

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, FEBRUARY 17, 2004

8:00 p.m.

Mayor Ely 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, Maris, Okawachi, Thomsen & Mayor Ely
Absent: None

STAFF PRESENT

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Dave Dowswell, Planning Manager; Billy Gross, Associate Planner.

3. ANNOUNCEMENT OF EXECUTIVE SESSION ACTION

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. 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. City Council minutes, February 2, 2004.

Staff recommendation: Approve.

4-2. a. Ratification of City of Albany net payroll in the amount of \$162,137.60; tax & benefits in the amount of \$110,248.35. Total payroll in the amount of \$272,385.95. Payroll period. 02/06/04.

4. CONSENT CALENDAR

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$36,396.69; tax & benefits in the amount of \$21,777.07. Total payroll in the amount of \$58,173.76; Payroll period: 02/06/04

Staff recommendation: Ratify.

4-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$516,700.26. Period: 01/30/04.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$15,685.45. Period: 02/01/04.
(File #300-40)

Staff recommendation: Ratify.

4-4. Resolution #04-4 – A Resolution of the Albany City Council Setting a Public Hearing for the Purpose of Assessing Liens on Certain Real Properties in the City of Albany Due to Delinquent Business Licenses.
(File #390-40)

Staff recommendation: Approve Resolution #04-4 and set the public hearing for March 1, 2004.

4-5. Annual Report on the status of Sewer, Storm Drainage, Capital Facilities In-Lieu Fees and Parkland In-Lieu Fees Collected, as of June 30, 2003 According to Government Code Section 66001 (AB1600).
(File #390-95)

Staff recommendation: Schedule public hearing for March 1, 2004, to formally review the information contained in the report.

4-6. 2004/05 Community Development Block Grant (CDBG) City-County Agreement.
(File #480-30)

Staff recommendation: Approve the recommended use of FY 2004/05 Community Development Block Grant Funds in the amount of \$106,740 for the following projects: a) \$30,600 to Meals on Wheels program, b) \$30,000 to disabled access ramps, c) \$10,000 to disabled access to Pierce Street bus stop, d) \$20,000 to widen portions of the sidewalk on Solano Avenue for disabled access, e) \$16,140 to Ocean View Park restrooms.

Mayor Ely asked if anyone would like to remove an item from the Consent Calendar for discussion. No items were removed.

4. CONSENT CALENDAR

MOTION:

Moved by Council Member Okawachi, seconded by Council Member Thomsen to approve the Consent Calendar as submitted.

AYES: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely

NOES: None

ABSENT: None

Motion carried and so ordered.

5. PRESENTATION/PUBLIC HEARING

5-1. Presentation on Regional Measure 2 – Regional Traffic Relief Plan.
(File #840-30)

The Planning Manager reported that the Albany Waterfront Committee recommends that the City Council support Regional Measure 2, which would increase Bay Area bridge tolls by \$1, except the Golden Gate Bridge, to fund major transportation projects in the bridge corridors. These projects would include improved ferry service and the possibility of a new ferry terminal in the Albany/Berkeley area.

Ms. Heidi Machen, Water Transit Authority, reported that on the March 2nd ballot is Measure 2, the Regional Traffic Relief Plan. If passed by the voters, Measure 2, would raise the toll on all Bay Area bridges except the Golden Gate by \$1, providing \$125 million annually for local transportation improvements.

The goals of Measure 2 are to increase public transit in bridge corridors, to create better and safe connections between express buses, BART, commuter rail and ferries and to reduce traffic congestion on Bay Area bridges and freeway connectors. Under the Measure 2 expenditure plan AC Transit would receive funding for: New Rapid Bus service along Telegraph Avenue, International Boulevard and East 14th Street; Increased late night bus service along BART corridors; Increased transbay service across the Bay, Dumbarton and San Mateo bridges; a new park & ride facility at Richmond Parkway Transit Center (I/80).

Other projects would be: a new Transbay Terminal in San Francisco; Seismic strengthening of the transbay BART tube; commuter rail improvements; freeway bottleneck and carpool-land improvements; new ferry service and ferry enhancements from Vallejo and the East Bay to San Francisco; bicycle and pedestrian improvements to safely get to transit; universal fare card technology.

Council Member Thomsen stated that Albany needs to have an express transbay bus that goes at regular intervals all day long and asked AC Transit if this will be included in Measure 2? A representative from AC Transit stated that yes funding is included for new and improved transbay bus service.

Council Member Maris asked a question about the funding and Ms. Machen responded that this measure would fill the funding gap.

Council Member Maris presented Resolution #04-5 – A Resolution of the Albany City Council Supporting Alameda County Regional Measure 2, Which Provides Funding for the Establishment and Operation of an Albany/Berkeley Ferry.

5-1. Presentation on Regional Measure 2 – Regional Traffic Plan

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Maris and seconded by Council Member Okawachi to approve Resolution #04-5.

ON THE QUESTION:

Council Member Thomsen stated that she would like to see something about the transbay express bus service all day long for Albany residents, as well as ferries and other items that are listed in the Measure 2 literature.

Council Member Good stated that he is not in favor of ferry service, however, will vote for the measure as other items in the measure are good.

VOTE ON THE MOTION:

AYES: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely

NOES: None

ABSENT: None

Motion carried and so ordered.

5-2. Measure A – Essential Health Care Services Tax Initiative.

(File #560-10)

Dr. Avrum Gratch stated that he is speaking on behalf of Measure A, which is the Essential Health Care Services Tax Initiative that will be on the March 2nd ballot. If the voters pass this Measure, it will raise revenue to support the Alameda County Medical Center and other health care programs and institutions throughout the County. The Measure is intended to provide additional support for emergency medical, hospital, inpatient, outpatient, public health, mental health and substance abuse services to indigent, low-income and uninsured adults, children, families, seniors and other residents of Alameda County.

As the tax would be used for dedicated services, a two-thirds vote is required for passage and if approved would become effective July 1, 2004 and sunset on June 30, 2019. This measure would add one half of one percent (0.05%) to the County’s current sales tax for personal property sold in the cities and unincorporated areas of Alameda County. As a result, an estimated \$90 million would be generated annually.

Council Member Maris stated he would like to know how the Governor feels about this and noted that the leadership is at the local level and noted that Supervisor Keith Carsen and County Administrator Muranishi were in the audience. The County Administrator noted that the County has lost billions of dollars and noted that more and more local taxes are being transferred to the State. At this time, the County keeps 15 cents on every dollar; however, this is going to be decreased to 12 cents on every dollar. The County Administrator stated that 35% of the budget goes towards health services and if the measure is not passed there will definitely be an impact on health and welfare. The County Administrator noted that the County has already closed two clinics this fiscal year.

Council Member Thomsen noted that the County is caught in the middle, because if they raise the sales tax people may shop in other counties with less sales tax and if the Measure is not passed the health services will be impacted.

5-2. Measure A – Essential Health Care Services Tax Initiative

MOTION:

Moved by Council Member Okawachi, seconded by Council Member Maris to go on record as supporting Measure A.,

ON THE QUESTION:

Council Member Good stated that although this is a good cause he does not believe in raising the sales tax and doesn't believe it will sunset in 15 years. Council Member Good noted that the State needs to come up with a solution and as long as the individual counties and cities try to solve the State deficit then the Government doesn't have to come up with a solution.

Council Member Maris stated that he agrees with Council Member Good but believes this action must be taken.

VOTE ON THE MOTION:

AYES: Council Members Maris, Okawachi, Thomsen & Mayor Ely

NOES: Council Member Good ABSENT: None

Motion carried and so ordered.

5-3. Public Hearing regarding Appeal of Planning & Zoning Commission Denial of Conditional Use Permit at 533 San Pablo Avenue.

The Associate Planner reported that the applicant, Mr. David Viale, requested approval of a Conditional Use Permit to allow a bar with pool tables in an existing building on San Pablo Avenue. The business would have operating hours of 11:00 a.m. – 1:30 a.m. and would have a minimum of 2 employees expected on the site at any one time.

This item was heard by the Planning Commission on October 28 & December 9, 2003 and was denied by a vote of 5-0. Staff was directed to prepare draft findings for the denial of the project.

The applicant filed the appeal on the basis of: 1) Other uses are approved with no parking. 2) Previous use of property (banquet/meeting hall) allowed serving of alcohol. 3) Department of Alcoholic Beverage Control (ABC) gave initial approval of license to serve alcohol.

The Associate Planner responded to the appeal as follows: Other business uses are allowed in existing buildings without providing the required off-street parking. This is often the case; however, when a change in use would increase the off-street parking requirement, which is the case of this application, the Planning Commission has the discretionary ability to waive or reduce the parking requirements.

Due to the nature of the proposed use and the subject property being directly adjacent to residential uses to the east, the Planning Commission did not believe they could adequately make the findings to allow a reduction in the required off-street parking without negatively impacting the adjacent residential neighborhood.

The appellant's second and third basis for the appeal deals with the serving of alcohol at the premises. The previous use would have required a license to serve alcohol but there is no current license listed in the ABC listings. Any business wanting to serve alcohol must submit an application with ABC, who look at the census tract in which the

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proposed address is located to calculate if there is an “undue concentration” of alcohol related uses within that census tract. To determine this, ABC sets up guidelines for the number of on and off-sale licenses that can be accommodated within a specific census tract. These guidelines are based on population projections.

Staff became aware of a mistake by ABC when listing the census tract in which a specific licensee was located. In reviewing records, it was discovered that 26 of the 54 establishments were listed in the wrong census tract. According to the table, the census tract that the current application would be located in has a total of 9 on-sale licenses, which is greater than the guideline of 4 licenses, and therefore, the census tract is now considered to have an undue concentration of licenses. Because of the existence of an undue concentration, the Planning Commission does not believe that the use would serve “public convenience and necessity”, and therefore, could not recommend approval of an Exception for this application.

The Planning Commission determined that the use was not suitable for the proposed location and made the required findings to support denial of the application, as stated in the December 13, 2003, Notice of Action.

The Planning Commission recommends that the City Council uphold the Commission’s decision to deny the bar application.

The Planning Associate noted that communications had been received from various civic groups, supporting the application and Jon & Ruth Gjerde and Clay Larson in opposition to the application.

Council Member Maris asked if the guidelines are enforceable and the Planning Associate responded not by ABC, but is part of the local jurisdiction.

The City Attorney advised that the applicant be asked to make a statement and then the public hearing be opened.

Mr. John Gutierrez, Attorney for applicant, stated that when this application first came before the Planning Commission staff recommended approval. However, after the hearing staff was asked by the Planning Commission to change the recommendation to deny the application. Mr. Gutierrez noted that the decision must be based on substantial credible evidence and believes that the basis for the Planning Commission denial was arbitrary.

Mr. Gutierrez noted that Mr. Viale did an informal survey to see what businesses did not provide off street parking. Mr. Gutierrez stated that the Planning Commission based their decision on a potential problem that might arise in the future. The lack of parking and undue concentration of alcohol is created by other existing establishments and it appears that this application is being unfairly singled out and being treated differently.

Mr. David Viale, applicant, stated that he doesn’t understand how at one meeting staff approves of the application and are then told by the Planning Commission to change their recommendation.

Mr. Viale noted that he has been contacted by various civic organizations asking to use his building for their weekly meetings and believes there is a need in Albany for this kind of use.

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Mayor Ely asked if Mr. Viale planned on serving food in the establishment and was told that food would be catered for the civic organizations, however, in general just appetizers would be served.

Council Member Thomsen noted that pool tables are very heavy and can't imagine Mr. Viale just moving them around to accommodate civic organizations. Mr. Viale stated that he would adjust the number of pool tables and would have 3 instead of 6. Mr. Viale stated that the tables could be moved easily with assistance from equipment.

Council Member Thomsen asked the applicant how he believes his business is the same as the previous business. Mr. Viale responded that it is not exactly the same although both businesses serve alcohol. The previous business actually rented out the hall for weddings, which had bands with live music and a lot more people than his business.

Council Member Maris asked what the seating capacity of the building was and was told that it would depend on how many pool tables were used but approximately 3500 sq.ft.

The Planning Manager responded to the question regarding staff changing their recommendation. The Planning Manager noted that at the hearing information was brought forth that staff did not know about previously and stated that concerns from neighbors were heard about the noise from other bars in the area.

Mayor Ely opened the public hearing and the following people spoke against the appeal and urged Council to uphold the decision of the Planning Commission. Concerns expressed were lack of parking spaces, fire safety, saturation of bars on San Pablo Avenue: Mr. Edward Fields, Kains Avenue; Ms. Maureen Crowley; Mr. Clay Larson; Ms. Kristina Osborne, Adams Street; resident on Adams Street (did not hear the name); Ms. Joan Larson, 600 block of Adams Street; Mr. Brian Parker, Garfield Avenue.

The following people spoke in favor of the appeal urging the Council to approve the appeal. The speakers responded to the fire safety issue noting this had been addressed by the Fire Department; spoke about the lack of meeting places in Albany for civic groups; noted that whatever business moved into that location parking would be an issue. Complimented Mr. Viale on being a good, fair business owner and that he would be an asset to the City of Albany: Ms. Rita Smith; Mr. Rich Smith; former employee of Mr. Viale (did not hear the name).

There being no one else wishing to speak Mayor Ely closed the public hearing. Council Member Thomsen asked the City Attorney to respond to the applicant's attorney regarding his statement on arbitrariness.

The City Attorney stated that when the City Council hears a hearing, and since this is a decision making group and a Conditional Use Permit situation, what it may have done in the past is not necessarily at all applicable to what would be done in this situation. Each of those determinations are based on the information presented to the City Council, the circumstances, the totality of all the different matters, which the Council believe are important. For example, how the Council confers a permit on another business and how they construct whatever parking requirements, or how they

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waive parking requirements is going to be based on that particular application. The information Council heard tonight indicates that if there is a business that is operating between normal business hours, let's say between 9 & 5, the parking impacts on a neighborhood may be much different than a business which probably has its peak business hours after dinner and into the later part of the evening.

The City Attorney stated that he did not believe the Council would be found to be arbitrary by making a determination under these circumstances should Council wish to deny the permit because they believe there was inappropriate or inadequate parking given the type of business.

Another example that came up was whether this was a similar business to the previous business. The City Attorney believes that the business may have predated any Conditional Use Permit process and don't believe they ever came to the City to obtain a Conditional Use Permit. Also, whether or not they would have been granted once under those circumstances is irrelevant on what Council consider today.

The City Attorney noted that in terms of being arbitrary the Council needs to be mindful that their job is to make a decision based on the information presented to them. That information whether it comes from staff, from speakers, from the applicant or anyone speaking in favor or against and using that information and distilling that into what the Council believes is an appropriate decision. If the Council makes a decision that is not based on substantial evidence or information in the record, that would be considered arbitrary. Therefore, the Council is bound to make a determination on what is in front of them.

Council Member Thomsen asked if that decision could be inclusive of their own personal knowledge of the situation. For example, having lived on one of the streets at a previous time. The City Attorney responded that the Council is a decision maker who is representative of the City and their background is going to play a part in whatever decisions are made. If this information is in the record, then that is what the Council would base their decision on.

The Planning Manager stated that he would like to add that the City's current Zoning Ordinance states that a Use Permit can be issued to a particular user and revoked if that person no longer operates the business. The Planning Manager note the it is his understanding that land use law does not allow that and in the process of redoing the Zoning Ordinance this is being corrected. Although Mr. Viale may be a wonderful operator at some point that business will be sold and the City Council must look at the long term use of the property, as it is being proposed and not the short term use.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Good to uphold the decision of the Planning Commission and deny the appeal based on the density of establishments with on and off sale of alcohol, the parking situation as it reflects on the residents of the area.

ON THE QUESTION:

The City Attorney asked that this be referred to staff to prepare Findings in support of the denial and come back at the next Council meeting.

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The maker and second withdrew the motion.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Good to uphold the decision of the Planning Commission and direct staff to prepare Findings to support the denial.

AYES: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely

NOES: None ABSENT: None

Motion carried and so ordered.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

8. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

Council Member Maris reported on the following items: 1) That he attended a transportation conference that dealt with the State budget and the impacts it has on local jurisdictions. 2) The League of California Cities is requesting that all elected and appointed officials get the word out about their proposed ballot measure, which would prohibit the State from taking money from local jurisdictions. The League is asking that officials obtain signatures to get this measure on the November ballot and the deadline is April 15, 2004.

9. 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 Ely opened the Good of the City/Public Forum and asked if any one would like to speak.

Mr. Roger Carlsen, Little League and Ms. Betsy Thomas, girls' softball, both spoke regarding the Codornices Creek Restoration project and how it affects the ball fields. The speakers noted that the field users gave a lot of give and take and have not been shown where the money will come from to make the proposed changes. The speakers urged the Council to make sure that they are aware of alternatives including the money from Measure R.

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

10. ADJOURNMENT

10:15 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.

JON ELY
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK