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**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION, 1000 SAN PABLO AVENUE**  
**MONDAY, APRIL 7, 2008**

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**7:15 p.m.**

**CLOSED SESSION**

Closed session to discuss existing litigation pursuant to Government Code Section 54956.9:

City of Albany v. Alten Construction

Closed session to discuss anticipated litigation pursuant to Government Code Section 54956.9(a):

California Department of Food & Agriculture regarding the Light Brown Apple Moth

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS**

**ADJOURN TO CLOSED SESSION**

**8:00 p.m.**

Mayor Lieber who led the Pledge of Allegiance to the Flag called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

Present: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber  
Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Judy Lieberman, Assistant City Administrator; Ann Chaney, Community Development Director; Charlie Adams, Finance & Administrative Services Director; Jeff Bond, Planning and Building Manager;

Rich Cunningham, Public Works Manager; Nicole Almaguer, Environmental Resources Associate; Barry Whitaker, Project Manager; Kim Denton, City Treasurer; Randy Leptien, City Engineer; Robert Zweben, City Attorney; Amanda Bennett, Planning Clerk

**3. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY**

Mayor Lieber reported that the Council had met in a closed session to discuss existing litigation pursuant to Government Code Section 54956.9: City of Albany v. Alten Construction and anticipated litigation pursuant to Government Code Section 54956.9(a): California Department of Food & Agriculture regarding the Light Brown Apple Moth.

**4. CONSENT CALENDAR**

**4-1.** Council Minutes, March 17, 2008.

Staff recommendation: Approve.

**4-2.** a. Ratification of City of Albany net payroll in the amount of \$182,385.57; taxes, benefits & withholdings in the amount of \$144,479.83. Total payroll in the amount of \$326,865.40. Payroll period: 03/14/08.

b. Ratification of City of Albany net payroll in the amount of \$180,592.77; taxes, benefits & withholdings in the amount of \$226,588.63. Total payroll in the amount of \$407,181.40. Payroll period: 03/28/08.

c. Ratification of Albany Municipal Services JPA net payroll in the amount of \$55,224.29; taxes, benefits & withholdings in the amount of \$42,213.63. Total payroll in the amount of \$97,437.92. Payroll period: 03/14/08.

d. Ratification of Albany Municipal Services JPA net payroll in the amount of \$53,312.57; taxes, benefits & withholdings in the amount of \$59,063.07. Total payroll in the amount of \$112,375.64. Payroll period: 03/28/08.

Staff recommendation: Ratify.

**4-3.** Ratification of bills, claims & demands against the City of Albany in the amount of \$227,252.19. Period: 03/21/08.

Staff recommendation: Ratify.

- 4-4.** Pension payments in the amount of \$108,523.25 for the month of March, 2008.

Staff recommendation: Ratify.

- 4-5.** Appointment of Auditors.

Staff recommendation: Approve the appointment of Caporicci & Larson, CPAs, to serve as independent auditors for the City of Albany, the Albany Municipal Services Joint Powers Authority, Albany Community Reinvestment Agency and the City of Albany Police and Fire Relief Pension Fund for fiscal years ending June 30, 2008 through June 30, 2012.

- 4-6.** Waste Management of Alameda County Annual Rate Adjustment Request

Staff recommendation: Authorize the Annual Rate Adjustment of 3.179% requested by Waste Management of Alameda County.

- 4-7.** A Resolution Directing the Filing of the Landscape and Lighting Assessment District No. 1988-1 and for Assessment District No. 1996-1.

Staff recommendation: Approve Resolution #08-19 – A Resolution of the Albany City Council Directing the Filing of the Landscaping and Lighting Assessment District Annual Report (Assessment District No. 1988-1 and 1996-1).

- 4-8.** Resolution No. 08-17 – A Resolution of the Albany City Council Authorizing the Destruction of Certain Records and Donation of Certain Records to the Albany Historical Society.

Staff recommendation: Approve Resolution No. 08-17.

- 4-9.** Paid Parking Program

Staff recommendation: That Council refer the issue of establishing paid parking program(s) to the Traffic & Safety Commission, Planning & Zoning Commission, Albany Chamber of Commerce, and Solano Avenue Association for comments and recommendations, by June 30, 2008.

- 4-10.** Consideration of Claim #AL572; CSAA v. City of Albany.

Staff recommendation: Reject the claim and authorize the City Clerk to send out rejection notice.

- 4-11.** Call for Bids and Award of Contract for Lower Codornices Creek Restoration, Step 1, Phase III – Site Improvement & CMU Wall at USPS, Lower Codornices Creek. Phase III.

Staff recommendation: Authorize the City Clerk to Invite Bids and authorize the City Administrator to award a contract not to exceed \$750,000 and authorize the inclusion of a “bid alternate” to complete the accessible sidewalk at the 5<sup>th</sup> Street crossing, for an amount not to exceed \$25,000.

- 4-12.** Extend Memorial Park tennis court fence to prevent foul balls from entering the courts.

Staff recommendation: Authorize the Albany Unified School District to extend the tennis court fencing along the third baseline at Memorial Park with to keep foul balls from entering the tennis courts.

- 4-13.** General Plan Annual Report.

Planning & Zoning Commission Recommendation: That the City Council approve the General Plan Annual Report.

- 4-14.** Relocation Status Update for Civic Center Project.

Staff recommendation: Information only.

- 4-15.** “Recycle your Rebate in Albany” - Shop Locally Campaign

Staff recommendation: That Council support the shop/buy local campaign called “Recycle Your Rebate in Albany” between May 10 and June 15 (Mother’s Day to Father’s Day), and authorize the expenditure of up to \$1,900 to send postcards to Albany households.

Mayor Lieber asked whether any Council Members or anyone else wished to pull any items from the consent calendar. Council Member Javandel pulled item **4-1**. Council Member Wile pulled item **4-15**. Mayor Lieber pulled item **4-12**. Allan Maris, Albany resident, pulled item **4-6**. Clay Larson, Albany resident, pulled item **4-14**.

- 4-1.** Council Minutes, March 17, 2008.

Council Member Javandel had the following corrections to the minutes: on page nine in the third-to-last line change “would” to “could;” and on page 10 in the first paragraph add that the Charter Review Committee would have an opportunity to come up with alternate language for the City Attorney to review.

Mayor Lieber had the following corrections to the minutes: on page six that had the City deployed resources a clean-up would have been possible, but that liability issues

seemed to prevent the City from deploying resources; on page eight he wanted it to be clear the Council was not stopping the Charter Review Committee from completing their work, and looked forward to their report. He also noted he did not believe the Mayor would need additional staff, although the entire Council could use some assistance.

**4-6. Waste Management of Alameda County Annual Rate Adjustment Request**

Allan Maris, Albany resident, recommended fining the garbage company for leaving trash bins in the street and in parking spaces, creating a hazard.

**4-12. Extend Memorial Park tennis court fence to prevent foul balls from entering the courts.**

Mayor Lieber wanted to know who would incur the cost for extending the fence. City Administrator Pollard indicated the expense would be incurred by the school district.

**4-14. Relocation Status Update for Civic Center Project.**

Clay Larson, Albany resident, was disappointed that there would have to be manual broadcasts. He asked for an update. Assistant City Administrator Lieberman provided a brief summary.

**4-15. "Recycle your Rebate in Albany" - Shop Locally Campaign**

Council Member Wile wanted to highlight this local campaign. City Administrator Pollard provided a brief summary.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Okawachi to approve the Consent Calendar, as amended.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None

ABSENT: None

Motion carried and so ordered.

**5. GOOD OF THE CITY/PUBLIC FORUM**

Mayor Lieber opened the Good of the City/Public Forum and asked if anyone would like to speak.

Mayor Lieber reported he would be going to Sacramento regarding pesticide spraying. He also noted a subcommittee meeting on the 14<sup>th</sup> with the University and others regarding development of University property.

Brian Parsley, Albany resident, submitted a statement and read it aloud about the Gilman Sports Fields/Tom Bates Regional Sports Complex. Mayor Lieber expressed willingness to meet and answer questions. Bob Outis, Albany resident, recommended agendaing the item.

There being no one else wishing to speak Mayor Lieber closed the Good of the City/Public Forum.

**6. UNFINISHED BUSINESS**

- 6-1.** Albany Library Board making a presentation about the “Albany Online Community Calendar” and submitting a proclamation for National Library Week – April 13-19, 2008.

Mayor Lieber read the proclamation aloud. Joan Larson, Chair of the Albany Library Board, and Julie Winklestein, Web site person for the Albany Library, gave a demonstration of the new online community calendar.

- 6-2.** Continued public hearing – Neilson Street Storm Drain and Sanitary Sewer Project.

Staff recommendation: 1) Reopen the hearing to receive public comments on the Draft Negative Declaration and the overall project. 2) Approve the *Initial Study/Negative Declaration regarding the Neilson Street Storm Drain and Sanitary Sewer Project*. 3) Authorize City staff to Call for Bids for the Neilson Storm Drain and Sanitary Sewer Improvements (Contract C07-21. 4) Authorize the City Administrator to negotiate a loan in the approximate amount of \$3,500,000 with repayment being made through annual payments of \$400,000 from Measure F revenues that achieves the most advantageous lending agreement.

Public Works Manager Cunningham delivered the staff report noting that Council authorized an amendment to the City’s contract with URS Corporation to prepare plans for an alternative approach for installing a new storm drain on Neilson Street to relieve chronic drainage conditions for the homes in the 1000 block of Curtis and Neilson streets.

The Public Works Manager stated that by developing plans for two acceptable tunneling approaches, the City would be able to Call for Bids with the intent of awarding a construction contract based upon the lowest bid for either approach

In response to a concern raised by the public, regarding the condition of the sanitary sewer line located in this portion of Neilson Street, URS Corporation has also completed plans for possible replacement of the sanitary server as well. While the sewer was found to be in failing condition, it is not imperative that it be replaced at this time. However, sections of this sewer will need to be relocated to accommodate the new storm drain shafts.

Karen Bougae, Albany resident, had concerns about this affecting her property, which is on the creek below the new connection point. Gabe Wilson, Berkeley resident, was also concerned. Ken (did not get last name), 1043 Curtis, asked the Council to move forward. Dirk Foermer, Albany resident, was concerned the culverts had not been inspected and might be damaged by the increased flow. Dorothea Dorenz, Berkeley resident, agreed. Clay Larson, Albany resident, recalled that there had been talk of a special assessment district, so that the City would not bear the entire cost for the project.

City Engineer Leptien stated this was a priority because of existing flooding problems, and that the increase in quantity, speed, and pressure of water should be non-significant. Seth Gensler, URS Corp. hydrologist agreed.

Council Member Atkinson asked Mr. Gensler whether he had any suggestions for those living downstream. He suggested they work with creek restoration groups to restore and maintain the creeks, which should reduce their erosion and flooding problems. Other options included partnering with the City and building retaining walls.

**MOTION:**

Moved by Council Member Javandel and seconded by Council Member Atkinson to approve the initial study, authorize staff to call for bids, and authorize staff to negotiate a loan. Council Member Wile proposed an amendment directing staff to proceed with proposing restoration and maintenance of the creek. The maker and seconder of the motion accepted the amendment.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None

ABSENT: None

Motion carried and so ordered.

**7. UNFINISHED BUSINESS**

**7-1.** Discussion regarding Charter Amendments that have been recommended by the Charter Review Committee and reviewed by the City Council at the meeting of October 15, 2007:

a. Section 2.01 – Council Compensation.

Staff recommendation: Review the proposed ballot language, discuss placing before voters and if Council wishes the measures to be on the November 4, 2008, ballot, direct the City Attorney to prepare ballot measure on Section 2.01.

b. Section 4.03 – Bid Procedures.

Staff recommendation: Review the proposed ballot language, discuss placing before voters and if Council wishes the measures to be on the November 4, 2008, ballot, direct the City Attorney to prepare ballot measure on Section 4.03.

**7-1.a.** City Attorney Zweben reported on the proposal regarding Council Compensation and noted that State law is very specific with regard to the definition and amount of salary that may be paid to Council Members, as well as the timing of salary adjustments. Therefore, in order to comply with State law it is recommended that the language be amended to read as follows: Effective December 15, 2010, each member of the City Council shall receive the amount of \$300 per month in salary as authorized for general law cities by Government Code Section 36516.

The City Attorney also recommended that this language be moved from Section 2.01 to a separate section of the Charter to avoid voter confusion in amending other

provisions of Charter Section 2.01. It is recommended that a new Charter section 2.08 be added.

Bob Outis, Albany resident, preferred the City Attorney's proposal to that of the Charter Review Committee. Allan Maris, Albany resident, opposed charging the citizens to pay the Council, or, alternately, supported compensating all of the City's commission and committee members. Carol O'Keefe, Albany resident, felt the proposed compensation was appropriate. Ruth Ganong, Albany resident, recommended the Charter Review Committee review the City Attorney's proposal.

**MOTION:**

Moved by Council Member Javandel and seconded by Council Member Wile to forward the proposal to the Charter Review Committee.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-1.b.** City Administrator Pollard reported on the proposal noting that the amendment is to update the maximum amount that can be contracted without a formal bid process to current economy and standards by allowing the City Council to set the limit by ordinance.

There was unanimous support from the Council.

**MOTION:**

Moved by Council Member Javandel and seconded by Council Member Wile to direct the City Attorney to prepare ballot measure on Section 4.03.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-2.** Award contracts for Civic Center Retrofit and Police & Fire Station Renovation project.

Staff recommendation: 1) Authorize the City Administrator to execute a construction contract in the amount of \$7,852, 700 with Sausal Corporation, San Leandro, CA for the seismic retrofitting of the Civic Center buildings, and additions and renovations to the Fire and Police Department buildings, Contract C 07-14, with authority for change orders up to 15 percent of contract amount. 2) Authorize the City Administer to enter into a lease agreement with Design Space Modular Buildings, Inc. for the lease of modular buildings for police and fire temporary quarters.

Public Works Manager Cunningham delivered the staff report noting that bids were opened for this project after the Council packet was prepared. The Engineer's estimate for the construction work was \$9,630,000. The City received seven (7) bids with a range up to \$11,000,000, but the four low bidders for the work ranged from \$7,852,700 to \$8,096,000 a range of 3.1%.

The results allow the City the opportunity to keep all the desired features included in the bid package and not exclude any items. This means that the City Council can

include the 30KW photovoltaic system, solar hot water for the Fire Department, fire sprinklers throughout and standing seam metal roof in the contract award.

It also allows the City to include in the contract award the bid alternate for replacing the floor covering and repainting the City Hall end of the building.

Mayor Lieber and Allan Maris, Albany resident, asked about the stability of the firm. Project Manager Whittaker indicated he had reviewed 20 years worth of references on approximately 300 projects.

**MOTION:**

Moved by Council Member Okawachi and seconded by Council Member Javandel to Authorize the City Administrator to execute a construction contract in the amount of \$7,852, 700 with Sausal Corporation, San Leandro, CA for the seismic retrofitting of the Civic Center buildings, and additions and renovations to the Fire and Police Department buildings, Contract C 07-14, with authority for change orders up to 15 percent of contract amount, and authorize the City Administer to enter into a lease agreement with Design Space Modular Buildings, Inc. for the lease of modular buildings for police and fire temporary quarters.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None

ABSENT: None

Motion carried and so ordered.

**8. NEW BUSINESS**

- 8-1.** Ordinance No. 08-02 – Regulation the use of polystyrene foam (Styrofoam) disposable food service ware and requiring the use of biodegradable or compostable disposable food service ware by food vendors and City facilities. - First Reading.

Staff recommendation: Introduce Ordinance #08-02 for First Reading

Environmental Resources Associate Almaguer delivered the staff report stating that Polystyrene, often known as “Styrofoam” is commonly used for disposable food service containers such as cups, plates, etc. Polystyrene has many management issues that have negative impacts on the environment and human health.

Polystyrene is pervasive as litter because it is lightweight and floatable, additionally it has a prevalence to be blown from disposal sites even when disposed of properly. In 2004, the State of California, Integrated Waste Management Board conducted a study on the use and disposal of polystyrene estimating that polystyrene foam compromises 15% of the litter collected in storm drains.

Legislation banning polystyrene foam food packaging has been adopted in nearly 100 American cities including the local cities of Berkeley, Emeryville, Oakland and San Francisco.

The Environmental Resources Associate noted that the Sustainability Committee reviewed the Ordinance and unanimously recommended adoption. The Committee identified that this Ordinance helps the City’s goal to develop a “Green Albany” and will effectively reduce the amount of non-recyclable toxic materials used within the City.

Tom Knox, American Chemistry Council, spoke in favor of using plastic.

**MOTION:**

It was moved by Council Member Wile and seconded by Council Member Atkinson to introduce Ordinance #08-02 for First Reading.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile, & Mayor Lieber

NOES: None ABSENT: None

Motion carried and so ordered.

**8-2. Business License Revenue Analysis report**

Finance & Administrative Services Director Adams delivered the staff report noting that Council and interested citizens have requested that staff review and report on the method used to assess business license taxes. The request has specific interest to the use of gross revenues of the licensee, as compared to the number of employees, as the basis for assessing the tax for commercial entities.

The Finance Director reported that the data analyzed does not produce a mandate for changing the basis of assessment so as to provide a more equitable tax, nor does it indicate that the revenue generated by the tax is disproportionate with that generated by similar cities.

Council Members asked whether taxing gross receipts would be more profitable, but Director Adams indicated the bookkeeping and enforcement would be more complicated. He noted the rates could simply be raised.

Clay Larson, Albany resident, stated only two cities in the area did not use gross receipts. He wanted more information.

**9. OTHER BUSINESS, REPORTS ON MEETINGS ATTENDED, ANNOUNCEMENT OF EVENTS/FUTURE AGENDA ITEMS.**

(Council and staff announcements: Council Member reports on State, regional and local boards, commissions and committees to which they are appointed by the City Council; Council Member announcement of requests for future agenda items. No public comment will be taken on announcement of future agenda items).

- a) Receive information, discuss, and provide Council direction on oral report from the University Village/Gill Tract City Council Subcommittee on meetings to date, and plans for future discussions, including the Subcommittee meeting of April 14, 4:30 p.m., Council Chambers, open to the public.
- b) Receive information, discuss, and provide Council direction on oral report from the Budget Priority Setting Process Council Subcommittee.
- c) Discuss and take action on amending City Council meeting schedule due to City Hall move May 2 – 5, including moving or canceling May 5 Council meeting.

Council Member Atkinson reported on the Association of Community Action Groups meeting. She reported on Alameda County instituting the 211 service.

Council Member Okawachi thanked the Fire Department for catering the Senior Center pancake breakfast.

City Administrator Pollard recommended canceling the May 5 meeting due to the relocation of City offices. There was unanimous consent to cancel the meeting. She also noted there would be a ceremony for a 37-year crossing guard's retirement this week.

Carol O'Keefe, Albany resident, stated the Council was supposed to give preliminary guidance/direction on item 9b, and she did not think that had happened. She wanted to see a comprehensive list of possible projects. She also wanted money from grants included.

Brian Parker, Waterfront Committee Chair, provided an update on their progress.

**10. ADJOURNMENT**

10:45 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Amanda Bennett, Planning Secretary.

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ROBERT S. LIEBER  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK