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## CITY OF EMERYVILLE

### ACTION MINUTES

#### City Council

#### Members:

Dianne Martinez Mayor  
Scott Donahue Vice Mayor  
Jac Asher Council Member  
Ruth Atkin Council Member  
Nora Davis Council Member

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Tuesday, October 18, 2016

7:16 PM

Council Chambers

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#### 1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The meeting was called to order at 7:25 p.m.

#### 2. ROLL CALL

**Present:** 5 - Mayor Dianne Martinez  
Vice Mayor Scott Donahue  
Council Member Jac Asher  
Council Member Ruth Atkin  
Council Member Nora Davis

#### 3. SPECIAL ORDERS OF THE DAY

- 3.1. [ID-2016-593](#) Proclamation In Recognition Of Sharon Wilchar's Contributions To The Emeryville Community And Ongoing Efforts As An Artist And Arts Advocate On The Occasion Of The 30th Annual Emeryville Art Exhibition. (Charles S. Bryant / Chadrick Smalley / Amber Evans)

Ms. Wilchar was present to receive the proclamation and make brief comments.

#### 4. PUBLIC COMMENTS

1. Andre Carpiaux spoke regarding Ms. Wilchar's contributions.
2. Kate Freeman spoke in support of Council's opposition to the closure of Alta Bates Hospital Berkeley campus.
3. Kevin Wickham spoke in favor of the ECCL pool staying open for the winter season.

#### 5. CITY MANAGER'S REPORT

There was no report given.

## 6. EX PARTE COMMUNICATIONS

Ex parte communications were reported as follows:

Mayor Martinez disclosed her communications with various people regarding the Sherwin Williams project and the Fair Work Week ordinance.

Council Member Asher reported her contacts related to Sherwin Williams and Fair Work Week.

Vice Mayor Donahue stated he had met with many of the same individuals as had been previously mentioned, as well as management at several businesses.

Council Member Atkins said that she had not met with anyone additional, but had received information on employee benefits from Starbucks.

Council Member Davis reported that she had met with representatives associated with the Sherwin Williams project, as well as from EBASE.

## 7. CONSENT ITEMS

### *Approval of the Consent Agenda*

**A motion was made by Council Member Atkins, seconded by Council Member Davis, to approve the Consent Agenda. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkins, and Council Member Davis

- 7.1. [ID-2016-624](#) Warrants. (Susan Hsieh)

**A motion was made to accept this item.**

- 7.2. [ID-2016-614](#) Action Minutes of the September 20, 2016 Emeryville City Council/Management of Emeryville Services Authority Special Closed Session Meeting. (Sheri Hartz)

**A motion was made to approve the Minutes.**

- 7.3. [ID-2016-615](#) Action Minutes of the September 20, 2016 City Council Special Study Session. (Sheri Hartz)

**A motion was made to approve the Minutes.**

- 7.4. [ID-2016-618](#) Action Minutes of the September 20, 2016 Emeryville City Council

Meeting. (Sheri Hartz)

**A motion was made to approve the Minutes.**

- 7.5. [ID-2016-581](#) Resolution Of The City Council Of The City Of Emeryville Opposing The 2018 Closure Of Alta Bates Hospital. (Carolyn Lehr)

**A motion was made to approve this Resolution.**

Enactment No: 16-136

- 7.6. [ID-2016-605](#) Resolution Of The City Council Of The City Of Emeryville Appropriating \$1,802,269.68 From Fund 298 (Housing Assets Fund) In Order To Make Timely Debt Service Payments Due November 8, 2016 Pursuant To Promissory Notes Held By The Charles A. And Elizabeth C. Leone Living Trust And The Miriam N. Flynn Trust One UAD 10/5/2001, As Well As Payment To The State Franchise Tax Board, Which Notes Are Secured By Deeds Of Trust Encumbering 5890 And 5900 Christie Avenue, Emeryville, California. (Michael Guina)

**A motion was made to approve this Resolution.**

Enactment No: 16-137

- 7.7. [ID-2016-619](#) Resolution Of The City Council Of The City Of Emeryville Adopting Revised City Of Emeryville Records Retention Schedules For The Planning, Building, Economic Development & Housing, Human Resources, Community Services, Finance And Information Technology Departments And Authorizing The Destruction Of Records Per The Attached Retention Schedules Pursuant To Government Code Section 34090; And Authorizing Destruction Of Duplicate Records Pursuant To Government Code Section 34090.7 (Sheri Hartz / Nanci Lima)

**A motion was made to approve this Resolution.**

Enactment No: 16-138

- 7.8. [ID-2016-497](#) Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute Contract Number 900162 With the Alameda County Area Agency On Aging, For Fiscal Year 2016-2017 In the Amount Of \$27,620 And Appropriate Said Funds When Received To Account Number 5460-51100. (Pedro Jimenez / Brad Helfenberger)

**A motion was made to approve this Resolution.**

Enactment No: 16-139

- 7.9. [ID-2016-606](#) 8 to Go Paratransit Shuttle Service. (Pedro Jimenez / Brad Helfenberger)

- 7.9.1.**     [ID-2016-591](#)     Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The Paratransit Gap Cycle 5 Extension Grant Program Funding Agreement With The Alameda County Transportation Commission For Fiscal Year 2016-2017 In The Amount Of \$34,000 And Appropriate Said Funds When Received To Account 240-55320, And To Appropriate \$26,000 From Community Fund 203 To Account 240-55320 For Operations Of The 8 To Go Shuttle Service. (Pedro Jimenez / Brad Helfenberger)

**A motion was made to approve this Resolution.**

Enactment No: 16-140

- 7.9.2.**     [ID-2016-592](#)     Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The Sixth Amendment To The Paratransit Shuttle Service Agreement With The Emeryville Transportation Management Association (TMA) In An Amount Not To Exceed \$96,900. (Pedro Jimenez / Brad Helfenberger)

**A motion was made to approve this Resolution.**

Enactment No: 16-141

- 7.10.**     [ID-2016-583](#)     Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Contract With J.A. Gonsalves & Son Construction Inc. In An Amount Not To Exceed \$462,559.10 For The Construction Of The 2016 Street Rehabilitation Project, EPW 105-16 (CIP #15240027). (Maurice Kaufman)

Council Member Asher pulled Item 7.10. for separate consideration.

**A motion was made by Council Member Asher, seconded by Council Member Atkin, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-142

- 7.11.**     [ID-2016-586](#)     Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A First Amendment To The Professional Services Agreement With West Coast Code Consultants, Inc. Increasing The Contract Amount By \$125,000 To An Amount Not To Exceed \$500,000 For Public Works Construction Inspection Services Required For Various Capital Improvement Program And Encroachment Permit/Stormwater

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Permit Projects For Fiscal Year 2016-2017. (Maurice Kaufman)

**A motion was made to approve this Resolution.**

Enactment No: 16-143

- 7.12.**     [ID-2016-597](#)     Resolution Of The City Council Of The City Of Emeryville  
Authorizing The City Manager To Submit Applications In Response  
To The Alameda County Transportation Commission's Call For  
Project Nominations For Its 2018 Comprehensive Investment Plan.  
(Charles S. Bryant / Chadrick Smalley / Amber Evans)

Council Member Atkin pulled Item 7.12. for separate consideration.

**A motion was made by Council Member Davis, seconded by  
Council Member Asher, to approve as amended this Resolution.  
The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council  
Member Atkin, and Council Member Davis

Enactment No: 16-144

- 7.13.**     [ID-2016-628](#)     Second Reading of an Ordinance of the City Council of the City of  
Emeryville Adding Sections 08 through 10 of Chapter 2 of Title 1,  
Adding Chapter 7 of Title 1 of the Emeryville Municipal Code,  
"Administrative Citations and Summary Abatement" and  
Amending Section 5.37-07 of the Emeryville Municipal Code;  
CEQA Determination: Exempt Pursuant to Sections 15061(b)(3)  
and 15378(a). (Michael Guina / Andrea Visveshwara)

**A motion was made to approve this Ordinance.**

Enactment No: Ord. #16-005

- 7.14.**     [ID-2016-613](#)     Resolution Of The City Council Of The City Of Emeryville  
Authorizing The Mayor Of Emeryville To Sign A Letter Of Support  
For The 2016 Cal Youth Soccer Grant Application For Gilman  
Sports Fields. (Pedro Jimenez)

Council Member Atkin pulled Item 7.14. for separate consideration.

**A motion was made by Council Member Davis, seconded by  
Council Member Asher, to approve this Resolution. The motion  
carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council  
Member Atkin, and Council Member Davis

Enactment No: 16-145

- 7.15.**     [ID-2016-585](#)     Resolution Of The City Council Of The City Of Emeryville  
Authorizing The City Manager To Enter Into An Agreement With

KBA Docusys For The Lease Of Twelve Kyocera Multi-Function Printing Devices, Including All Service And Support For A Period Of Thirty-Six Months In The Amount Of Five Thousand, Five Hundred And One Dollars And Eighty Cents (\$5,501.80) Per Month Or One Hundred Ninety-Eight Thousand, Sixty-Four Dollars And Eighty Cents (\$198,064.80) Over The Course Of The Lease; And To Sign All Relevant And Necessary Documents Pertaining To The Execution Of The Lease. (Michael Parenti)

Enactment No: 16-146

## 8. PUBLIC HEARINGS

- 8.1. [ID-2016-601](#) Sherwin Williams Mixed Use Project. (Charles S. Bryant / Miroo Desai)

At 9:28 p.m., the Council took a brief recess and reconvened at 9:37 p.m.

Senior Planner Miroo Desai gave the staff presentation, followed by Kevin Ma, Lennar, and Ron Metzger, LPS Associates, who gave the applicant presentation.

The public hearing opening at 10:15 p.m.

1. Daniel Gregg spoke on behalf of Carpenters Union Local 713, in opposition of the project due to wages, no apprenticeship program and no local hire preference.
2. Donna Briskin, representing PARC, spoke in support of the project.
3. Joel Devalcourt spoke in favor of the project on behalf of Greenbelt Alliance.
4. Dave Campbell on behalf of Bike East Bay, spoke in support of the project.
5. Nina Rizzo, a Green Trip Planner with Transform, spoke in support of the project.
6. Ruth Major asked about whether migratory bird flight patterns and species attraction had been considered.
7. Brian Donahue spoke in opposition to the project.

The public hearing closed at 10:35 p.m.

- 8.1.1. [ID-2016-602](#) Resolution Of The City Council Of The City Of Emeryville Reviewing And Applying The Sherwin Williams Environmental Impact Report To The Sherwin Williams Development Project; Making Findings As Required By The California Environmental Quality Act (CEQA); And Adopting Mitigation Measures. (Charles Bryant / Miroo Desai)

**A motion was made by Council Member Davis, seconded by Council**

**Member Atkin, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-147

- 8.1.2.**     [ID-2016-603](#)     Resolution Of The City Council Of The City Of Emeryville Adopting A General Plan Amendment To Modify The Land Use Diagram (Figure 2-2) To Reflect The Proposed Relocation Of Park/Open Space And Mixed Use With Residential On The Sherwin Williams Project Site, And To Modify The Maximum Residential Densities Map (Figure 2-6) To Be Consistent With The Land Use Diagram. (Charles Bryant / Miroo Desai)

**A motion was made by Council Member Davis, seconded by Council Member Atkin, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-148

- 8.1.3.**     [ID-2016-604](#)     Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adopting A Planned Unit Development Zoning Designation And Approving A Preliminary Development Plan For The 10.05-Acre Sherwin Williams Project Site Bounded By Sherwin Avenue To The South, The Union Pacific Railroad Tracks To The West; Horton Street To The East, And Temescal Creek To The North (APNs 49-1041-26-15 And 16), And Adopting An Amendment To The Planning Regulations To Add The Sherwin Williams Mixed Use Project To The List Of Planned Unit Developments In Section 9-3.310. (Charles Bryant / Miroo Desai)

**A motion was made by Council Member Davis, seconded by Council Member Atkin, to read the Ordinance by title only. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

**A motion was made by Council Member Davis, seconded by Council Member Atkin, to approve the first reading of this Ordinance. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

- 8.2.**     [ID-2016-607](#)     Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 39 To Title 5 Of The Emeryville Municipal Code, "Fair Workweek Employment Standards",

And Amending Sections 3-1.108 And 3-1.141 Of Chapter 1 Of Title 3 Of The Emeryville Municipal Code, "Business Taxes". (Charles S. Bryant / Chadrick Smalley / Michael Guina)

Community and Economic Development Manager Chad Smalley gave the staff presentation.

The public hearing opened at 8:02 p.m.

1. Seema Patel spoke regarding San Francisco's experience with implementing a fair work week policy.
2. Manoj Tripathi spoke in favor of simplifying the ordinance, making it similar to San Francisco's.
3. John Van Geffen, Council Candidate, spoke in opposition to special interests taking over the City Council's agenda.
4. Steven Manlove spoke regarding Home Depot's scheduling practices and in support of a certification program.
5. Lionel Stevens, Home Depot manager, spoke regarding Home Depot's flexibility in scheduling and the advance notice provided.
6. Kelby Peeler spoke in support of the ordinance and against the certification program.
7. Gabrielle Doocha-Chambers spoke in favor of the ordinance and fair scheduling practices.
8. Joel Doocha-Chambers spoke in favor of advance scheduling and employee rights.
9. Moriah Larkins spoke in support of Option 2, and asked that there be no loopholes in the ordinance.
10. Manuel Carmoner spoke in support of the ordinance.
11. Ana Bibiano spoke in support of ordinance.
12. Rhonesha Victor spoke about the fair scheduling practices already in place at Ikea and supported passage of ordinance.
13. David Brazil spoke in support of the ordinance.
14. Bob Lane spoke in support of the ordinance.
15. Jennifer Lin spoke in support of the ordinance.
16. Jessica Lynam spoke on behalf of the California Restaurant Association, in opposition to grouping restaurants and retail together in the ordinance.
17. Janelle Mercurio spoke in support of Starbucks' scheduling practices and asked for reconsideration of some of the sections of the ordinance.
18. Catherine Finn stated that ordinance would hurt employees as scheduling changes are mostly initiated by staff members, not the employer.
19. Gary Jimenez spoke in support of the ordinance.
20. Emily Tricia spoke in support of the ordinance.
21. Angie Minetti spoke on behalf of California Retailers Association,



stating that many employers already comply by providing advance notice.

22. Ken Bukowski spoke in opposition to enacting this ordinance in isolation from Oakland and Berkeley.

23. Stevie Miles spoke in support of the ordinance.

24. Ashley Garcia spoke in support of the ordinance.

25. Brian Donahue spoke regarding special corporate interests.

26. Anna Savano spoke in support of Option 2 of the ordinance.

The public hearing closed at 8:48 p.m.

**A motion was made by Mayor Martinez, seconded by Council Member Asher, to read the Ordinance by title only. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkins, and Council Member Davis

**A motion was made by Council Member Asher, seconded by Council Member Atkins, to approve as amended the first reading of this Ordinance. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkins, and Council Member Davis

- 8.3. [ID-2016-584](#) Resolution Of The City Council Of The City Of Emeryville Amending the City of Emeryville Master Fee Schedule For Fiscal Year 2016-2017 Effective On October 21, 2016. (Maurice Kaufman)

Public Works Director Maurice Kaufman gave a brief staff presentation.

The public hearing opened at 10:51 p.m.

Brian Donahue spoke regarding the previous item.

The public hearing closed at 10:53 p.m.

**A motion was made by Council Member Davis, seconded by Council Member Asher, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkins, and Council Member Davis

Enactment No: 16-149

## 9. ACTION ITEMS

- 9.1. [ID-2016-582](#) Third Quarter Council Goals Update

The Item was for information only. There was no action taken.

- 9.2. [ID-2016-587](#) Committee Appointments To Budget Advisory Committee, Commission On Aging And Economic Development Advisory Committee, And Amending The FY2016-17 Local Roster Of Boards, Commission And Committees. (Sheri Hartz / Lorraine Leong)
- A motion was made by Council Member Davis, seconded by Council Member Asher, to approve Items 9.3, 9.4 and 9.5, below. The motion carried by the following vote:**
- Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis
- 9.3. [ID-2016-588](#) Resolution Of The City Council Of The City Of Emeryville Appointing Ossee Demangles As The City Labor Representative To Serve On The Budget Advisory Committee For A Term Effective October 18, 2016, And Ending June 30, 2017, And Amending The FY2016-2017 Local Roster Of Boards, Commissions And Committees Accordingly. (Sheri Hartz / Lorraine Leong)
- Enactment No: 16-150
- 9.4. [ID-2016-589](#) Resolution Of The City Council Of The City Of Emeryville Appointing Yvonne Behrens And Joyce Jacobson To Serve On The Commission On Aging For Terms Effective October 18, 2016, And Ending June 30, 2018, And Amending The FY2016-2017 Local Roster Of Boards, Commissions And Committees Accordingly. (Sheri Hartz / Lorraine Leong)
- Enactment No: 16-1581
- 9.5. [ID-2016-590](#) Resolution Of The City Council Of The City Of Emeryville Appointing Ruslana Golunova As The Small Business Representative And Laurel Wagoner As The Business Representative Of Any Size, To Serve On The Economic Development Advisory Committee For Terms Effective October 18, 2016, And Ending June 30, 2017, Amending The Committee Meeting Frequency To Every Two Months, And Amending The FY2016-2017 Local Roster Of Boards, Commissions And Committees Accordingly. (Sheri Hartz / Lorraine Leong)
- Enactment No: 16-152
- 9.6. [ID-2016-596](#) Resolution Of The City Council Of The City Of Emeryville Approving Artists Mari Andrews, Sofia Cordova, Heather Deyling, Joseph Kosdrosky, Tatiana Mak And Kevin Wickham, And Alternate Artists Kim Harrington And Christina Aguila For The Bus Shelter Temporary Art Program - Phase IV And Authorizing The City Manager To Execute Agreements With The Approved Artists For Final Design Of The Art Works In Amounts Not To Exceed \$4,000 For Each Artist. (Charles S. Bryant / Chadrick Smalley / Amber Evans)

**A motion was made by Council Member Davis, seconded by Mayor Martinez, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-153

- 9.7.**      [ID-2016-594](#)      Resolution Of The City Council Of The City Of Emeryville Approving The Purchase Of Artwork For The City's Annual Purchase Award Program Entitled "Valley Ford Ranch and Road" By Emeryville Artist Paul Oikawa And Appropriating \$6,000 (Six Thousand Dollars) From The Public Art Fund (Fund 243) To Fund The Purchase, And Installation Of The Artwork. (Charles S. Bryant / Chadrick Smalley / Amber Evans)

**A motion was made by Council Member Davis to approve this Resolution, but failed for lack of a second.**

**A sub-motion was made by Mayor Martinez, seconded by Council Member Asher, to approve as amended this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-154

- 9.8.**      [ID-2016-611](#)      Informational Report On East Bay Community Energy Authority Joint Powers Agreement. (Michael Guina / Nancy Humphrey)

City Attorney Michael Guina, along with representatives from Alameda County Albert Lopez, Tom Kelly and Mark Fullmer, gave a presentation on this informational item.

There was no action taken.

**At 11:21 p.m., Council Member Atkin made a motion to adjourn the meeting at 11:30 p.m. and continue the remaining items until October 25, 2016. The motion failed for lack of a second.**

**A motion by Council Member Davis, seconded by Council Member Asher to continue the meeting past 11:30 p.m. and hear the remaining agenda items.**

**Ayes: 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin and Council Member Davis**

- 9.9.**      [ID-2016-600](#)      Resolution Of The City Council Of The City Of Emeryville Approving And Consenting To An Amended And Restated Agreement Of Employment Between The Management Of Emeryville Services Authority And Michael Guina As City Attorney For A Two Year Period Commencing July 1, 2016, And Terminating June 30, 2018. (Michael Guina)

**A motion was made by Council Member Davis, seconded by Council Member Atkin, to approve this Resolution. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

Enactment No: 16-155

- 9.10.**      [ID-2016-612](#)      Consideration Of Proposed Cancellation Of October 25, 2016 Regular City Council Meeting. (Carolyn Lehr / Sheri Hartz)

**A motion was made by Council Member Davis, seconded by Council Member Asher, to approve this Other Item. The motion carried by the following vote:**

**Ayes:** 5 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, Council Member Atkin, and Council Member Davis

## **10. CITY AS HOUSING SUCCESSOR**

## **11. COMMUNICATION AND REPORTS**

### ***11.1. Department Heads***

### ***11.2. Council Members***

Mayor Martinez announced that Former City employee Kevin Lavin had sent a birth announcement for his new baby.

Council Member Asher reported on a documentary entitled "Getting Ahead", where Emeryville was featured.

### ***11.3. Council Members Reporting on Meetings Attended***

Mayor Martinez reported that she had attended the League of California Cities Conference along with City Manager Carolyn Lehr.

## **12. COMMUNITY ADVISORY BODY VACANCIES**

## **13. ADJOURNMENT**

The meeting adjourned at 11:34 p.m.