

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, JULY 24, 2006

6:45 p.m.

WORK SESSION

Green Building Ordinance and By Friendly Landscaping Ordinance; Water Reuse Ordinance, Construction and Demolition Debris Recycling Ordinance.
(File #405-35)

Staff recommendation: No formal action is required at this time. It is recommended that the City Council receive presentation from staff and Stopwaste.org representatives, review recommendations from the Planning & Zoning Commission and provide policy direction to staff for preparation of amendments to the Municipal Code and associated implementing policies.

8:00 p.m.

Mayor Maris, 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 Good, Javandel, Lieber, Okawachi & Mayor Maris
Absent: None

STAFF PRESENT

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Judy Lieberman, Assistant City Administrator; Ann Chaney, Community Development Director; Ed Phillips, Planning Consultant; Barry Whittaker, Public Works Manager; Amber Curl, Assistant Planner; Jeff Bond, Planning Manager; Randy Leptien, City Engineer; Marc McGinn, Fire Chief.

3. 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. 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.)

3-1. City Council minutes, July 10, 2006.

Staff recommendation: Approve.

3-2. a. Ratification of City of Albany net payroll in the amount of \$164,662.60; taxes, benefits & withholdings in the amount of \$230,643.02. Total payroll in the amount of \$395,305.62. Payroll period: 07/07/06.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$42,316.50; taxes, benefits & withholdings in the amount of \$45,551.07. Total payroll in the amount of \$87,867.57; Payroll period: 07/07/06.

Staff recommendation: Ratify.

3-3. Ratification of pension payments for the month of June in the amount of \$102,645.95.

Staff recommendation: Ratify.

3-4. Resolution #06-36 – A Resolution of the Albany City Council Adopting the National Incident Management System (NIMS) for the City of Albany and Implementing Mandated NIMS Training for all City of Albany Employees to Comply with Homeland Security Presidential Directive (HSPD-5) Management of Domestic Emergency Incidents. (File #585-45)

Staff recommendation: Approve Resolution #06-36.

3-5. Solano Avenue Stroll – September 10, 2006. (File #820-50)

Staff recommendation: 1) Direct staff to issue a no-fee encroachment permit to the Solano Avenue Association for the 2006 Solano Stroll event, scheduled for Sunday, September 10, 2006. 2) Contribute \$5,000 to the Solano Avenue Association to assist in putting on the 2006 Solano Stroll. 3) Waive fees for paramedics to be on-site from 9:00 a.m. to 6:30 p.m.

3. CONSENT CALENDAR

- 3-6.** Notice of Exemption from the California Environmental Quality Act (CEQA) for the Burrowing Owl Habitat Project at the Albany Plateau. (File 400-20)

Staff recommendation: Information only.

- 3-7.** Call for bids, 2006 Parks Rehabilitation Projects, Terrace Park, Memorial Park & Ocean View Park. (File #600-10)

Staff recommendation: Authorize call for bids to renovate Terrace Park, Memorial Park (Phase II) and Ocean View Park.

Parks & Recreation Commission Recommendations: 1) Eliminate three (3) features from the Memorial Park renovation project including: a. Promenade and entry feature off Portland Avenue, b. Staging Area/Plaza at the entrance of the Veteran's Building, c. Entry features/Gateway Monuments at two other park entries. 2) Reallocate \$131,000 in Measure R funding from the Pierce Street Park project to cover the funding shortfall for ball field-related elements.

- 3-8.** Lower Codornices Creek Phase II – Contract #06-11. (File #600-10)

Staff recommendation: Reject the bid of W.R. Forde Associates, sole bidder for the proposed work and authorize staff to rebid the project in its present form this winter for construction to commence June 15, 2007.

Mayor Maris asked if anyone would like to remove an item from the agenda and the following items were removed for discussion: 3-1, 3-5, 3-6 & 3-8.

3-1. Council Minutes, July 10, 2006

Council Member Good stated he would like to make a correction to page 10 – the minutes should reflect that he recused himself from discussion and vote on the Veteran's Memorial Building.

3-5. Solano Stroll Encroachment Permit

Council Member Okawachi stated that Lisa Bullwinkel, Executive Director, Solano Avenue Association, submitted a letter asking that the City be an official sponsor of the Stroll and requested permission to use the City Logo.

The City Administrator stated that this could be incorporated in the motion when approved by Council.

3. CONSENT CALENDAR

3-6. Notice of Exemption – Burrowing Owl

Council Member Okawachi stated that she received an e-mail from Clay Larson and would like clarification as to whether this is exempt from CEQA. The City Attorney responded that he believes that is correct and noted it is not just the owls but also the delineation of the area.

Council Member Okawachi stated that she believes the best area for the owls is the plateau.

Mr. Clay Larson stated that he does not believe the finding that the project is categorically exempt and does not believe that the Initial Study included a proper evaluation of the environmental factor and Land Use Planning.

Mr. Larson requested that the City Council direct the City Attorney to give an opinion as to whether the City’s claim that the Burrowing Owl habitat project is categorically exempt from CEQA is legally sound. If it is not, then the Council should direct staff to follow the correct CEQA requirements.

3-8. Lower Codornices Creek Phase II

The Assistant City Administrator reported that after this item was put on the agenda the Contractor contacted the City and stated that he would reduce the bid amount. Staff is recommending that in addition to approving the staff recommendation on the agenda that staff be authorized to negotiate with the contractor and the City Administrator be authorized to enter into a contract with contractor for no more than \$1.2 million.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to approve the Consent Calendar, which includes the correction to the City Council minutes and the change to staff’s recommendation for Item 3-8.

ON THE QUESTION:

Council Member Good noted that his vote is for all items, except Item #3-7 in which he recuses himself.

AYES: Council Members Good, Javandel, Lieber, Okawachi & Mayor Maris

NOES: None

ABSENT: None

Motion carried and so ordered.

4. GOOD OF THE CITY/PUBLIC FORUM

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 five (5) 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 Maris asked if anyone would like to speak. Mara Duncan, Albany resident, asked to have item 6-2 moved to the beginning of the agenda.

4. GOOD OF THE CITY/PUBLIC FORUM

The following people spoke on the action taken by the City Council at the meeting of July 17, 2006, regarding a process for a development application by Caruso Affiliated: Ms. Judy Innes, Albany resident; Mr. Robert Cheasty, Albany resident; Mr. Norman LaForce, Sierra Club, Mr. Howard McNenny, Albany resident; Ms. Diane? Albany resident; Ms. Marge Atkinson, Albany resident; Mr. Ed Fields, Albany resident; Mr. Brian Parker, Albany resident; Mr. Trevor Grayling, Albany resident; Ms. Lubov Mazur, Albany resident; Ms. Nan Wishner, Albany resident; Mr. Sol Strand, Albany resident; Ms. Wynette Weaver, Albany resident; Mr. Alan Riffer, Albany resident; Ms. Stephanie Travis, Albany resident; Ms. Joanne Wile, Albany resident; Mr. Francesco Papalia, Albany resident; Mr. Bill Dann, Albany resident.

Comments ranged from support of the action taken by the City Council to dismay that the Council did not approve Resolution #06-46, which supported a development process for Caruso Affiliated.

Mayor Maris stated that as to the request to change the order of the agenda he prefers that it stay the way it is printed, as there are other important items that need to be taken care of tonight.

Council Member Lieber stated that he would like to have the public hearing regarding the vacation of right-of-way moved to the next regular meeting, as he does not have all the information at this time.

The City Attorney advised that the public hearing be opened and then continued to a date certain.

5. PUBLIC HEARING

5-1. Vacation of Right-of-Way at 1001 Eastshore Highway
(File #820-95)

Mayor Maris opened the public hearing and suggested that it be continued.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to continue the public hearing to the next regular City Council meeting.

ON THE QUESTION:

Mr. Charles Paghter asked if this would impact the area so that it could not be used and the Community Development Director responded no.

VOTE ON THE MOTION:

AYES: Council Members Good, Javandel, Lieber, Okawachi & Mayor Maris

NOES: None

ABSENT: None

Motion carried and so ordered.

6. UNFINISHED BUSINESS

6-1. Measures for November, 2006 Ballot

(File #630-30)

The City Administrator stated that before Council tonight is the second reading of Ordinance #06-09, which authorizes the submittal of a ballot measure for the issuance of General Obligation Bonds in the amount of \$5 million for the purpose of renovating and expanding the City's Fire Station, constructing an Emergency Operations Center at the City's Police/Fire complex and adding sustainable building features to the Civic Center complex.

The City Administrator reported that the estimated average annual tax is \$18.47 per \$100,000 of assessed valuation and the estimated high would be \$23.66 per \$100,000 of assessed valuation.

It was also noted that some minor language changes were made to the Ordinance per the discussion at the first reading.

Council Member Lieber stated that he received an e-mail from Tony Caine requesting an exemption be included for seniors and low-income residents. The City Administrator responded that pursuant to the law exemptions are not allowed when based on assessed valuation.

Mr. Bob Outis, Albany resident, did not like the wording of the ballot question and suggested different language and noted his wording was only 60 words, which is less than what is proposed. Mr. Outis stated that he would recommend the City not use contract people in the future for the reason stated above.

Ms. Mara Duncan, Albany resident, asked what the expectations were for the building and wondered whether the City should be building higher in case of unforeseen natural events, such as flooding, etc.

Council Member Okawachi introduced Ordinance #06-09 – An Ordinance of the Albany City Council Authorizing the Submittal of a Ballot Measure for the November, 2006 Election for the Purposes of Renovating and Expanding the City's Fire Station, Constructing an Emergency Operations Center at the City's Police/Fire Complex and Adding Sustainable Building Features to the Civic Center Complex. Second Reading

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Okawachi and seconded by Council Member Javandel to approve Ordinance #06-09 for Second Reading – Pass-to-Print.

AYES: Council Members Good, Javandel, Lieber, Okawachi & Mayor Maris

NOES: None

ABSENT: None

Motion carried and so ordered.

The City Attorney reported that Council directed staff to prepare an advisory ballot measure for the November, 2006 election, which asks the voters whether they support establishment of a single medical marijuana dispensary that would be subject to City regulations.

Council Member Javandel presented Resolution #06-49 – A Resolution of the Albany City Council Submitting to the Voters an Advisory Question Regarding Permit Approvals for Medical Marijuana Dispensaries in the City of Albany.

6-1. Measures for November, 2006 Ballot

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Javandel and seconded by Council Member Good to approve Resolution #06-49.

VOTE ON THE MOTION:

AYES: Council Members Good, Javandel, Lieber, Okawachi & Mayor Maris

NOES: None

ABSENT: None

Motion carried and so ordered.

6-2. City Initiated Waterfront Planning Process

(File #410-20)

The City Planner reported that in May, 2006, the City Council directed staff to pursue a City-initiated planning and environmental review process that incorporates equal treatment of a range of alternatives, in advance of either a development application or an initiative-mandated planning process.

The Planning & Zoning Commission discussed this issue and recommends that the Council initiate a Waterfront land use planning process incorporating citizen program desires and necessary technical studies and that: The Planning Commission serve as the primary body to sponsor the process in collaboration with the Council and pertinent commissions and committees; part of the process should be to study the appropriateness and impacts of applicable General Plan and Zoning Ordinance amendments; the City Attorney review the viability and liability of placing alternative plans on a ballot subject to instant run-off voting.

Council Member Good expressed concern with the language on page 4 of Resolution #06-50 regarding the term “viewpoints” and noted he would prefer language that states “a range of plans”. Council Member Good stated that he would like to see Caruso’s plan submitted.

The following people spoke regarding Resolution #06-50: Mr. David Greensfelder, Albany resident; Ms. Peggy McQuaid, Albany resident; Ms. Jean Safir, Albany resident; Ms. Wynette Weaver, Albany resident; Mr. Charles Paghter, Albany resident; Mr. Trevor Grayling, Albany resident; Mr. Robert Cheasty, Albany resident; Mr. Norman LaForce, Sierra Club; Mr. Pete Hobart, Albany resident; Ms. Karen Buttwinick, Albany resident; Mr. David Madson, Albany resident; Ms. Maureen Crowley, Albany resident; Ms. Diane ?, Albany resident; Ms. Caryl O’Keefe, Albany resident; Mr. Brian Parker, Albany resident; Mr. Howard McNenny, Albany resident; Mr. Sol Strand, Albany resident; Ms. Stephanie Travis, Albany resident; Mr. Steve Granholm, Albany resident; Ms. Mara Duncan, Albany resident; Mr. Preston Jordan, Albany resident; Ms. Sydney Madison, Albany resident; Ms. Marsha Skinner, Albany resident; Mr. Mike Mazur, Albany resident; Ms. Jan Hitchcock, Albany resident; Ms. Susie Kisberg, Albany resident; Mr. Bob Outis, Albany resident; Mr. Bill Dann, Albany resident; Ms. Nan Wishner, Albany resident.

A summary of the comments is as follows: Support a responsible planning process and asked that the City Attorney be instructed to negotiate in good faith with all

6-2. City Initiated Waterfront Planning Process

applicants; asked Council Member Javandel to put the rest of his motions regarding the development process on a future agenda; noted that a CEQA document is a legal document and it is the Council's fiscal responsibility to have one completed; spoke about City taxes and expanding the City's tax base; noted that the staff report speaks about the property owner being involved in the process but believes the property owner will want nothing to do with the City after last week; asked that this matter be re-evaluated and that a compromise be made; endorsed the idea that the Waterfront Committee take charge of this process; spoke about Golden Gate Fields either staying or leaving Albany; indicated that there are no funds available to do anything at the Waterfront and the parking lot will probably stay a parking lot; supported the action of the Council last week and asked that an independent fiscal analysis be performed; asked the Council to make sure that the City lives within its means and encouraged the Council to ask for volunteer help from the community instead of hiring consultants; spoke in favor of a comprehensive planning process and stated whatever happens at the Waterfront will be a legacy to future generations; asked that all plans be compared side by side and that staff should be directed to look into the funding for this project; asked that the Council come up with a vision for the Waterfront; noted this was a "stupid idea" and waste of money now that the land owner does not want to participate in the process; suggested a scoping session with City staff, in particular, the Planning Manager; spoke about the impact to local businesses; urged the Council to support a City initiated planning process that will take into account economic viability and something to generate income to the community; stated that the City should have a "needs assessment" to find out what the City really would like at the Waterfront; important that the City take the lead on the planning process so that the City can decide what they want on the Waterfront; asked for more extensive public input; asked that if a planning process is done by the City that City staff be involved and noted that the City needs the property owner's cooperation; asked where the plans come from and who generates them and who will pay for them; urged the City to continue planning and that the City can do this without the developer; stated that the Planning & Zoning Commission should be the lead commission with the Planning Manager in a key role; supported a specific plan for the Waterfront; encouraged the Council to have a format that embraces all the City and noted that an independent facilitator should be used for the process.

Council Member Okawachi stated that she received a lot of criticism regarding presenting the Resolution last week. Council Member Okawachi spoke about one e-mail in particular from Norman LaForce who stated that her action was a "slap in the face" to City staff.

Council Member Okawachi asked staff if they felt that way. The City Administrator stated that staff works for the Council and provides advice to the Council and follows direction from the Council.

The City Attorney stated that he did not take it as a "slap in the face" but noted he definitely has concerns with any document not written by staff, which includes the Caruso Resolution, as well as the Citizen's Initiative.

Council Member Okawachi noted that she has always been fiscally responsible to the City and supports the Caruso plan because she knows that the City will get an EIR

6-2. City Initiated Waterfront Planning Process

done. Council Member Okawachi expressed concern about the Initiative if it passes and noted that the money the City has will not give much of a plan.

Council Member Javandel stated that he also heard from a lot of people and proceeded to name everyone that contacted him. Council Member Javandel noted that he has tried to listen to everyone very carefully and believes that through an open planning process that everyone could participate and have input. Council Member Javandel supported the idea of having a Facilitator and to use the expertise of the Planning & Zoning Commission.

Council Member Lieber thanked everyone for their input and noted that the City's finances are not in the red but in the black. Council Member Lieber believes that by having a planning process it will determine what the community wants and is a wise thing to do. The City needs to do an outreach to the community to see what it wants and agrees that a "needs assessment" is the correct thing to do.

Council Member Lieber stated that the Planning Commission is the correct body to take the lead but believes the Waterfront Committee is best equipped to come up with several different visions. Council Member Lieber noted that the City needs to have a plan in place in case the racetrack does leave Albany.

Council Member Lieber stated that the planning process will allow dialog on this issue and supports that process and noted that he does have a vision for a park and will work with the City to implement that vision.

Council Member Lieber asked that language be removed from the Resolution, as follows: Page 2, line 21-22 – strike the words "Specific Plan". Also questioned the reference to Caruso when he has withdrawn his project from the City and believes it more appropriate to reword to talk about Magna.

Mayor Maris stated that the planning process will have to deal with some specificity, the Waterfront amenities, appropriating the City's source of funding, creating parks and open space, aesthetic issues, impacts on view, selecting structure size and the traffic and parking issues.

Mayor Maris agreed with Council Member Good that it cannot include viewpoints that the City needs a plan and disagreed with Council Member Lieber and believes the Resolution needs to retain the statement regarding the Specific Plan.

Mayor Maris suggested that wording be added in the "Now, Therefore Clause" that identifies funding source for a City-initiated planning process. Mayor Maris suggested that the City look at all plans from CESP, the Albany Waterfront Coalition and Magna.

Council Member Javandel suggested language for page 4, line 17, as follows: add "to generate a range of plans" and that the City should look for funding sources and add "and explore the possibilities with the landowner.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi that the City Council is willing to consider General Plan and Zoning Ordinance changes at the Waterfront in order to foster the complete and open planning process for the entire Waterfront.

6-2. City Initiated Waterfront Planning Process

ON THE QUESTION:

Council Member Good believes it is redundant; Mayor Maris did not support the change; Council Member Javandel noted the language says why the City wants this process and not the Initiative.

The following people spoke to the motion: Mr. Robert Cheasty, Albany resident; Mr. Mike Mazur, Albany resident; Mr. Sol Strand, Albany resident; Mr. Preston Jordan, Albany resident; Ms. Mara Duncan, Albany resident.

VOTE ON THE MOTION:

AYES: Council Members Good & Lieber

NOES: Council Members Javandel, Okawachi & Mayor Maris

Motion Failed

Council Member Lieber reiterated his concern with the reference to Caruso in the Resolution and the City Administrator responded that on page 4, line 4 the language could be changed to Magna processing an application.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to approve the change, as noted above.

AYES: Council Members Good, Javandel, Lieber, Okawachi & Mayor Maris

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Javandel presented Resolution #06-50 – A Resolution of the Albany City Council Endorsing and Directing Staff to Proceed with a City Directed Waterfront Planning Process.

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 approve Resolution #06-50, as amended.

ON THE QUESTION:

Council Member Good stated that the City needs to have something in place in case the racetrack does leave and noted that viewpoints do not get a planning process. Council Member Good stated that the City needs to have open space and generated revenue.

Council Member Good commented that he would like to see an estimate of open space and an estimate of revenue and that whatever plan is presented should include this. Council Member Good stated that he would like to see a plan from the Waterfront Committee.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Lieber to extend the meeting 5 minutes.

Motion carried and so ordered.

Council Member Lieber stated that he would be voting for this motion and noted that staff has come a long way in determining a committed process.

6-2. City Initiated Waterfront Planning Process

Council Member Good noted that he would be voting against the motion if the words “view points” are left in the Resolution and believes that the process would be flawed.

VOTE ON THE MOTION:

AYES: Council Members Javandel, Lieber, Okawachi & Mayor Maris

NOES: Council Member Good ABSENT: None

Motion carried and so ordered.

7. NEW BUSINESS

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

8-1. The City Council will reconvene its regular schedule in September. The first meeting of September will be **Tuesday, September 5, 2006**, due to the Labor Day holiday.

Council Member Okawachi stated that she attended the Waste Management Authority meeting in which it was reported that the Board of Supervisors turned down the EIR on the composting facility.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to extend the meeting 10 minutes.

Motion carried and so ordered.

Council Member Javandel stated that he would like to add an item for a meeting in September. Council Member Javandel expressed concern that the motion made last week regarding development agreements may conflict in some ways with the motion made tonight.

Council Member Javandel asked that the previous motion be put back on the agenda so that the Council can confirm whether or not there are any issues with it.

Council Member Lieber asked for clarification. Council Member Javandel commented that a motion was made that the City would accept a Caruso planning process, as any other and then he started to make another motion, which was not completed.

Council Member Javandel noted that he would like the opportunity for Council to revisit and make sure that it doesn't conflict with the motion made tonight.

Mayor Maris announced that he attended the beach clean up last Wednesday, which was successful and also attended a County Health Summit.

Mayor Maris asked for a future agenda item regarding Key Route Boulevard irrigation.

Mayor Maris announced the City is reviewing the Alameda County Bicycle/Pedestrian Master Plan, which was approved by the Congestion Management Authority and informed the public to contact City staff for information on this.

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

Mayor Maris announced that he attended the JPA Sports Field User group meeting and noted that the agreement was shortened to one-year.

9. ADJOURNMENT

11:45 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.

ALLAN MARIS
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK