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**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION, 1000 SAN PABLO AVENUE**  
**MONDAY, SEPTEMBER 19, 2005**

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**7:30 p.m.**

**EXECUTIVE SESSION**

Call to order

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED 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

**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; Charles Adams, Finance & Administrative Services Director; Ann Chaney, Community Development Director; Dave Dowswell, Planning Manager; Judy Lieberman, Assistant City Administrator; Ed Phillips, Zoning Coordinator; Barbara Kautz, Special Counsel.

**3. ANNOUNCEMENT OF EXECUTIVE SESSION ACTION**

Mayor Good announced that no conclusive decision was reached.

**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, September 6, 2005.**

Staff recommendation: Approve.

**4-2. a.** Ratification of City of Albany net payroll in the amount of \$155,690.09 (\$1,038.96 vacation payout); taxes, benefits & withholdings in the amount of \$118,727.50 (\$553.66 vacation payout). Total payroll in the amount of \$274,417.59 (\$1,592.62 vacation payout). Payroll period. 09/02/05.

**b.** Ratification of Albany Municipal Services JPA net payroll in the amount of \$46,540.08; taxes, benefits & withholdings in the amount of \$33,341.08. Total payroll in the amount of \$79,881.16; Payroll period: 09/02/05.

Staff recommendation: Ratify.

**4-3. a.** Ratification of bills, claims & demands against the City of Albany in the amount of \$225,374.55. Period: 08/12/05

**b.** Ratification of bills, claims & demands against the Albany Municipal Services JPA in the amount of \$360.00. Period: 08/12/05.

**c.** Ratification of bills, claims & demands against the City of Albany in the amount of \$223,790.64. Period: 08/29/05.

**d.** Ratification of bills, claims & demands against the Albany Municipal Services JPA in the amount of \$250.00. Period: 08/29/05.

**e.** Ratification of bills, claims & demands against the City of Albany in the amount of \$22,077.70. Period: 08/31/05.  
(File #300-40)

Staff recommendation: Ratify.

- 4-4.** Ratification of Police & Fire Pension payments in the amount of \$104,390.74 for the month of August, 2005.

Staff recommendation: Ratify.

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

**MOTION:**

Moved by Council Member Maris, seconded by Council Member Javandel 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.

**5. 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 asked if anyone would like to speak and there being no one the Good of the City/Public Forum was closed.

**6. PRESENTATION/PUBLIC HEARING**

**7. UNFINISHED BUSINESS**

**8. NEW BUSINESS**

**8-1. Work Session on Zoning Ordinance Section 20.40: Housing Provisions and Related Definitions in Section 20.08.**

(File #450-20)

The Community Development Director stated that tonight a work session is being held to discuss Section 20.40: Housing Provision and related Definitions in Section 20.08.

The Community Development Director announced that the Zoning Ordinance Amendments became effective in January; however, the Council deferred action of certain parts of the text that addressed “density bonus” and other matters relating to affordable housing. This was done to allow staff to analyze the potential effects of Senate Bill 1818, which substantially changed the State law on density bonus.

Since that time, changes have been incorporated and the language was referred to the City Attorney and planners for them to review to make sure it was consistent with State law.

**8-1. Work Session on Zoning Ordinance Section 20.40: Housing Provisions and Related Definitions in Section 20.08.**

The Community Development Director introduced Barbara Kautz, Goldfarb and Lipman, who is an attorney and long-time Bay Area planner, who will answer any questions the Council may have tonight.

The Zoning Consultant stated that the draft Zoning Section 20.40 is a new section that sets out procedures and programs relating to “affordable” housing for low and moderate-income households. The purpose of the section is to implement housing policies that the City is committed to through the Housing Element of the General Plan.

Section 20.40 describes two principle mechanisms for promoting affordable housing: 1) Inclusionary Housing, which is not a program directly mandated by State law; however, it has become the method of choice of cities throughout the State, as a means of meeting State-mandated housing production of goals for localities. Under the proposed zoning provisions, all projects of five or more dwelling units would be required to “include” or make available 15% of the units for very low and low-income households.

2) Density Bonus is a program that is specifically mandated by State law, including a requirement that local zoning ordinances must set forth the method by which the law will be implemented. For example, if a developer agrees to construct a project in which as few as five percent of the units are to be affordable to lower income households, the City is required to grant an increase in maximum allowable density of 20 to 35 percent, plus at least one additional concession or incentive such as a waiver of a development standard or a fee.

Council discussed the recommendation from the Planning & Zoning Commission regarding Section 20.40: Housing Provisions and related Definitions in Section 20.08. The Council asked staff questions regarding this Section and a summary of those questions are as follows:

Whether the Inclusionary Housing and Density Bonus fulfills the requirement of SB 1818 and Barbara Kautz, Special Counsel, responded yes and that Inclusionary Housing will promote affordable housing. A question was raised about applicants building above the City’s height limit regarding the density bonus; it was answered that this could be granted as one of the required concessions, but the draft ordinance requires financial justification by the applicant. A question about parking spaces and conflict with the City’s rule and it was noted that the State has set one parking space per one-bedroom unit, which is half the requirement that the City has in place and questioned height limits. Staff responded that this application of the state parking standard could be considered a concession. A concern was noted about noticing the meetings regarding this issue and staff responded that a 1/8 page display ad was put into the newspaper, as well as being on the City’s web page.

A question was raised about revisiting the City’s Measure D and Special Counsel responded that Measure D does not have to be revisited since the City would be able to approve reduced parking under the authority of the State law.

A concern was raised about Developers having control over what is done in the City. Special Counsel suggested that the meeting of all requirements is a high hurdle for developers and it was suggested that this offers the City some negotiating leverage.

**8-1. Work Session on Zoning Ordinance Section 20.40: Housing Provisions and Related Definitions in Section 20.08.**

Staff noted that Albany has a very good low-income project, which is working well - Creekside Commons and assured Council that staff will keep their eye on aesthetics.

A question was raised on how far do the exceptions go? Special Counsel replied a developer can ask for any increase it wants under the law but the need has to be demonstrated based on affordability. Also the City can cite health and safety problems; and can require an Environmental Impact Report.

The Council discussed the issue of in-lieu fees and asked if the City was required to offer in-lieu fees, as an alternative. Special Counsel responded no it doesn't have to be one of the ways and does not have to allow them.

Mayor Good asked the public to comment on this subject and the following people spoke: Mr. Clay Larson, Albany resident; Ms. Mara Duncan, Albany resident.

A summary of their comments is as follows: Spoke about in-lieu fees and had questions regarding Page 7, Section 20.40.040 noting they did not believe cross-reference to standards in 20.40.050 was necessary; Asked what other cities have regarding inclusionary housing requirements. Questioned Section 20.40.30E, page 4, with respect to incentives not being applicable in R-1 District, and how this would affect potential conversion of existing market rate multi-family units that might be converted to below market units; and spoke about a new bill pending (SB 435) relating to moderate housing and the impact it will have.

Concern about green buildings, open space and quality of life for children. Asked the Council to have a clear vision for Albany and to make sure that interested groups are notified about upcoming meetings. Spoke about the University of California, Berkeley low income housing and suggested the City partner with the University so that housing in Albany would be enhanced.

The Work Session ended and a public hearing was set for Monday, October 17, 2005 to consider adoption of the recommended Zoning Ordinance amendments.

The Zoning Consultant stated that he hopes to complete the State preliminary review of the Housing Element and bring before the Council for hearing this fall.

**8-2. Panhandling**

(File #585-25)

The Assistant City Administrator reported that the Police Department has received concerns regarding the presence of a panhandler in front of the Bank of America building on Solano Avenue. Currently there is no regulation in the Albany Municipal Code specific to panhandling.

Panhandling is a controversial issue involving community beliefs about individual liberty, freedom of speech, etc. This issue has been debated in the legal community. A number of approaches and model ordinances are available and it is staff's recommendation that it be referred to the Economic and Social Justice Commission to explore this issue and to provide a recommendation to the City Council.

**8-2. Panhandling**

Mayor Good stated that he believes that the City cannot prevent begging, etc, and agrees it should be sent to the Economic & Social Justice Commission.

Council discussed this and asked that the Economic & Social Justice Commission expand their review to broader issues.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Lieber to refer this issue of panhandling to include review of the broader issues to the Economic & Social Justice Commission.

Motion carried and so ordered.

**8-3. Status Report – Proposed Ballot Measure to Fund Capital Projects and Operations**

(File #390-115)

The Assistant City Administrator reported that Council decided to wait for the Statewide June ballot to submit a measure to the voters to fund Capital Projects and Operations.

This will enable staff to gather further information about specific projects, refine budgets and engage in a more extended information process. Based on the June election date, the public information process could be held in the winter of 2005/06. Ballot language is due to the County in March, 2006.

Council Member Maris asked that staff add an item to encourage a campaign committee to get organized. The City Administrator noted that staff couldn't be involved in campaign issues.

Council Member Lieber suggested that a sunset clause be added so that the voters have some closure in the future and noted that the School District has added to their measure a sunset clause and a cost of living increase, which is tied to inflation. Council Member Lieber stated that the City should watch the School District campaign.

Council Member Javandel spoke about process and obtaining public input and the draft language. Council Member Javandel stated that the City should be thinking about these issues and how and when the City goes through this process.

It was asked if the schedule could be moved up and the City Administrator responded that staff is waiting for the report on the Veteran's Building, which will not be ready until January. The City Administrator noted that the Veteran's Building is a big piece of the puzzle.

No Council action required.

**8-4. Unaudited Financial Statements, Interfund Transfers and Pension Plan Side Fund Payments**

(File #330-20)

The Finance & Administrative Services (F&AS) Director reported that this year has been good to the City of Albany noting that the City is in a sound position with the auditors on site. The General Fund increased more than what was projected, property tax

#### **8-4. Unaudited Financial Statements, Interfund Transfers and Pension Plan Side Fund Payments**

revenue exceeded what was budgeted and sales tax revenue grew due to the increase in retail growth. The City's fund balance increased \$107,092.

The Council has previously approved a schedule of interfund transfers, as part of the 2004/05 budgets. Several of these transfers were based on estimated revenues and expenditures and at this time are being adjusted to reflect the actual operations for the year and to provide for additions to reserve funds.

The F&AS Director noted that in June, 2003, the CalPERS Board implemented a requirement that plans with less than 100 active members be assigned a risk pool for purposes of establishing contribution rates. The purpose of the risk pool is to reduce fluctuation in employer rates at CalPERS and required that a side fund be established for each plan, as it enters the pool. Staff recommends that the side fund balances of City Miscellaneous and the JPA Miscellaneous plans be retired by a charge to the General Fund operating expense for fiscal year 2004/05.

Currently, the City collects a pension override tax to fund the closed City Police & Fire Pension Plan and to fund a portion of the PERS Police and Fire Pension Plans. Based on the most recent actuarial, the Police and Fire Pension Fund has no unfunded liability and will not require a contribution in fiscal year 2005/06. Staff estimates that there will be approximately \$2 million in pension override tax funds available to pay down the side funds in fiscal year 2005/06.

The F&AS Director stated that staff is recommending that the Council approve use of the pension override funds to pay down the Police and Fire PERS side funds, the actual amount of the payments to be made in fiscal year 2005/06 and future years to be determined by the Council.

Council Member Maris asked if a larger amount of the Pension Override Tax could be used to pay down the side fund. Council Member Maris questioned the parking fine revenue and it was noted that the 90-minute parking change could definitely impact the revenue.

Council Member Maris asked about the Redevelopment District loan and the F&AS Director stated that the loan would be shown in the Redevelopment budget and statements, which will be coming to Council.

Mr. Clay Larson stated that he would like to see a more detailed report on the revenue side and also asked what is included in the Franchise Fees. The F&AS Director replied it includes Waste Management, Cable and PG&E.

#### **MOTION:**

Moved by Council Member Javandel, seconded by Council Member Lieber to accept the unaudited financial report for the fiscal year ended June 30, 2005. Approve the updated schedule of interfund transfers and approve payment of side funds of the Miscellaneous Plan of the City and the Miscellaneous Plan of the Albany Municipal Services Joint Powers Authority.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**8-5. City Reserves**

(File #330-30)

The Finance & Administrative Services (F&AS) Director stated that by June 30, 2005, the City of Albany held the following reserves: General Fund Reserves - \$3,360,334; Equipment Reserves - \$975,412; Pension Override Tax Fund - \$1,588,835.

The General Fund reserves may be considered the rainy-day reserve. Measuring the adequacy of these reserves is an inexact science, but at 25.1% of general fund operating expenses, the City's reserves are in line with other cities and exceed the minimum level recommended by the Government Finance Officer's Association.

Equipment Reserves are maintained to provide for the replacement of long-lived assets without debt financing and the purpose is for extreme emergency and could be diverted to pay current expenses.

The Pension Override Tax Fund balance arose with the full funding of the Police and Fire Pension and Relief Fund and suspension of contributions to the fund. A portion of this reserve will be maintained in the Pension Override Tax Fund, in case it should be necessary to resume contributions. Staff has recommended that the balance, not required to pay current pension contributions, be used to pay the unfunded liability of the PERS Police and Fire Pension Plans.

Council Member Javandel asked that in terms of salary and vacant positions what impact on the reserve funds would be affected if all positions were filled. The F&AS Director responded that staff always budgets for full staffing levels, therefore, will not affect the reserves.

Council Member Maris spoke about the purchasing of the Pierce Street Park property and fixing the storm drains and asked how this is balanced against having substantial reserves. The F&AS Director responded that he would not feel comfortable with a 15% reserve and the City Administrator reiterated that this is more art than science and sometimes it has to be based on a case-by-case decision.

Mr. Clay Larson, Albany resident, stated that he looks at the data differently than staff and noted that Albany is very near the top of other cities.

No Council action required.

**8-6. Status Report on 2005/06 City Council Goals**

(File #100-30)

The City Administrator reported that submitted for Council review is the second status report on the 2005/06 goals. Some of the significant accomplishments of the work plan to date include: 1) Establishment and formation of the Social and Economic Justice Commission, scheduled for its first meeting on September 28, 2005. 2) Cable casting of Council meetings to begin October 10, 2005, including improved presentation media for Council meetings. 3) Plan design for improvements to three City parks is underway. 4) Unfunded needs assessed and tax measure drafted, with June election date now proposed.

The moratorium on marijuana dispensaries and the development of a related ordinance has been added to the list of goals. The Albany School District has asked the City to prepare an Ordinance that would prohibit ice-cream vendors from 300-500 feet of schools during school days. If Council agrees, this could be added to the Council goals.

**8-6. Status Report on 2005/06 City Council Goals**

Council Member Maris spoke in length on the goals and a summary follows:

Reinstitute emergency preparedness efforts, including adult school classes, publicizing what residents can do to help themselves during an emergency and noted that April is Emergency Awareness month and stated that the City needs to do something during that time.

Restore irrigation to the Bay Trail. Provide full operation of new irrigation system on Key Route median.

Measure R funds used at Gilman Street JPA Fields should be credited to Albany rights to use fields.

Albany should determine how effectively it participates in providing Mental Health Services to its residents through the Berkeley/Albany Health Services.

Correct Waste Management Service deficiencies in collection of commercial recycling of organic waste and return of empty residential bins that block parking and driveways. Council Member Okawachi stated that she is involved with Waste Management Authority and they are working on this issue.

Land Use – Housing – the City Administrator stated that staff is looking for Council direction on whether they want to pursue the size of second story additions. Council Member Maris suggested that it be kept on the Council goals, but do not see a need to deal with it immediately.

A discussion followed on expansion of single-family homes and the Community Development Director asked if Council wants the Planning Commission to review the Floor Area Ratio (FAR) asking if the City's additions are too large for the size of the lots. The Community Development Director noted that the Planning Commission is looking at privacy and view issues and noted applications being submitted are going to the maximum allowed. Council discussed this and unanimously agreed that the Planning & Zoning Commission should deal with these issues but not to pursue action at this time.

Eastshore State Park. The goal is to transfer the park over to the State, however, there are some issues that need to be taken care of before that can happen: Dogs off leash, art, etc. Council Member Maris suggested this be added to the list.

Pierce Street Park. The City should make an effort to start purchasing open space on Albany Hill with Measure R funds. Council Member Maris suggested that Pierce Street Park be defined as part of Albany Hill. The City Administrator responded this could be added to the report.

Council Member Lieber stated that when some of the streets are closed there is an opportunity to put in pocket parks. El Cerrito Plaza development was discussed and the Community Development Director stated that she has plans in her office if the Council would like to see them.

Council Member Javandel suggested that the City put together emergency preparedness kits for a one-stop shopping experience for the Albany resident. The City Administrator noted that the Disaster Council had a meeting and is planning to involve the school children in this issue. Transportation – questioned the use of stop signs on bike routes in particular between San Pablo Avenue and Key Route Boulevard – suggested the City look at other options and second-generation improvements.

**8-6. Status Report on 2005/06 City Council Goals**

The City Council discussed the issue of ice-cream vendors being prohibited within 300-500 feet of schools during school days. Council Member Lieber stated that he understands that the School District is looking into healthier eating habits and this issue should be looked at seriously. The City Administrator responded that staff would figure out which Commission should be involved and refer this issue.

Council accepted the status report.

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

**9-1.** The regular scheduled meeting of October 3, 2005 has been cancelled due to Rosh Hashanah. Therefore, the regular City Council Meeting will be held on Monday, October 10, 2005.

The City Administrator stated that as Council is meeting on the 10<sup>th</sup>, did they want to continue meeting on the regular date of October 17<sup>th</sup> or move it to October 24<sup>th</sup>? Council agreed to keep the date of October 17<sup>th</sup>, 2005.

Council Member Lieber stated that he would like a staff report and Council discussion at a future meeting regarding health care. Council Member Lieber noted that employees are given money if they do not use the City health plan and would like a report on the pros/cons of extending this to the City Council. Council consensus was to look at this issue at a future meeting and that a staff report be prepared.

Council Member Maris made the following announcements: 1) The Berkeley City Council will be discussing the sports fields and CEQA approval on October 18, 2005. Stated that he would like to make some awards to certain individuals who worked on the sports fields. 2) Spoke about the possibility of having a conservation area on the Albany Plateau for a Burrowing Owl habitat. The Waterfront Committee will look at this issue. 3) Spoke about \$60 million going to the Congestion Management Authority from the Federal Transportation Act. Noted that the City will not see any of this money, as there are some major regional projects on the list. 4) Spoke about Alameda County Housing Authority helping with affordable housing. 5) Noted that the Berkeley Mental Health has five proposals for receiving funds. 6) The Cable Ad Hoc Committee had a meeting tonight and asked if Council would like a rehearsal for live broadcasting. Council discussed this and the majority said it was not necessary. 7) The 2x2 meeting with the City of Berkeley was held and various issues were discussed. 8) Noted that a potential area for a pocket park might be at Kains/Codornices.

**10. ADJOURNMENT**

11:10 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 Jacqueline L. Bucholz, CMC, City Clerk.

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ROBERT GOOD  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK