

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, JUNE 21, 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, Amanda Bennett, Planning Clerk; Charles Adams, Finance & Administrative Services Director; Melinda Chinn, Recreation & Community Services Director; Judy Lieberman, Assistant to the City Administrator; Greg Bone, Chief of Police; Marc McGinn, Fire Chief; Randy Leptien City Engineer.

**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, June 7, 2004.**

Staff recommendation: Approve.

- 4-2. a. Ratification of City of Albany net payroll in the amount of \$154,090.80; taxes, benefits & withholdings in the amount of \$149,897.78. Total payroll in the amount of \$303,988.58. Payroll period: 05/28/04.

- b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$34,551.33; taxes, benefits & withholdings in the amount of \$33,404.43. Total payroll in the amount of \$67,954.76; Payroll period: 05/28/04.

Staff recommendation: Ratify.

- 4-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$23,094.96. Period: 06/04/04.

- b. Ratification of bills, claims & demands against the City of Albany in the amount of \$172,836.20. Period: 06/04/04.

Staff recommendation: Ratify.

- 4-4. Resolution #04-25-A Resolution of the Albany City Council Approving the Salary Schedule for City of Albany Safety Management Employees and Select City of Albany Elected Officials.

Staff recommendation: Approve Resolution #04-25.

- 4-5. Resolution #04-31 – A Resolution of the Albany City Council Establishing the Appropriation Limits for the 2004/05 Fiscal Year at \$11,139,884.

Staff recommendation: Approve Resolution #04-31.

Mayor Ely asked if anyone would like to remove an item from the Consent Calendar for discussion. No one wished to remove any of the items.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Okawachi 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.** Appeal of P&Z Commission decision denying Planning Application 04-012, Variance to allow a six-foot fence to be located within the front yard setback at 801 Kains Avenue.

Planning Manager Dowswell delivered the staff report. The applicant/appellant was requesting approval to allow an existing six-foot, wooden fence to be located zero feet from the front property line and within 25 feet of a street intersection. The applicant/appellant was requesting the variance because she believed the property at 801 Kains Avenue is unique due to the orientation of the building, which makes Washington Avenue appear to be a side yard. She further believed granting the variance was justifiable because the new fence replaced an old hedge that was eight feet in height, and because the fence was needed to help reduce the amount of trash being disposed of on the property by passers-by.

The majority of the Planning and Zoning Commissioners, in denying the request for a variance, were unable to make any of the findings required for approval: 1) they did not find that the property is unique because there are at least six similar properties located within the same zoning district (R-3); 2) they did not find that the fence could be allowed to remain without that constituting a grant of a special privilege; 3) they did not find that the residents would be deprived of enjoyment of private yards because there is adequate space behind each unit for a fenced yard; and 4) they did not find that allowing the fence to remain would not be detrimental to the community and its overall character, because this closed-off front yard is out of character with Albany's open front yards.

Council Member Maris asked how far the building was from the front property line. It was ten feet from the front property line. City Attorney Zweben noted this was a public hearing, and that the applicant/appellant should be invited to address the Council.

Cathie Kosel, the applicant/appellant, spoke in favor of her appeal. She also opined that Commissioner Flavell should have recused himself, because he was the person who reported to the City staff the existence of her non-conforming fence, and because he has received a variance for a seven-foot high fence at one of his properties. Evan Flavell, 846 Solano, expressed dismay that this seems to have turned into a personal attack on him.

A woman who did not state her name said she was Ms. Kosel's next-door neighbor, and that she liked the new fence. Minu Rainbow, Portland Avenue, spoke in favor of fences because vagrants cut through un-fenced yards. Mary Jane Peluki, owner of 1127 Washington, opined the property is unique because there is only one other just like it, and because of its proximity to the liquor store in the adjacent commercial district. Mr. Peluki, 1127 Washington, submitted a photo of his view of the fence, and stated he finds it attractive and clean.

Mayor Ely asked the City Attorney whether there was any need for Commissioner Flavell to have recused himself. City Attorney Zweben indicated that there was not. Council Member Good thought this would be a good variance. Council Member Maris thought it would be better to maintain open front yards. Council Member Thomsen thought that it was a special circumstance being located so close to the commercial zone, but that it would be precedent-setting to allow the fence. Commissioner Okawachi felt

she could support the argument that it is really a side yard. Mayor Ely stated it was a good fence in the wrong place.

**MOTION:**

Moved by Council Member Good, seconded by Council Member Okawachi to overturn the decision of the Planning and Zoning Commission.

AYES: Council Members Good & Okawachi

NOES: Council Members Maris & Thomsen & Mayor Ely

ABSENT: None

Motion not carried.

**MOTION:**

Moved by Council Member Maris, seconded by Council Member Thomsen to uphold the decision of the Planning and Zoning Commission.

AYES: Council Members Maris & Thomsen & Mayor Ely

NOES: Council Members Good & Okawachi

ABSENT: None

Motion carried and so ordered.

**6. UNFINISHED BUSINESS**

- 6-1.** Prioritization of the Parks, Recreation and Open Space Improvement Priorities to be funded through Measure F funds and analysis of operational and maintenance impacts associated with the recommended projects.

Recreation and Community Services Director Chinn delivered the staff report. She noted that the Council's requests generated at the June 7, 2004, study session were for the Parks and Recreation Commission: 1) to consider reprioritizing the proposed Pierce Street Park to priority 3 and the proposed Vista Neighborhood Park to priority 6; 2) to provide a cost breakdown for the Key Route Median Project sections from the El Cerrito border to Portland Avenue and from Portland Avenue to Solano Avenue; and 3) to provide identification of specific projects in the Miscellaneous Pathway Improvements category.

Director Chinn indicated these requests had been addressed, with the Pierce Street Park changed to priority 3 and the proposed Vista Neighborhood Park changed to priority 8. Council Member Thomsen stated she might have a conflict of interest voting on the Pierce Street Park due to proximity to her residence. Council Member Good disagreed. Alan Riffer, Vice Chair of the Parks and Recreation Commission, spoke in favor of the prioritization. He noted that the dollar amounts are simply included to demonstrate the likely orders of magnitude of funding required.

Council Member Thomsen suggested voting on the priority order but not on the dollar amounts because there may be new funding available from other sources, such as the school district or the proposed development at Golden Gate Fields. The Chair of the Parks and Recreation Commission, explained that the dollar amounts are intended as placeholders rather than actual budget figures. Mayor Ely recommended voting on the priority order and the monetary order of magnitude, but leaving the funding sources out

of it. Roger Carlson stated that no school bond money would be available because of the way the bond measure was worded.

**MOTION:**

Moved by Council Member Good, seconded by Council Member Thomsen to accept the prioritization of the Parks and Recreation Commission excepting the Pierce Street Park.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**MOTION:**

Moved by Council Member Good, seconded by Council Member Maris to accept the prioritization of the Parks and Recreation Commission regarding the Pierce Street Park.

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

NOES: None

ABSENT: None

ABSTENTIONS: Council Member Thomsen

Motion carried and so ordered.

**6-2. Codornices Creek Restoration Project: Update on Memorandum of Understanding and Update on Budget – Measure R funds.**

Assistant to the City Administrator Lieberman delivered the staff report. She asked the Council to review and comment on the draft MOU, and authorize the allocation of additional funds from Measure R for modification of the ball fields impacted by the new creek right-of-way, and for the construction of the 4<sup>th</sup> Street bridge.

Regarding the MOU, Council Member Good noted that the terms “understanding” and “agreement” were both used. He recommended using one or the other but not both, to be more consistent and less confusing. Council Member Thomsen stated she was shocked by the change in the amount of funding needed, especially since these figures do not include the 5<sup>th</sup> and 6<sup>th</sup> Street bridges.

Doug Fielding spoke in favor of the project. Council Member Thomsen noted that Albany would be agreeing to pay for one third of maintenance costs each year, when it is not even one of the landowners. She suggested an offset, at least initially, to mitigate the construction being funded solely by the City. Jeff Bond, UC Berkeley Planner, stated he understands what Council Member Thomsen is suggesting. He also noted that the Albany Village is a stand-alone entity, rather than part of a large group of UC Berkeley holdings, meaning it has to be fiscally solvent independent of other university resources.

Council Member Thomsen asked the City Attorney to “weigh in.” City Attorney Zweben suggested that staff determine its current creek maintenance costs, and be certain that the agreement is only for added maintenance, and not for easing the property owners’ burdens. Mr. Bond pointed out that while the university owns the land, the City would be gaining a right-of-way easement.

Council Member Thomsen asked staff to be sure that the City Attorney reviews the grant agreement at the same time as he reviews the MOU. Council Member Maris suggested that language regarding volunteer utilization be included. There was consensus that the intent of the MOU language is appropriate.

Regarding authorization of additional Measure R funds, Council Members Maris and Thomsen were very concerned about the jump in the cost estimate. Mayor Ely asked for more documentation of what the Council was being asked to approve. He also asked staff to check that the new construction will be ADA compliant. City Engineer Leptien spoke to some of the cost increase being for the “mow band.”

Mayor Ely suggested that maybe the bridge could be labeled “future” or “alternate” on the bid sets. He is not opposed to the work being done, but concerned about costs. Assistant to the City Administrator Lieberman noted that the bridge is part of the agreement with the ball field users. City Engineer Leptien noted that time is very tight on this. He suggested an addendum request could be used to ask for the estimate on the bridge work to be called out separately by bidders.

Community Development Director Chaney pointed out that there is a limited time window on this project because it must be coordinated with the railroad allowing widening of the culvert. Roger Carlson and Doug Fielding spoke in favor of moving ahead with the project including the bridge.

Noting the lateness of the hour, City Administrator Pollard suggested continuing agenda item 7-2 to the July 6, 2004, meeting. There was consensus agreement to continue item 7-2.

### **6-3. University Village – Environmental Document.**

Community Development Director Chaney delivered the staff report. She noted that subsequent to release of the staff report, the response to the City comments had been received. Jeff Bond, UC Berkeley Planner, advised that the UC Regents’ Grounds and Buildings Committee would be meeting on June 30, 2004.

Council Member Thomsen stressed that there are significant economic impacts to the City from development at Albany Village. Also of concern are aesthetics along San Pablo Avenue, and traffic circulation and truck routes, particularly near the Ocean View school. Council Member Maris asked what UC Berkeley’s response is to the fiscal issue.

Mr. Bond reported that there are both legislation being proposed and judicial hearings underway on this very issue, and those are the appropriate venue for this issue, rather than a CEQA EIR. He stated that UC Berkeley had heard the City “loud and clear” regarding the aesthetic issue, but that there is pressure to get the highest yield possible from the property, while still providing recreation space, which means building “up.” He recommended that these concerns be directed to the Regents.

City Attorney Zweben asked whether an agreement would be required. Mr. Bond said it would. City Attorney Zweben asked what the timetable would be. Mr. Bond suggested at the end of the legislative session and/or after the court decision. City Attorney Zweben suggested a tolling agreement so that time limits would not be an issue. Mr. Bond referred City Attorney Zweben to the Regents’ legal counsel.



**6-5.** Resolution #04-32 – A Resolution of the Albany City Council Adopting the City of Albany Budget for Fiscal Years 2004/05 & 2005/06.

Finance and Administrative Services Director Adams delivered the staff report. The Council previously held a public hearing on this item at the June 7, 2004, meeting. Subsequent to that meeting, staff made corrections to the draft budget. Other than that there had been no changes made.

Council Member Maris had concerns regarding the amount spent on maintenance versus the results. City Administrator Pollard noted that there will be a report forthcoming from the interim Public Works Director. Council Member Maris was also concerned about the Community Services deficit. Recreation and Community Services Director Chinn pointed out that the revenue numbers are not for the entire year, so they appear to be coming up short. In actuality, the classes are filling up and revenue looks positive.

**MOTION:**

Moved by Council Member Maris, seconded by Council Member Thomsen to adopt Resolution #04-32, as submitted.

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

NOES: None ABSENT: None

Motion carried and so ordered.

**7. NEW BUSINESS**

**7-1.** Allocation of funds for City grants to Non-Profit Organizations for Albany projects or programs.

Mayor Ely proposed dividing the funds equally between the three groups.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Good to authorize the allocation of \$3,000 of City funds, as submitted.

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

NOES: None ABSENT: None

Motion carried and so ordered.

**7-2.** Discuss offer from Bayside Commons, 535 Pierce Street, to acquire parcel of land located due north of their parking lot entrance in the City of Richmond.

This item had been continued to the July 6, 2004, meeting earlier in the evening.

**7-3.** Budget/Constitutional Protection Package approved by the League of California Cities.

There was consensus to continue this item to a future meeting.

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

- 8-1.** Special Council Meeting, **Monday, June 28, 2004, 8:00 p.m.** to discuss the Zoning Ordinance. The City Council and the Planning & Zoning Commission will have a study session before the public hearing, 7:00 – 8:00 p.m.
- 8-2.** **July 4<sup>th</sup> Celebrations** will be held at Memorial Park and the dedication of the newly improved Memorial Park will also be held during the celebrations.
- 8-3.** City Offices will be closed on **Monday, July 5, 2004**, in observance of the July 4<sup>th</sup> Holiday.
- 8-4.** July schedule of City Council meetings: **Tuesday, July 6, 2004 and Monday, July 26, 2004.**

Council Member Maris mentioned an upcoming (**REGIONAL?**) San Pablo Avenue development meeting. He had attended a League of Cities meeting, and reported that cities will be facing gender equity issues. He asked staff to communicate with Waste Management about the poor trash pick-up service.

Mayor Ely reported that former Mayor and Council Member Henry Kruse passed away on June 15, 2004. There will be a service June 24, 2004, at 5:00 p.m., at Sunset View, 101 Colusa Avenue, El Cerrito. Mayor Kruse served as a Council Member for 8 years, with two terms as Mayor. Mayor Ely called for a moment of silence in Mayor Kruse's honor at the adjournment of the meeting.

**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 anyone would like to speak and there being no one Mayor Ely closed the Good of the City/Public Forum.

**10. ADJOURNMENT**

11:27 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

**10. ADJOURNMENT**

Minutes submitted by Amanda Bennett, Planning Clerk.

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JON ELY  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK