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MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION, 1000 SAN PABLO AVENUE
MONDAY, MARCH 17, 2008

7:30 p.m.

CLOSED SESSION

Closed session to discuss real property pursuant to Government Code Section 54956.8:

Property: Proposed Pierce Street Park, located across from 737 Pierce Street.
Negotiating Parties: Caltrans, on behalf of the State; City Administrator & City Attorney on behalf of the City.

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; Robert Zweben, City Attorney, Jacqueline Bucholz, City Clerk; Kim Denton, City Treasurer; Ann Chaney, Community Development Director; Jeff Bond, Planning Manager; Randy Leptien, Contract Engineer; Dan Stevenson, Maintenance Supervisor; Marc McGinn, Fire Chief.

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

Mayor Lieber reported that instructions were given to staff to follow up on the real property negotiations.

4. CONSENT CALENDAR

(Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion. By approval of the Consent Calendar, the staff recommendations will be adopted unless otherwise modified by the City Council. There will be no separate discussion on these items unless a Council Member or a member of the audience requests removal of the items from the Consent Calendar.)

4-1. Council Minutes, March 3, 2008.

Staff recommendation: Approve.

4-2. a. Ratification of City of Albany net payroll in the amount of \$197,486.02; taxes, benefits & withholdings in the amount of \$154,804.40. Total payroll in the amount of \$352,290.42. Payroll period: 02/29/08.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$54,461.62; taxes, benefits & withholdings in the amount of \$30,738.57. Total payroll in the amount of \$85,200.19. Payroll period: 02/29/08.

Staff recommendation: Ratify.

4-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$27,707.92. Period: 03/01/08.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$310,828.40. Period: 03/07/08.

Staff recommendation: Ratify.

4-4. Contract for Janitorial Services for City Facilities.
(File #600-30)

4. CONSENT CALENDAR

Staff recommendation: Authorize the City Administrator to replace the City Facility Janitorial Service Provider, One Source Building Services, Inc., with Township Building Services, Inc., for a monthly contract amount of \$7,127.50, which is less than current amount being paid by the City.

- 4-5.** Resolution No. 08-14 – A Resolution of the Albany City Council Authorizing the City Administrator to Execute Agreement to Share Taxpayer Information with the Franchise Tax Board.
(File #600-30)

Staff recommendation: Adopt Resolution #08-14.

- 4-6.** City Council endorsement of an Earth Hour Event, Saturday, March 29, 2008, from 8-9 p.m.
(File #405-35)

Staff recommendation: That the City Council endorses an Earth Hour Event to encourage the community to reduce energy consumption.

- 4-7.** 2008 Sewer Project – East Albany Hill.
(File #1030-30)

Staff recommendation: Authorize the City Administrator to 1) Invite bids for the 2008 Sewer Improvement Project – East Side of Albany Hill. 2) Authorize a transfer of \$450,000 of Sewer Funds, from the North of Brighton Sewer Project to the 2008 Sewer Project – East Side of Albany Hill. 3) Enter into an Agreement not to exceed \$149,000 with Greg Jacobs Engineering to provide construction management services. 4) Enter into an agreement not to exceed \$15,000 with Hultgren-Tillis for soil investigation services during construction. 5) Enter into voluntary agreements for access and temporary construction easements over certain properties within the project area for a total amount not to exceed \$20,000.

- 4-8.** Proclamation Showing Appreciation and Gratitude to Bob Mainini, owner of D&M Auto Body, for donating time and craftsmanship restoring the Jerome Blank Memorial Clock.
(File #610-50)

Staff recommendation: Information only.

Mayor Lieber asked if anyone would like to remove any item from the Consent Calendar for discussion. The following items were pulled off the Consent Calendar: 4-1, 4-5, 4-6 & 4-8.

4. CONSENT CALENDAR

4-1. Council Minutes.

Mayor Lieber asked to have the minutes amended, as follows: Page 9, under the Smoking Ordinance add language “Mayor Lieber did not want anything put on the website regarding rental or lease agreements”.

4-5. Franchise Tax Board

Mayor Lieber asked how much revenue has been identified with this program and the City Treasurer responded that the City has not implemented it yet, as they are getting the business licenses completed.

4-6. Earth Hour

Council Member Javandel reported that on March 29, between 8-9 p.m. cities across the world will turn off their lights for one hour “Earth Hour” to engage communities into action against global warming.

Council Member Atkinson stated that many electrical units stay on even though the consumer turns them off and noted that this problem needs to be addressed.

4-8. Proclamation

Mayor Lieber asked Bob Mainini to come forward so that he could present the proclamation. Mayor Lieber read the proclamation thanking Bob Mainini for his contributions to the new Jerome Blank clock.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to approve the Consent Calendar, as submitted with the amendment to the Council minutes of March 3, 2008.

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/ANNOUNCEMENTS

For persons desiring to address the City Council on an item that is not on the agenda please note that City policy limits each speaker to three (3) minutes. The Brown Act limits the Council’s ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

Please go to our website at www.albanyca.org to view all future Commission and Committee meetings.

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

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

Council Member Wile announced that the Council subcommittee regarding UC Village met on March 6, 2008 and reviewed the future plans for the Gill Tract and approximately 30 people attended. The subcommittee listened to all the ideas presented and noted that the next meeting is scheduled for April 14, 2008 4:30-6:30 at the Senior Center.

Council Member Okawachi announced that she and the Finance Director attended the Alameda County Library Board strategic planning meeting and noted that the Friends of the Albany Library held their book sale and received \$2,800.

Mayor Lieber announced that he attended a rally in Sacramento regarding the Light Brown Apple Moth and met with members of the Assembly and is pleased with the response he received. Also noted that he received a letter from Supervisor Carson who also opposes the State's plan to aerial spray for the Light Brown Apple Moth.

Council Member Atkinson announced that she received a Certificate of Completion from Alameda County regarding in-service programs that she attended. Council Member Atkinson noted that she didn't realize how big the County is and how dedicated the staff are.

The following members of the public spoke: Bob Outis, Albany resident; Brian Parsley, Albany resident; Francesco Papalia, Albany resident; Allan Maris, Albany resident; Tom Kelly, Berkeley resident; Robert Cheasty, Albany resident; Preston Jordan, Albany resident; Maxina Ventura; Lisa Tracy; Maria; Sydney Madson, Albany resident; Jane Kelly, Berkeley resident.

A summary of the comments is as follows: Expressed concern about the Council subcommittee and the Waterfront Committee not being an open transparent government. Noted that Albany does not have a No Drinking in Public Policy in the Municipal Code and believes this should be referred to the Social & Economic Justice Commission. Spoke about trees and sidewalks and who is responsible when damage occurs. A number of speakers spoke in opposition to the State program for aerial spraying for the Light Brown Apple Moth.

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

6. PRESENTATION/PUBLIC HEARING

6-1. Cosco Busan Oil Spill (File #520-30)

The City Administrator reported on November 7, 2007, the container ship Cosco Busan hit the Bay Bridge and released 58,000 gallons of bunker oil into the San Francisco Bay. By the following day, tar balls had washed ashore on the Albany beach and other Albany shoreline.

City staff has participated in numerous meetings with other agencies to address remaining issues from the November spill, as well as to identify areas in which to improve response in the future if/when there is another spill. The areas identified for

6-1. Cosco Busan Oil Spill

future improvement included: 1) Advocacy for improved federal and state responses in an oil spill. 2) Communication. 3) Expectations. 4) Response resources.

Mayor Lieber introduced Supervisor Keith Carson who is here to speak to the Council regarding the oil spill.

Supervisor Carson introduced key members of his staff that are present tonight: The County Administrator, Director of Communications, Health Care Services, Fire Chief, Outreach Coordinator, Director of Environmental Health, the Under Sheriff and County Counsel.

Supervisor Carson stated that he asked for this opportunity so that the County could present their response to the actions taken during the emergency. Supervisor Carson spoke about liability issues and that it was the Federal Government that was in charge and calling the shots. Supervisor Carson noted that in hindsight there were things that could have been done better.

Supervisor Carson introduced the Under Sheriff who gave a presentation and noted that the County was just as frustrated as the cities and noted that the County was #4 in line at Incident Command. The County is planning to speak with everyone involved and discuss what the County can do to help facilitate the process and come up with a clear decisive plan.

The Under Sheriff stated that a counter top exercise is going to be planned and all the groups involved will be asked to participate. The Under Sheriff spoke to the problem that occurred when all the volunteers started to show up and noted that on November 12 a Volunteer Plan was activated and 17 training sessions were held and 2275 people were trained and 1007 volunteer were deployed.

Supervisor Carson stated that the County is going to use an aggressive approach as it moves forward and hopefully would be better prepared in the future.

Mayor Lieber agreed with the moving forward approach and expressed concerns with both the County and local levels noting there were problems from the top to the bottom. Mayor Lieber stated that had he City deployed its resources to the beach area that he believes the City would have been able to cleanup a significant amount of the oil spill and the liability issues regarding that action seem to have prevented the City from deploying its trained personnel.

Council Member Wile stated that she works with the East Bay Bird Advocates who worked to rescue many birds and submitted a report that the organization completed, which was presented to Assembly Woman Loni Hancock for action by the State to implement the recommendations.

Council Member Javandel stated that the County and the cities need to be better prepared for the next emergency and asked how the problems with communications and other road blocks could be dealt with quickly.

The following people spoke on this issue: Robert Cheasty, Citizens for Eastshore State Park; Allan Maris, Albany resident; Francesco Papalia, Albany resident.

A summary of the comments is as follows: Expressed concern about the need for volunteer training. Noted that Chevron has a great plan in place for emergencies and the need to look at Federal requirements to include double hull ships. Expressed concern that

6-1. Cosco Busan Oil Spill

volunteer training was given but no follow up has been made by County and asked if the County has a list of the 4,000 trained volunteers.

The Under Sheriff responded to the question about follow up with the volunteers and stated that the County does have a list of trained volunteers but there are no guarantees that all the volunteers are on that list. The Under Sheriff noted that the County would use first responders before asking for volunteers; however, would like the cities assistance in collecting volunteer information.

Council Member Atkinson thanked Supervisor Carson and County staff for attending the meeting.

6-2. Neilson Street Storm Drain and Sanitary Sewer Project
(File #1030-30)

The Community Development Director reported that pursuant to the California Environmental Quality Act (CEQA) a "Notice of Intent" to adopt a Negative Declaration regarding the Neilson Storm Drain and Sanitary Sewer Project was circulated to applicable agencies and mailed to all residents within a 300' radius of the project.

However, based on the need for additional information regarding project funding, a decision was made to continue this item to April 7. If members of the public are present and wish to speak, the Council should open the public hearing, receive public comments on the Draft Negative Declaration and continue the hearing on the Draft Negative Declaration, plan approval and call for bids to the Council meeting of April 7, 2008.

Mayor Lieber opened the public hearing and the following people spoke: Dorothy, Albany resident; Karen Bugay, Albany resident.

A summary of the comment is as follows: Expressed concern that notification was not given especially as there is a culvert that is 70 years old and is afraid it may collapse and believes no consideration was given to that fact. Spoke about the storm drains filling up with water, and if the plan increases the amount of water, wants to make sure that a study is completed so that the storm drain doesn't suffer any erosion.

There being no one else wishing to speak Mayor Lieber continued the public hearing.

MOTION:

Moved by Council Member Atkinson, seconded by Council Member Javandel that the public hearing be continued to the meeting of April 7, 2008.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

7. NEW BUSINESS

Mayor Lieber stated that due to the time and the length of the agenda and the number of people wishing to speak he would like to propose that the Agenda be changed,

as follows: Continue Item 7-1 to the next meeting and start with Item 7-2 and then Item 8-1.

Council agreed.

7-2. Directly Elected Mayor
(File #660-25)

The City Administrator reported that this matter had been referred to the Charter Review Committee for their review and recommendation. The Charter Review Committee have had several Mayors from other cities, former Albany Mayors and City Managers from other cities to their meetings to discuss this question.

Mayor Lieber would like the Council to discuss this issue and review proposed language that he submitted so that the City Attorney could prepare the ballot language for the November 4, 2008 election. The ballot language must be provided to the County no later than August 8, 2008.

Mayor Lieber commented that the Charter Review Committee has been struggling with this issue since last May and there are time constraints if this is to go on the November 4, 2008 ballot; however, the Council is not stopping the Charter Review Committee from continuing their work and looking at this issue and looks forward to their final report.

Council Member Okawachi noted that the Charter Review Committee has submitted an interim report and would like to know how much time they need to come back with a final report.

Michael Wallace, Chair Charter Review Committee (the Committee), stated that the Committee intends to have a public hearing and believes they need at least a few more months for completion of a final report.

Chair Wallace presented the Committee's Interim Report and noted that last November there was consensus of the Council to give the Committee as much time as they need to complete their deliberations. The Committee requested a work session with the Council but was told this was to be an agenda item. Chair Wallace asked what the role of the Committee is and believe that the process has been cut short.

Ken Bukowski, Mayor of Emeryville, spoke in favor of having an elected Mayor and spoke about the advantage of an elected Mayor at the Mayors Conference, which has a policy of appointing elected Mayors to regional committees.

Council Member Javandel stated that he does not see the need to rush this item and believe that the Charter Review Committee should be given the ability to continue their deliberations.

Mayor Lieber responded that this item has been a priority of his since his election to the Council and believes that the people of Albany have the right to have an elected Mayor. Mayor Lieber stated that the Charter Review Committee has been dealing with this issue for almost a year now.

Council Member Okawachi agreed with Council Member Javandel and does not see the need to rush into this issue and the Charter Review Committee should be able to take as long as they need to make their decision.

Council Member Okawachi asked if the power of the Mayor would change and whether he would need additional staff and noted that more detail is needed. Mayor

7-2. Directly Elected Mayor

Lieber responded that the language before Council does not change the power of the Mayor. In response to the question of more staff time Mayor Lieber stated that right now he does need more staff time but does not believe the City can afford to provide the Mayor with a personal secretary. Mayor Lieber indicated that he is his own personal secretary with issues like the Light Brown Apple Moth; he has been able to find community activists who have served as staff and volunteered for those roles. Since Albany is a close community these kinds of things are possible.

Council Member Atkinson stated that she supports a directly elected Mayor and noted that the Charter Review Committee is an advisory body to the City Council. Council Member Atkinson commented that language could be drafted by the City Attorney and then forwarded to the Charter Review Committee for their input.

Sally Martin, member Charter Review Committee, stated that the Committee has worked very hard and heard a number of facts and spoke about the importance of an elected Mayor building relationships throughout the County over a 4-year period.

Bob Outis, member Charter Review committee, stated that the focus should be on the procedural question and it should be referred back to the Committee for discussion and a final report. Mr. Outis noted that the Committee needs an opportunity to think this through as a function that transcends the politics of the day.

Sarita Mathiasen, member Charter Review Committee, stated that the Council should discuss the procedural question and not the merits of an elected Mayor.

Jerri Holan, member Charter Review Committee, expressed disappointment with the Council that this is being discussed tonight and believes the Mayor is circumventing the process. Ms. Holan noted that there is no consensus on the Committee and that additional public input is needed.

The following people spoke on this issue: Francesco Papalia, Albany resident; Caryl O'Keefe, Albany resident; Preston Jordan, Albany resident; Allan Maris, Albany resident; Robert Cheasty, Albany resident.

A summary of the comments is as follows: Disagreed with the statement that the power of the Mayor would not change and noted that an elected Mayor would diminish the power of the Council. Agreed that the Charter Review Committee needs to be allowed to do their job on its own without any Council deadline. Believe that the City needs to look at Instant Runoff Voting and asked that the City Attorney look into this with regards to how the Council and Mayor are elected. Noted that not many cities have a directly elected Mayor and believe that the Council should work together and not have a dominant Mayor for 4 years. Noted that the real question is whether the voters would like to have an elected Mayor and believe this issue should be on the ballot and agreed that language should be written and referred to the Charter Review Committee for their input.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi that a work session be scheduled with the Charter Review Committee to discuss this issue in more detail.

7-2. Directly Elected Mayor

ON THE QUESTION:

Council Member Atkinson stated that the Attorney could work on the language and a work session scheduled with the Charter Review Committee.

MOTION:

Moved by Mayor Lieber, seconded by Council Member Wile to refer to the City Attorney a Charter Amendment for an elected Mayor based on the recommendations

MOTION (Cont.):

submitted by Mayor Lieber and to also include language that there would continue to be five members, 4 Council and 1 Mayor.

ON THE QUESTION:

It was noted that this measure could go on the November 4, 2008 ballot and the drafted language would be referred to the Charter Review Committee and Council for review and that a work session would be scheduled to discuss the proposed language.

Council Member Javandel stated that the Charter Review Committee would have an opportunity to come up with other ballot language for review by the City Attorney.

VOTE ON FIRST MOTION:

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

NOES: None

ABSENT: None

Motion carried and so ordered.

VOTE ON SECOND MOTION:

AYES: Council Members Atkinson, Wile & Mayor Lieber

NOES: Council Members Javandel & Okawachi ABSENT: None

Motion carried and so ordered.

8. NEW BUSINESS

8-1. Hearing Board – Nuisances

(File #560-95)

The Planning Manager reported that the City adopted Chapter 18 “Nuisances” of the Albany Municipal Code in 2003. The purpose is to address serious and/or persistent health and safety hazards resulting from the neglect, misuse or deterioration of property.

To date the City has not utilized the Nuisances Code to deal with problem properties; however, it is apparent that there are a number of properties in the City in which a cooperative compliance approach with the property owners has not been successful and the health, safety and quality of life for the neighborhood has been impacted.

The nuisance abatement process involves a series of steps. Initially, staff would seek legal authority to inspect the property. Based on the inspection, a Compliance Order would be issued by staff requiring that health and safety violations be corrected. The Compliance Order would be focused on securing the property and structures from unauthorized entry, removal of dead or overgrown landscaping, removal of trash and debris and other basic safety requirements.

8-1. Hearing Board – Nuisances

If the property owner fails to respond fully to the Compliance Order, a hearing would be scheduled before the Council-designate Hearing Board. The Hearing Board could issue an administrative order that includes authorizing the City to abate the nuisance and authorizing administrative penalties of up to \$1,000 per day until the nuisance is abated. If penalties are not paid within the time period designated by the Hearing Board, the City may impose a lien on the property. The property owner has 15 days to protest the lien, which must be heard by the City Council. The City could also ask the County Tax Collector to impose a special assessment on the property for the amount of the lien, and if not paid, the property may be sold after three years.

The Planning Manager noted that staff is recommending that the Planning & Zoning Commission serve as the Hearing Board, as they are familiar with quasi-judicial actions. Furthermore, the Commission has experience in dealing with land use and construction issues, and therefore, could evaluate nuisance situations in the context of the wide range of City land use policy goals and objectives.

The Planning Manager stated that the Planning & Zoning Commission have discussed this issue and would accept the role of Hearing Board.

The City Attorney explained that the comments be confined to the process and not to an individual address, as this could jeopardize the case.

MOTION:

Moved by Council Member Javandel, seconded by Council Wile to extend the meeting half an hour.

Motion carried and so ordered.

Gail Williams, Albany resident, noted that a Petition had be handed out to the Council with photographs and proceeded to speak about a neighborhood and the safety issues noting that the property is filled with garbage, the windows are gone and there is a bad smell. Vector Control has been contacted due to infestation of rats.

The City Attorney reiterated his concern that no particular property be discussed, as this could hurt the City's case. The Attorney noted that this process could take a while, as staff may have to go to Court to get a warrant to enter the property and that the City has to follow the rules of law. The City Attorney offered to speak with the neighbors after the Council meeting to explain the process.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi that the Planning & Zoning Commission be designated as the Hearing Board pursuant to Chapter 18 "Nuisances" of the Albany Municipal Code.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

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

Council Member Wile asked the residents who came to the meeting for the Nuisance item to meet with the City Attorney and the Planning Manager before it goes to the Planning & Zoning Commission.

Mayor Lieber announced the following: 1) That Item 7-1 – Charter Amendments would be on the April 7, 2008 agenda. 2) Saturday, March 22, 2008 is the Little League Parade, which starts at 9 a.m. 3) Asked that the meeting be adjourned in memory of former Police Chief, Ralph Jensen, who passed away recently.

10. ADJOURNMENT

11:30 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

ROBERT S. LIEBER
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK