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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

Tuesday, November 1, 2016

7:16 PM

Council Chambers

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

The meeting was called to order at 7:27 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-2016-680](#) Presentation From The Berkeley FILM Foundation Regarding A Grant Program for Indie Film Makers. (David Bergad)

Abby Ginzberg, Berkeley FILM Foundation Board President, gave a brief presentation on the Foundation's efforts.

4. PUBLIC COMMENTS

1. Rob Arias spoke regarding the tragic pedestrian fatality earlier in the day.
2. Brian Donahue spoke in opposition to approval of the second reading of the Sherwin Williams ordinance
3. Judy Timmel also spoke in opposition to the Sherwin Williams project approval.

5. CITY MANAGER'S REPORT

There was no report given.

6. EX PARTE COMMUNICATIONS

Council Member Davis reported that she had communicated with Mary Murtagh from EAH and two of her associates, as well as Berkeley Mayor Tom Bates regarding Gilman Fields.

Council Member Atkin disclosed that she had also communicated with representatives from EAH.

Mayor Martinez stated that, along with EAH, she had also communicated with the Emeryville Marina Harbormaster and the owner of Prop regarding the private ferry proposal, and with Mayor Bates.

Vice Mayor Donahue reported he had also communicated with EAH, as well as Gabrielle Holland from SEIU, and Mayor Bates.

Council Member Asher stated that she, too, had communicated with EAH, as well as the owner of Prop, and had received a message from Mayor Bates.

7. CONSENT ITEMS

Approval of the Consent Agenda

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

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

- 7.1. [ID-2016-665](#) Warrants. (Susan Hsieh)

A motion was made to accept this item.

- 7.2. [ID-2016-672](#) Action Minutes of the October 18, 2016 Emeryville City Council Special Closed Session Meeting. (Sheri Hartz)

A motion was made to approve the Minutes.

- 7.3. [ID-2016-674](#) Action Minutes of the October 18, 2016 City Council Special Study Session. (Sheri Hartz)

A motion was made to approve the Minutes.

- 7.4. [ID-2016-676](#) Action Minutes of the October 18, 2016 Emeryville City Council Regular Meeting. (Sheri Hartz)

A motion was made to approve the Minutes.

- 7.5. [ID-2016-652](#) Second 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 On 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 S. Bryant / Miroo Desai)

Vice Mayor Donahue pulled Item 7.5 for separate consideration.

Kevin Ma, Lennar, addressed Vice Mayor Donahue's questions regarding non-formula neighborhood serving retail.

A motion was made by Council Member Davis, seconded by Council Member Atkin, to approve the second reading of this Ordinance.

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

Enactment No: 16-006

- 7.6. [ID-2016-655](#) Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Memorandum Of Understanding With The City Of Oakland For The Operation Of A Winter Shelter In The City Of Oakland For The Accommodation Of Up To 75 Persons For The Period November 14, 2016 Through April 17, 2017 In An Amount Not To Exceed \$30,000. (Charles S. Bryant / Chadrick Smalley / Catherine Firpo)

A motion was made to approve this Resolution.

Enactment No: 16-156

- 7.7. [ID-2016-670](#) Resolution Of The City Council Of The City Of Emeryville Adopting The Revised City Of Emeryville Records Retention Schedules For Public Works, And Authorizing The Destruction Of Records Per The Attached Retention Schedules. (Sheri Hartz / Lorrayne Leong)

A motion was made to approve this Resolution.

Enactment No: 16-157

- 7.8. [ID-2016-626](#) Annual Development Impact Fee Report - Fiscal Year 2015-2016 (Charles S. Bryant)

Vice Mayor Donahue pulled Item 7.8 for separate consideration.

A motion was made by Vice Mayor Donahue, seconded by Council Member Asher, to accept this Informational Report.

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

- 7.9. [ID-2016-657](#) Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Fifth Amendment To The Professional Services Agreement With LSA Associates To Increase The Maximum Compensation By \$5,000 For A Total Amount Not To Exceed \$416,300 For Environmental Analysis Of The Proposed Sherwin Williams Mixed Use Project (Charles S. Bryant / Miroo Desai)

A motion was made to approve this Resolution.

Enactment No: 16-158

8. PUBLIC HEARINGS

No Public Hearings were scheduled.

9. ACTION ITEMS

- 9.1. [ID-2016-671](#) Discussion and Consideration of the Operation of Private Ferry Service at the Emeryville Marina. (Michael Guina / Andrea Visveshwara / Maurice Kaufman)

Assistant City Attorney Visveshwara gave the staff presentation.

PUBLIC COMMENT

1. Ron Freund spoke in opposition to the process by which the ferry began service but supported the service in concept.
2. Fran Quitell, Watergate resident, spoke in support of impacts to marina being adequately studied.
3. Louise Engel spoke in support of the operators of the proposed ferry service.
4. James Jaber, CEO of Prop, spoke about the project.
5. Harbormaster Michelle Shadows responded to Council questions.

Mayor Martinez directed staff to bring an informational item forward after the new Council was seated.

- 9.2. [ID-2016-651](#) Second 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 3-11.08 And 3-1.141 Of Chapter 1 Of Title 3 Of The

Emeryville Municipal Code, "Business Taxes" (Charles S. Bryant / Chadrick Smalley / Michael Guina)

Mayor Martinez directed that Public Comment would be taken first, and that each speaker would be allotted one minute to express their views.

PUBLIC COMMENT

Speakers in Support of Ordinance Adoption:

1. David Brazil
2. Jim Araby
3. Stevie Miles
4. Kelby Peeler
5. Anya Svanoe
6. Monique Hendrix
7. Moriah Larkins
8. Saul Sandoval
9. Zamorie Lovett
10. Cynthia Nucamendi
11. Julio Payes
12. Rhonesha Victor
13. Jennifer Lin
14. Judy Timmel
15. Kyle Beauford
16. Ruth Major
17. Bill Reuter
18. Ilana Master

Speakers Opposed to Ordinance as Proposed:

1. Jessica Lynam, California Restaurant Association
2. Marilyn Boucher

A motion was made by Council Member Atkin, seconded by Council Member Asher, to approve the second reading of the Ordinance.

A Substitute Motion by Council Member Davis to adopt "Alternative C" as described in the staff report. Motion failed for lack of a second.

The original motion carried by the following vote:

Ayes: 4 - Mayor Martinez, Vice Mayor Donahue, Council Member Asher, and Council Member Atkin

Noes: 1 - Council Member Davis

Enactment No: 16-007

- 9.3. [ID-2016-658](#) Adoption of 2016 California Building Standards Code and Local Amendments. (Charles S. Bryant / Victor Gonzales / Bonnie Terra)

- 9.3.1. [ID-2016-659](#) Introduction and First Reading of An Ordinance Of The City Council Of The City Of Emeryville Repealing Chapters 1, 1A, 2, 3, 4, 5, 7, 8, And 19 Of Title 8 Of The Emeryville Municipal Code, Renumbering Chapters 9 Through 22 Of Title 8 Of The Emeryville Municipal Code, Renumbering And Amending Chapter 6 Of Title 8 Of The Emeryville Municipal Code, And Adopting New Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9 And 10 Of Title 8 Of The Emeryville Municipal Code, Entitled "Building Regulations", And Making Required Findings Relating To The Adoption And Amendment Of The California Building Standards Code

A motion was made by Council Member Davis, seconded by Council Member Asher, to read the Ordinance by title only.

The City Attorney read the ordinance title.

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 Asher, to approve the first reading of the 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

- 9.3.2. [ID-2016-660](#) Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Repealing Chapter 5 Of Title 4 Of The Emeryville Municipal Code And Adopting A New Chapter 5 Of Title 4 Of The Emeryville Municipal Code, Entitled "Fire Code" And Making Required Findings Relating To The Adoption And Amendment Of The California Building Standards Code

A motion was made by Council Member Davis, seconded by Council Member Atkin, to read the Ordinance by title only.

The City Attorney read the ordinance title.

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 Asher, to approve the first reading of the 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

- 9.4.** [ID-2016-653](#) Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 40 To Title 5 Of The Emeryville Municipal Code, "Residential Landlord and Tenant Relations" (Charles S. Bryant / Chadrick Smalley / Catherine Firpo)
- Community Development and Economic Development Coordinator Catherine Firpo gave the staff presentation and responded to Council questions.

PUBLIC COMMENT

1. Peter Schnack spoke in support of some tenant protections, but objected to property owners being penalized if they wanted to move into their property, remodel it or sell it.
2. Melissa Colon supported the ordinance.
3. Marc Janowitz spoke in support of the ordinance.
4. Thomas Brown spoke in support of modifying the ordinance to include the desire of owners and their families to occupy their own property as a just cause for eviction.
5. Woody Clint spoke in opposition to the ordinance on the grounds that it discriminates against landlords and senior citizens.
6. Monique Ngyuen spoke in opposition to the requirement that owners pay tenants' expenses if the owner wishes to move back into their own home.
7. William Sievers spoke in opposition to the ordinance and its restrictions on owners.
8. Manny Belamide spoke in opposition to the ordinance.
9. Jeffrey De Puy spoke in opposition to the ordinance.
10. Dr. Christian Patz spoke in support of the ordinance.
11. Bernice Thorstenson spoke in opposition of the ordinance.
12. Robert Higginbotham spoke in opposition to some of the components of the ordinance.
13. Luigi Bonacini spoke in support of expediting process when evictions do occur and objected to some aspects of the ordinance.
14. Ryan Overbeck spoke in opposition to the impacts to owners of the ordinance.
15. John Bauters spoke in support of the ordinance.

Following Council discussion and questions, the Mayor allowed the following members of the public to ask additional questions or make clarifying comments:

Thomas Brown
Peter Schnack
Monique Ngyuen
Manny Bellamide
Marc Janowitz
Luigi Bonacini
William Sievers
Jeffrey De Puy
Woody Clint
Melissa Colon

A motion was made by Council Member Atkin, 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 Atkin, and Council Member Davis

Council deliberation ensued, and it was determined that the changes to the ordinance the Council Members proposed were too extensive to incorporate at this meeting. It was determined that the item would come back for a new first reading at Council's November 15, 2016 meeting.

9.5. [ID-2016-667](#) Authorization Of Community Choice Aggregation For The City Of Emeryville. (Michael Guina)

City Attorney Guina gave a brief staff presentation before introducing Tom Kelly from the County.

9.5.1. [ID-2016-668](#) Ordinance Of The City Council Of The City Of Emeryville Authorizing The Implementation Of A Community Choice Aggregation Program Pursuant To California Public Utilities Code Section 366.2

A motion was made by Council Member Atkin, seconded by Council Member Davis, to read the Ordinance by title only.

The City Attorney read the ordinance title.

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 Atkin, seconded by Council Member Davis, 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

9.5.2. [ID-2016-669](#) Resolution Of The City Council Of The City Of Emeryville Accepting The Technical Study For A Community Choice Aggregation (CCA) Program In Alameda County; and Approving The East Bay

Community Energy Authority Joint Powers Agreement And Authorizing The City Manager To Execute Said Agreement.

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: 16-159

- 9.6.** [ID-2016-662](#) Senior Center Renovations, EPW 102-15, Project Completion.
(Maurice Kaufman)

- 9.6.1.** [ID-2016-663](#) Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Third Amendment To The Construction Contract With Southland Construction Management, Inc. Increasing The Contract Amount By \$86,077.84 To An Amount Not To Exceed \$2,372,127.84 For The Senior Center Renovations, Project No EPW 102-15 (CIP # 14650011) And Appropriating \$86,077.84 From The General Capital Fund 475 CIP Implementation Reserve To Said Project. (Maurice Kaufman)

A motion was made by Council Member Atkin, seconded by Council Member Davis, 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: 16-160

- 9.6.2.** [ID-2016-664](#) Resolution Of The City Council Of The City Of Emeryville Accepting The Senior Center Renovations, Project No. EPW 102-15 (CIP # 14650011) As Complete And Authorizing The City Engineer To File A Notice Of Completion For Said Project With The Alameda County Clerk. (Maurice Kaufman)

A motion was made by Council Member Atkin, seconded by Council Member Davis, 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: 16-161

- 9.7.** [ID-2016-673](#) City Council Discussion On Financial Support For The Gilman Sports Fields Grant Application. (Pedro Jimenez / Council Member Nora Davis)

Mayor Martinez requested that edits be made to the final paragraph of

the letter, suggesting that it mention an aggregate contribution amount for all of the cities combined.

10. COMMUNICATION AND REPORTS

10.1. Department Heads

10.1.1. [ID-2016-650](#) Planning Director's report on Planning Commission actions at the October 27, 2016 meeting:

- (a) Cellular Facility on Existing Streetlight Pole - Proposal to install a new wireless telecommunication facility on an existing City streetlight pole in the Powell Street public right-of-way near the intersection of Christie Avenue, adjacent to 5795 Christie Avenue.*
- (b) Grifols Signs - Proposal for three illuminated wall signs at 5350 Horton Street.*
- (c) 4-Plex Expansion - A second study session to review a proposal to add below grade parking and additional floor area to an existing four unit residential building at 1271 64th Street.
- (d) Demolition of PG&E Building G - A study session to review a proposal to demolish a 17,000 square foot building at the southwest corner of Hollis and 45th Streets that is designated as a Significant Structure.**

* Item subject to "call for review" (i.e. appeal) by motion of the City Council pursuant to Section 9-7.1406 of the Planning Regulations.

** Item will require City Council approval.

The packet for the October 27, 2016 Planning Commission meeting can be viewed online at

<http://ca-emeryville.civicplus.com/Archive.aspx?AMID=43&Type=Recent>

Community Development Director Bryant gave the report.

10.2. Council Members

Mayor Martinez asked for information on the tragic traffic accident that had occurred earlier in the day and requested that a report come back to Council on what might be done to improve safety at that intersection.

Council Member Davis requested that the Parks Committee review the PG&E building to assess the possibility of putting a park there.

10.3. Council Members Reporting on Meetings Attended

Mayor Martinez reported that Stop Waste had conducted the second reading for expanding the plastic bag ordinance.

11. COMMUNITY ADVISORY BODY VACANCIES

12. ADJOURNMENT

The meeting adjourned at 10:21 p.m.

PASSED, Approved and Adopted

this ____ day of ____, 2016

Sheri Hartz, City Clerk/Secretary