

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, AUGUST 8, 2005

8:00 p.m.

Mayor Good 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 Javandel, Lieber, Maris, Okawachi & Mayor Good
Absent: None

STAFF PRESENT

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Kim Denton, City Treasurer; Charles Adams, Finance & Administrative Services Director; Ann Chaney, Community Development Director; Dave Dowswell, Planning Manager; Brian Crudo, Fire Marshall; Richard Cunningham, Public Works Manager.

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, July 5 & 18 & August 1, 2005.

Staff recommendation: Approve.

3-2. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$126,137.01. Period: 07/15/05.
b. Ratification of bills, claims & demands against the City of Albany in the amount of \$466,493.79. Period: 07/15/05.

c. Ratification of bills, claims & demands against the City of Albany Municipal Services JPA in the amount of \$170.00. Period: 07/15/05.
(File #300-40)

Staff recommendation: Ratify.

3-3. Ratification of Albany Police & Fire Pension payments in the amount of \$106,340.79 for the month of July, 2005.

Staff recommendation: Ratify.

3-4. A rendering of the quarterly Cash and Investments Treasury Report of the City of Albany, as of June 30, 2005, as required by Section 53646 of the California Government Code.
(File #300-10)

Staff recommendation: Note and file; information only.

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

MOTION:

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

AYES: Council Members Javandel, Lieber, Maris, Okawachi & Mayor Good

NOES: None

ABSENT: None

Motion carried and so ordered

4. UNFINISHED BUSINESS

4-1. Appeal of St. Mary’s High School Application

(File #450-50)

Council Member Maris stated that he would be recusing himself from the discussions, as he lives within 500’ of the area in question. Council Member Maris left the Council Chamber.

The Planning Manager stated that after the preparation of the Agenda a lot of letters were presented to Council in favor of St. Mary’s application and against the application.

The City Attorney stated that for the record the only item in question tonight is Resolution #05-46, which overturns the Planning & Zoning Commission decision. This is not a public hearing or a time to hear new information.

Council discussed this and agreed that a lot of new information has come before the Council and maybe another public hearing should be set.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to schedule another public hearing for September 6, 2005.

4-1. Appeal of St. Mary’s High School Application

ON THE QUESTION:

Council Member Lieber stated that he would be abstaining on this vote, as he believes that St. Mary’s High School has not kept their end of the bargain. Council Member Lieber stated that he is in favor of approving Resolution #05-47 noting that whatever action is taken not everyone will be pleased.

Mayor Good noted that he would really like to see a Master Plan from St. Mary’s High School so that everyone knows what is being planned in the future. Mayor Good urged both sides to get together and negotiate what is best for the entire community.

Mayor Good asked one spokesperson from each side to speak.

Mr. Peter Smith, Attorney for St. Mary’s High School, stated that the school has hired a facilitator and will be discussing the issues with the community and then will go ahead with the Master Plan. Mr. Smith referenced a letter he sent on August 4th and noted that the facilitator is part of the Master Plan process.

Council commented that they are interested in the specific details of each room and to have the school and the Peralta Neighborhood Association commit to sit down and talk with each and try to come up with a compromise.

Mr. Lucas Guttentag, Peralta Neighborhood Association, stated that he would prefer that Council vote on the Resolution that is before them tonight and noted that by postponing the decision it just burdens everyone involved. Mr. Guttentag commented that it has to be clear to the facilitator that if the two groups meet it is for the purpose of reaching a resolution and figuring out a way to reduce space.

VOTE ON THE MOTION:

AYES: Council Member Javandel, Okawachi & Mayor Good

NOES: Council Member Lieber ABSENT: Council Member Maris (recused)

Motion carried and so ordered.

8:40 p.m. – Council recessed

8:50 p.m. – Council reconvened

Council Member Maris came back to the Council Chamber.

5. PUBLIC HEARING

**5-1. Special Municipal Services Tax
(File #390-115)**

The Assistant City Administrator reported that since March, 2005, Council has been looking at the City’s unfunded needs and how to best meet those needs. At the meeting of July 18, 2005, Council directed staff to prepare documents necessary to place a parcel tax measure on the November 8, 2005, ballot to fund capital projects and operations.

The Albany Unified School District has also been considering placing a parcel tax measure on the November 8, 2005, ballot. A joint meeting of the School Board and the City Council was held on August 1, 2005, to discuss the possibility of a joint tax measure

5-1. Special Municipal Services Tax

or other alternatives for joint efforts in pursuing tax revenues to support the two agencies. It was decided that neither the Council nor the School Board were interested in pursuing a joint measure; however, both bodies expressed interest in cooperative efforts between the two tax measure efforts.

The Assistant City Administrator summarized the provisions of the measure, as follows: 1) Funding Allocation. 2) Escalator Clause. 3) ERU Allocations, Discounts and Exemptions. 4) Estimated Revenue. 5) Duration. 6) Ballot Language.

The Assistant City Administrator noted that a ballot measure for \$145 special municipal services tax would raise approximately \$1,000,000 in revenues for capital projects and operational programs.

Mayor Good opened the public hearing and the following people spoke: Ms. Elizabeth Pun, Albany resident; Mr. Robert Outis, Albany resident; Ms. Peggy Thomsen, Albany resident.

A summary of their comments is as follows: Concerned that there was no ending date for the tax in the Ordinance and suggested it only be on the books for 5-6 years. Preference was indicated that the ballot measure be on the June ballot rather than the November special election. Liked the language and how it started with the word "shall". Urged the Council to put the measure on the November ballot, as the City is ready to go.

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

Council Member Javandel noted that he liked the language included in the Ordinance for a low-income exemption.

Council Member Lieber stated that he supports the measure but wants it to go on the June, 2006, ballot and believes the School District should go on the November ballot, as this election has a lot of education issues.

Council Member Okawachi stated that she prefers that the measure be submitted on the November ballot and believes the City is ready.

MOTION:

Moved by Mayor Good, seconded by Council Member Javandel to approve Resolution #05-47 – A Resolution of the Albany City Council Calling and Giving Notice of Holding a Special Election to be Held November 8, 2005 and Requesting the Board of Supervisors of Alameda County to Consolidate Said Election with the Special Statewide Election; and Authorize the City Clerk or Her Duly Authorized Officers to Carry Out All the Necessary Procedures for Said Election Submitting to the Voters a Municipal Services and Capital Improvement Special Tax to the Qualified Voters of the City and Setting the Ballot Language.

However, this motion is contingent upon the decision of the Albany Unified School District (AUSD) to place a measure on the same ballot. If the AUSD proceeds with placing a measure on the November, 2005, ballot then the City will postpone its measure until June, 2006.

ON THE QUESTION:

Council Member Maris stated that he believes the AUSD will go in November and is reluctant to support the motion, as he believes the Council should commit to going in November regardless of what the School District decides.

5-1. Special Municipal Services Tax

Council Member Okawachi stated that she understands that the City and the School District would be working together on both measures.

The City Attorney stated for the record that if the School District moves forward with their measure then staff will not proceed to begin the election process and another Resolution will come back to Council rescinding Resolution #05-47.

VOTE ON THE MOTION:

AYES: Council Members Javandel, Okawachi & Mayor Good

NOES: Council Member Maris ABSTAIN: Council Member Lieber

ABSENT: None

Motion carried and so ordered.

Mayor Good stated that the Council must now decide which Council Members will prepare the ballot argument if the election takes place.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to appoint Mayor Good and Council Member Maris to prepare the Argument in Favor of the Measure.

Motion carried and so ordered.

6. NEW BUSINESS

6-1. 2005 Slurry Seal Project and Marin Avenue Reconfiguration Project
(File #820-30 & 590-40)

The Community Development Director informed the Council that the original intent was to enter into a single contract, with one contractor, to perform both the 2005 Slurry Seal Project and the Marin Avenue Reconfiguration Project. Unfortunately, no bids were received and since that time, staff has met with a number of individual contractors and believes the best approach is to split up the various tasks and contract them separately. The contract Project Engineer would coordinate the various contractors and has done other such projects, e.g. City's Traffic Calming Project, San Pablo Avenue Sewer Project and the Curb Ramp Project.

The Community Development Director explained the financial impact noting that if the project construction contract cost comes in at the Engineer's Estimate (\$419,000), there will be an approximately \$200,000 shortfall from the amount allocated in the CIP; however, as noted in previous communications to the Council, the Transportation Project funds will be used to make up this difference.

If the project construction contract cost comes in closer to the "not to exceed amount" of \$460,900 staff recommends that Measure F funds be used to cover the difference above the Transportation Project fund, as follows: \$432,500 (CIP authorized) plus \$20,000 Transportation Project fund plus \$8,400 Measure F Traffic Projects Allocation, which equals \$460,900.

6-1. 2005 Slurry Seal Project and Marin Avenue Reconfiguration Project

Council Member Maris questioned the schedule and the funding aspect of the contract.

The following people spoke: Mr. Peter Hobart, Albany resident; Ms. Sally Outis, Albany resident; Ms. Lubov Mazur, Albany resident.

A summary of their comments follows: Concerned about the multi contractors and believes it will cause havoc, especially with traffic accidents, etc. Concerned about the school children and the impact it will have on Marin and Cornell schools and urged the Council to give serious thought to this project. Suggested that the traffic patterns be changed around the school area.

Council Member Javandel asked if the slurry seal portion could be done and then later complete the striping. The Community Development Director responded that the intent is to do this part of the project in a single phase. The Community Development Director stated that staff would work with the Police Department and the Crossing Guards.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Maris to authorize the City Administrator to negotiate and award a contract(s) for the 2005 Slurry Seal Project and the Marin Avenue Reconfiguration (traffic calming) Project for a contract amount not to exceed \$460,900 (Engineer's estimate of \$419,000 plus 10%).

AYES: Council Members Javandel, Lieber, Maris, Okawachi & Mayor Good

NOES: None

ABSENT: None

Motion carried and so ordered.

6-2. League of California Cities Annual Conference Voting Delegate

(File #140-20)

The City Administrator stated that the League of California Cities will be holding their annual Conference on October 6-8, 2005, and request designation of voting delegate and alternate.

MOTION:

It was moved by Council Member Maris, seconded by Council Member Lieber to nominate Mayor Good, as the Voting Delegate and Council Member Javandel, as the Alternate.

Motion carried and so ordered.

6-3. Report from Charter Review Committee

(File #660-25)

The City Administrator reported that the Charter Review Committee have two recommendations before the Council, as follows: 1) That the City Council submit a proposed amendment to the City Charter to the voters to change the term of Committee/Commission appointees from four years to two years (appointments or reappointments to follow each general election). 2) That the City Council submit a

6-3. Report from Charter Review Committee

proposed amendment to the City Charter to the voters to provide for the appointment rather than the election of the City Attorney, with a recommendation that Council consider the issue of the most appropriate timing for a submission of this issue to the voters.

Mayor Good recommended that the two items be discussed separately and asked the Chair of the Charter Review to speak on the first recommendation.

Mr. Robert Outis stated that he does not believe this change would override the 1996 Charter Amendment noting that after each election each Council Member should have the opportunity to reconsider their appointments.

Mayor Good disagreed and believes that this recommendation would go against Measure Q and stated there are methods to remove a person for cause already in place.

Council Member Maris stated that Council would not be making the decision but putting the measure on the ballot for the people to decide if this is a reasonable compromise.

Council Member Lieber indicated that he did not support Measure Q when it was before the voters and believe that elected officials appoint people to various Commissions/Committees and should be able to evaluate the appointments every two years. Council Member Lieber stated that he supports this recommendation.

Council Member Okawachi agreed that every two years the appointment can be looked at and changed if necessary.

Council Member Javandel stated that after speaking with people about being on a City Commission/Committee that many prefer the shorter term and it allows for flexibility.

Ms. Lubov Mazur, Traffic & Safety Commission, raised the issue that it could mean that every two years the City would have a completely new Commission/Committee. Ms. Mazur stated that she hoped this would not happen.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Okawachi to direct staff to prepare ballot language for the change in terms for Commission/Committee members. This item to come back to the Council in March for approval and then submitted on the June, 2006, ballot.

AYES: Council Members Javandel, Lieber, Maris & Okawachi

NOES: Mayor Good

ABSENT: None

Motion carried and so ordered.

Mayor Good stated that Council will now consider the Charter Review's recommendation regarding changing the elected City Attorney position to an appointed position.

Council Member Javandel stated that he likes the idea of an elected Attorney giving an honest opinion and does not see any problem with how it is now and would like to know why this came up.

Council Member Lieber agreed that there is a value to having an elected Attorney who answers to the public.

