

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, MAY 3, 2004**

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**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; Melinda Chinn, Recreation & Community Services Director; Judy Lieberman, Assistant to the City Administrator; Marc McGinn, Fire Chief; Greg Bone, Police Chief.

**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, April 6 & 19, 2004.**

Staff recommendation: Approve.

**4. CONSENT CALENDAR**

**4-2.** a. Ratification of City of Albany net payroll in the amount of \$149,213.35; taxes, benefits & withholdings in the amount of \$147,616.00. Total payroll in the amount of \$296,829.35. Payroll period: 04/16/04

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$36,816.01; taxes, benefits & withholdings in the amount of \$35,710.55. Total payroll in the amount of \$72,526.56; Payroll period: 04/16/04

Staff recommendation: Ratify.

**4-3.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$206,975.65. Period: 04/23/04.

Staff recommendation: Ratify.

**4-4.** Ratification of pension payments in the amount of \$105,622.89 for the month of April, 2004.

Staff recommendation: Ratify.

**4-5.** A rendering of the quarterly Cash and Investment Treasury Report of the City of Albany as of March 31, 2004, as required by Section 53646 of the California Government Code.

Staff recommendation: Note and file; information only.

**4-6.** Para transit Program for Fiscal Year 2004/05.

Staff recommendation: Authorize staff to implement the proposed plan for the City of Albany's Para transit Program for Fiscal Year 2004/05.

**4-7.** Consideration of Claim #AL477.

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

**4-8.** Resolution #04-15 – A Resolution of the Albany City Council Calling for a General Municipal Election to be Consolidated with the Statewide General Election; and Requesting the Board of Supervisors of the County of Alameda, State of California to Take the Necessary and Appropriate Steps to Consolidate the Municipal Election with the General Election to be Held on Tuesday, November 2, 2004.

**4. CONSENT CALENDAR**

Staff recommendation: Approve Resolution #04-15.

Mayor Ely asked if anyone would like to remove an item from the Consent Calendar for discussion. The City Clerk requested Item 1, Council Minutes, April 19, 2004 and Mr. Clay Larson requested Item 4-8.

**4-1. Council Minutes, April 19, 2004**

The City Clerk stated that there is a correction to the April 19<sup>th</sup> minutes on page 9, as follows: Item 7-2 – Pavement Resurfacing Program, 2004, second paragraph: Council Member Maris stated that last year the Council decided on the medium route regarding allocation of funds and recommended the minimum amount of \$250,000 be done this year.

**4-8. Resolution #04-15 – Election**

Mr. Clay Larson stated that he believes Resolution #04-15, which calls for the election and requests consolidation with the Council should be held over until the Campaign Finance Ordinance has been take care of. Mr. Larson noted that the Ordinance refers to the election being conducted as provided by law for holding the Municipal Election in the City. Mr. Larson informed the Council that the Campaign Reform law has not been corrected.

The City Attorney responded that the Resolution deals with the laws on the book at the time of the election and that Resolution #04-15 should not be held over.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Okawachi to approve the Consent Calendar, as submitted with the correction to the City Council minutes of April 19, 2004.

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

NOES: None

ABSENT: None

Motion carried and so ordered

**5. PRESENTATION/PUBLIC HEARING**

**6. UNFINISHED BUSINESS**

**6-1. Measure F Fire & Police Stations and City Hall Renovation Project  
(File #320-55)**

The Project Manager reported that the City obtained the services of outside professionals to provide advice on space needs, design, and cost estimation for the replacement or renovation of the fire, police and city hall facilities. All versions submitted address the following functions in consistent ways: Space for emergency medical service supplies (fire); facilities for female firefighter in the living quarters;

**6-1. Measure F, Fire and Police Stations and City Hall Renovation Project**

space for police evidence, materials, supplies and records, an alternate location to the fire apparatus bay for the physical fitness equipment; second exits for fire station bedrooms for safety; code compliance, such as proper placement of communications equipment in police station, provision of fire sprinkler systems; alternative to the storage of records in the police station attic; sufficient meeting rooms and storage spaces for the several City functions (Police, Fire and City Hall); improved energy efficiency; an improvement in the space, configuration and aesthetics of City Hall lobby/customer service locations.

A major variable in the plan versions is the inclusion in or absence from the plan of the following two functions: A room dedicated primarily, if not exclusively, for the City's Emergency Operations Center and for staff training/use, so as to be in a state of readiness in the event of a disaster; the potential for public works services (non-field) personnel to be located at City Hall to reduce the size of the permanent maintenance center that the City needs to build or acquire, as well as to provide customer services in a central location for the public.

The Project Manager noted that four plan variants were developed for analysis and estimating purposes: two incorporate the EOC and Public Works administration function, two do not.

Mayor Ely asked if it was possible to close the westbound lane on Buchanan Street for parking. The Project Manager responded it could be done but would have to be diagonal parking and noted that the Police Department would need the eastbound lane so this would have to be looked at.

Council Member Maris questioned the rebuilding of the buildings noting that the measure that was passed was for retrofitting the existing buildings. Council Member Maris asked if there was a way to do the earthquake retrofit that would accommodate a future expansion. The Project Manager responded it would limit the choices in the future and would have to tear done the retrofitting that had already been done.

Council Member Good thanked staff for a good presentation and stated that the City Hall complex is the showcase of the City and should look good, as well as being safe. Council Member Good noted that he likes the idea of building up and doing a second story with more landscaping and parking. Council Member Good stated that he likes Plan C-1 and is not sure about the bridge in Plan C-3.

Council Member Okawachi agreed with Council Member Good and stated that the EOC and the Maintenance Personnel should be located in the City Hall building and likes Plans C-1 & C-3.

Council Member Thomsen stated that parking around the City Hall complex is definitely an issue and need to make as many spaces as possible and still serve the needs of the City.

Council Member Good asked if the carport in Plan C-1 could be removed to provide additional parking and the Project Manager responded this is a separate issue.

Mayor Ely asked if the cost of relocation was included and was informed yes. Mayor Ely stated that the advantage of moving the employees out of building would make the project go much faster and be less of a drawn out process. The Project Manager noted that the Fire Department would not have to be relocated, as they could be moved to another area of the Fire Station.

**6-1. Measure F, Fire and Police Stations and City Hall Renovation Project**

Council Member Maris stated that he wants to make sure that whatever Plan is chosen there is space available for the cable casting of Council meetings.

Mr. Dana Milner, 619 Talbot, stated that City Hall is a one-story masonry building and does not need to be retrofitted, however, noted that there might be a legal and engineering reason to do the retrofitting. Mr. Milner noted that he prefers Plan C-3, noting the building is completely separate from what is already here. Mr. Milner stated that if more space is needed maybe the City should consider buying the Veterans Building and then just retrofit the current buildings.

The Fire Chief gave a brief history of how this all came about noting that a friend of his, who is an engineer for Caltrans, told him that the Fire Station Apex would not withstand a major earthquake.

The Police Chief stated that the engineering component is essential and recommends having the EOC at City Hall and agreed that Plans C-1 or C-3 would be the best solution.

A member of the Albany Disaster Council and a PTA member spoke noting that she agrees that the EOC should be located at City Hall.

Council Member Maris recommended that staff should take another look at just retrofitting the existing building and have the City Attorney look at the liability issues and to include the possibility of future expansion.

It was the consensus of the Council to have staff come back with another report, which would 1) look at seismic retrofitting the existing building and 2) look at Plans C-1 and C-3.

The City Administrator noted that this would come back in July with all the other Measure F projects.

Council thanked staff for their hard work and good presentations.

**7. NEW BUSINESS****7-1. Cable TV Franchise Negotiations**

(File #1050-30)

The Assistant to the City Administrator reported that the City's fifteen-year Franchise Agreement with Comcast would expire on July 24, 2004. In the spring and summer of 2003, the City requested and received a variety of proposals for franchise renewal proceedings and related technical services. The proposals ranged from \$18,750 to over \$200,000 depending upon a wide range of services and options offered by the consultants.

Subsequently, the City entered into discussions with the cities of San Pablo and El Cerrito regarding the potential benefits of entering into negotiations on a joint basis. The benefits discussed by the cities included increasing the potential leverage over Comcast based on a larger number of subscribers and sharing the fees related to negotiations and technical services. However, the cities recognized the potential for differing interests,

### **7-1. Cable TV Franchise Negotiations**

particularly with regard to Public, Education and Government channel (PEG) access and technical studies.

The three cities then held a joint meeting with Mr. Greg Stepanicich at Richards, Watson & Gershon to discuss how best to optimize joint negotiations yet still allowing each City to address its own interests. Mr. Stepanicich outlined the four tasks, which would be involved in negotiations: 1) Franchise extension (\$500). It was recommended that the cities extend their franchises for a one-year period to allow more time for negotiations. Also to wait for the conclusion of the Marin Telecommunications Agency negotiations, which will provide some guidance. 2) Preparation of Regulatory Ordinance (\$2,500). Each City ordinance should be updated and was recommended to use the Marin Telecommunications Agency's ordinance as a model. 3) Preparation of Franchise Agreement (\$5,000). This includes the drafting of a standard franchise agreement, which all three cities could then customize. 4) Negotiation and drafting of PEG access/I-net and special franchise terms (\$10,000). This task would be billed on an hourly basis and the time and cost for this phase would depend upon the level of demands made by each City.

Mayor Ely asked if the City could go out to bid and the Assistant to the City Administrator replied that Albany has an exclusive franchise and noted the City could try but whether it gets any response is questionable.

Mayor Ely stated the City has no power and is looking at a monopoly and asked if it would be more effective to not spend the \$18,000 and to do whatever the Cable Company wants.

Mr. Clay Larson, Adams Street, stated that the City can deny the renewal and expressed concern about partnering with the cities of San Pablo and El Cerrito. Mr. Larson recommended the City look to other cities, such as Walnut Creek.

#### **MOTION:**

Moved by Council Member Okawachi, seconded by Council Member Maris to approve staff's recommendation to authorize the City Administrator to enter into an agreement with Mr. Greg Stepanicich at Richards, Watson & Gershon in an amount not to exceed \$18,000 for the preliminary tasks needed to initiate negotiations with Comcast to renew the City's cable television franchise agreement.

#### **SUBSTITUTE MOTION:**

Moved by Council Member Thomsen to authorize \$500 for the first step and then come back to Council.

The maker and second of the original motion agreed to the Substitute Motion.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

### **7-2. Advanced Life Support**

(File #630-30)

The Fire Chief reported that in 2002, Albany residents approved Measure G to help support maintenance of the high standard and quality care of paramedic life support

## 7-2. Advanced Life Support

services by increasing the amount of Albany's paramedic supplement tax. Measure G also restructured the commercial and industrial assessment to more fairly reflect the use of the services. Measure G changed the assessment for commercial and industrial properties to one Equivalent Residential Units (ERU) for every 1,200 square feet of developed property. This means that commercial and industrial properties under 2,400 square feet now have less of a tax burden while properties over 2,400 square feet pay more.

The Measure G restructure did not change the structure of the Advanced Life Support (ALS) tax measure known as Measure N. Currently, Measure N funds paramedic engines, charges two ERU for each commercial property, regardless of size. Therefore, a large commercial property such as Golden Gate Fields or Target pays the same tax as a small property such as Subway Sandwiches

The Fire Chief stated that the proposed measure would seek to amend Measure N to reflect the same assessment factor as Measure G in order to charge commercial property fair usage of emergency medical services. This new measure would not increase any residential property assessment and would use the same language as Measure G in establishing 1,200 square feet as the ERU in assessing commercial and industrial property.

Measure N charges two ERU at \$18.00 per residential unit for commercial properties regardless of their size. This equates to 7,044 ERU in Albany. If Measure N is restructured along the lines of Measure G, there would be an addition of approximately 1,027 ERU, which includes commercial property now under construction), for a total new revenue of \$18.486 annually.

Council Member Good asked if there was a possibility of a legal challenge and the City Attorney replied that the measure sounds fine.

### **MOTION:**

Moved by Council Member Maris, seconded by Council Member Good to direct staff to prepare and return to Council with a proposed ballot measure for the November, 2004 election.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

## 7-3. Ordinance #04-05 – Campaign Finance Reform

(File #630-20)

The City Attorney stated that during the 2002 election questions and complaints were raised by and about persons running for the School Board about the City's Campaign Reform Ordinance. The inquiries were addressed to the City Clerk and the City Attorney.

After a review of Chapter VII, staff is requesting clarification and modifications of the present code provisions, as follows: 1) The provision in the Albany Ordinance that restricts campaign contributions from sources outside the City is no longer valid and should be rescinded. An expert from Common Cause, who consults with public entities,

### **7-3. Ordinance #04-05 – Campaign Finance Reform**

also believes this provision is unconstitutional. Staff is recommending it be rescinded and an amendment has been prepared. 2) Was this law intended to apply to the School District elections? The City Attorney reported that he was the staff liaison to the ad hoc committee that studied the Campaign Reform Ordinance and throughout the process there was little discussion of School District matters. However, a School Board member was appointed as the School District's representative on the committee.

The report and recommendations made by the committee to the City Council made no mention, as far as staff can discern, of the School District's view of the proposed ordinance. It is recommended that Council direct staff to clarify the code provisions to indicate that at the present, and until this matter is presented to and reviewed by the School District, this law only pertains to the City of Albany elections and not to School District elections.

The City Attorney also noted that other questions have been raised among staff about more basic issues concerning the two agencies. The City Charter sets forth provisions about School District elections and probably predated provisions in the Education Code. The Education Code is a comprehensive body of legislation that establishes how school districts operate, including provisions about the election of school board members. If the Charter provision were repealed, then the School District would hold elections through a direct relationship with the County. As it is today, the City is a go-between the County and the School District.

The City Attorney stated that given the questions about the Campaign Finance Reform laws it seems like an appropriate time to ask the School District for its views on these intergovernmental matters.

Mr. David Farrell, Albany School Board Member, stated that he believes the Campaign Finance Ordinance does pertain to the School Board stating the School District belongs to the community and the City Council represents the Community in how elections are run. Mr. Farrell noted that due to the majority of the School Board at this time it is a forgone conclusion on how they will react to this item.

Ms. Marsha Skinner, 984 Peralta, agreed with Mr. Farrell and stated that in 1996 when this Ordinance was adopted the School District had no objections with the provisions of the Ordinance. Ms. Skinner stated that it is a very difficult issue now, as three of the members of the School Board who were elected were in violation of the provisions. Ms. Skinner urged the City Council to make a determination that the School Board is included in the City's Campaign Reform Ordinance.

Mr. Clay Larson stated the City is very slow in responding to this issue, as it came up in 2002. Mr. Larson believed that other cities should be contacted to see what they are doing regarding this issue.

Ms. Sally Outis, 952 Ventura, agreed that the School District should come under the City's Charter and should comply with the City's Election rules.

Council Member Thomsen stated that she has always assumed that the School District operates under the City Charter. Council Member Thomsen noted that the Council can either make that determination or it can go to the people at an election.

Council Member Good introduced Ordinance #04-05 for First Reading – An Ordinance of the Albany City Council Repealing Section 7-3b & 7-5b, Campaign

**7-3. Ordinance #04-05 – Campaign Finance Reform**

Finance Reform Ordinance of the Albany Municipal Code Regarding Limitations on Contributions from Outside Albany.

**MOTION:**

Moved by Council Member Good to approve for First Reading Ordinance #04-05 and to authorize staff to contact the Superintendent of the Albany School District.

**ON THE QUESTION:**

Council Member Thomsen stated she would prefer that the only action taken tonight is the approval of the first reading of Ordinance #04-05 and no contact be made with the School District until there is more review.

Council Member Good withdraw motion.

It was noted that there was a typographical error on line 5 and should change the spelling of “Counsel” to “Council.”

**MOTION:**

Moved by Council Member Good, seconded by Council Member Thomsen to approve the First Reading of Ordinance #04-05.

**ON THE QUESTION:**

Council Member Maris believed that additional information was needed before the approval of the first reading. Council Member Maris stated that Common Cause should be notified and asked why this section is unconstitutional.

Council Member Thomsen disagreed stating there is already case law on the books regarding this.

Mayor Ely suggested wording that includes a statement that this is voluntary and not mandatory.

The City Attorney recommended the current wording be rescinded and that staff will come back with other language.

**VOTE ON THE MOTION:**

AYES: Council Members Good, Okawachi & Thomsen

NOES: Council Member Maris & Mayor Ely      ABSENT: None

Motion carried and so ordered.

It was the consensus of the City Council to direct staff to explore the possibility of amending the Ordinance to provide some type of provision regarding voluntary limitation on outside contributions.

Mayor Ely also stated that he would like to make sure that the intent of the City Council is to maintain control over the School Board elections. The City Attorney stated this issue is not on the agenda and discussion should only apply to the Ordinance. Council asked that this issue be discussed at the next 2x2 meeting.

Council Member Good stated that he would like staff to speak with the Albany School District and noted for clarification the following action taken by the Council: 1) Approved Ordinance #04-05 for First Reading; 2) directed staff to come up with wording in the Ordinance for a voluntary statement regarding outside contributions; 3) the issue of the City keeping control over the School District elections be taken up at the next 2x2 meeting.

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

Council Member Maris reported on the following items: 1) The Albany High School Music Program will be sponsoring a fund raiser on Sunday, May 9, 2004, at the Albany High School Gym. 2) The JPA Ball field developer will be doing an Environmental Impact Report. 3) The San Pablo Avenue Corridor group has not addressed the issue of zoning codes along the Corridor; however, there is a potential to receive grants to work on a regional effort.

Council Member Good noted that he has been attending the following meetings ABAG, ACAP and LCC and will report at a later date.

**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 is anyone would like to speak. There being no one, the Good of the City/Public Forum was closed.

**10. ADJOURNMENT**

10:10 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, City Clerk, CMC.

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JON ELY  
MAYOR

ATTEST:

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JACQUELNE L. BUCHOLZ  
CITY CLERK