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MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION, 1000 SAN PABLO AVENUE
MONDAY, DECEMBER 6, 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; Judy Lieberman, Assistant City Administrator; Charles Adams, Finance & Administrative Services Director; Ann Chaney, Community Development Director; Billy Gross, Associate Planner; Ed Phillips, Zoning Consultant.

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, November 8 & 15, 2004.

Staff recommendation: Approve.

3-2. a. Ratification of City of Albany net payroll in the amount of \$155,045.58; taxes, benefits & withholdings in the amount of \$163,133.62. Total payroll in the amount of \$318,179.20. Payroll period. 11/24/04.

3. CONSENT CALENDAR

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$36,512.51; taxes, benefits & withholdings in the amount of \$38,456.52. Total payroll in the amount of \$74,969.03; Payroll period: 11/24/04.

Staff recommendation: Ratify.

- 3-3.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$652,525.36. Period: 11/05/04.
(File #300-40)

Staff recommendation: Ratify.

- 3-4.** Ratification of pension payments for the month of November, 2004, in the amount of \$108,919.43.

Staff recommendation: Ratify.

- 3-5.** Ball field modifications at Fielding Field related to the Codornices Creek Restoration Project.
(File #600-30)

Staff recommendation: 1) Authorize the City Administrator to approve a contract for ball field modifications at Fielding Field not to exceed \$80,000. 2) If the lowest responsible bid exceeds \$80,000, approve Resolution #04-65 to reject the bids, find that contract bid requirements have been met, and break the project into subtasks in order to get more economical pricing by dealing directly with suppliers and subcontractors.

- 3-6.** 2004 Work Plan Final Status Report.
(File #100-30)

Staff recommendation: Accept the 2004 Work Plan Final Status Report.

- 3-7.** Resolution #04-63 – A Resolution of the Albany City Council Authorizing the City Administrator to Execute a Long-Term Disability (LTD) Insurance Policy through Standard Insurance Company.
(File #720-50)

Staff recommendation: Approve Resolution #04-63.

3. CONSENT CALENDAR

- 3-8.** Ordinance #04-08 – An Ordinance of the Albany City Council Amending Chapter 12 of the Albany Municipal Code by Adopting Regulations Requiring Seismic Strengthening of Unreinforced Masonry Buildings. (File #440-30)

Staff recommendation: Adopt for Second Reading – Pass-to-Print Ordinance #04-08.

- 3-9.** Revisions to the City of Albany Zoning Ordinance. (File #450-20)

Staff recommendation: Adopt for Second Reading – Pass-to-Print Ordinance #04-09 – An Ordinance of the Albany City Council Amending Chapter XX, Planning and Zoning of the Albany Municipal Code.

Mayor Ely asked if anyone would like to remove an item from the Consent Calendar and the following items were removed: Item 3-5, 3-6 & 3-9.

3-5. Ball Field Modifications at Fielding Field Related to Codornices Creek Restoration Project

The Assistant to the City Administrator stated that bids for this project were opened today and there are two (2) options: 1) Dug out with CMP, or 2) Dug out with concrete. The CMP is a lower cost item and the City is waiting to hear from UC to see if that material could be used.

The Project Manager noted that UC is concerned about reducing the amount of vegetative swell for the cleansing process and some details still need to be worked out with UC.

MOTION:

Moved by Council Member Good, seconded by Council Member Maris to authorize the City Administrator to enter into a contract with the low bidder (\$70,591.81) conditionally based on the approval of the University of California, Berkeley to go ahead with the CMP bench.

ON THE QUESTION:

Mr. Dan Brodsky, Albany/Berkeley Girls Softball, expressed his gratitude to the Council and staff and supported the low bid contingent on the approval by the University of California, Berkeley.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: None

Motion carried and so ordered.

4-1. Presentation of the June 30, 2004 Financial Statements and Reports of the Independent Auditor

The independent auditor's report, which is in the Comprehensive Annual Financial Report and the Basic Financial Statements of the Community Reinvestment Agency are unqualified reports, which mean that the auditors believe the statements to present fairly, in all material respects, the financial positions of the City and Reinvestment Agency as of June 30, 2003. This is the highest level of auditor assurance the City can achieve in an audit.

The F&AS Director reviewed for the Council the Comprehensive Annual Financial Report (CAFR), the Reinvestment Agency, the Police & Fire Relief and Pension Fund, Appropriations Limit, the Alameda County Transportation Improvement Authority (ACTIA), the auditors report on internal controls.

Mr. Scott Miller, auditor, spoke to the Council reiterating that the City's audit was good and noted that any recommendations made the City has complied with them.

Council Member Maris asked what the Appropriations Limit meant and the F&AS Director responded that State law mandates that a City cannot spend in excess of their base level.

Council Member Maris asked that staff prepare for Council the Reinvestment Agency repayment schedule before June. Council Member Maris also expressed concern about the State and whether they will repay back revenues that the City is counting on and noting it is a very unstable source of revenue. The F&AS Director replied that staff will be monitoring this very closely and believe that the City will be all right, however, share the same concerns.

Council Member Okawachi thanked the Finance Director and his staff for an excellent reporting job.

MOTION:

Moved by Council Member Maris, seconded by Council Member Okawachi to accept the June 30, 2004 reports of the City's Independent Auditors: a) Comprehensive Annual Financial Report; b) Albany Community Reinvestment Agency; c) Albany Police & Fire Relief and Pension Fund; d) ACTIA Measure B funds; e) Appropriations Limit; f) Auditor's Fiscal 2004 Report to the City Council.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**4-2. Appeal of Planning & Zoning Commission Approvals for Applications 04-068 & 04-070 Cellular Antennas at 1530 Solano Avenue (formerly Jerome Blank Realty Building)
(File #450-50)**

The Associate Planner reported that applicants MetroPCS and Nextel Communications requested a Conditional Use Permit and Design Review approval to co-locate wireless telecommunication facilities on the existing building at 1530 Solano Avenue. The project would consist of nine (9) antennas on top of the existing building,

4-2. Appeal of Planning & Zoning Commission Approvals for Applications 04-068 & 04-070 Cellular Antennas at 1530 Solano Avenue (formerly Jerome Blank Realty Building)

with ground equipment within the basement. The antennas will be visually screened behind a new rooftop screen fabricated with fiberglass RF transparent panels to allow radio signal transmission. The screen would appear as a mock elevator penthouse, textured and painted to match the building. The overall height of the building with this concealment would be 40.5 feet.

The Planning & Zoning Commission heard this application on September 14, 2004 and after a public hearing the Commission approved the Mitigated Negative Declaration and the application for Design Review and Conditional Use Permit by a vote of 4-0 with some modifications to the conditions of approval.

An appeal was filed and the City Council on November 15 with agreement of applicants and appellants continued the appeal to December 13, 2004, however, since that time it has been rescheduled for December 6. Staff sent a notice of the change in date to the appellants, applicants and all properties within 300 feet radius of the project site.

The City Council on November 15, 2004, adopted an interim urgency Ordinance #04-010 restricting and/or prohibiting, suspending and/or denying any permits for, or otherwise restricting the approval of the installation of wireless communication facilities. This moratorium will expire on April 17, 2005.

Mayor Ely asked the appellant to make their presentation. An Attorney representing the appellant, Albert Chen, spoke to the Council stating that they support staff's recommendation to deny the application. The Attorney cited several cases that permit the City to approve a moratorium and stated that the appeal is based on aesthetics and noise issues, which were not analyzed in the Environmental Impact Report (EIR).

Mayor Ely asked the applicant to make their presentation. Ms. Maryann Miller, MetroPCS, stated that she believes the reasons cited in the appeal are not founded and that the project will not be detrimental to the public health and safety.

Ms. Miller noted that MetroPCS has made some modifications to the project, which will move the use further away north on the rooftop and away from the residents and have made changes to improve the visual impact.

Ms. Miller stated that the application did meet all of the City's requirements and was approved by the Planning & Zoning Commission and that they agreed to abide by the additional conditions set by the Commission.

Mr. Bill Hammond, a radio frequency engineer, spoke to the Council stating that after their calculations this project will not affect the residents and that it will comply with Federal standards.

Mr. Jim Hurd, Attorney for MetroPCS, noted that he is not representing Nextel. Mr. Hurd stated that the Planning & Zoning Commission reviewed this application and found that it met all legal requirements of the City and noted that they did not receive notice of the moratorium prior to its adoption.

Mr. Hurd stated that he disagrees with the appellant's attorney and believes the moratorium to be illegal, as there is no threat to the health safety of the public and there is no urgency and his view will be upheld in court.

4-2. Appeal of Planning & Zoning Commission Approvals for Applications 04-068 & 04-070 Cellular Antennas at 1530 Solano Avenue (formerly Jerome Blank Realty Building)

Mayor Ely opened the public hearing and the following people spoke in favor of denying the appeal and reversing the decision of the Planning & Zoning Commission: Appellant, 912 Peralta; Robert Lieber; resident, 906 Ventura; Albert Chen, appellant, 908 Peralta; Nan Wishner, San Carlos Avenue.

A summary of the comments is as follows: noise, aesthetics, health and safety, property values being devalued; the City has seven antennas already and the applicant should not feel discriminated against; too close to the schools.

The following people spoke in favor of the Planning & Zoning's decision and against staff's recommendation: Tasha Skinner, Nextel, who pointed out that there is a 100 feet distance to the nearest residence and referred to the comments made by Bill Hammond.

There being no one else wishing to speak Mayor Ely closed the public hearing.

Council Member Good stated it comes down to whether the City has an urgency ordinance and if so then the appeal is not considered until April 17, 2005. However, if there is no urgency ordinance then the appeal is heard.

The City Attorney responded that an Urgency Ordinance has been approved by the Council and cannot tell if it will be up held in court or not. However, City staff believes that a six-month moratorium is a reasonable amount of time and believes the City has the right to do this under State law.

Council Member Thomsen stated the Urgency Ordinance does exist and believes the City has the grounds to proceed with the moratorium.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Good to reverse the decision of the Planning & Zoning Commission and approve the prepared Findings to support the denial without prejudice, of the applications. A denial without prejudice would allow the applicant to: 1) Resubmit respective applications after a new Wireless Communication Facilities Ordinance has been adopted. 2) Not pay a new application fee.

ON THE QUESTION:

Council Member Okawachi stated that she wants to make sure it is clear that the applicants can resubmit their application at any time.

Council Member Maris asked what the City will accomplish during the moratorium. The Associate Planner responded that there will be a process to adopt a Wireless Communication Facilities Ordinance and noted the first public hearing will be on January 11, 2005.

The City Attorney stated that staff has conducted a review of various ordinances across the country and have attempted to assess all the information and will circulate a draft to the Planning & Zoning Commission at their December 14th workshop. After that, staff will evaluate all the information and have available for the public hearing on January 11, 2005.

Council Member Good noted that he still does not believe it was necessary to pass an Urgency Ordinance, however, it was passed and the City needs to proceed.

4-2. Appeal of Planning & Zoning Commission Approvals for Applications 04-068 & 04-070 Cellular Antennas at 1530 Solano Avenue (formerly Jerome Blank Realty Building)

VOTE ON THE MOTION:

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

NOES: None

ABSENT: None

Motion carried and so ordered.

Mayor Ely stated some citizens have asked him if they could make a presentation to the outgoing Council, as they are unable to attend the meeting next week.

Joan Larson and Marsha Skinner thanked Mayor Jon Ely and Council Member Peggy Thomsen for their dedicated service and presented them with flowers. A presentation of flowers was also given to the City Clerk for her service to the City.

5. UNFINISHED BUSINESS

5-1. Cerrito Creek Trail Project: Pierce Street Segment

(File #490-90)

The Community Development Director reported that on November 16, 2004, the Traffic & Safety Commission voted 4-1 to recommend that the City Council a) amend the Albany Bicycle Master Plan; b) implement Class I bicycle facilities on Pierce Street contingent upon access and/or easement through Pierce Street Park parcel; and c) approve Pierce Street and reaffirm Buchanan Street, as the City's Bay Trail bicycle connectors.

Phase I of the Cerrito Creek Trail project was completed in January, 2004, which identifies alternatives concerning the Ohlone Greenway at El Cerrito Plaza with the San Francisco Bay Trail.

The City Council directed the preparation of Phase II, which is intended to resolve and review the Pierce Street Trail Segment (traffic and parking plan). For Phase II of the Cerrito Creek project, the City hired Wilbur Smith Associates (WSA). Their recommendations were presented to the Traffic & Safety Commission and divided the project implementation into 3 phases, as follows: WSA Phase 1: Install signs for a bicycle route (Class III) for the entire length of Pierce Street (i.e. from the Cerrito Creek trail to Buchanan Street) with no loss in parking. The only change to the street would be the added signs. WSA Phase 2: Create new Class II bicycle lanes for the northern section of Pierce Street and to reconfigure the on-street parking along the west side of the street to accommodate a "back-in diagonal parking" configuration. WSA Phase 3: Construct a new Class 1 bicycle path on the west side of the street, along the sound wall, which would require the construction and reconfiguration of the northern section of the street (this would only be recommended if the bicycle path is constructed through the Caltrans parcel to the south).

The Community Development Director stated that the Traffic & Safety Commission were concerned that WSA Phase 1 would not be safe enough for bicyclists and also did not favor WSA Phase's 2 back-in parking reconfiguration. Based on these

5-1. Cerrito Creek Trail Project: Pierce Street Segment

concerns the Commission decided to recommend skipping WSA Phase 1 and 2 and pursue the implementation of WSA Phase 3 instead.

The Community Development Director informed the Council that Traffic & Safety Commissioner Lincoff was not present tonight, however, would like to read his letter, which recommends a compromise and expressed concern about the money it would cost for a Class I route and noted that he was the one dissenting vote from the Traffic & Safety Commission.

Mayor Ely asked how much of the money would be coming from Measure F and was informed \$470,000, which is just for the trail.

Council Member Good noted that he believes the Class III is dangerous and the City should be planning for a Class I. Council Member Good stated that he believes it is extravagant to spend the money at this time and noted that the Pierce Street Park does not exist.

The following people spoke in favor of this recommendation: Susan Schwartz, Friends of Five Creeks; an El Cerrito resident; Chris Kempter; Nick Pilch.

The following person spoke against this recommendation: Jessica Barbara, 535 Pierce Street, who opposed the reduction in parking and the traffic congestion.

Council Member Thomsen stated that she has some concerns, as she lives on Pierce Street and agrees that the cars drive very fast and do not slow down and is especially concerned about the bicyclists.

Council Member Thomsen noted that the Pierce Street Park has not yet been purchased and that there is only a limited amount of space and believes the City would be doing a disservice to the hill community. The space needs to be planned when the Pierce Street Park is purchased. Council Member Thomsen also expressed concern about another issue, which is the easement and believes this is a premature use of the park.

Council Member Good stated that he agrees with Council Member Thomsen and would agree that it would be desirable to have a resolution in place and then go into the details.

Council Member Maris spoke about the \$470,000 and how it will be spent noting that he did not see a cost break down.

Council discussed this issue in length and the Community Development Director suggested that this matter be continued if there are other alternatives that Council would like explored.

Council Member Maris stated that this has so much potential for all the community it will allow children to get from Gateview to San Pablo Avenue in a safe manner. Council Member Maris commented that he looks at this as a reasonable goal even though the City may not be able to achieve everything and that he is in favor of Resolution #06-61 and would suggest postponing Resolution #04-62.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Okawachi to extend the meeting 10 minutes past 11:00 p.m.

Motion carried and so ordered.

Council Member Thomsen stated that the park use on Pierce Street take precedence over the transportation use. The City Administrator stated that maybe it

5-1. Cerrito Creek Trail Project: Pierce Street Segment

would be better if the Council did not take any action at this time if the Pierce Street Park is a significant issue and the matter be deferred until the Park is completed.

11:10 p.m. – Council Member Good left the meeting

After much discussion and deliberation the following motion was made.

MOTION:

Moved by Council Member Maris, seconded by Council Member Okawachi to amend the Albany Bicycle Master Plan to include Pierce Street, as a Class I bicycle path from the El Cerrito boarder south up until where is narrows; and approve a Class III bicycle path (signage only) on Pierce Street to the Buchanan Overpass. It is intended that this action does not interfere with passive Pierce Street Park uses.

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

NOES: None

ABSENT: Council Member Good

Motion carried and so ordered.

6. NEW BUSINESS

7. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

7-1 A special Council meeting will be held on **Monday, December 13, 2004, at 7:00 p.m.** to Issue the Oath of Office to the newly elected Officials.

7-2 City offices will be closed on **Friday, December 24, 2004**, in observance of Christmas and **Friday, December 31, 2004**, in observance of New Year's Day.

8. 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.

Mr. Robert Zweben, City Attorney, thanked Council Member Thomsen and Mayor Ely for their 8 years of service and stated that both of them exemplify what public service is all about. Mr. Zweben expressed his gratitude and noted what a pleasure it has been working with them.

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

9. ADJOURNMENT

11:20 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

9. ADJOURNMENT

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

ROBERT GOOD
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK