

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, MARCH 15, 2004**

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**7:30 p.m.**

Executive Session pursuant to Government Code Section 54957.8 to discuss labor negotiations:

Agency Negotiator:           City Administrator  
Unrepresented Employees:   Department Heads

**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 & Mayor Ely  
Absent:           Council Member Thomsen (Excused)

**STAFF PRESENT**

**3.       ANNOUNCEMENT OF EXECUTIVE SESSION ACTION**

Mayor Ely announced that no action was taken in Executive Session.

**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, March 1, 2004.

Staff recommendation: Approve.

- 4-2.** a. Ratification of City of Albany net payroll in the amount of \$152,482.86; taxes, benefits & withholdings in the amount of \$106,430.14. Total payroll in the amount of \$258,913.00. Payroll period: 03/05/04.
- b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$35,402.14; taxes, benefits & withholdings in the amount of \$21,892.99. Total payroll in the amount of \$57,295.13; Payroll period: 03/05/04.

Staff recommendation: Ratify.

- 4-3.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$178,155.13. Period: 02/27/04.
- b. Ratification of bills, claims & demands against the City of Albany in the amount of \$127,795.48. Period: 02/27/04.
- c. Ratification of bills, claims & demands against the City of Albany in the amount of \$51,322.50. Period: 03/04/04.  
(File #300-40)

Staff recommendation: Ratify.

- 4-4.** Appraisal for Caltrans property known as “Pierce Street Park.”  
(File #670-30)

Staff recommendation: Authorize staff to enter into an agreement for an appraiser to perform an appraisal on the surplus Caltrans property adjacent to Interstate 80/580 for purposes of pursuing acquisition of the property for use as a park.

- 4-5.** Resolution #04-10 – A Resolution of the Albany City Council Supporting a Statewide Ballot Initiative to Require Voter Approval before State Government May Take Local Tax Funds.  
(File #330-20)

Staff recommendation: Approve.

- 4-6.** Findings in Support of Denial of Appeal filed by Mr. David Viale regarding application for bar/pool hall at 533 San Pablo Avenue.  
(File #450-50)

Staff recommendation: Approve.

**4. CONSENT CALENDAR**

- 4-7.** Contributions to City, Non-Profit, Local Public Agencies, Individuals and Other Organizations for Albany Projects or Programs.  
(File #100-30)

Staff recommendation: Authorize the appropriation of \$2500 for City grants to non-profit, local public agency, individuals or other organizations for programs that enrich the quality of life in Albany and further the City's goals.

- 4-8.** Schedule public hearing for Fiscal Year 2004/05 and 2005/06 Operating Budgets, Capital Improvement Plan, Master Fee Schedule, Assessments for Landscape & Lighting Districts 1988-1 & 1996-1, Clean Water Storm Fee, Library Services Fee and Sewer Services Fee.  
(File #330-20)

Staff recommendation: Set public hearing for June 7, 2004.

- 4-9.** Resolution #04-07 – A Resolution of the Albany City Council Approving the Use of Up to \$100,000 in Measure Re Funds for Ball Fields, in Advance of Receiving Grant Funding, in Order to Commence Work on the CEQA Requirements for the Gilman Street Ball Field Project, and Entering into a Side Agreement with the City of Berkeley for Shared Liability for these Costs if Grant Funding is not Secured for this Project.  
(File #490-100)

Staff recommendation: Approve Resolution #04-07.

Mayor Ely asked if anyone would like to remove an item for discussion and Council Member Maris removed the following items: 4-5, 4-7 & 4-9.

**4-5. Resolution #04-10 – Statewide Ballot Initiative**

Council Member Maris stated that the League of California Cities is sponsoring this Initiative to require voter approval before the State can take away local tax funds. Each City was asked to participate in gathering signatures to qualify this Initiative for the ballot and in Albany 140 signatures have been received and the goal is to get 200 signatures and the deadline is April 15<sup>th</sup>.

Council Member Good asked that the following changes be made to the Resolution: To include the name of the ballot measure in the Resolution, which is the Local Tax Payers and Public Safety Protection Act. Council Member Good also asked that a change be made in the 6<sup>th</sup> Whereas Clause, as follows. "Voters of California should be consulted".

- 4-7. Contributions to City, Non-Profit, Local Public Agencies, Individuals and Other Organizations for Albany Projects or Programs**

**4. CONSENT CALENDAR**

Council Member Maris noted that the deadline for this application should be April 15<sup>th</sup> and not March 1<sup>st</sup> as stated in the staff report and suggested the amount be amended to \$3,000.

**4-9. Resolution #04-07 – Measure R Funds for Gilman Street Ball Fields**

Council Member Maris asked that an additional Whereas Clause be added to the Resolution, as follows: That the City of Berkeley agrees to reimburse the City of Albany fifty (50%) percent not to exceed \$50,000.

**MOTION:**

Moved by Council Member Good, seconded by Council Member Okawachi to approve the Consent Calendar with the suggested amendments.

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

NOES: None

ABSENT: Council Member Thomsen

Motion carried and so ordered.

**5. PRESENTATION/PUBLIC HEARING**

**6. UNFINISHED BUSINESS**

**6-1. Draft Environmental Impact Report – U.C. Village**  
(File #515-50)

The Planning Manager reported that on March 1<sup>st</sup>, the City Council reviewed a list of comments and concerns from staff and the public regarding the DEIR. The major areas of citizen concerns were as follows: Loss of the Gill Tract as an urban farm; loss of affordable housing; traffic impacts on major streets; visual impact due to the size of the building; loss of the Gill Tract house; the need to replace ball fields; impact on City services, especially fire services.

Council discussed the DEIR and the following comments were made: Concerned about the impact of traffic on San Pablo Avenue and noted that the Traffic Study did not mention Eastshore State Park. The Planning Manager responded the Study only focused on the Target project and believes the Study should be revised and based on current facts and figures and not old data and speculation.

Council Member Maris reported that he and the City Administrator attended a meeting regarding cities that have U.C. facilities and noted that legislation is being considered to protect cities from a financial burden. Council Member Maris noted that Assembly Person Hancock is very concerned about this issue and is working on behalf of the City.

Ms. Kim Linden, 1109 Stannage, stated that U.C. is thinking about changing from Allen & O’Hara and going with TMG. Ms. Linden stated she believes the City should address this. Mayor Ely stated that right now comments are being solicited for the DEIR and noted if any changes are made then a new DEIR would have to be done.

### **6-1. Draft Environmental Impact Report – U.C. Village**

Mr. David Arkin noted that with a little imagination the Children's Center could be saved and the houses still built. Mr. Arkin stated that there is room to accommodate all the existing and futures uses of this site.

Mr. Pete Hobart, Albany resident, expressed concern about the increase of traffic and the impact it will have on City streets. Mr. Hobart believes it is premature to restripe Marin Avenue until Target and the U.C. project is completed. This requires a long-term approach.

Council Member Maris asked if the DEIR could add the Marin Avenue traffic impact and the Community Development Director responded that staff is in the process of looking at the EIR process. The Community Development Director noted that in response to the restriping of Marin the Traffic & Safety Commission believe it should be done before the projects are completed so that people get used to the change and that staff is moving forward on the Marin Avenue Project.

#### **MOTION:**

Moved by Council Member Okawachi, seconded by Council Member Good to direct the Mayor to sign and forward the letter commenting on the Subsequent Focused DEIR regarding the proposed amendments to University Village and Albany Northwest Berkeley Properties Master Plan.

#### **ON THE QUESTION:**

Council Member Maris noted that the University does a great job for the community.

#### **VOTE ON THE MOTION:**

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

NOES: None

ABSENT: Council Member Thomsen

Motion carried and so ordered.

### **6-2. Reinstatement of Entertainment Permit – Monteros**

(File #650-90)

The Planning Manager reported that on December 1, 2003, the City Council revoked Montero's Entertainment Permit for 90 days due to a hip hop party that got out of control. The Police Department was contacted due to fights and rowdy behavior and eventually close to 60 police officers from neighboring cities and the CHP were used to restore order. On February 4, 2004, Mr. Romo, owner of Montero's applied for a new Entertainment Permit and is requesting to have live music/entertainment, as follows: Wednesday – Flamenco, Belly & Tango dancing – 7 p.m. – 10 p.m.; Thursday, International Night – 9 p.m. – 1:30 a.m.; Friday & Saturday – Tex Mex, Banda, Salsa Night – 8 p.m. – 1:30 a.m.; Sunday – Salsa – 4 p.m. – 11 p.m.

The Planning Manager recommended reinstatement with the following Conditions of Approval: 1) The permit approval is to allow live music/entertainment on Wednesday, Thursday and Sunday nights until 10 p.m. and on Friday and Saturday nights until 1:00 a.m. Descriptions of types of live entertainment are as described in the staff report dated March 9, 2004, and in the application description dated February 26, 2004. 2) Before having the first live music/entertainment at the restaurant, the applicant/owner shall

**6-2. Reinstatement of Entertainment Permit - Monteros**

contact the City. The City shall monitor the impacts on parking and traffic on the adjoining businesses because of having live entertainment. If it is determined that having live music/entertainment or dancing is creating a parking or traffic problem, this permit will be brought back to the Council for review and possible modification or revocation. 3) Noise levels generated by the live music/entertainment shall not exceed the City's Noise Ordinance. To help insure noise levels are not exceeded, doors and windows in the portion of the restaurant where the live music/entertainment is being conducted shall remain unlocked but closed at all times. Applicant/permit holder shall be responsible for paying any costs incurred by the City to monitor noise. 4) This permit shall be subject to Council review and possible revocation if the Police Department receives criminal, Alcoholic Beverage Control and Albany Municipal Code related complaints concerning the operation of the restaurant. Applicant/permit holder shall be responsible for paying any administrative costs incurred by the City to review this permit. 5) This entertainment permit shall be restricted to those events that are directly sponsored by Montero's. Live music and entertainment shall be prohibited at any private parties. 6) Any further violation of this permit and/or the conditions of approval shall result in permit being brought back to the City Council for immediate revocation.

Mr. Romo, owner of Montero's, stated that he did submit a contract, which was prepared by his attorney and noted that whenever the restaurant is rented out he will be in contact with the Police Department. The Planning Manager stated that the City's concern is that the party will not be under the control of Mr. Romo and the same situation will occur that happened last year.

Mr. Romo stated that he would like to have the ending time on Friday and Saturday changed to 1:30 a.m. The Planning Manager responded the patrons could stay until 2:00 a.m.; however, the live entertainment must close by 1:00 a.m.

Council Member Okawachi asked if staff had seen the contract submitted by Mr. Romo's attorney and the Planning Manager responded yes but he would like the City Attorney to review it before the restaurant is rented out.

Mr. Andrew Robinson suggested that Mr. Romo provide private security and Mr. Pete Hobart spoke about the noise vibrating into the next-door restaurant, which shares a wall with Montero's. Mr. Romo indicated that he has spoken with the owners of Da Nang restaurant and reassured them that the music will not start until 10:00 p.m. and Da Nang is closed at that time.

Mr. Romo commented that he does not allow private parties to bring in their own DJs, and therefore, everyone that works at Montero's is under his control.

Council Member Maris asked about the contract that was submitted and the Planning Manager responded that the contract does not have anything in it regarding private security. The Planning Manager noted that before the restaurant is rented out the City must approve the contract. Council Member Okawachi noted that the Chief of Police should be involved in reviewing the contract.

A speaker on behalf of Mr. Romo stated that he is a DJ that works for Mr. Romo and that he always provides his own DJs and controls the music that is played.

## **6-2. Reinstatement of Entertainment Permit - Monteros**

### **MOTION:**

Moved by Council Member Maris, seconded by Council Member Okawachi to approve the six Conditions of Approval, as recommended by staff. Also, if Mr. Romo wishes to have private parties at Montero's with live music/entertainment the City must receive an approved contract, which includes penalties and the use of private security. The City Attorney and the Chief of Police must review the contract before any renting of the restaurant to private parties.

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

NOES: None ABSENT: Council Member Thomsen

Motion carried and so ordered.

## **7. NEW BUSINESS**

### **7-1. Multi-Year Sewer Repair & Replacement Program**

(File #1030-30)

The Public Works Manager reported that the City has an ongoing sewer repair and replacement program due to the fact that the sewers are old and in very poor condition. This City spends approximately \$100,000 a year making "spot repairs" to mitigate problems.

In 2001, staff determined that based on the history of the spot repairs and other sewer related problems that the City needed to move toward a series of area-wide sewer repair and replacement projects. The worst four areas in the City were identified as: Albany Hill, San Pablo Avenue, the easement (back and side yard) sewer between Pomona Avenue and Key Route Boulevard running from Marin to Washington Avenues and a sewer-line north of Brighton Avenue that runs under 15 buildings.

Nute Engineering, the City's sewer engineers, has recommended a sewer repair and replacement program to undertaken over the next several years, as funding is available. Nute Engineering divided the sewers in need of repair and replacement into four geographical areas: Area 1 – San Pablo Avenue. Preliminary estimate cost: \$1,920,000 in 2004 dollars. Timing: 2004; Area 2 – Two Easements (back and side yard) Sewers East of San Pablo Avenue. The preliminary estimate cost: \$1,240,000 in 2004 dollars. Timing: designed in 2004/05, construction scheduled 2005/06. An Easement sewer north of Brighton passes under 15 buildings, and as a result, repairing obstructions is impossible. The preliminary cost to replace: \$1,120,000 in 2004 dollars. Timing: 2006/07. Total preliminary cost for both projects in Area 2: \$2,360,000 in 2004 dollars. Area 3 – East Albany Hill. The preliminary cost: \$2,920,000 in 2004 dollars. Timing: After the recommended work in Areas 1 & 2. There is also an easement sewer between Madison and Adams, south of the Orientation Center for the Blind, in urgent need of repair. It is recommended that a connecting sewer on Clay Street be constructed. The preliminary cost: \$200,000 and is included in the 2004 Sewer Repair and Replacement Project. Area 4 – Repairs and Sewer Abandonment on Albany Hill. The preliminary cost: \$1,150,000 in 2004 dollars.

### **7-1. Multi-Year Sewer Repair & Replacement Program**

The Public Works Manager noted that Caltrans recently notified the City that they intend to proceed with its planned repaving of San Pablo Avenue beginning in September, 2004. Therefore, it is imperative that all sewer work that is needed along San Pablo Avenue be completed before the repaving is done, which now makes the replacement of the Area 1 an urgent priority.

Currently, the City's Sewer Service Charge generates approximately \$1.5 - \$1.7 million per year. Of this, approximately \$400,000 to \$500,000 million can be made available for the recommended sewer repair and replacement projects.

Mr. Ed Nute, Nute Engineering, gave a slide presentation, which indicated the following problems found in the sewers: Tree roots, severe cracks, severe broken joints, offset lateral at main, severe defect, severe protruding lateral.

The Public Works Manager reiterated the fact that San Pablo Avenue is a high priority to be repaired.

Council Member Maris asked a question relating to unforeseen obstacles, which is mentioned on page 5. The Public Works Manager responded that sometimes conditions are different from what was expected, for example: underground utilities that do not show on the record, which then becomes a problem.

#### **MOTION:**

Moved by Council Member Maris, seconded by Council Member Okawachi to approve staff's recommendations as follows: 1) Accept, in concept, the multi-year Sewer Repair and Replacement Program, as described. 2) Authorize the City Administrator to enter into an agreement or agreements with Nute Engineering for preparation of plans, specifications, and estimates, and for services during construction, for (a) the replacement of sewers along San Pablo Avenue, as described; (b) construction of a connecting sewer on Clay Street, and rerouting the easement sewer near the creek, including rerouting four laterals; and (c) repair or replacement of the sewer between Pomona Avenue and Key Route Boulevard, from Marin to Washington Avenues; all in the approximate amounts stated. 3) Authorize the City Administrator to invite bids and award a contract to the lowest responsible bidder for the replacement of the sewers along San Pablo Avenue. 4) Authorize the City Administrator to invite bids and award a contract to the lowest responsible bidder for construction of a connecting sewer on Clay Street and rerouting the easement sewer near the creek, including rerouting four laterals. 5) Authorize the City Administrator to enter into an agreement with Greg Jacobs Engineering to provide project management services for the replacement of the sewers along San Pablo Avenue, and for the Clay Street sewer project.

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

NOES: None

ABSENT: Council Member Thomsen

Motion carried and so ordered.

### **7-2. Ordinance #04-01 – Sewers & Sanitation**

(File #100-95)

The Assistant to the City Administrator stated that in October, 2003, the City Council approved a new franchise agreement with Waste Management of Alameda

#### **7-4. Ordinance #04-01 – Sewers & Sanitation**

County for Solid Waste, Recyclables and Organic Materials collection, processing and disposal.

The City's existing solid waste ordinance, Section 15-2 of the Municipal Code was established in 1958, as part of Chapter 15 'Sewers and Sanitation.' However, most of the provisions date back to 1958 and are outdated. Consequently, the new ordinance deletes all of Section 15-2 and replaces it with an entirely new section. Section 15-3 is still appropriate and has not been changed.

Council Member Good asked where the new language came from and the Assistant to the City Administrator responded that the new ordinance was drafted in conjunction with review of other city ordinances, advice from the Alameda County Waste Management Authority and was reviewed by the City Attorney.

Council Member Maris asked a legal question about the language on page 9, line 17 and the City Attorney replied modification and define definition including person and corporation.

Council Member Okawachi introduced Ordinance #04-01 – An Ordinance of the Albany City Council Amending Chapter 15 of the Code of the City of Albany Entitled "Sewers and Sanitation" for First Reading.

#### **MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Okawachi and seconded by Council Member Good to approve Ordinance #04-01 for First Reading.

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

NOES: None

ABSENT: Council Member Thomsen

Motion carried and so ordered.

### **8. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS**

**8-1.** The regular City Council meeting scheduled for Monday, April 5, 2004, has been rescheduled to **Tuesday, April 6, 2004**, due to Passover.

Council Member Maris announced that he and the City Administrator attended a meeting with Assembly Person Hancock regarding legislation that deals with the impacts to cities that have a University in their community.

Council Member Maris reported that everyone should celebrate the new grass that is planted at Memorial Park.

Council Member Okawachi stated that the City of Albany will be celebrating its 100<sup>th</sup> birthday in 2008 and a group of citizens are trying to get civic organizations involved in the planning of the celebration. Also they are trying to get a historical book put together and are looking for photographs of businesses in Albany during the 1940's & 1950's.

### **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

**9. GOOD OF THE CITY/PUBLIC FORUM**

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 anyone would like to speak.

Mr. Andrew Robinson, 599 Jackson Street, spoke to the Council regarding his Mother being put out of her home and asked the City to do something about it. The City Attorney explained that this is a private matter between the homeowner and the landlord and the City can do nothing about it. However, if Mr. Robinson has an attorney he would be happy to speak him.

Mr. Roger Carlsen, Albany resident, spoke to the Council about the Pierce Street Park appraisal noting that they should get an appraisal that looks at all the different sections so the real value is noted. Mr. Carlsen urged the Council to look at all the options so they get better information on the real estate market.

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

**10. ADJOURNMENT**

10:05 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.

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JON ELY  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK