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MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION, 1000 SAN PABLO AVENUE
TUESDAY, SEPTEMBER 6, 2005

6:45 p.m.

EXECUTIVE SESSION

Call to Order

OPPORTUNITY FOR THE PUBLIC TO SPEAK ON EXECUTIVE SESSION ITEMS

City Council convenes in the Council Chamber and then adjourns to Executive Session to discuss the following pursuant to Government Code Section 54957.8

Agency Negotiator:	City Administrator and Glenn Berkheimer, IEDA
Employee Organization:	Albany Peace Officers' Association

And pursuant to Government Code Section 54957 Public Employee Performance Evaluation:

Title:	City Administrator
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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; Jacqueline Bucholz, City Clerk; Lee Rosenthal, Attorney; Dave Dowswell, Planning Manager; Jay Jorgensen, Captain Fire Department.

3. ANNOUNCEMENT OF EXECUTIVE SESSION ACTION

Mayor Good announced that the labor negotiations work session was cancelled and the employee evaluation was held and a letter will be forthcoming.

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.)

3-1. City Council minutes, August 8, 2005.

Staff recommendation: Approve.

3-2. a. Ratification of City of Albany net payroll in the amount of \$170,350.39; taxes, benefits & withholdings in the amount of \$193,242.69. Total payroll in the amount of \$363,593.08. Payroll period: 07/22/05.

b. Ratification of City of Albany net payroll (special) in the amount of \$6,272.18; taxes, benefits & withholdings in the amount of \$2,693.10. Total payroll in the amount of \$8,965.28. Payroll period: 07/29/05.

c. Ratification of City of Albany net payroll in the amount of \$166,800.81; taxes, benefits & withholdings in the amount of \$122,862.48. Total payroll in the amount of \$289,663.29. Payroll period: 08/05/05.

d. Ratification of City of Albany net payroll in the amount of \$153,787.77; taxes, benefits & withholdings in the amount of \$177,838.61. Total payroll in the amount of \$331,626.38. Payroll period: 08/19/05.

e. Ratification of Albany Municipal Services JPA net payroll in the amount of \$44,085.03; taxes, benefits & withholdings in the amount of

\$46,654.19. Total payroll in the amount of \$90,739.22. Payroll period: 07/22/05.

f. Ratification of Albany Municipal Services JPA net payroll in the amount of \$44,949.79; taxes, benefits & withholdings in the amount of \$20,809.63. Total payroll in the amount of \$65,759.42. Payroll period: 08/05/05.

g. Ratification of Albany Municipal Services JPA net payroll in the amount of \$44,936.40; taxes, benefits & withholdings in the amount of \$59,412.38. Total payroll in the amount of \$104,348.78. Payroll period: 08/19/05.

Staff recommendation: Ratify.

3-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$442,818.85. Period: July 29, 2005.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$192,715.15. Period: July 29, 2005.
(File #300-40)

Staff recommendation: Ratify.

3-4. The following people are appointed to the Social & Economic Justice Commission: Council Member Maris – Ruth Ganong; Mayor Good – Peggy Thomsen; Council Member Okawachi – Kathryn Javandel.
(File #110-30)

Staff recommendation: Information only.

3-5. Resolution #05-49 – A Resolution of the Albany City Council Rescinding Resolution #05-47, Which Called for a Special November, 2005, Election for the Purpose of Submitting a Tax Measure to the Voters.
(File #630-20)

Staff recommendation: Approve.

3-6. Resolution #05-50 – A Resolution of the Albany City Council Authorizing the City Administrator to Execute a Contract with Universal Building Services to Conduct Monthly Citywide Residential Street Sweeping.
(File #600-30)

Staff recommendation: Approve Resolution #05-50.

- 3-7.** Consideration of Claim #AL496; Baozhen Zhang, Jiaqing Wang & Mercury Casualty Insurance Company.
(File #170-60)

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

Mayor Good asked if anyone would like to remove an item from the Consent Calendar and the following items were removed: Item 3-4 & 3-6.

3-4. Council Member Javandel announced that he would be appointing Christiane Khan to the Social & Economic Justice Commission.

3-6. Council Member Maris expressed concern with the review period being done after one year and noted that if the program was not working that the review could be done sooner.

Council Member Lieber suggested that staff prepare an interim report and that the item be revisited.

The City Administrator stated that before Council is an emergency item that came up after the Agenda was prepared and to take action it needs a 4/5 vote of the Council.

