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MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION, 1000 SAN PABLO AVENUE
MONDAY, MARCH 3, 2008

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; Judy Lieberman, Assistant City Administrator.

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

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, February 19, 2008.

Staff recommendation: Approve.

4-2. a. Ratification of City of Albany net payroll in the amount of \$171,668.23; taxes, benefits & withholdings in the amount of \$220,817.40. Total payroll in the amount of \$392,485.63. Payroll period: 02/15/08.

4. CONSENT CALENDAR

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$54,818.21; taxes, benefits & withholdings in the amount of \$60,266.19. Total payroll in the amount of \$115,084.40. Payroll period: 02/15/08.

Staff recommendation: Ratify.

4-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$192,401.61. Period: 02/22/08.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$343.00. Period: 02/22/08.

Staff recommendation: Ratify.

4-4. Pension payments in the amount of \$110,238.99 for the month of February, 2008.

Staff recommendation: Ratify.

4-5. Endorsement of 2nd Annual Greening Albany Event.
(File #405-10)

Staff recommendation: Endorse the event, which is being organized by the Green Chamber of Commerce and that the City contribute \$2,000 for the event.

4-6. Resolution No. 08-1 – A Resolution of the Albany City Council Accepting the Offer of Dedication of a Conservation Easement Over a Portion of Codornices Creek Lying on a Portion of 1101 5th Street, Berkeley, CA: Lower Codornices Creek Restoration – Phase II.
(File #670-40)

Staff recommendation: Adopt Resolution No. 08-1.

4-7. Resolution No. 08-7 – A Resolution of the Albany City Council Establishing the Community Media Access Committee.
(File #110-30)

Staff recommendation: Adopt Resolution #08-7.

4. CONSENT CALENDAR

- 4-8.** Resolution No. 08-11 – A Resolution of the Albany City Council Designating City of Albany Authorized Agents for Receipt of FEMA Pre-Disaster Mitigation (PDM) Grant Funds, as Required by the State of California Office of Emergency Services.
(File #345-30)

Staff recommendation: Adopt Resolution No. 08-11.

- 4-9.** Resolution No. 08-12 – A Resolution of the Albany City Council, State of California, Terminating Proclamation of Local Emergency.
(File #520-30)

Staff recommendation: Adopt Resolution No. 08-12.

- 4-10.** Consideration of Claim #AL567; Westbrook v. City
(File #170-60)

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

- 4-11.** Consideration of Claim #AL569; Holmes v. City.
(File #170-60)

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

- 4-12.** The following appointments were made: Council Member Javandel: Steven Schwartzberg, Civil Service Board. Council Member Okawachi: Robert Outis, Charter Review Committee. Council Member Atkinson: Sheryl Black, Arts Committee.

Staff recommendation: Information only.

- 4-13.** Gift to the City: Approval for Memorial Plaques Replacement by Albany Community Foundation and Albany Firefighters' Association.
(File #150-70)

Staff recommendation: Accept the proposed Gift to the City, with the provision that the City would be responsible for installation of the replacement plaques.

Mayor Lieber asked if anyone would like to remove an item from the Consent Calendar. The following items were removed.

4. CONSENT CALENDAR

4-6. Dedication of Easement

Mayor Lieber asked where the easement was located and the Assistant City Administrator responded it is adjacent to Bryant Lab, which is on the corner of 5th Street across from the ball fields.

4-7. Community Media Access Committee

Mayor Lieber noted that this Committee would have a lot of work and is happy to see the establishment of this Committee.

4-9. Termination of Local Emergency

Mayor Lieber asked the status and why the emergency is being terminated. The City Administrator responded that the City has ceased any out-of-pocket expenses and noted that the reader board was very expensive and is no longer being used. The City Administrator explained that East Bay Regional Park District would be putting up new signage indicating the beaches are open but to be aware of tar balls.

Mayor Lieber indicated that he would like to remove Item 8-3 from the Agenda, as this item has been taken care of and no action is needed.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to approve the Consent Calendar, as submitted and to remove Item 8-3 from the Agenda.

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.

Mayor Lieber opened the Good of the City/Public Forum/Announcements and the following announcements were made: Council Member Wile: Invited the public to attend a Council subcommittee meeting on Thursday, March 6, 2008, 3-5 p.m. in the Council Chambers to hear ideas regarding the Gill Tract. Presentations would be made by the Little League, Watershed Council and Urban Roots and is time for the public to present ideas. Council Member Wile noted that no action would be taken but would appear on a future agenda for Council action.

Mayor Lieber: 1) Attended the Rotary event last Saturday for the celebration of Albany's 100 birthday. 2) Continuing to work and speak on the proposal to spray for the

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

brown apple moth and noted that he would be attended a meeting in Sacramento to participate in a press conference.

The following people spoke: Allan Maris, Albany resident; Caryl O'Keefe, Albany resident; Francesco Papalia, Albany resident.

A summary of the comments is as follows: Expressed concern about the rescheduling of the Waterfront Committee meeting because one member could not make the meeting. It was noted that this does not justify changing the meeting date and gave very short notice to the public and believes the process needs to be more transparent and clearer. Noted that the new fields at Memorial Park are great and the kids appear to be enjoying it. Thanked U.C. for all the work they have done and reminded everyone that the Village is primarily to be used for student housing. Noted that the public is not respected at the Waterfront Committee meetings and urged the Council to deal with this behavior. A member of the Waterfront Committee spoke stating that he is going to propose the "Consultant issue" be taken off the agenda so that the public gets a chance to participate. Noted that the Council subcommittee regarding UC Village is leaving a large perspective of the City out of the process and noted there are many different points of view that might be beneficial to the City.

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

6. PRESENTATION/PUBLIC HEARING

7. UNFINISHED BUSINESS

7-1. Light Brown Apple Moth

(File #560-70)

In January, 2008, the City Council adopted Resolution #08-4 opposing the California Department of Food and Agriculture (CDFA) aerial spraying program to eradicate the Light Brown Apple Moth. On February 14, 2008, the CDFA issued a Notice of Preparation of a draft Problematic Environmental Impact Report for the Light Brown Apple Moth Eradication Program. Public agencies and members of the public have 30 days from receipt of the Notice to provide written responses.

Mayor Lieber noted that he has appointed Nan Wishner as his "Chief of Staff" to work and represent him on this matter. Mayor Lieber commented that the aerial spraying is a bad idea and the spray used is toxic pesticide and no environmental group advocates the spraying. Mayor Lieber commented that the State should implement an IPM program and continue to study the insect and see if there is going to be a problem.

Council Member Javandel noted that the two alternatives are very sparse and would like to see different choices available and would prefer a less invasive approach. Also expressed concern on how the public is going to try and protect themselves and their property. Council Member Javandel stated it has been reported that the Light Brown Apple Moth does not move very quickly.

7-1. Light Brown Apple Moth

The following member of the public spoke: Allan Maris, Albany resident. A summary of the comment is as follows: Stated that the State needs to look at alternate ways to eradicate the moth that would not be detrimental to humans and would be sensitive to the farmers and the crops.

MOTION:

Moved by Council Member Wile, seconded by Council Member Javandel to authorize the Mayor to send a letter of comment on the Notice of Preparation that communicates the concerns of the City Council, as stated in Resolution #08-4 and any additional concerns of the City Council for the CDFA to address in the Environmental Impact Report.

ON THE QUESTION:

This includes the comments made by Council Member Javandel on having different choices available.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: None

Motion carried and so ordered.

8. NEW BUSINESS

8-1. Department of Peace and Non-violence

(File #660-40)

The Assistant City Administrator reported that at the January meeting of the Social & Economic Justice Commission (SEJC) a presentation was made regarding the creation of a U.S. Department of Peace, per House Bill 808. House Bill 808 has gathered the sponsorship of 68 members of the U.S. House of Representatives. The SEJC unanimously recommended that Council approve a resolution supporting House Bill 808.

The Assistant City Administrator noted that the last two Whereas Clauses were added by the SEJC to a generic resolution.

The following people spoke: Nancy Merit; Stephanie Thomas, representative from Barbara Lee's office; Unidentified speaker; Carolina Marks, Berkeley; Mr. Davis, Oakland; Allan Maris, Albany resident and member of the SEJC; Wendy ?, Albany resident.

A summary of the comment is as follows: This is a Department that would teach peace and peer mediation to help with the violence in the schools. Noted that this legislation is very well written. All the speakers urged the Council to adopt a Resolution of support.

Council Member Okawachi stated that she definitely supports this and noted that the Albany Prevention Council deals with the same kind of issues regarding violence in the schools and hopes that also would support the legislation.

Council Member Javandel commented that he is pleased to see that local issues would be included and that he too believes in peace.

8-1. Department of Peace and Non-violence

Council Member Atkinson noted that hopefully this legislation would change people's attitudes and way of thinking.

Council Member Wile thanked everyone for attending and speaking in support of this legislation.

Mayor Lieber stated that peace does mean power and definitely supports the legislation noting it has been a long time coming.

Council Member Okawachi presented Resolution No. 08-10 – A Resolution of the Albany City Council Supporting House Bill 808 to Create a United States Department of Peace and Non-violence.

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Okawachi and seconded by Council Member Javandel to adopt Resolution No. 08-10.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

8-2. Smoke Free Ordinance

(File #560-90)

The Assistant City Administrator reported that Ira Sharenow introduced the smoke free proposal to the Council at the meeting of October 1, 2008. Council Members stated their overall support for making Albany's smoking regulations stronger, but referred the issue to the Social and Economic Justice Commission (SEJC).

The SEJC has discussed a variety of issues and concerns, heard public testimony and developed specific issue related recommendations.

Commission Recommendations:

- 1) Upgrade the ordinance to include all provisions of State Law.
- 2) Upgrade the "Whereas" clauses to include language regarding nuisance, cigarette butts as littering; second-hand smoke as a carcinogen, etc.
- 3) Exclude smoking in the following additional unenclosed places:
Recreational areas (parks, playground, sports fields, gardens, walking paths, etc.); Public Events: (sports/music events, parades, fairs, Solano Stroll, etc.); Service lines; outdoor dining areas
- 4) Add defined reasonable distance from doorway of 25 feet
- 5) Add 80% of hotel rooms
- 6) Allow outdoor smoking at bars, particularly the Pub.
- 7) Add landlords to those (business owners, managers, etc.) to those who can declare their entire establishment as non-smoking.
- 8) Do not prohibit smoking on San Pablo Avenue
- 9) Prohibit smoking on Solano Avenue on a one year trial basis; only if language can be developed to ensure that this does not impact The Pub on Solano Avenue
- 10) Prohibit smoking in indoor common areas of multi-family housing

- 11) Prohibit smoking at outdoor common areas of multi-family housing as long as landlords can provide a designated outdoor space where smoking is permitted
- 12) Require landlords in multi-family housing and in condominiums to disclose in writing to prospective tenants/buyers the smoking policy in the unit and for the complex.
- 13) The Commission did not recommend that the City be responsible for developing and posting questionnaires from landlords/condominium owners on the City web site.
- 14) Recommend that the Albany School Board adopt a policy prohibiting smoking on the sidewalk adjacent to Albany public schools.
- 15) Do not recommend language automatically categorizing second hand smoke as a nuisance that would trigger the city's Nuisance Abatement ordinance

Commission Concerns:

Although the Commission has recognized the dangers of second-hand smoke, particularly in enclosed spaces, and has recommended a fairly comprehensive set of recommendations (although perhaps not everything the original proposer would like), they also felt strongly that their concerns be represented as well. They specifically expressed concerns regarding the following: Restrictions related to multi-family housing fall predominantly on lower income households and individuals, who live in multi-family housing. Impacts to existing small businesses should be considered, in particular The Pub on Solano, which is a community institution; The Mallard Club, which also has an outdoor smoking area; and The Ivy Room. Smoking in outdoor public places in Albany may not be a significant issue that would require additional government regulation. Enforcement should not be punitive; but should involve mediation and referral to smoking cessation services.

Council Member Atkinson asked why San Pablo Avenue was not recommended and the Assistant City Administrator responded that the Commission voted on both streets and decided to start with just Solano Avenue.

Council Member Wile stated that all schools should be included in this Ordinance.

Mayor Lieber stated that non-smokers have the right to breathe fresh air and asked that the one-year clause be taken out and San Pablo Avenue included in the Ordinance. Mayor Lieber commented that he would prefer to see a fine for the second offense and also mentioned the littering of cigarette butts. Mayor Lieber noted that there should be a provision that states smokers must be at least 25' from a residence when smoking.

The following people spoke: Francesco Papalia, Albany resident; Ira Sharenow, Albany resident; Rita ?, Albany resident; Allan Maris, Albany resident; Brian Parsley, Albany resident; Jeffrey Sauders, Albany resident; Joseph Fenton, Albany resident; William Justice, Albany resident.

A summary of the comments is as follows: Stated there is a line between education and legislation and believes the Commission has gone too far and noted that this presents a very narrow view. Urged the Council to support a very strong smoking ordinance. Commented this comes down to individual rights versus health issues and asked the Council to look at this issue very carefully. Believe that this ordinance is not

8-2. Smoke Free Ordinance

enforceable and do not believe it is the best use of the Police Department to be chasing down smokers. Agree that smoking should be prohibited at special events and close quarters but not to include the entire street. Noted that scientists have not stated that second hand smoke is a problem in the open air and asked the Council to consider the diversity in this area.

Council Member Javandel agreed that areas such as doctor offices, Solano Stroll should have smoking prohibited; however, there does have to be some sensitivity to smokers. Council Member Javandel favored an “opt out” for businesses and does not want to turn this into an enforcement issue.

Council Member Atkinson believes that Albany should have the same laws regarding smoking, as Berkeley has.

Council Member Wile stated that the Ordinance should go ahead on Solano Avenue but omit any police action and that it include all schools. Agree with the recommendations of the SEJC and that it apply to apartments and that the apartment has an outdoor area for the smokers.

Mayor Lieber commented that second had smoke is hazardous to health and believe the SEJC has done a good job on this issue. Mayor Lieber stated that he would like the Ordinance to include San Pablo Avenue and have an “opt out” for businesses and believe that mediation and education is the answer instead of fines. Mayor Lieber stated that he does not want the City to include rental or lease agreements on the website.

Council Member Okawachi stated that she is not ready to pass anything tonight and noted that the Ordinance needs language regarding education not just legislation.

Council Member Javandel recommended that he would like to add to item #6 of the SEJC recommendation language for an “opt out”. Recommendation #9 should not be on a trial basis but revisited in one year.

The City Attorney stated that “opt out” language on public streets may be confusing and suggested signage instead, such as “smoking zone”. The City Attorney commented that the Council needs to think through the issue and believes that consistency is the best rule.

The City Attorney also recommended that regarding item #9 that no business name be listed.

Council Member Okawachi noted that the Smoking Ordinance should be given out to all businesses when they come into the City to apply for their business license.

MOTION:

Moved by Council Member Atkinson, seconded by Council Member Javandel to approve staff’s recommendation, as follows: Direct the City Attorney to draft an ordinance, which includes provisions to 1) update or replace the City’s existing smoking regulation ordinance to be in compliance with State Law and 2) add a variety of provisions to prohibit smoking in public places, per the SEJC recommendations and to include general comments made tonight.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

8-4. Budget Priority Setting Process

(File #330-20)

The City Administrator reported that every two years the City Council adopts a budget for a two fiscal year period beginning July 1st. In June, 2008, the Council is scheduled to adopt a budget for fiscal years 2008-09 and 2009-10.

Historically, the City's finances are generally relatively stable and have no dramatic changes from year to year. However, due to the projected State budget deficit of more than \$14 million and the downturn in the economy cities are starting to curtail budget spending or at least approach the next fiscal year with caution. As noted in the City's mid-year budget report, both sales and property transfer tax revenues are down, which creates some uncertainty in available revenues for City expenditures.

The City Administrator stated that to prepare the Council for any changes it is recommended that the Council designate a subcommittee to work with staff on developing a recommended priority setting process.

Council Member Atkinson agreed that this is a good direction and likes the idea of having Council making sure that the money is there for priority projects.

Council Member Wile stated that it would be good for Council to look at the budget and see where it could be trimmed.

Council Member Javandel stated that he would like staff to present ideas on cutting the budget before this goes to the public.

Council Member Okawachi commented that she is still interested in the City having an economic development program.

Council Members Atkinson, Javandel and Okawachi indicated that they would like to be on the subcommittee. Council Member Okawachi stated that although she has the experience and business background she would withdraw her name for consideration.

The following people spoke: Caryl O'Keefe, Albany resident; Allan Maris, Albany resident.

A summary of the comments is as follows: Believes the Council should work together, as a whole and participate in public. Expressed concern about one priority listed, which is item 5 on the staff report IPM program, noting that this program would create a lot more work for the Maintenance Department. Noted that the City should participate in public art for the City.

Council Member Javandel stated that he envisions the subcommittee working with staff on the budget process and decisions would be made at the Council level.

Council Member Atkinson agreed noting that nothing is going to be done behind the scenes and that the subcommittee would be deciding on process decisions.

MOTION:

Moved by Council Member Wile, seconded by Council Member Okawachi to appoint Council Members Atkinson and Javandel to work with staff on the Council priority setting process for the 2008-10 budget.

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.

Mayor Lieber announced that the Council subcommittee on UC items would be having a meeting and a report would be on the March 17, 2008, Council agenda.

Council Member Wile announced the March 6, 2008, meeting of the subcommittee to hear preliminary ideas.

The City Administrator reported that the Buchanan median has been planted with Bay friendly landscaping and noted that the Public Works Supervisor negotiated a deal with the Company to work on the planter in front of the old Cortese Pharmacy building at the corner of San Pablo and Solano Avenue.

Council Member Atkinson announced that Meals on Wheels need to have a volunteer available on Fridays and urged people to call the Senior Center if they are interested.

10. ADJOURNMENT

10:25 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