

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY- -OCTOBER 7, 2008- -7:30 P.M.

Mayor Johnson convened the Regular Meeting at 7:47 p.m.

ROLL CALL - Present: Councilmembers deHaan, Gilmore,  
Matarrese, Tam, and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

(08-414) Mayor Johnson announced that the National Business Women's Week proclamation [paragraph no. 08-415]; Disability Awareness Month proclamation [paragraph no. 08-416]; and Resolutions of Reappointment and Appointment [paragraph nos. 08-417 and 08-15A] would be heard first.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(08-415) Proclamation declaring October 19 through 25, 2008 as National Business Women's Week.

Mayor Johnson read and presented the proclamation to JoAnn Ainsworth, President of Isle City Business and Professional Women.

Ms. Ainsworth thanked Council for the proclamation; presented a basket of pink ribbons in recognition of Breast Cancer Awareness Month.

(08-416) Proclamation declaring October as Disability Awareness Month.

Mayor Johnson read and presented the proclamation to Commission on Disabilities Chair Jodie Moore, and Commissioner Robbie Krietz.

Ms. Moore thanked Council for the proclamation; invited Council to attend a tree planning ceremony on November 8, 2008, at Lincoln Park.

REGULAR AGENDA ITEMS

(08-417) Resolution No. 14270, "Reappointing Harry Dahlberg as a Member of the Economic Development Commission (Manufacturing / Industrial Seat)." Adopted; and

(08-417A) Resolution No. 14271, "Appointing Maggie Mei as a Member of the Youth Advisory Commission." Adopted.

Councilmember Matarrese moved adoption of the resolutions.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5.

The City Clerk administered the Oath of Office and presented Mr. Dahlberg with a certificate of reappointment.

Mr. Dahlberg stated that he is honored to be reappointed to the Economic Development Commission; stated the City has seen the completion of a number of major development projects; the community has a sense of excitement and the City's future is full of hope.

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Mayor Johnson called a recess at 8:02 p.m. and reconvened the Regular City Council meeting at 11:18 p.m.

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#### CONSENT CALENDAR

Mayor Johnson announced that the Minutes [paragraph no. 08-418] were removed from the Consent Calendar for discussion.

Councilmember Matarrese moved approval of the remainder of the Consent Calendar.

Vice Mayor Tam seconded the motion, which carried by unanimous voice vote - 5. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(08-418) Minutes of the Special and Regular City Council Meetings held on September 16, 2008; the Special Joint City Council and Public Utilities Board Meeting held on September 30, 2008; and the Special City Council Meeting held on October 1, 2008.

Councilmember Gilmore stated that Page 14 should read "...two stores each up to 60,000 square feet."

Councilmember Gilmore moved approval of the minutes with said correction.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5.

(\*08-419) Ratified bills in the amount of \$4,327,773.86.

(\*08-420) Recommendation to accept the Bayport Phase 2 public

backbone infrastructure, stormwater treatment pond improvements, and authorize the City Clerk to record a Notice of Completion for the improvements. Accepted.

(\*08-421) Recommendation to award Contract in the amount of \$234,598, including contingencies, to A-Plus Tree Service, for pruning of City trees for Fiscal Year ending June 30, 2009, No. P.W. 07-08-20. Accepted.

(\*08-422) Recommendation to award Contract in the amount of \$160,990, including contingencies, to Schaaf & Wheeler Consulting Civil Engineers, for assessment of the City of Alameda Sewer Pump Stations, No. P.W. 06-08-16. Accepted.

(\*08-423) Resolution No. 14272, "Readopting the City of Alameda's Bicycle Master Plan." Adopted.

(\*08-424) Resolution No. 14273, "Supporting the FOCUS Priority Development Area Application for Alameda Point." Adopted.

(\*08-425) Ordinance No. 2983, "Approving Master Plan Amendment, PLN08-0181, Adjusting Lot Sizes Within the Grand Marina Village Master Plan." Finally passed.

(\*08-426) Ordinance No. 2984, "Amending Various Sections of the Alameda Municipal Code Contained in Article I (Zoning Districts and Regulations) of Chapter XXX (Development Regulations) to Prohibit Single Retail Stores Larger than 90,000 Square Feet in Size that Include More Than Ten-Percent Sales Floor Area Devoted to Non-taxable Merchandise." Finally passed.

#### CITY MANAGER COMMUNICATIONS

(\*08-427) Update on budget status and discussion of potential cuts.

The City Manager provided a Power Point presentation.

Mayor Johnson stated the State budget is not balanced; the State carried over a \$15.5 billion shortfall.

The City Manager stated the State has a cash flow and projection problem.

Mayor Johnson inquired whether having departments cut back an additional 5% would be enough, to which the City Manager responded a 5% cut is a starting point.

Mayor Johnson stated a 5% cut is very optimistic; the projected \$700,000 deficit for this year needs to be addressed.

The City Manager stated that the budget would need to be reviewed continually.

Mayor Johnson stated Council would be receiving recommendations on contributions to Other Post Employee Benefits (OPEB) from the Economic Sustainability Committee; the public needs to understand that the City Manager will be proposing a package of cuts at the next City Council meeting; Council would like to have public input on the matter.

Councilmember Gilmore stated cities cannot run a deficit; a balanced budget is needed; inquired whether the State can come back after Proposition 1A money in the 2009-2010 budget cycle.

The City Manager responded the State could go after Proposition 1A money this year.

Councilmember deHaan stated the State could be looking at transportation funding also.

Vice Mayor Tam stated the Governor could reopen the budget because of credit market tightening and the State's inability to qualify for a huge loan.

Councilmember deHaan stated the City projected an approximate \$5 million shortfall when the last budget was passed; changes have occurred; Council discussed the American Insurance Group's [AIG] situation; inquired whether there are other areas of concern.

The City Manager stated that she asked the Chief Finance Director and City Treasurer about the matter; the City Treasurer assured her that the City is properly invested.

Councilmember deHaan inquired whether the budget includes any pay raises.

The City Manager responded that the budget does not assume any pay increases that have not been negotiated; stated property reassessments will be monitored continually.

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(08-428) Councilmember Matarrese moved approval of continuing the meeting past midnight.

Councilmember deHaan seconded the motion, which carried by

unanimous voice vote - 5.

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Councilmember Matarrese stated proposed cuts would be brought to Council on October 21<sup>st</sup>; he would like Council to consider policies because the depth of the cuts will depend on whether Measure P passes.

The City Manager stated that the budget does not take into account Measure P passing.

Councilmember Matarrese stated he would like to review ways to change the structure of the City's service system to flatten the organization so that top management has more responsibilities with fewer people; some cities have a Director for public safety; consolidating recreation programs and Library services should be reviewed; professional services could be outsourced; Council should look at concentric circles for prioritizing the most effective uses of tax dollars to preserve health and safety and value in the City.

Mayor Johnson stated private organization funding should be reviewed; the City is paying \$50,000 [per year] to the Alameda Museum; public money needs to be spent in areas where the public gets the most benefit; the City Manager needs to provide Council with different recommendations for OPEB funding; one budget proposal could address the Economic Sustainability Committee recommendation for \$4.5 million.

Councilmember deHaan stated the City usually has a two-year budget; recovery will be very slow; out years need to be discussed; the City needs to live with a three or four year budget forecast.

Mayor Johnson stated the public needs to know that difficult cuts will need to be made even if Measure P passes.

(08-429) Public Hearing to consider an appeal of Planning Board decision to certify the adequacy of the Alameda Towne Centre Expansion Project Environmental Impact Report and to approve the Sign Program, permitted hours of operation, and outdoor uses for Planned Development Amendment PDA05-0004 and Major Design Review DR05-0073;

(08-429A) Resolution No. 14274, "Approving the Environmental Impact Report and Upholding the Planning Board Decision." Adopted; and

(08-429B) Resolution No. 14275, "Denying the Appeal of the August 11, 2008, Planning Board Decision to Approve the Hours of Operation and Outdoor Uses for Planned Development Amendment PDA 05-0004 and Major Design Review DR05-0073." Adopted.

The Supervising Planner gave a brief presentation.

Councilmember deHaan inquired whether the project was 545,000 square feet originally, to which the Supervising Planner responded in the affirmative.

Councilmember deHaan stated the square footage increased by 112,000 square feet; Target would have increased the square footage by an additional 49,000 square feet; inquired whether the square footage was included in the Environmental Impact Report for Target.

The Supervising Planner responded the EIR specifically addressed the change from 657,000 square feet up to 706,000 square feet and included the 49,000 square feet; stated full build-out impacts have been discussed.

Councilmember deHaan inquired whether the 49,000 square feet has been approved.

The Supervising Planner responded the 49,000 square feet has not been addressed to date; stated the matter is before the Planning Board.

Councilmember deHaan stated a parking structure was discussed during the Target era; inquired whether double deck parking was discussed for the Mervyn's site.

The Supervising Planner responded the issue was discussed after Target left; stated some of the square footage was shifted to Mervyn's.

Councilmember deHaan inquired how the issue fits into tonight's discussion.

The Supervising Planner responded that the most recent plan, which includes Kohl's, proposes a shopping center for up to approximately to 681,000 square feet which would require construction of a parking structure.

Councilmember deHaan inquired whether 680,000 square feet is the breaking point [for a parking structure], to which the Supervising Planner responded the breaking point would be before reaching 680,000 square feet.

Mayor Johnson opened the public portion of the hearing.

Proponents (In favor of Appeal): Eugenie Thomson, Appellant; Brenda

Benner; Alameda; Joel Ramband, Alameda; Colin Stermer, Alameda; Claire Risley, Alameda; Christine Healey, Alameda (submitted handout); Holly Sellers, Alameda; Michael Radding, Alameda; Janet Libby, Alameda; Kurt Libby, Alameda.

There being no further speakers, Mayor Johnson closed the public portion of the hearing.

Following Ms. Thomson's comments, Vice Mayor Tam inquired whether Ms. Thomson is being compensated for her services, to which Ms. Thomson responded she is providing pro bono services.

Vice Mayor Tam stated the Alameda Towne Center study projects traffic levels up to 40 percent higher than projected in the EIR; inquired whether Ms. Thomson thinks that a lower amount of traffic should be assumed.

Ms. Thomson responded in the negative; stated that she was referring to peer review by Dowling Associates which indicates that the traffic study for future years is conservative because traffic would be 40% higher in the a.m. and 50% higher in the p.m. than what the Transportation Element amendment shows; the Transportation Element numbers are the same as the 2004 counts.

Councilmember Gilmore requested clarification on 2003 traffic counts versus 2005 traffic counts.

Ms. Thomson stated a combination of 2002 and 2005 traffic counts were used for the 2006 draft EIR; the shopping center has been dynamic and has been under construction since 2003; 2002 traffic counts were used for all Otis Drive intersections and 2005 traffic counts were used for all other locations; she received sales tax information from Councilmember deHaan and the Finance Department which illustrates that sales were down 20% in 2002 and 30% in 2005; both years had low occupancy or low sales; occupancy should have been checked and the base should have been increased because of lack of activity.

Councilmember Gilmore inquired whether there would be a larger delta of traffic if the baseline were artificially low.

Ms. Thomson responded the delta never changes; stated the delta is due to the shopping center producing trips and other projects [within the City] producing trips; counts are never done in areas of high vacancy or poor sales; the shopping center was not doing well in 2002.

Councilmember Gilmore stated the accurate baseline would have been

higher if the shopping center was doing well and built out; the impact would be less; the delta would be less if the shopping center is doing well as opposed to doing poorly; more traffic would be generated if the shopping center is doing well, and the change in traffic is less; higher impacts would be realized by starting artificially low because there would be a bigger delta.

Ms. Thomson stated the delta is the increase; a 112,000 square foot increase would generate 250 trips; the existing shopping center is not operating at 545,000 square feet, but at 475,000 square feet or 450,000 square feet.

Vice Mayor Tam stated the adequacy of the EIR is being evaluated tonight; an EIR reviews a base level and worst-case action level and identifies impacts.

The Supervising Planner stated the sales tax table looks at aggregated sales tax data for different sectors from 2003 and 2005; there can only be one highest year; sales tax would be down for all other years.

Peter Galloway, Omni-Means, stated shopping center activity is not as robust as the 545,000 square feet would suggest; said information was not available when counts were done; he feels that Omni-Means' counts are fairly accurate; Omni-Means took the existing base square footage to calculate trips and calculated trips for the proposed square footage using shopping center rates; driveway rates were not used because Omni-Means cannot account for trips coming in and out of the Post Office or restaurants that are not part of the shopping center; the Institute of Transportation Engineers (ITE) shopping center rates were used after reviewing the matter with the Public Works Department.

Councilmember Matarrese inquired whether the full build out rate was a calculation projected using the number of trips for shopping centers based on square foot of retail shopping centers, to which Mr. Galloway responded in the affirmative.

Councilmember Matarrese inquired whether the number is theoretical and remains the same whether the baseline is based on a conservative projection of not being a fully occupied or robust shopping center and is based on the square footage of the shopping center using the same criteria to peg the top number, to which Mr. Galloway responded in the affirmative.

Councilmember Gilmore inquired whether the two to one lane drop was analyzed.



Mr. Galloway responded all calculations reflect correct lane geometries; stated Highway Capacity Manual 2000 (HCM 2000) methodology was used and is very sensitive to signal cycling and lane designations.

Councilmember deHaan inquired how the occupied square footage is taken into consideration.

Mr. Galloway responded the amount of occupied space is provided.

Councilmember deHaan inquired what is the amount of occupied space, to which Mr. Galloway responded 545,000 square feet.

Vice Mayor Tam stated Omni-Means' traffic study was peer reviewed by Dowling Associates; the traffic study looked at trips generated for 545,000 square feet in addition to 706,650 full build out trip generation; an impact comparison was made for the increased trip generation; the peer review noted that projected intersection traffic levels were up to 40% higher than expected; inquired whether the increase was a result of projections made.

Mr. Galloway responded the Public Works Department wanted to use a one-half percentage per year [increase] and added in the northern waterfront plan trips.

Vice Mayor Tam inquired whether there would be less traffic in reality in need of mitigation as a result of using a more conservative estimate, to which Mr. Galloway responded in the affirmative.

Councilmember deHaan inquired how incidental travel counts are done.

Mr. Galloway responded incidental travel is difficult to calculate; incidental travel is included in existing counts.

Mayor Johnson inquired whether information provided by Omni-Means is within reasonable professional standards.

Mr. Galloway responded that the information is very reasonable and has been reviewed numerous times by the Public Works Department and Dowling Associates.

Councilmember deHaan inquired whether [traffic count] research was not performed to determine the baseline's validity, to which Mr. Galloway responded in the affirmative.

Councilmember Gilmore inquired how the City's noise ordinance

relates to truck traffic; further inquired what methodology is used to determine pollution levels.

The Supervising Planner responded traffic noise is reviewed cumulatively over a long period of time; stated a Code Enforcement Officer measured shopping center noise levels from Ms. Healy's balcony; levels did not come anywhere near passing City noise standards; levels spiked when an AC Transit bus came by or a police car sped down Otis Drive; neither situation would trigger a significant impact; tonight's anecdotal comments cannot be qualified.

Rebecca Gordon, Lamphier-Gregory, stated air quality is addressed in the final EIR; air quality is a regional issue; the San Francisco Air Quality Management District guidelines are used; the guidelines have thresholds that address when a project might have a significant impact under the California Environmental Quality Act (CEQA); the Alameda Towne Centre Project is below the threshold for the District.

Councilmember Gilmore inquired whether specific air quality testing would be used if a 250,000 square foot factory moved into a neighborhood.

Ms. Gordon responded projections would be analyzed; stated factory emission thresholds are lower than shopping center emissions; air quality analysis would be performed if residences are next to an existing factory because the factory is an emitter.

Councilmember Gilmore inquired whether there is a way to compare past pollution levels to current levels.

Ms. Gordon responded the Air Quality Management District tracks pollution over the years.

Councilmember Gilmore inquired whether there is a way to narrow the comparison down to a specific area, to which Ms. Gordon responded in the negative.

Councilmember deHaan inquired whether there would be concern if the shopping center were not utilizing all of the space.

Ms. Gordon responded the previous expansion project was reviewed in a separate EIR and certified; stated additional impacts are being reviewed; the impacts will become part of the cumulative scenario.

Councilmember deHaan stated that he is not sure how underperformance is measured.

Ms. Gordon responded shopping center use goes go up and down; changes occur; keeping analyses as conservative as possible leaves some wiggle room.

Councilmember deHaan inquired how much wiggle room is put into a study, to which Ms. Gordon responded 20% to 25%.

Councilmember deHaan inquired what is the shopping center vacancy rate.

The Supervising Planner responded the vacancy rate is irrelevant because a conservative position has been taken which overstates the impacts.

Randy Kyte, Harsch Investments, stated attempts have been made to address neighbor concerns and subsequent conditions have been added; mechanisms have been put in place to mitigate hours when certain things can occur around the shopping center; Park Street would be the only truck entrance; truck route analysis was staff's responsibility; suggesting that all of the ills on Broadway are the result of the shopping center is nonsensical.

Councilmember deHaan inquired what was the prior truck delivery time.

The Supervising Planner responded 7:00 a.m. to 10:00 p.m. unless a Use Permit allowed extended hours; stated Safeway and Walgreen's have Use Permits; staff does not anticipate any additional Use Permits in the future if Council approves extending hours to midnight.

Councilmember Matarrese stated that the EIR has been certified; he has no problem with signage; he is trying to figure out the rationale of giving a blanket change of hours versus a Use Permit; Use Permits provide a controlling mechanism; that he does not have a problem with some businesses staying open until midnight; a Use Permit should be required; that he sees the EIR information as a snap shot in time; Council has a good idea of the impact; the impact does not approve any expansion; there is a complete picture of what the impacts would be with a 706,000 square foot shopping center; measurements should be made on incremental occupancy of some of the current, bigger projects; real time traffic counts should be taken when Kohl's is up and running; observations need to be taken when the gas station and Orchard Supply Hardware (OSH) opens; speeding and idling issues need to be enforced.

Councilmember Gilmore inquired how enforcement is done for trucks

entering the correct driveway and idling for no more than five minutes; further inquired who would enforce Use Permit non-compliance.

The Supervising Planner responded twenty-four hour security is on site; the proposed condition puts the responsibility for monitoring on the Applicant and security; security would be responsible for alerting the shopping center management, then management would bring the matter up with the tenant.

Councilmember Gilmore inquired who would be responsible for Use Permit non-compliance and what would be the penalties.

The Supervising Planner responded the shopping center management; stated individual Use Permits would need separate conditions; he is not sure what the monitoring mechanism would be; the matter might be complaint driven.

Councilmember Gilmore stated the City would have a bigger stick with the Use Permit scenario because revoking a Use Permit would seriously affect business; the proposed condition involves a landlord-tenant relationship; a lessor might have an incentive to keep the lessee in business as long as possible.

Vice Mayor Tam inquired how violations would be pinpointed if there are multiple Use Permits.

The Supervising Planner responded enforcement would be difficult unless trucks have identification.

Vice Mayor Tam inquired how the City would recoup enforcement costs.

The Planning and Building Director responded Use Permit violations do not have fees in place; stated Use Permit violations are complaint bases.

Councilmember Matarrese stated very few businesses would need Use Permits for twenty-four hour delivery.

The Supervising Planner stated most tenants are small businesses and use UPS trucks or vans [for delivery].

Councilmember Matarrese inquired whether idling is governed by State law.

The Supervising Planner responded in the affirmative; stated the law was enacted to address diesel emissions.

Councilmember Matarrese stated the Police Department could issue tickets for idling; that he likes the idea of having direct City enforcement available for areas that could cause potential problems.

Mike Corbitt, Harsch Investments, stated his main concern is to allow Kohl's seasonal hours until 12:00 a.m.; restaurant hours are also a concern.

Councilmember Gilmore stated conditions could be added regarding restaurants staying open until midnight and extending Kohl's seasonal hours.

Councilmember deHaan inquired whether twenty-four hour deliveries are being controlled.

Mr. Corbitt responded that he would need to ask the neighbors.

Councilmember deHaan inquired how long Mr. Corbitt has been with the shopping center, to which Mr. Corbitt responded nine years.

Councilmember deHaan inquired how much traffic has increased.

Mr. Corbitt responded a good shopping center would produce more traffic; stated parking capacity is good.

Councilmember deHaan inquired what is the vacancy rate.

Mr. Corbitt responded the shopping center is approximately 80% to 90% occupied.

Councilmember deHaan stated that occupancy is at 80% for 545,000 square feet.

Councilmember Matarrese moved approval of the hours of operation allowing restaurants to remain open until midnight and the Planning Director to approve extending holiday hours for Kohl's; and requiring Use Permits for extended hours beyond business hours. [Adoption of Resolution No. 14275]

Mayor Johnson inquired whether a Use Permit would be required for deliveries beyond existing hours, to which Councilmember Matarrese responded in the affirmative.

Councilmember Gilmore seconded the motion, which carried by unanimous voice vote - 5.

Councilmember deHaan inquired whether twenty-four hour deliveries would require a Use Permit, to which Councilmember Matarrese responded in the affirmative.

Councilmember Gilmore moved approval of the sign program [included in Resolution No. 14275].

Councilmember Matarrese seconded the motion, which carried by unanimous voice vote - 5; and

The Supervising Planner inquired whether the motion to approve hours included conditions, to which Councilmember Matarrese responded in the affirmative.

Vice Mayor Tam requested a description of noticing concerns raised; stated the City Manager provided an update stating that notice was provided in the Alameda Journal, and notices were mailed to residents within 500 feet.

Councilmember deHaan stated Council never quantified what the noticing requirements would be when projects reach a certain threshold.

The Planning and Building Director stated the Municipal Code has certain noticing requirements; the Alameda Towne Centre project requires notification to property owners and residents within 100 feet and advertising in the paper ten days before the hearing; Council adopted a policy several years ago which expanded the notification policy to a twenty day notice for hearings before the Planning Board and Historical Advisory Board and a 300 foot radius around the property; the notification process was expanded to 500 feet for Alameda Towne Centre.

Councilmember deHaan stated the traffic engineers discussed various corridors that were areas of concern.

The Planning and Building Director stated staff published an ad in the newspaper; notice was posted on the website as well.

Vice Mayor Tam stated that she has the sense that increased traffic cannot be attributed to Alameda Towne Centre totally; the EIR looked at the worse case scenario and impacts were identified; the EIR does not grant approval to move forward with the expansion of 49,000 square feet.

Vice Mayor Tam moved adoption of the resolution approving the Environmental Impact Report and upholding the Planning Board decision. [Adoption of Resolution 14274]

Councilmember Matarrese seconded the motion, with direction for staff to provide Council with real time data for Kohl's, the gas station, and OSH occupancy.

Under discussion, Vice Mayor Tam inquired whether Councilmember Matarrese is asking for monitoring requirements, to which Councilmember Matarrese responded in the affirmative.

The Supervising Planner stated the gas station had its own mitigated declaration with certain monitoring requirements; impacts would not occur until cumulative conditions occur in 2020.

Councilmember Matarrese stated that he wants data collected once the aforementioned occupancy occurs to test the projections before the next step is taken.

The Supervising Planner stated current plans for Kohl's and OSH do not increase the square footage of the shopping center; a substantial change in the square footage would occur if the Planning Board approves a second story expansion at Kohl's.

Councilmember Matarrese stated the issue would increase number of cars and delivery trucks.

The Planning and Building Director stated Council could add the monitoring as an additional mitigation measure when Kohl's, the gas station, and OSH are occupied.

Councilmember deHaan stated that he would like to have monitoring performed now and when Kohl's and OSH open for comparison purposes.

The Supervising Planner stated State law requires that the baseline used is based on the date that the City released a notice of preparation for the EIR.

Patricia Curtin, Harsch Development, stated the EIR certification is an action stating that the EIR is adequate for the impacts of 706,000 square feet.

Mayor Johnson stated requesting a traffic baseline is separate from the EIR.

Ms. Curtin inquired what is the point for monitoring; stated either the EIR is adequate for 706,000 square feet or not.

Councilmember Matarrese seconded the motion.

Under discussion, Councilmember deHaan stated the motion would accept the EIR which would give Alameda Towne Centre an extra 49,000 square feet.

Councilmember Matarrese stated the motion certifies the EIR and potential impacts of the 49,000 square feet, and is not an entitlement.

Vice Mayor Tam stated the motion discloses impacts in accordance with CEQA.

The Assistant City Attorney inquired whether the motion is to adopt the resolution denying the appeal of the August 11 Planning Board decision to certify the adequacy of the Alameda Towne Centre Project Environmental Impact Report, to which Vice Mayor Tam responded in the affirmative.

Councilmember deHaan clarified that Harsch could go back to the Planning Board and ask for the additional 49,000 square feet if the EIR is accepted tonight and could ask to build a parking structure.

Mayor Johnson stated that the EIR discloses impacts and deals with mitigation.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmembers Gilmore, Matarrese, Tam, and Mayor Johnson - 4. Noes: Councilmember deHaan - 1.

Councilmember Matarrese requested traffic counts once Kohl's, the gas station, and OSH are occupied.

Councilmember deHaan stated a baseline should be done now.

Vice Mayor Tam stated that having Council and the community request data and monitoring is appropriate; an EIR looks at a baseline snapshot in time and action alternatives; two years from now a new Council may have a new baseline and may request to use the 2010 baseline; baselines will have constant movement; receiving information is good; it is important to have the integrity of the EIR preserved.

Councilmember Matarrese stated the EIR is a projection; the number of cars that run over the tubes in the street is more relevant.

Councilmember deHaan stated it is important to know where traffic patterns are throughout the City.

Councilmember Matarrese stated some of the Broadway truck traffic



could come from Bay Farm Island; truck routes should be reviewed.

Vice Mayor Tam questioned who would pay for the monitoring.

Mayor Johnson stated the matter [monitoring] could be put on a future agenda.

Councilmember deHaan stated Mr. Galloway used occupancy data that was provided to him; occupancy was not verified.

#### ORAL COMMUNICATIONS, NON-AGENDA

(08-430) Susan Toth, Alameda Peace Network, submitted petition, stated that Alameda Peace Network is in promotion of peace and opposes the Iraq War; money is being taken away from education, healthcare and infrastructure.

(08-431) Carl Halpern, Alameda Peace Network, stated Alameda Peace Network understands that the Council has taken a stand on the Iraq War; the War has dropped below the radar screen because of the fiscal crises; \$12 billion a month is being spent on the War; the \$12 billion could have given the Governor the \$7 billion requested to run the State.

(08-432) Pat Flores, Alameda Peace Network, stated the current United Nations mandate for military presence in Iraq expires at the end of 2008; the majority of Americans believe that the most reasonable stimulus for the United States economy would be withdrawal from Iraq; the important question is what do the people in Iraq want; a recent poll found that nearly 60% of people in Iraq favor an immediate withdrawal of US troops.

#### COUNCIL REFERRALS

(08-433) Resolution No. 14276, "Supporting the Alameda County Active Transportation Campaign." Adopted.

Councilmember Matarrese moved adoption of the resolution.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5.

#### COUNCIL COMMUNICATIONS

(08-434) Councilmember Gilmore requested that the Alameda Peace Network matter come for Council discussion.

(08-435) Vice Mayor Tam stated that she attended the League of

California Cities Conference; SB 375, roles of diversity caucuses, and police and fire service levels were discussed.

Councilmember Matarrese requested that Council be provided with a list of the questions related to police and fire service levels.

ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular Meeting at 2:39 a.m.

Respectfully submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA)  
AND COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING  
TUESDAY- -OCTOBER 7, 2008- -6:00 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 6:10 p.m.

ROLL CALL - Present: Councilmembers / Board Members /  
Commissioners deHaan, Gilmore, Matarrese,  
Tam, and Mayor/Chair Johnson - 5.

Absent: None.

The Special Meeting was adjourned to Closed Session to consider:

(08-411 CC) Conference with Labor Negotiators; Agency Negotiators:  
Craig Jory and Human Resources Director; Employee Organizations:  
All Bargaining Units.

(08-412 CC / ARRA / 08-50 CIC) Conference with Real Property  
Negotiators; Property: Alameda Point; Negotiating parties: City  
Council, ARRA, CIC, and SunCal; Under negotiation: Price and terms.

Following the Closed Session, the Special Meeting was reconvened  
and Mayor/Chair Johnson announced that regarding Labor, the Labor  
Negotiator gave an update on Alameda City Employee Association  
(ACEA), International Association of Fire Fighters (IAFF), and  
Alameda Police Officers Association (APOA) negotiations, and  
Council provided instruction; regarding Real Property, the Council,  
CIC, and ARRA were provided with a briefing on negotiations  
regarding Alameda Point; no action was taken.

Adjournment

There being no further business, Mayor/Chair Johnson adjourned the  
Special Joint Meeting at 7:20 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk  
Secretary, Community Improvement  
Commission

The agenda for this meeting was posted in accordance with the Brown  
Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA), AND  
COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING  
TUESDAY- -OCTOBER 7, 2008- -7:27 P.M.

Mayor/Chair Johnson convened the Special Meeting at 8:02 p.m.

ROLL CALL - Present: Councilmembers / Board Members /  
Commissioners deHaan, Gilmore, Matarrese,  
Tam, and Mayor/Chair Johnson - 5.

Absent: None.

MINUTES

(08-51 CIC) Minutes of Special Community Improvement Commission Meeting held on September 16, 2008. Approved.

Commissioner Gilmore moved approval of the minutes.

Commissioner Tam seconded the motion, which carried by unanimous voice vote - 5.

AGENDA ITEMS

(08-52 CIC) Recommendation to accept and endorse the Park Street north of Lincoln Avenue Strategic Plan.

The Development Services Manager gave a brief presentation.

Ian Ross, The City Design Collective, gave a Power Point presentation.

Vice Mayor Tam stated the form based concepts are innovative; Council has discussed CalTrans' plans regarding Highway 880 and the potential closing of Glascock Avenue because of Union Pacific's plans; inquired whether there has been any outreach to understand how said issues would factor into the Strategic Plan.

Mr. Ross responded that he is not aware of any additional outreach with CalTrans.

Vice Mayor Tam stated Mr. Ross mentioned that auto servicing businesses would continue even without auto dealerships because there is sufficient customer base.

Mr. Ross stated [auto] dealerships are anchors; some auto servicing businesses will close or look elsewhere, but there is demand within the City to sustain many of the uses.

Vice Mayor Tam stated very few businesses have the ability to produce the same level tax revenue as auto dealerships; inquired whether Mr. Ross concurs that loss in sales tax revenue cannot be replaced with mixed uses.

Mr. Ross responded auto dealerships are the main tax producing entities within cities; stated auto dealerships are abandoning small cities and moving to auto malls; replacing auto dealership revenue is very difficult; hotels, motels, and destination retail uses are possible revenue generators; said businesses prefer to be on gateway streets.

Vice Mayor Tam stated that Mr. Ross noted that residential development could act as a catalyst; inquired whether work/live opportunities would differ from the City's current constraints [ordinance].

Mr. Ross responded that residential development has been one of the primary driving engines for revitalization within City districts; stated recommendations are to create as much flexibility in the land use code as possible in order to attract work/live, retail, and commercial.

Councilmember deHaan inquired whether office and tech opportunities would be beneficial.

Mr. Ross responded that a strong office base is always good; stated Alameda has vacancies in some of the larger office parks; small, professional offices are in demand; the office market is not as strong as in the past.

Councilmember deHaan inquired whether high tech could be a driving force.

Mr. Ross responded that he hopes that high tech would develop office space in the future; stated small, incubator flex space is in demand now; office developments love vibrant centers.

Councilmember Gilmore stated the Planning Board recommends not to allow any drive-through access on Park Street; inquired what is the thinking behind the recommendation.

Mr. Ross responded one of the overall goals is to make the district walkable; stated he would recommend reducing the number of curb cuts; drive-through businesses generate conditions for cars to drive across sidewalks.

Councilmember Matarrese stated that he likes the way function and form has been laid out; inquired whether the Transportation Demand Management (TDM) is intended to be a district wide or development-by-development program.

Mr. Ross responded the Transportation Master Plan has Citywide recommendations and regulations; stated any future transportation modifications would be in keeping with the Transportation Master Plan.

Mayor Johnson opened the public portion of the hearing.

Opponent (Not in favor of the staff recommendation): Arthur Lipow, Alameda.

Proponent (In favor of the staff recommendation): Robb Ratto, Park Street Business Association (PSBA).

Neutral: Bill Smith, Alameda.

There being no further speakers, Mayor Johnson closed the public portion of the hearing.

Mayor Johnson inquired whether any thought has been given to advocating for auto sales tax revenue being distributed to the city in which the purchaser resides.

The City Manager responded sales tax distribution has been reviewed but still remains at the point of sale.

Mayor Johnson stated that efforts should be made to review the matter; communities with dealerships are siphoning a lot of sales tax revenue.

The City Manager stated the League of California Cities could be asked to explore the matter; opposition would come from cities benefiting from the revenue.

Mayor Johnson stated fewer cities have larger dealerships; efforts should be made to advocate for reallocation [of tax revenue].

Councilmember Matarrese stated staff recommends that Council accept and endorse the Park Street north of Lincoln Strategic Plan and direct staff to amend the City's zoning regulations; inquired whether direction is to include expanding the Work/Live Ordinance; stated that he advocates using work/live beyond the current scope in order to review rehabilitation and reuse of historic buildings outside zones currently designated and as a way to meet Community Action for a Sustainable Alameda (CASA) goals.

The Development Services Director stated the Strategic Plan provides a framework; the next step would be to start exploring form-based zoning.

Councilmember Matarrese stated that he does not advocate changing the interior Work/Live Ordinance requirements but expanding locations within the Ordinance.

Councilmember deHaan stated six properties fall under the Work/Live Ordinance; only one property has moved forward; the work/live idea seems to have hit a wall; the proposed plan sets benchmark visions.

Vice Mayor Tam stated the City has the opportunity to take control of its destiny by going through concerted efforts with the Planning Department rather than allowing haphazard market forces to decide.

Vice Mayor Tam moved approval of the staff recommendation.

Councilmember Matarrese seconded the motion with direction to put effort into the Transportation Demand Management (TDM) plan, including the integrated area and review expansion of the Work/Live Ordinance.

Under discussion, Mayor Johnson stated direction should include review of obstacles associated with work/live projects because only one project has moved forward; the Work/Live Ordinance is a critical piece for reuse of historic assets in the northern waterfront area.

Vice Mayor Tam and Councilmember Matarrese concurred to amend the motion to include Councilmember Matarrese's and Mayor Johnson's recommendations.

Mayor Johnson stated the area should not be named the Gateway District.

Councilmember deHaan stated a better name would be one that is historical in nature.

Mayor Johnson concurred with Councilmember deHaan; stated a temporary name should be used.

Vice Mayor Tam stated that the motion should also include assurance that the TDM addresses what would happen on the other side of the [Park Street] bridge.

Councilmember deHaan stated Council continually discusses sales tax leakage; the area provides an opportunity to capture sales tax leakage.

On the call of the question, the motion carried by unanimous voice vote - 5.

(08-413 CC/ARRA/08-53 CIC) Recommendation to approve the second amendment to the Exclusive Negotiation Agreement with SCC Alameda Point LLC.

Debbie Potter, Base Reuse and Community Development Manager, gave an overview of the proposed Second Amendment to the ENA, stating that in June 2008, SunCal Companies, Alameda Point's master developer, requested authorization from the ARRA to secure a financial partner to assist in carrying out their obligations under the ENA. Pursuant to the ENA, a transfer requires approval of CIC, CC, ARRA. On Aug. 19<sup>th</sup>, the ARRA considered the transfer to the new entity: Cal Land Ventures, a joint partnership between D.E. Shaw Real Estate Portfolio Twenty, LLC and WM Development Group, a wholly-owned affiliate of SunCal.

Discussion of the transfer was based on the following core principles - 1) any new entity must retain SunCal as the day-to-day manager of the project, 2) SunCal should retain equity interest in the new venture, and 3) new entity should commit to invest funds necessary to meet obligations under the ENA. The City/ARRA/CIC felt it was critical to amend the ENA to address these core principles, because City entities are not parties to an operating agreement between joint venture partners.

The 2<sup>nd</sup> amendment to the ENA provides: Approval of ownership transfer, establishes new termination date of July 20, 2010 - this date reflects SunCal's intention to seek voter approval of its proposed land plan in Nov. 2009 and anticipates concluding DDA negotiations by July 20, 2010. The termination date can only be



extended if Alameda hasn't acted on SunCal's land use approvals by that date.

The 2<sup>nd</sup> amendment also establishes several new mandatory milestones:

- SunCal's obligation to elect to pursue, or not, a ballot initiative by April 30, 2009
- Complete a final Navy Conveyance Term Sheet by July 31, 2009
- Complete a negotiated DDA by July 20, 2010.

2<sup>nd</sup> amendment provides Alameda with performance standards it needs to ensure timely progress on the redevelopment of Alameda Point. Failure to meet any mandatory milestone is a default of the ENA. In addition, SunCal will now be required to deposit \$250,000 with the City to commence CEQA work by April 20, 2009. Failure to make the initial deposit or subsequent deposits for this work is a default under the ENA. The cure periods for all the defaults under the ENA have been shortened, so the ENA can be terminated more quickly as necessary. The city may request once every six months that the developer prove in writing that they are consistent with the obligations of the ENA regarding any transfer.

These modifications protect Alameda's core interests and allows an addition of a new financial partner with the wherewithal to fund the necessary predevelopment activities to entitle a mixed-use project at Alameda Point.

Member deHaan asked for clarification on the change of the ballot initiative. Ms. Potter explained that the only change would be whether SunCal elects to put their land plan on the ballot or not.

They are not required to place it on the ballot, the mandatory milestone requires only that SunCal to inform us whether they will go on the ballot or not. Member deHaan asked SunCal if they would "stay the course" if modifications to the Measure A ordinance would not pass.

Pat Keliher, Alameda Point Project Manager for SunCal, replied that, per the agreement, SunCal would like to continue to have an opportunity to stay the course. To date, they do not believe that there is any non-Measure A plan that would work. Their plan developed with community effort is a plan they will take to the ballot. Mr. Keliher further explained the process it would take to bring their plan to the ballot. Boardmember deHaan asked if SunCal would stay in the project, even if the initiative (to change Measure A) did not pass. Mr. Keliher replied affirmatively.

Member Matarrese asked staff about his earlier request for a

business plan from SunCal. He expressed his concerns about calling the pile of data a business plan because there was no proposal, nor any conclusions drawn. Ms. Potter explained that SunCal did submit a draft business plan on September 19<sup>th</sup>, which was submitted in multiple parts, and do not exist together as one document. SunCal understands the Board's expectation of what the Business Plan document should entail and has promised that when they submit the final plan on November 19<sup>th</sup>, it will be bound in one single document with a narrative tying all the disparate pieces together as the Business Plan.

Member Gilmore asked who gets to decide which party decides or determines when DE Shaw can remove SunCal as partner. Amy Freilich, Senior VP of SunCal, stated that as it's drafted currently, the Board would get notice from DE Shaw that would indicate that they have removed, for cause, SunCal as a partner. At that point, under the standard default provisions of the document, the ARRA would be entitled to declare default and specify the reasons for concerns and ask for a demonstration for what the cause was. If DE Shaw is unable to satisfy the ARRA with respect to that, it would be a default of the developer, and the ARRA would be entitled to terminate. DE Shaw would present their evidence that they were appropriately removing SunCal as partner. Member Gilmore further asked, under the operating agreement, SunCal can be removed for "member issues", would the process for determining default be the same? Ms. Freilich affirmed. Chair Johnson added that the only remedy would be to declare default and then terminate.

Member Matarrese stated that the problem with this situation is, in layman's terms, it puts us back to square one where SunCal doesn't have any money without DE Shaw. He was concerned that DE Shaw knows nothing about developing Alameda Point, and that if we lose SunCal, we're at the end of the line -- we're stuck with a terminated agreement and no developer, and have to start the process all over again.

Member Gilmore discussed that this scenario could happen at any point in the process, whether it's SunCal or DE Shaw; as you go forward, you always run the risk that something unforeseen could happen, and the project could not be completed and then you're back to square one. Alameda Point is a risk-inherent project. Chair Johnson agreed, stating that there's not 100% assurance to ourselves that something could happen; it's a very risky project and there's not way to prevent the risk.

Chair Johnson requested that language be added that if DE Shaw terminates SunCal for reasons insufficient for our ENA, it doesn't affect the relationship between the ARRA and SunCal. Ms. Potter explained that if SunCal is terminated for cause, the ARRA has the opportunity to approve a replacement. The path forward under either scenario would be approval of replacement, or termination if DE Shaw did something contrary to ENA.

Member deHaan expressed deep concern with this issue in general. He discussed that SunCal was selected because they had multimillion dollar background. He was uncomfortable that SunCal had to get a hedge fund partner to tie them over to get through the ENA. Because he has no in-depth knowledge of the company, Member deHaan requested a financial consultant prepare a fiscal evaluation of DE Shaw and their capability to weather the storm for this project.

Member Tam stated that it is clear that there have been extraordinary events in financial market, and a solvent financial partner is difficult to find. Comparing Alameda to Mare Island (Lennar), she said we have the safeguards in place, and if DE Shaw jettisons SunCal, the deal would be off and we're not absorbing any fallout or cost.

In response to Member deHaan's request, Ms. Potter explained that DE Shaw had submitted their financial information to our consultant, EPS, who analyzed the data and determined that DE Shaw could take on the financial obligations of ENA. Ms. Freilich further discussed DE Shaw, stating that they have \$36 billion under management and \$1.8 billion in real estate. They began 20 years ago as hedgefund in global and technology, with 10 different asset classes, and have hired an experienced team to do real estate acquisitions. DE Shaw acknowledges that it is a difficult real estate market, but that they've done extensive due diligence at Alameda Point, which they view as a unique and irreplaceable opportunity. SunCal is thrilled to have a partner with the capacity and ability that DE Shaw has, and they understand the goal of tightening up the milestones, and remain a committed partner in producing the DDA.

Member deHaan asked if SunCal was in such dire straits that \$10m was difficult for them to invest without a financial partner. Ms. Freilich explained that because the markets have changed, lines of credit are not available under the same terms. From SunCal's standpoint, partnering with DE Shaw provides stability to the project rather than the opposite.

Chair Johnson asked for a fundamental explanation of the ENA and DDA, for the benefit of the public. Ms. Potter explained that the Exclusive Negotiation Agreement (ENA) is a predevelopment period with SunCal, with a term that runs through July 20, 2010. During this period, the City works in partnership with SunCal to get to the Disposition and Development Agreement (DDA) stage. The DDA is a critical document negotiated during the ENA period and is an acquisition agreement - what you're paying for the land, what you'll be developing on the property, etc. If we don't have a negotiated DDA by July 20, 2010, then we go our separate ways.

Member Gilmore asked for an explanation of the Navy still owning the property, and the clause regarding Navy negotiations. Ms. Potter stated that it is true that one of the riskiest issues about the Alameda Point property is that any developer we work with is not negotiating with the Property owner, which is the Navy. One of the key milestones being converted to a mandatory milestone under the 2<sup>nd</sup> amendment is the conveyance term sheet, our agreement with the Navy on the land purchase price, how the property will be conveyed to the ARRA, and ultimately to the developer. This term sheet is due July 31, 2009. If we don't come to an agreement with the Navy, SunCal is in default under the agreement of the ENA and we move to plan B.

Chair Johnson asked whether the July 31, 2009 deadline is that a realistic time frame for the Navy. David Brandt, Deputy Executive Director, stated that the date was what the Navy indicated they're willing to entertain in terms of negotiating with us on a deal with SunCal, and that they're not moving further past July 2009. Chair Johnson asked if we are expecting any changes in the Navy's approach on the project after election. She hopes for a new outlook on base reuse from Federal Government and recommended we have flexibility in that milestone. Mr. Brandt explained that certainly, if we're making great progress, and if the Navy wants to extend beyond July 09, we'll come back and see if all parties want to go beyond; but doesn't want to be caught in the position where there are no changes after the election, and we're unable to move forward. The Navy would not officially negotiate directly with developer, but will negotiate with ARRA.

Member Gilmore asked staff to inform the public of the upcoming community meetings where SunCal will present their Development Concept to eight boards and commissions. Ms. Potter summarized the meeting schedule and discussed that public comments from each of these meetings will be compiled into one document and presented to the ARRA Board at its Nov. 5<sup>th</sup> regular meeting. ARRA will also

provide their comments, all of which will feed into the Draft Master Plan due on Nov 19<sup>th</sup>. Member Gilmore asked if the Nov. 19<sup>th</sup> deadline was enough time.

Ms. Potter acknowledged it is aggressive time frame. Mr. Keliher said that the purpose of the public meetings was to listen and receive, and SunCal hopes to receive a number of different comments from all of the different groups, and needs to time to analyze, make changes so that these comments can be considered in developing the draft master plan. He said they are committed to 11/19 date.

Member Gilmore was concerned that it's not enough time and asked if the Board and staff was opposed to an extension? Mr. Brandt supported the extension because it would mean receiving a better product. Ms. Potter agreed and requested that the mandatory milestone be modified to extend the submission of the draft master plan to Dec. 19<sup>th</sup>, 2008.

Ms. Freilich requested that language should be added to protect their interest; that as long as negotiations with the Navy continue and are fruitful, SunCal would not be in default. Mr. Brandt, and stated that the City should be included as a party in the same language.

Ms. Potter wanted to note that there will be a correction made to an oversight in a sentence included in the ENA, per Senior Assistant City Attorney, Donna Mooney. Chair Johnson acknowledged the notation.

There were several speakers on this item: Philip Tribuzio, Alameda, spoke regarding cleanup of Alameda Point scheduled for completion in 2011, which is beyond the deadline for conveyance of the property. Arthur Lipow, Alameda, was concerned about, and against the partnership between DE Shaw and SunCal. He discussed an alternative and would like to see a public trust situation like at the Presidio. Gretchen Lipow, Alameda, discussed health and safety codes, traffic issues, and clean-up of the Alameda Point and would like more transparency in General Plan and Business Plan. Joel Ramland, Alameda, was not in favor of the agreement between SunCal & DE Shaw and discussed its financial status. Bill Smith, Alameda, spoke about light industry.

Member Matarrese asked how much SunCal has spent to date. Ms. Potter replied that SunCal has spent approximately \$3M to date with a non-refundable \$1M deposit. Member Matarrese asked if we own the materials produced by SunCal and its consultants pertaining to

geotechnical and environmental information. Ms Potter said that it is a provision that we do own any and all materials prepared or commissioned by the developer.

Member Tam motioned approval of the 2<sup>nd</sup> Amendment to the ENA, including approving a transfer of the ownership interest in SCC Alameda Point LLC to Cal Land Venture, LLC, subject to the following modifications:

1. modify mandatory milestone for submittal of Final Business Plan and draft Master Plan by December 19, 2008, in order to incorporate public comment and to have a meaningful work product
2. get a status report at least 30 days in advance whether or not we need an extension on the mandatory milestone regarding finalization of the Navy term sheet on July 31, 2009.

The motion was seconded by Member Gilmore and passed by the following voice votes: Ayes: 5, Noes: 0, Abstentions: 0.

Member Gilmore requested an update of the financial analysis of DE Shaw given the tremendous change in market. The Board directed staff to provide this update and staff affirmed.

#### ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the Special Meeting at 10:59 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk  
Secretary, CIC and

Irma Glidden, Secretary ARRA

The agenda for this meeting was posted in accordance with the Brown Act.