Council unanimously agreed to discuss the emergency item.

City Response to Hurricane Katrina.

The City Administrator reported that the City of Albany responded to this disaster by sending two firefighters to the hurricane region through FEMA for a period of 30 days.

The City is also using this opportunity to remind Albany residents about steps to take and items to have ready in the event of a disaster.

The City Administrator stated that there is at least one City employee who may be interested in volunteering in the recovery and relief effort. This particular employee has the responsibility of care and shelter in the event Albany has a disaster and would gain valuable experience to apply locally for the City's emergency preparedness and response.

The City will be reimbursed by FEMA for up to approximately 75% of the firefighters' pay; the City is expected to pay the remainder of the cost as well as the overtime costs to backfill the employees' shifts. The costs for authorizing other employees leave time for disaster response will be whatever staff time may be needed, if any, to backfill for the employee's time.

The City Administrator recommended the following action: To authorize the City Administrator to approve paid leaves of up to three weeks, on a case-by-case basis, for employees to perform emergency response, relief and recovery work. Factors for consideration in review of leave requests will include the impact of the employee's absence from Albany, the nature of the work to be performed and the experience that the employee can bring back to Albany.

Council Member Maris stated that the Disaster Council will be meeting next week and would like to see the EQPP Program jump-started again. Council Member Maris noted that he has a meeting with the Fire Marshal next week to go over the entire process.

Council Member Lieber commented that this is a very hard time for the Country and anything that Albany can do should be done and suggested the Disaster Council might recommend a donation.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Maris to approve the Consent Calendar, as submitted with the addition of the City Administrator's recommendation regarding Hurricane Katrina and the City's response.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

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

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

5. PRESENTATION/PUBLIC HEARING

5-1. St. Mary's College High School

(File #450-50)

Council Member Maris stated that he would be recusing himself from the discussion, as he lives within 500 feet of St. Mary's.

The Council on July 5, 2005, upheld the appeal of the Peralta Park Neighborhood (PPNA) Association, which overturned the decision of the Planning & Zoning (P&Z) Commission to 1) amend the CUP 93-27, Condition No. G-2b to allow the gross square footage of the St. Mary's College High School (SMCHS) classroom space to be increased by 3,032 square feet; and 2) amend Design Review 99-24, Condition No. 7, by eliminating the requirement that 3,032 square feet of building area be demolished; and 652 square feet of additional building area be converted to a non-classroom use.

In upholding the appeal the Council voted to modify CUP 93-27 Condition G-2b and DR99-24 Condition 7 to eliminate the demolition requirement, thereby allowing SMCHS to keep the two buildings intact (Band Pavilion and Snack Shop). The school, however, would have to cease using two buildings for classroom use and convert them to non-habitable space until a new master plan is approved.

On July 15, 2005, PPNA submitted a letter in response to staff report, dated July 12, 2005. The letter requested the City Council not postpone adoption of a resolution confirming their July 5th decision. The letter also included a list of possible conditions of approval that the Council could/should adopt.

5-1. St. Mary's College High School

On July 18, 2005, Council Member Javandel presented a draft resolution for consideration; however, due to the fact that the Council, PPNA and SMCHS had not had an opportunity to review the draft resolution, the Council voted to continue this matter to August 8, 2005.

On August 8, 2005, Council considered adoption of a Resolution that memorialized the Council's decision of July 5, 2005. Prior to the meeting, SMCHS submitted a letter, dated August 4, 2005, urging the Council to reconsider their decision. The PPNA also submitted a letter commenting on the draft resolution.

Council asked St. Mary's High School and the Peralta Park Neighborhood Association to sit down with a facilitator and try to work out a compromise. Council passed a motion to schedule another public hearing on September 6, 2005.

The Planning Manager noted that the City has received numerous e-mails and letters, almost entirely in support of SMCHS request to keep 3,032 square feet of classroom space.

The City Administrator introduced Lee Rosenthal, Attorney, who is filling in for the City Attorney who is on vacation.

The Mayor asked the Planning Commission members present to give the Council a brief history of this item and their subsequent motion. Mr. Phil Moss, Mr. Evan Flavell and Mr. David Arkin spoke regarding their decision.

The Mayor asked a representative of St. Mary's to speak first.

Mr. Tom Rauch, Chairman, Board of Trustees, stated that he would like five people to make a presentation on St. Mary's behalf.

Mr. Colbert Davis, Teacher, spoke with the perspective of the teaching staff noting that the enrollment will not increase. Mr. Davis noted that SMCHS has always been cooperative with the neighborhood.

Mr. Pete Imperial, Principal of St. Mary's, stated that classroom space is indicative of the quality of education. Mr. Imperial noted that the State keeps changing the standards for college entry; therefore, students require more courses and reiterated that the number of students will not increase.

Ms. Alexa Brown, Student Body President, spoke about the relationship that the students have with their teachers, college admission requirements and asked the Council to reconsider their position so that the school can keep the existing classroom space.

Mr. Michael Bush, alumni of St. Mary's, spoke about the music program and how important it is to the students and stated it is about something other than just space.

Mr. Mike Harrington, parent of St. Mary's student and neighbor, stated that the PPNA does not speak for him and do not represent all the residents in the area. Mr. Harrington stated that he believes the school has been open and honest and that this situation has hurt the neighborhood.

Mayor Good asked a representative of PPNA to speak.

Mr. Lucas Guttenberg, Ventura Avenue, stated that the appeal is about the integrity of the planning process and noted that the Association does support the good work and academic goals of the school. Mr. Guttenberg commented that St. Mary's is

5-1. St. Mary's College High School

not in compliance and that the school should have a cap of 600 students and St. Mary's see 630 students, as their goal.

Mr. Guttenberg stated that PPNA and SMCHS sat down, as directed by the City Council to try and reach a compromise; however, SMCHS did not want to discuss the square footage issue.

Mr. Guttenberg commented that PPNA is in favor of applicants keeping their promises and to make sure that the planning process means something. Mr. Guttenberg stated that PPNA definitely wants to be involved with the discussions during the St. Mary's master plan process.

Mr. Guttenberg went on record as objecting to the manner in which some of the Planning Commissioners testified tonight and reminded the Council that before them is the matter of the Resolution and the appeal.

Mayor Good opened the public hearing and the following people spoke: Two unnamed speakers; Mr. Chris Handleman; Ms. Doris Treasman; Mr. Mark Canter, Monterey Avenue, Berkeley; Mr. Andrew Watery, Monterey Avenue, Berkeley; Mr. Jason Butcher; Mr. Tim Needlessly; Ms. Margarite Sprague; Ms. Jennifer Winch, Hopkins Court, Berkeley.

A summary of the comments is as follows: Spoke about the facilitated meeting between St. Mary's and Peralta Park Neighborhood Association; Concerns about the enrollment; Urged the Council not to change their July 5th decision; Concerned about trust between the school and the neighborhood; A comment was made that the "end does not justify the means"; urged a compromise so that the students do not suffer – keep the band pavilion but close other classrooms. Confused and hurt about the proposal to remove classroom space; Spoke about the long range plans and the need for communication between the school and the neighborhood; Noted that traffic concerns have been addressed and that PPNA does not speak for everybody in the neighborhood.

A petition with 47 Albany resident signatures was submitted. The petition urged the Council to retain and continue the use of the 3,032 square feet of classroom and campus facilities space.

10:15 p.m. – Council Recessed

10:20 p.m. – Council Reconvened

Mayor Good gave St. Mary's and the Peralta Park Neighborhood Association time for a short rebuttal. Mr. Colbert Davis spoke for St. Mary's and Mr. Lucas Guttenberg spoke for Peralta Park Neighborhood Association.

There being no one else wishing to speak Mayor Good closed the Public Hearing.

Council entered into a lengthy and detailed discussion of this issue. Council Member Javandel stated that he agreed with a speaker "that the end does not justify the means" and also agreed with Jason Butcher who called for a compromise by keeping the band pavilion and closing two other classrooms.

Council Member Lieber stated this is a very difficult situation and admits that he has softened his thoughts over the last few weeks. Council Member Lieber commented that this is not about education but about buildings and repairing trust with the

5-1. St. Mary’s College High School

community and the neighbors. Agreed that a compromise needs to be acted on and noted that he is disappointed with the facilitation that took place earlier.

Council Member Okawachi disagreed with Council Member Lieber stating that she believes this is about education and not square footage and stated that a lot of teachers would have to be moved around if three classrooms were closed, which would affect the education of the students. Council Member Okawachi agreed that a compromise must be reached and suggested that the band pavilion be kept and the snack bar and one or two classrooms be closed.

Mayor Good stated that he agrees that a compromise must be reached and stated that a line has to be drawn and would suggest that the original resolution be passed and this issue revisited when St. Mary’s discusses their master plan.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to adopt Resolution #05-46 – A Resolution of the Albany City Council Upholding the Appeal by the Peralta Neighborhood Association of Planning & Zoning Commission Decision Concerning St. Mary’s College High School Amendment Request with the following amendment: That St. Mary’s keep the band pavilion but will give up the Snack bar Pavilion and one classroom of their choice and that the benchmark for square footage will be capped at 90,000. St. Mary’s will involve the community in the discussions during the Master Plan process and will have a facilitator during that process.

ON THE QUESTION:

The Planning Manager reiterated that the square footage would be based on the 1994 requirement of 90,000.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Maris

Motion carried and so ordered.

Council Member Maris came back to the Council Chamber and took his place on the podium.

MOTION:

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

Motion carried and so ordered.

6. UNFINISHED BUSINESS

7. NEW BUSINESS

7-1. Participation in Casino Transportation Impact Study

(File #1060-10)

The City Administrator reported that there are three Indian casino projects currently contemplated in West Contra Costa County. Contra Costa County, the cities of El Cerrito, Hercules, Pinole, Richmond and Orinda, along with other public agencies,

7-1. Participation in Casino Transportation Impact Study

including AC Transit, BART and WestCAT have agreed that it is extremely important to conduct a transportation impact study to assess baseline conditions and impacts on traffic, public transit and emergency response services. The West Contra Costa Transportation Advisory Committee (WCCTAC) has agreed to be the lead agency for the study.

The study is estimated to cost approximately \$300,000 and WCCTAC and the County have solicited financial participation from neighboring cities and other public agencies, as well as local businesses and institutions.

The draft scope of work includes the possibility of including intersections in both Marin and Alameda Counties at an additional cost. It has been suggested that a contribution of \$3,500 would allow the study to include the Albany freeway interchanges at Buchanan and at Cleveland. Funds would come from the Non-Department professional services budget line item.

Council Member Lieber stated that he supports the study and believes that Albany should participate.

The City Administrator cautioned the Council that there are no guarantees that the study will occur.

Council Member Maris asked why other cities in the corridor are not participating and the City Administrator responded she really doesn't know other than this action took place when many cities were on their summer recess.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to allocate \$3,500 for participation in the West Contra Costa Transportation Advisory Committee's Casino Transportation Impact Study.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

7-2. City Council Agenda Format

(File #100-30)

The City Administrator reported that on August 8, 2005, the Council discussed procedures and policies for preparing the Council agenda. During that discussion, a member of the public suggested that the Agenda have a section at the beginning of the meeting to approve the Agenda.

Staff checked with other cities to see if any have such an item on their agenda and is noted that none do. However, the Albany Unified School District does have an item on their agenda entitled "Approval of Agenda", which gives the Board the opportunity at the beginning of the meeting to take off any item that is on the agenda.

Council indicated concern about violation of the Brown Act and according to the City Attorney that adding this section should not result in a violation of the Brown Act. The public would have notice that the Council can change the order of agenda items or can decide to defer items.

7-2. City Council Agenda Format

Council Member Javandel noted that this suggestion might be beneficial to running an efficient meeting and would envision that it be the first item under the Consent Calendar.

Council Member Lieber stated that Albany has a simple, but elegant process in place and the Council already has the power to make changes to the Agenda and does not support this suggestion.

Council Member Maris commented that after discussions at the last Council meeting this suggestion might confuse the public and maybe this should be considered at a later date.

Council Member Okawachi stated that she agreed it might cause confusion noting that in the past citizens have been confused when an item has been pulled.

Council Member Javandel commented that there is no urgency for acting immediately on this suggestion and would recommend no action at this time.

8. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

Council Member Maris made the following announcements: 1) September 20, the City of Berkeley will have a CEQA item regarding the Gilman Street fields and that the State Fish & Game is recommending a bird sanctuary at the bulb, which will go to the Waterfront Committee. 2) Spoke about the Mental Health Advisory Board noting that they have five projects under the Mental Health Act. 3) There will be a 2x2 meeting on September 15, 2005. 4) Spoke about air quality concerns regarding Pacific Steel Casting and noted that the City of Berkeley is conducting studies of the facility.. 5) A meeting on Friday, September 9, 2005, with the Fire Marshal to discuss EQPP and the City's Emergency Plan

9. ADJOURNMENT

11:25 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