorothy Freeman, Alameda.

Stated that she strongly objects to the Charter amendments during the County shelter-in-place orders; the changes need to be discussed in open session allowing the public to weigh in; urged an outside independent prosecutor to address Councilmember interference issues: Karen Miller, Alameda.

Stated she strongly objects to Council considering significant Charter Amendments during shelter-in-place orders; urged Council to wait until the public can weigh in: Katherine Bearwith, Alameda.

Stated the taskforce strongly objects to the Charter amendments during the shelter-in-place orders and is dismayed by the seven-day notice; suggests including a provision that the City prosecutor investigate allegations independent of the Council, City Manager, and City Attorney: Paul Foreman, Alameda Citizens Taskforce.

Stated proposals are incomplete and leave too many details unaddressed; presented a list of eight suggestions for Council consideration: Jay Garfinkle, Alameda.

Stated there have been audio issues with meetings; she is frustrated two special meetings have been called with short notice; public participation is important; Council is sacrificing transparency: Toni Grimm, Alameda.

Vice Mayor Knox White thanked Councilmember Daysog for his comments and approach; stated no cities have placed Council removal on a ballot; one cannot say whether something will be held up in the law; he is afraid to add something which circumvents the District Attorney and Grand Jury process; he believes outlining the removal process is

also covered by being very clear and there is already a process for removal; the proper protections and processes are in place.

In response to Mayor Ezzy Ashcraft's inquiry regarding a mechanism for replacing a removed Councilmember, Vice Mayor Knox White stated the Charter already prescribes how to replace a removed Councilmember; if within 180 days of an election, the replacement is the next highest vote-getter; outside of that, the Council appoints the replacement; a special process is not needed.

Councilmember Daysog stated he likes the language of Article 7-3 as is.

(20-300) Mayor Ezzy Ashcraft proposed allowing five extra minutes.

Councilmember Oddie stated he would like to vote to allow the presenters to have more time.

Councilmember Vella moved approval of adding three minutes to each presenter's time.

Councilmember Oddie seconded the motion, which carried by the following roll call vote: Councilmembers Daysog: Aye; Knox White: Aye; Oddie: Aye; Vella: Aye; and Mayor Ezzy Ashcraft: Aye. Ayes: 5.

Councilmember Daysog stated that he is comfortable with language that Councilmembers cannot talk to the City Manager about hiring; the issue is historic in nature; he wants to move away from potential influence; the overly broad language was meant to be a catch-all; he does not think it is an issue to define away the term "influence;" by virtue of being a Charter City, Council can create its own rules; the grand jury had the power to remove Councilmembers, but did not do so to respect the will of the voters; a special election would be a decision made by the voters.

Councilmember Vella acknowledged constituents who have raised issues about having the two special meetings; stated if Council is trying to build trust, regardless of how Council may feel, the constituents feel this is happening without having enough time to weigh in; acknowledged the digital divide; stated some people may not have internet access or the technology to follow meetings; people are not getting the word-of-mouth as before the quarantine; whatever Council does, she wants to make sure people are given the time and ability to weigh in; the meetings in June are particularly important and the message needs to be shared with constituents that a decision is not going to be made tonight; the measure is very different from the other Charter provisions because outside parties have acknowledged it needs to change; she is comfortable starting the conversation tonight and having more conversation in June regarding the timing; not all people indicted by a Grand Jury are found guilty at trial; not all people charged by a District Attorney are found guilty; opportunities of due process are very important, especially in politically-heated environments; one's right to vote is a manifestation of free speech; she

would not be comfortable trying to overturn the will of the voters with a democratic process by writing into the Charter something that would usurp the political voice of the constituents; the right to vote is very sacred and should be upheld to the highest extent possible; there have been a number of cases of political intrigue that have happened over the years; Alameda's Charter needs to stand up to Constitutional muster and Council needs to be thoughtful about what goes into it; being a Charter City there are a number of areas where Council can legislate, but there are also areas that are precisely and explicitly carved out under the Constitutions of the United States and State of California; suggested removing gender terms; stated language should be changed throughout; she is willing to support Vice Mayor Knox White's proposal; the term "influencing" is overbroad and important to deal with as there are a lot of things that are not ill-intended that could fall under influencing.

Councilmember Oddie stated that he concurs with Councilmember Vella's comments; the issue is two and a half years old; he wants to frame his remarks about moving forward; he appreciates the language proposed by Vice Mayor Knox White, but wants to focus on what he thinks is the most important sentence in that the City Council may further implement the section by ordinance, resolution or its Rules of Conduct; the Code of Conduct needs to be brought back in order for the public to see the big picture; it outlines the levels of inquiry and discipline; keeping both together are critical to having the public understand that Council takes the issue seriously; implementing the recommendations of the Grand Jury in a way that improves City government is important; the Constitution exists to control the worst impulses of politicians; the Constitution has a due-process clause; one of the weaknesses in the alternative proposal is that there is a mechanism to remove someone just based on an accusation; he appreciates the statements made in the Jenkins report; quoted some of the language; stated an extra statutory recall provision is not appropriate; care needs to be taken in the future not to vest political power because there could be the tyranny of the majority; Council needs to protect the rights of any future Councilmember and the rights of their constituents; he looks forward to the Code of Conduct.

Mayor Ezzy Ashcraft stated that she concurs with Councilmembers Vella and Oddie and does not favor a recall election be a part of the modification; care should be taken to be non-partisan as possible; it should not be up to a City Council whether or not to pursue a special election; in addition to usurping the rights of voters to choose, special election costs need to be recognized; staying away from selective enforcement is important; she prefers a simpler and straight forward method of drafting regulations so it is easily understood and not ambiguous; addressed issues raised by public comment about the timing of the special meetings; stated direction was given to Council in July, 2019 at a public meeting with ample opportunity for public comment; the three Councilmembers who were able to vote accepted the findings of the Grand Jury and agreed to investigate and make amendments so the Charter delineates specific types of misconduct that constitute a violation, as well as outline an enforcement process; the Vice Mayor's proposed language changes do so; Council respects the right of the voters; Charter provisions need to be amended by a vote of the people; Council plans to meet in June to

decide and discuss timing; discussed the timing of reopening and Council moving forward with City business.

Councilmember Daysog stated if the District Attorney and Grand Jury substantiate allegations that a Councilmember exercised cronyism, people should be able to recall said Councilmember through a special election; he can see that he does not have the votes tonight for his mechanism; while he does not support Vice Mayor Knox White's language proposals, he does not oppose it either.

Mayor Ezzy Ashcraft stated that she fully respects Councilmember Daysog's right to decide how to vote on the matter; urged him to reconsider his position; stated he has been part of the Subcommittee tasked with making the changes to the Charter and she would like to see his support.

Vice Mayor Knox White moved approval of directing staff to come back in June with language that clarifies the Mayor is part of the City Council; he would like the City Attorney's guidance regarding the language, but starting with restructuring the sentence: "violation of any provision of this section by a member of the City Council shall be prosecuted as prescribed by State law, conviction of which shall immediately forfeit the office..."

In response to Mayor Ezzy Ashcraft inquiry regarding the sentence: "Neither the City Council nor any of the members shall give orders to any subordinate..." Vice Mayor Knox White stated he would leave the wording to the City Attorney.

Mayor Ezzy Ashcraft concurred.

Councilmember Vella stated she would like to second the motion; inquired whether Vice Mayor Knox White meant the item should come back to Council at the June meeting regarding the scheduling, to which Vice Mayor Knox White stated there are two meetings in June: one to decide how to move forward and the second for potential scheduling.

In response to Councilmember Vella's inquiry, Vice Mayor Knox White stated that he would like to bring the item back for both June meetings; concurred with Councilmember Daysog's desire to have an opportunity to consider everything at the first meeting and make a determination on whether to move forward at that point.

Councilmember Vella stated there is a consensus to support giving direction on the language tonight, which includes potentially placing it on a ballot; she wants to make sure that when the item comes back in June, tonight's conversation is not re-hashed and Council is really talking about timing, as opposed to the substance of the proposal.

The City Attorney stated that he would be happy to bring the Council ballot language whenever directed to do so; suggested doing so when the Council has made a final decision to go forward; stated bring ballot language to the Council in June may be premature, confusing and unnecessary prior to the Council deciding whether or not to

move forward; there is time if the Council decides to move forward for the November election, as action needs to be taken by the second meeting in July; assuming Council directs staff to draft ballot language in June, the language will be brought back to Council in July to amend, modify or place on the ballot.

Vice Mayor Knox White stated the City Attorney's statement is consistent with what he is proposing.

Councilmember Oddie stated that he is inclined to support direction to actually prepare the ballot language now since it is the original charge of the Subcommittee; the issue has been around for some time; he does not think Council should have a second vote to prepare language; he does not know why it would be an issue to place it on the ballot this year given it was the point of the Subcommittee; he supports bringing the language and the Council voting on it.

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated if the Council gives direction to bring ballot language, staff could bring it to Council at the second meeting in June or the first meeting in July.

Councilmember Vella stated that she would like to acknowledge staff's input about when to start preparing ballot language; she is fine with the current motion as is, provided at the first June meeting Council is not re-hashing tonight's conversation; what she is hearing from the Vice Mayor is that the only conversation is one about timing regarding the provision, which will happen at the second meeting in June; she is fine with it being on the November ballot, but hears her colleagues wanting to talk about other measures.

(20-301) Mayor Ezzy Ashcraft moved approval of adding three minutes to each Councilmember's time.

Councilmember Oddie seconded the motion, which carried by the following roll call vote: Councilmembers Daysog: Aye; Knox White: Aye; Oddie: Aye; Vella: Aye; and Mayor Ezzy Ashcraft: Aye. Ayes: 5.

Councilmember Vella stated she is amenable to whatever pathway forward that allows the Council to be as united as possible; if the timing conversation can be done together in conjunction with other provisions, she is fine with it taking place at the second meeting in June.

In response to Mayor Ezzy Ashcraft's inquiry, Councilmember Vella stated she is okay with having the item on the November ballot.

Mayor Ezzy Ashcraft stated that she is respectful of staff's time; she would like to give the direction Councilmember Vella and Councilmember Oddie seem to be saying could be done now, but does not want to hijack Vice Mayor Knox White's motion.

Vice Mayor Knox White stated Councilmember Vella's recommendation is consistent with his intent; he was not including Councilmember Oddie's recommendation to prepare the ballot language now and does not feel it is necessary; waiting until June to give staff direction was his intent, but he is fine with giving staff direction to prepare the ballot language now to bring back in July.

Councilmember Vella stated she would like to be considerate of Councilmember Daysog's recommendation and have the conversation in June; she supports wherever Council could move together in unanimous agreement; she knows that Councilmember Daysog may not be ready to support the direction and would like to hear from him.

Councilmember Daysog stated there is always a possibility of changing his mind; there are separate issues he would still like to pursue; he would like to get at a comfort level with the new language regarding enforcement; if Council moves forward with the language right now, he would like to know the parameters; he understands it cannot be fleshed out tonight; a wise move would be for him to abstain and have further discussion with the City Attorney and Vice Mayor Knox White.

Vice Mayor Knox White stated he could withdraw his motion.

Councilmember Vella restated Vice Mayor Knox White's motion: clarifying that the matter will come back at the second meeting in June relative to the conversation on timing; in the meantime staff could prepare ballot language and that Council would consider it; the motion includes the Vice Mayor's revised language and the inclusion of the term "Mayor."

In response to Mayor Ezzy Ashcraft's inquiry, the City Attorney stated that he understands Council would like to take one more look at the issue; in the meantime, Council would like staff to prepare ballot language to be brought to Council in July.

Councilmember Oddie seconded the motion, which carried by the following roll call vote: Councilmembers Daysog: Abstain; Knox White: Aye; Oddie: Aye; Vella: Aye; and Mayor Ezzy Ashcraft: Aye. Ayes: 4; Abstention: 1.

ADJOURNMENT

There being no further business, Mayor Ezzy Ashcraft adjourned the meeting at 6:59 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

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