6-3. Report from Charter Review Committee

Council Member Maris asked what the advantages were of making the change to an appointed Attorney.

Council Member Okawachi stated this is a different situation from the elected Police Chief noting that the Police Department has a big budget and the Council had no control. This is not true for the elected City Attorney and City Treasurer and did not believe the City needed a change right now.

Mayor Good agreed that he likes the idea of having an independent Attorney who is not under the thumb of the City Council and the City Administrator and believes it is a good checks and balance.

Mr. Outis stated that the Committee was unanimous in its decision and indicated that he has a very high regard for the current City Attorney who has a sense of history of the community. Mr. Outis noted that for him it was a philosophical point and may be premature at this time.

The following people spoke: Ms. Nan Wishner, Albany resident, stated that she believes that the Attorney should be elected and answerable to the voters.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Maris to send this back to the Charter Review Committee for further deliberations and asked that when it comes back to the Council that the Committee provide a list of pros/cons on elected vs. appointed City Attorney.

AYES: Council Members Javandel, Lieber, Maris & Okawachi

NOES: Mayor Good

ABSENT: None

Motion carried and so ordered.

6-4. Policy and Procedure for Placing Items on Council Agenda

(File #100-30)

The City Administrator stated that Council Member Maris asked that this item be on the agenda and went over the existing policy for placement of items on the City Council Agenda. The City Administrator noted that her job is to make sure that Council has sufficient information upon which to make good decisions for the City.

The City Administrator stated that staff needs clear direction of what is expected of them and when making the decision Council should keep in mind that staff is responsible for being even-handed and equal to all Council Members and take direction from the majority of the Council.

Mayor Good stated that his experience during his tenure on the Council is that there is an unwritten rule that one Council Member cannot direct staff to prepare a staff report. The Council directs staff, however, if one Council Member puts an item on the agenda they are on their own and that staff does not prepare a report.

Council Member Maris stated that he hopes that what is decided tonight everyone will feel comfortable.

Council Member Maris at this time addressed concerns with articles that have appeared in The Journal and stated that he would like to clear up some misconceptions.

6-4. Policy and Procedure for Placing Items on Council Agenda

Council Member Maris also spoke about democracy and why effective democratic government bodies have committees to review agenda items.

Council Member Maris stated that he wishes to adopt a policy that returns credibility to the City Council and effective government to the City of Albany.

Council Member Lieber responded stating that the City Council should have no interest in suppressing the rights of others to present evidence in support of their positions.

Council Member Lieber noted that he opposes allowing other Council Members or staff to evaluate, revise or decide on the appropriateness of any offered agenda item and also opposes requiring a second to put an item on the agenda.

Council discussed this issue in great length.

MOTION:

Moved by Council Member Lieber to refer this item to the Social & Economic Justice Commission for their review.

MOTION WITHDRAWN:

Council Member Lieber withdrew his motion.

MOTION:

Moved by Mayor Good, seconded by Council Member Lieber that the existing policy be continued emphasizing that any individual Council Member has to provide a written introduction, not just a title, and that staff explicitly need not provide a staff report for an individual Council Member.

ON THE QUESTION:

The following people spoke: Ms. Lubov Mazur, Albany resident; Mr. Clay Larson, Albany resident; Ms. Thelma Rubin, Albany resident; Ms. Kristina Osborne, Albany resident; Mr. Evan Flavell, Albany resident; Ms. Margie Marks, Albany resident; Ms. Sally Outis, Albany resident; Mr. Richard Treat, Traffic & Safety Commission; Ms. Nan Wishner, Albany resident.

A summary of their comments, as follows: Hoped that staff would be held blameless if a staff report was not prepared. No need for any new rules and believes the existing procedures are appropriate. Referred language in the current policy CCP4 –to the City Attorney noting that the word “important” does not fit under the guidelines of the Brown Act. The City Attorney agreed stating that the word “important” should be deleted from this language. Council needs to show some judgment when putting items on an agenda and any item must have supporting documentation. Council should be responsible in what they want staff to do. Anything on the agenda should have supporting documentation so that everyone is fully informed. Staff should not have discretion in preparing a report and prepare one only after direction by the City Council. Support anyone’s right to put an item on the agenda and if the Council does not like the item it can be tabled. Suggested that an item be put at the beginning of the agenda for the Council to vote on the actual agenda. Suggested that a public calendar be distributed with upcoming items and posted on the web site. Spoke to the Bill of Rights and individual rights. Support the motion made by the Mayor, as it is important that an individual Council Member prepare their own report.

6-4. Policy and Procedure for Placing Items on Council Agenda

MOTION:

Moved by Council Member Maris, seconded by Council Member Javandel to extend the meeting past 11:00 p.m.

Motion carried and so ordered.

Council Member Javandel stated that he supports the idea that an individual Council Member can put something on the agenda but would like language added to the motion that notice be given prior to the meeting and allowing the Council to direct staff to prepare a report.

Mayor Good noted that this would be a substantive change and would not agree to it and prefers to stay with the current procedures.

VOTE ON THE MOTION:

AYES: Council Member Lieber & Mayor Good

NOES: Council Members Javandel, Maris & Okawachi ABSENT: None

Motion Failed.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Maris that an individual Council Member announce at a prior meeting any item they would like presented and that the existing procedures be followed. Also that staff have the discretion on whether a staff report should be prepared, and “need not” prepare a report.

ON THE QUESTION:

Council Member Lieber stated that he opposes this motion, as it limits Council’s ability to bring matters forward.

The following people spoke to the motion: Mr. William Dann, Albany resident; Ms. Kristina Osborn, Albany resident; Ms. Nan Wishner, Albany resident; Mr. Robert Outis, Albany resident.

A summary of their comments, as follows: Concerned about the time between Council meetings and believes the motion is not workable. Stated that the current rules are fine, as long as documentation is submitted. Believes it is a matter of calendar management and the rules do not need to be changed.

Mayor Good expressed concern about the language and suggested that the word “should” be included in front of “announce”.

AMENDMENT TO MOTION:

Council Member Javandel stated that he would be happy to take that suggestion and will include the word “should” in the motion, second agreed to the change.

VOTE ON THE MOTION:

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

NOES: Council Member Lieber ABSENT: None

Motion carried and so ordered.

6-5. Changing the Order of the Agenda
(File #100-30)

The City Administrator reported that typically the Good of the City/Public Forum has been placed at the end of the agenda, although for a period of time in 1985 it was at the beginning and then changed back in 1988.

Mayor Good has asked that his recommendation to change the Good of the City/Public Forum to the beginning of the meeting be discussed by the Council.

MOTION:

Moved by Mayor Good, seconded by Council Member Maris to change the order of the agenda and put the Good of the City/Public Forum after the Consent Calendar.

ON THE QUESTION:

The following people spoke to the motion: Ms. Lubov Mazur, Albany resident; Ms. Kim Linden, Albany resident.

A summary of their comments, as follows: Concerned about people talking too much when the meetings become televised and making the Council Meeting much longer. Agreed with the change and urged the Council to support the motion.

VOTE ON THE MOTION:

Motion carried and so ordered.

6-6. Appointment to the Social & Economic Justice Commission
(File #110-30)

Council Member Lieber stated that at this time no Council Member, other than himself, has appointed a representative to the Social & Economic Justice Commission; therefore, he is recommending that Steve Pinto be appointed.

Council pointed out that Council Member Lieber already has one appointment and he cannot make another. Council Member Lieber responded that pursuant to the City Charter if Council Members do not make an appointment then this could be done.

It was the consensus of the City Council to table this item to allow the Council Members to make their individual appointments.

7. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

7-1. The regular City Council meeting scheduled for Monday, August 15, 2005, has been cancelled, as the Council is on recess.

7-2. City Offices will be closed on **Monday, September 5, 2005**, in recognition of the Labor Day Holiday. Therefore, the regular scheduled Council meeting will be held on **Tuesday, September 6, 2005**.

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.

8. GOOD OF THE CITY/PUBLIC FORUM

Mayor Good opened the Good of the City/Public Forum and asked if anyone would like to speak.

Ms. Lubov Mazur read from the Commission/Committee Handbook and spoke about Commission/Committee interface with the Council and expressed concern about special interests.

Ms. Kim Linden thanked the Council for changing the Good of the City/Public Forum to the beginning of the Agenda noting that having it at the end deters people from staying and speaking due to the lateness of the hour.

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

9. ADJOURNMENT

11:50 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.

ROBERT GOOD
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK