

NOTE: These minutes are subject to Council approval and are not verbatim; however, tapes are available for public review.

**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION, 1000 SAN PABLO AVENUE**  
**MONDAY, OCTOBER 1, 2007**

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**7:15 p.m.**

**CLOSED SESSION**

Closed session with legal Counsel pursuant to Government Code Section 54956.9

City of Albany v. Alten Construction

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

Property: 1495 Solano Avenue; Monroe Street Site, University Village.

Negotiating Parties: JL Lemm & Associates; University of California; City Administrator, 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; Ann Chaney, Community Development Director; Jeff Bond, Planning Manager; Judy Lieberman, Assistant City Administrator; Aaron Walker, Personnel Manager; Charles Adams, Finance & Administrative Services Director.

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

Mayor Lieber reported on closed session actions, as follows: Gov. Code Section 54956.9: Gave instructions to no decision was made. Gov. Code Section 54956.8: Gave instructions to staff.

**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, September 17, 2007.

Staff recommendation: Approve.

**4-2.** a. Ratification of City of Albany net payroll in the amount of \$223,014.48; taxes, benefits & withholdings in the amount of \$170,114.68. Total payroll in the amount of \$393,129.16. Payroll period: 09/14/07.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$51,447.24; taxes, benefits & withholdings in the amount of \$39,991.28. Total payroll in the amount of \$91,468.52. Payroll period: 09/14/07.

Staff recommendation: Ratify.

**4-3.** Pension Payments for the month of September, 2007, in the amount of \$110,761.41.

Staff recommendation: Ratify.

**4-4.** Resolution No. 07-58 – A Resolution of the Albany City Council Approving the Final Condominium Subdivision Map for Tract 7773 (Villa de Albany , 727 San Pablo Avenue)

**4. CONSENT CALENDAR**

(File #410-50)

Staff recommendation: Adopt Resolution No. 07-58.

**4-5.** a. Ordinance No. 07-04 – An Ordinance of the Albany City Council Amending Chapter 20 of the Planning & Zoning Code Establishing an Art in Public Places Program. Second Reading-Pass-to-Print.

b. Resolution No. 07-60 – A Resolution of the Albany City Council Establishing Standards for Implementation of the Art in Public Places Program.

(File #450-20)

Staff recommendation: 1) Adopt Ordinance No. 07-04 – Second Reading Pass-to-Print. 2) Adopt Resolution No. 07-60.

Mayor Lieber asked if anyone would like to remove any item from the Consent and announced that staff has requested that Item 4-4 be continued, as the documents are not ready at this time.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Okawachi to approve the Consent Calendar with the continuance of Item 4-4.

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**

The following announcements were made by Council: 1) Thanked Brian Johns and Allan Maris for the Peace Day they organized last Sunday. 2) Thanked Nicole Almaguer for the electronic recycling day last Saturday. 3) Thanked Aleida Andrino-Chavez for putting the map of the bikeways and the Pedestrian Master Plan Safe Routes to Schools on the City’s web page. 4) Announced a demonstration against the war in San Francisco, on October 27, 11 a.m. at the Civic Center. 5) Thanked the Arts Committee for the beautiful tile mural at Terrace Park.

The following people spoke: Mr. Paul Cummings, Albany resident; Nan Wishner, Albany resident; Allan Maris, Albany resident.

A summary of the comments is as follows: Spoke on second hand smoke and SB 7 legislation, which would ban smoking in cars with children as passengers and urged the Council to support this legislation. Announced that October is Arts & Humanities Month. Thanked the Arts Committee, and in particular Nan Wishner and Susan Adame, for their work on the Ordinance for public art. Expressed concern about the City’s inclusionary housing, especially at 727 San Pablo Avenue and noted there is a lack of housing for the 30% below level and urged the Council to address this concern.

## 6. UNFINISHED BUSINESS

### 6-1. Burrowing Owl Habitat at the Albany Plateau.

(File #490-95)

The Community Development Director reported that a five-city Joint Powers Agreement (JPA) was created to provide ball fields and property at Gilman Street and the I-80 frontage road was secured for the ball field complex. During the preparation of the environmental document it was learned that qualified persons at this location had made historical sightings of burrowing owls. As a result, the environmental document required that mitigation occur on-site or alternatively off-site, if on-site mitigation was not possible.

The Department of Fish & Game requires a minimum of 6.5 acres of mitigation for impacts to burrowing owls, plus a suitable buffer in areas of public access. If done at the ball field site (Gilman Street), an estimated 40% of the field would have been lost. It was agreed by everyone that the Albany Plateau was a suitable alternative location to mitigate impacts to burrowing owls.

The Community Development Director summarized the project description: 8.1 acres of low-lying grassland enclosed by a perimeter fence located in the northeast portion of the Plateau. Perimeter fence 4' in height. Four entrance gates for mowing and emergency access. Three burrows created from salvaged rock and soil, as directed by the City's wildlife biologist. A 40-ft wide grassland and service path buffer. Minor grading will be necessary in some areas to improve the road surface. Interpretive sign near the main entrance to the Plateau per Park District specifications. Additional "habitat enhancement" signs will be installed on the fence.

The Community Development Director noted that the costs include construction monitoring and maintenance, which would be \$5,000 for maintenance, per year for 5 years. The total project cost is \$125,700 and the project will start this fall. At the end of the 5 years the obligation of the cities and the JPA will cease.

Council Member Javandel suggested that instead of mowing the grass the District should use grazing.

Council Member Atkinson stated that she hopes there is a way to keep other animals out of the area.

Council Member Wile stated the City has an opportunity to really do this right and encourage a wildlife area that is protected.

The following people spoke on this issue: Maureen Crowley, Albany resident; Clay Larson, Albany resident; Kristina Osborn, Albany resident; Joan Larson, Albany resident.

A summary of the comments is as follows: Agreed that grazing should be encouraged instead of mowing the grass. Expressed concern on how much money is being spent on this project. Stated that decisions should be based on environmental data and not based on political decisions. Expressed concern that dog walkers will lose an area that is being used for owls that may or may not come to this area. Spoke about the increase of costs being 400% and would like to have a 400% increase given to the Historical Society.

Council Member Okawachi stated that she is disappointed in the area chosen, as it will impact many dog owners who currently use the area. Also expressed concern for the

### **6-1. Burrowing Owl Habitat at the Albany Plateau.**

other wildlife in the area and noted that she does not like this but realizes it will go forward.

Council Member Javandel stated that he too is concerned about the increase of costs and hopes that the bids will come in under the Engineer's estimate.

Council Member Atkinson stated that maybe if the owls do not appear after the 5 year period the Park District will make the area into a dog run.

Mayor Lieber stated that he is very excited to see this project going forward and spoke about the benefits to the City and the youth with the new ball fields. Mayor Lieber stated that the funds are coming from the JPA with an obligation of \$6,500 from Albany. Mayor Lieber noted that there have been owl sightings and this project should be given time.

#### **MOTION:**

Moved by Council Member Javandel, seconded by Council Member Atkinson to approve staff's recommendation to 1) Enter into a Memorandum Agreement between the City of Albany and East Bay Regional Park District relating to Burrowing Owl Habitat and Public Access Improvements at Albany Plateau, Eastshore State Park. 2) Authorize the City Administrator to invite bids and award a construction contract to the lowest responsible bidder to construct the Burrowing Owl Habitat at the Albany Plateau for an amount not to exceed \$93,600. 3) Authorize the City Administrator to execute a contract with Avocet Research Associates for an amount not to exceed \$7,102.50. Also to add discussion with the Park District on what method of keeping the grass low could be used and would suggest they use grazing.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

### **6-2. Salary Schedule for the City Attorney**

(File #700-20)

The Personnel Manager reported that in July, 2007, the City Council approved Resolution #07-45 authorizing a cost-of-living increase for the position of City Attorney and establishing a longevity incentive in the form of a post-employment retiree health savings account for a City Attorney with at least thirty years of active service. This benefit was also approved for the Albany Municipal Services JPA and the Albany Fire Fighters Association.

The City Attorney submitted a memo expressing concern about inequity of his salary with city attorneys in other cities and with increases approved over the years and this year for some Department Heads.

The City Council requested that staff return with information on the total compensation paid to the City Attorney in the past two fiscal years and funds paid for services to outside attorneys.

The following people spoke on this issue: Caryl O'keefe, Albany resident; Maureen Crowley, Albany resident.

**6-2. Salary Schedule for the City Attorney**

A summary of the comments is as follows: Glad to see the City dealing with internal equity issues. Stated the amount being requested was too much money for a part/time Attorney and believes the City cannot afford the increase.

Council Member Okawachi stated that she believes the salary request is fair and that the City Attorney deserves the equity raise and the experience and education should be taken into account.

Council Member Javandel agreed that with the level of experience the salary request is not out of line and supports the recommendation.

Council Member Javandel presented Resolution #07-61 – A Resolution of the Albany City Council Approving the Salary Schedule for the City Attorney.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Javandel and seconded by Council Member Okawachi to adopt Resolution #07-61.

AYES: Council Members Javandel & Okawachi    ABSENT: None

NOES: Council Members Atkinson, Wile & Mayor Lieber

Motion Failed.

Council Member Atkinson stated that there are two elected staff members, the Attorney and the Treasurer and is hard to figure out the relationship between them and the Council and asked what are the hours and what is part-time? Council Member Atkinson stated that if the Attorney is reviewed then the Treasurer should also be reviewed.

Mayor Lieber commented that Council is not hiring staff and the Attorney is an elected position and approving the budget and salary is the only way the Council has a say as to whether it is happy or not.

Council Member Okawachi asked the three Council Members whether their vote was reflective that they believe the Attorney is not performing.

Council Member Wile stated that this position is different and spoke about the other compensation that the Attorney receives from the City including a secretarial subsidy.

Council Member Javandel commented those costs are associated with doing business and don't believe it fair to hold that against the request for an increase in salary. Council Member Javandel stated that he believes the City Attorney has done a remarkable job and this motion will discourage other candidates in the future.

Council Member Atkinson asked if there was a way to determine how many hours the City Attorney works and the City Administrator responded that the litigation costs are billed on an hourly basis but not the other services.

## 7. NEW BUSINESS

### 7-1. Centennial Banners

(File #910-25)

The Assistant City Administrator reported that in 2006, the City appropriated \$5,000 to support the installation of brackets on San Pablo Avenue in support of a San Pablo Avenue banner program to be developed and implemented by the Albany Chamber of Commerce.

In 2007, the Council directed the Chamber of Commerce to take the banner program through the Arts Committee. The Historical Society has approached the Chamber and the City with the idea of having banners, as part of the City's Centennial Celebration.

The Arts Committee approved the idea of Centennial banners using Albany's historical photographs as the artwork with specific direction in terms of design, including the following: Use the new "Albany font" for lettering. As little text as possible. Sponsorships allowed on bottom of banners. Albany Historical Society to select the historical photos and develop some kind of "key" to identify the photographs.

Following the Centennial year, the Chamber would like to continue the banner program on San Pablo Avenue. The Arts Committee has stated its desire not to have mass produced graphics and indicated their willingness to call for and review the artwork for the banners.

The Assistant City Administrator stated the estimated cost to purchase and install brackets and to purchase and install the Centennial banners is \$230 per pole and the program goal is to have at least 50 banners, of which 10 will be on Buchanan, 10-15 on Solano Avenue and 25-30 on San Pablo Avenue. The total cost of the program for 50 banners is approximately \$11,500.

The following people spoke on this issue: Ruth Ganong, Albany resident; Dana Milner, Albany resident; Nan Wishner, Albany resident.

A summary of the comments is as follows: Stated that it is very important to have a variety of historical photos on the banners and not be too repetitive. Support this program as a way to beautify Solano Avenue and like the idea of different fonts. Noted that the banners need to look like "Albany" banners and be distinctive with no advertising.

Council Member Okawachi stated that she would like to see samples of the banners.

Council Member Javandel stated that he would like to see a variety of photos used and believes it is worth the extra cost.

Mayor Lieber expressed concern about advertising on the bottom of the banners and expressed concern that the Chamber of Commerce is using this as a funding raising event. Mayor Lieber asked why the Chamber, and not the Historical Society or any other group, was given this event to run.

Mayor Lieber stated that Council must over see this and watch how much money is being raised and spent and believes the Chamber should provide the Council with reports. Mayor Lieber commented that he does support the Chamber of Commerce becoming financially independent, and therefore, will support this program.

**7-1. Centennial Banners**

Mayor Lieber noted that there are a lot of poles around town that are damaged and need to be repaired.

Council Member Okawachi stated that this program is ideal for the Chamber to benefit from, as the banners are going into the business community. Agreed that the font should be small but noted people should be able to see who is sponsoring a banner.

**MOTION:**

Moved by Council Member Okawachi, seconded by Council Member Javandel to approve the Centennial Banner Program, to be implemented by the Albany Chamber of Commerce in conjunction with the Albany Historical Society, and with the Albany Arts Committee review.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-2. Smoke Free Ordinance**

(File #560-90)

The Assistant City Administrator reported that Albany resident Ira Sharenow has submitted a proposal for smoking regulations for consideration by the City, as a measure to help protect the community from the health impacts of secondhand smoke and related concerns.

Council Member Wile has proposed that the Council refer consideration of a smoke-free ordinance to the Social & Economic Justice Commission. The main points of the proposal are: 1) No outdoor smoking on Solano Avenue from San Pablo Avenue to the Berkeley border. 2) No outdoors smoking on the block that contains Albany High School. 3) No smoking in recreational areas such as parks, biking and walking trails or at City festivals such as the Solano Stroll. 4) No smoking in indoor workplaces. 5) A second proposal utilizes a market-based approach to smoke free housing by requiring landlords to state their smoking policies on a central web site.

The following people spoke on this issue: Paul Cummings, Albany resident; Ira Sharenow, Albany resident.

A summary of the comments is as follows: Thanked Council Member Wile for supporting this legislation and noted that Albany did not get good marks from the American Lung Association. Suggested that resources be posted on the City's website.

Council Member Okawachi stated that the Prevention Council is working closely with the Police Department and putting signs in liquor stores regarding selling cigarettes to a minor.

Mayor Lieber stated that he supports this ordinance and that it be sent to the Social & Economic Justice Commission for their input.

Council Member Javandel commented that he is glad to see this ordinance and also supports its.

The consensus of the Council approved sending this proposal to the Social & Economic Justice Commission for their recommendation.

**7-3. Unaudited Financial Statements**

(File #330-20)

The Finance Director reported that the financial statements of the City General Fund are compiled from the financial records maintained by the Finance Department. They reflect all transactions completed during the year and the accrual of revenues and expenditures, as required by generally accepted accounting principles. The City's comprehensive financial statements are currently undergoing independent audit, which may result in modification of the financial results reported.

The Finance Director noted that Council previously approved a schedule of interfund transfers as part of the fiscal year 2006/07 budgets. Several of these transfers were based on estimated revenues and expenditures and at this time are being adjusted to reflect the actual operations for the year and to provide for additions to reserve funds.

The City is self-insured for general liability claims up to \$50,000 per claim and for worker's compensation claims up to \$150,000. Reserve funds are maintained at levels determined by actuarial projects of future liabilities. As of June 30, 2006 the reserve balances were sufficient to provide for future payments at a statistical level of 90%. The 2007 reserve balances exceed the amount required at the 90% level.

Mayor Lieber asked if the Police Department was fully staffed and if so will the overtime budget reflect a decrease. The Finance Director responded that the overtime costs are usually for court time, transportation of prisoners and training; therefore, there will be no major decrease in the overtime budget.

Caryl O'Keefe, Albany resident, asked a question on Exhibit A & B regarding excess deficiency being in the negative.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Wile to accept the unaudited financial report for the fiscal year ended June 30, 2007 and approve the updated schedule of interfund transfers and approve the carry-forward of the self-insurance reserve balances, as reported June 30, 2007.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-4. Proposed Charter Amendment – Section 4.03 Changes in Formal Contract Bid Limits.**

(File #660-25)

The Public Works Manager stated that currently the City Charter provisions for public works construction projects essentially requires the City to use formal bid procedures for projects estimated at \$5,000 or more. This limit has been in place for many years and is without a mechanism for adjustment to allow for increases in the cost of business due to inflation or other factors.

The bid requirement threshold currently in the Charter refers to the requirements for general law cities and as a charter city, Albany can amend its Charter to differ the threshold from what is set for general law cities.

**7-4. Proposed Charter Amendment – Section 4.03 Changes in Formal Contract Bid Limits.**

Many general law cities have adopted the Uniform Public Construction Cost Accounting Regulations, which in state law allows a mechanism for raising the threshold to an amount higher than \$5,000. However, the City Attorney advised that a charter amendment to allow the threshold to be set by ordinance adopted by the City Council would be clearer and less ambiguous, due to the reference in the Charter to the applicable limits for general law cities.

The City Attorney reiterated his position and recommended this be sent to the Charter Review Committee for their recommendation for a ballot measure to appear on the February, 2008, ballot.

Council Member Javandel stated that he would like to see established guidelines be part of the discussion of the Charter Review Committee.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Atkinson to refer this issue to the Charter Review Committee for recommendation and to also address the issue of staff authorization levels.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

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

Council Member Okawachi announced the following: 1) On October 13, 10-2, the Police Department will be sponsoring a bicycle rodeo. 2) A book signing of the new Albany book will be at the Albany Library, October 11, 1 p.m. in the Edith Stone Room.

Mayor Lieber announced the following: 1) Attended the Albany Peace Day and hopes that this will be an annual event. 2) Attended the Chamber of Commerce mixer, which was well attended.

Council Member Atkinson announced the following: 1) Attended Ruth Meniketti's memorial, which reflected on her life and Council Member Okawachi noted that the refreshments were provided by the Friends of the Albany Library, Friends of Five Creeks and Boy Scout Troop, which her son was a member.

Council Member Javandel announced the following: 1) Attended a 70<sup>th</sup> anniversary of the Albany Preschool.

The City Administrator announced that the report on the Albany Waterfront Process is scheduled for the meeting of October 15<sup>th</sup>.

**9. ADJOURNMENT**

10:20 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

**9. ADJOURNMENT**

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

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ROBERT S. LIEBER  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK