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MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION, 1000 SAN PABLO AVENUE
MONDAY, NOVEMBER 7, 2005

7:15 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 54959.8

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; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Ed Phillips, Interim Planning Manager; Greg Bone, Chief of Police; Judy Lieberman, Assistant City Administrator; Rich Cunningham, Public Works Manager.

3. ANNOUNCEMENT OF EXECUTIVE SESSION ACTION

The Mayor announced that no conclusion was reached during the Executive Session regarding the negotiations with the APOA.

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, October 10 & 17, 2005.

Staff recommendation: Approve.

4-2. a. Ratification of City of Albany net payroll in the amount of \$177,728.60; taxes, benefits & withholdings in the amount of \$133,115.65. Total payroll in the amount of \$310,844.25. Payroll period: 10/14/05.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$46,247.05; taxes, benefits & withholdings in the amount of \$32,468.49. Total payroll in the amount of \$78,715.54; Payroll period: 10/14/05.

Staff recommendation: Ratify.

4-3. a. Ratification of bills, claims & demands against the City of Albany in the amount of \$211,270.47. Period: 10/21/05.

Staff recommendation: Ratify.

4-4. Ratification of pension payments for the month of October, 2005, in the amount of \$101,325.52.

Staff recommendation: Ratify.

4-5. A rendering of the quarterly Cash and Investments Treasury Report of the City of Albany as of September 30, 2005, as required by Section 53646 of the California Government Code.
(File #300-10)

Staff recommendation: Note and file; information only.

- 4-6.** Consideration of Claim #AL492; Pangelina v. City of Albany.
(File #170-60)

Staff recommendation: Reject the claim and authorize the City Clerk to send out the appropriate rejection notice.

- 4-7.** Consideration of Claim #AL498; Isseks v. City of Albany.
(File #170-60)

Staff recommendation: Reject the claim and authorize the City Clerk to send out the appropriate rejection notice.

- 4-8.** Consideration of Claim #AL514; Xiang v. City of Albany.
(File #170-60)

Staff recommendation: Reject the claim and authorize the City Clerk to send out the appropriate rejection notice.

- 4-9.** Resolution #05-55 – A Resolution of the Albany City Council in Honor of Vivian Kuhl on Her Retirement from Service as a Parking Enforcement Officer with the City of Albany.

Staff recommendation: Approve Resolution #05-55.

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

MOTION:

Moved by Council Member Okawachi, seconded by Council Member Maris 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 opened the Good of the City/Public Forum and asked if anyone would like to speak.

Mr. Leon Rimov, Albany resident, stated that the proposed development at El Cerrito Plaza is no good for the City of Albany and also noted that the traffic calming project on Marin Avenue is not working, as cars are using the 3rd left hand turn lane to go up Marin.

Ms. Susan Arnold, Albany resident; Mr. Maurice Segerberg, Albany resident; Mr. Craig Hendrickson all spoke opposing the proposed community room at Terrace Park.

The residents noted traffic, parking, trash, lighting, loitering and noise problems associated with this building.

Mayor Good stated that this subject is on the agenda and will be discussed later on during the meeting.

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

6. PRESENTATION/PUBLIC HEARING

6-1. Chamber of Commerce Green Albany Project

(File #405-25)

Mr. James Carter, out-going Executive Director of the Albany Chamber of Commerce, reported that the Chamber of Commerce was awarded a grant by the Alameda County Waste Management Authority and Recycling Board to implement the "Green Albany" project. This project is also in cooperation with the City of Albany.

Mr. Carter reported that currently 10-12 businesses are participating and 5-6 businesses are waiting to be certified. This project assists the City in further increasing the total amount of material diverted from the landfill and encourages a sustainable commercial sector.

Council commended Mr. Carter for all that he has done on this project and thanked him for his service to the City while working for the Chamber of Commerce. Mr. Carter noted that he is leaving the Chamber of Commerce but will still be working on the "Green Albany" project.

6-2. Public Hearing to consider Proposed Zoning Ordinance Section 20.40: Housing Provisions, including related Definitions in Section 20.08.

(File #450-20)

The Community Development Director reported that on December 6, 2004, the City Council adopted Ordinance #04-09, Zoning Ordinance, completing a multi-year effort to revise the City's zoning ordinance. At that time, the Council deferred adoption of certain parts of the text that addressed "density bonus" and other matters relating to affordable housing. Additional time was needed so that staff could analysis the potential effects of Senate Bill 1818, which substantially changed the State law on density bonus.

The Planning & Zoning Commission was given revised versions of Sections 20.40 and 20.08 that responded to changes to State law made by SB 1818. Public hearings were held and on June 14, 2005, the Commission adopted Resolution No. PZ05-02, recommending Council adoption of Section 20.40 and additional definitions in Section 20.08.

The Community Development Director stated that before Council is a Decision Agenda and would like to divide it into 3 parts and take each part separately with public comment after each section.

First Section discussed. See attached Decision Agenda for complete language, which is made a part of the official record.

6-2. Public Hearing to consider Proposed Zoning Ordinance Section 20.40: Housing Provisions, including related Definitions in Section 20.08.

Mayor Good opened the public hearing and asked that the public make their comments at the end of each section.

Section 20.40.010. Purpose and Intent & Section 20.40.020, Definitions: Council supported both sections.

Section 20.40.030. A. Inclusionary Housing, Applicability, General: Council discussed the payment of a fee in-lieu of units and Mayor Good noted that he was definitely against the in-lieu fee. Council supported the threshold of five units and ratio of 15%.

B. Applicability, Density Bonus Development: Council supported limitations regarding density bonus.

C. Allocation by Income Group: Council supported the split between low and very low-income groups.

D. Affordable Housing Agreement: Council supported permanent affordability and other agreement requirements.

E. Incentives: Council discussed this issue and believes that Measure D the parking measure should be revisited. Council supported the incentives.

F. Alternatives to On-Site Provision: Council supported alternatives to on-site units.

The following spoke on this section of the Decision Agenda: Mr. Leon Rimov, Albany resident; Mr. Clay Larson, Adams Street. A summary of the comments is as follows: Believe that the City is treating this as a marketing plan and noted that Albany does not have any vacant land for new buildings. Stated that in-lieu fees should be kept in mind for smaller 5-6 units and asked what the City would do with the in-lieu fees collected. Suggested adding a provision that, in a case where an in-lieu fee was required for a fraction of a unit, the City would accept a whole unit in place of the fee. Also questioned Section 20.40.30E regarding incentives and suggested that it be made clear that incentives could be granted for improvement to existing multi-family buildings in R-1 districts. The Interim Planning Manager agreed stating that it is not the intent to have this apply to single-family housing and secondary units and that staff would come back with the appropriate language.

Second section discussed:

Section 20.40.040. Density Bonus: A & B. Qualifications for Density Bonus and required number of units: Council reaffirmed the State requirements.

C. Calculation of Bonus: Council affirmed the calculation method.

D. Incentives or Concessions: Council accepted the incentive system, specifically item #2 on pages 10 & 11.

E. Other Waivers of Reductions: Council supported the waiver provision.

F. Off-Street Parking: Council affirmed the State-parking standard.

G. Affordable Housing Agreement – Density Bonus: Council accepted the agreement requirements.

H. Application Procedures: Council supported the procedures.

The following people spoke on this section: Mr. Leon Rimov; Mr. Clay Larson; Mr. Ed Fields. A summary of the comments is as follows: Expressed concern about

6-2. Public Hearing to consider Proposed Zoning Ordinance Section 20.40: Housing Provisions, including related Definitions in Section 20.08.

height and variances and asked who makes the decision on what is considered low income. The Interim Planning Manager responded it is based on State standards and levels set by the County regarding median income. Asked that the third paragraph in Section 20.40.040 regarding exemptions be deleted. The Interim Planning Manager agreed noting that this is a non-essential paragraph. Council agreed to delete that section.

Suggested that very high buildings be avoided and that the developer should have to request a concession or waiver. Asked what the nexus was between density bonus and concessions and the Interim Planning Manager responded that a concession is not granted without achieving the maximum density.

Suggested that the burden should be placed on the developer regarding the waivers and reductions. The title of Section 20.40.50 may be confused with other uses of the term “development standards”. The Interim Planning Manager suggested that the title be changed to Development Criteria.

Third section discussed.

Section 20.40.050. Development Standards. Council supported the standards with title change.

Section 20.40.060. Disabled Persons Housing. Council supported the disabled provisions.

Section 20.40.070. Emergency and Transitional Housing. Council supported the emergency and transitional guidelines.

20.08. Definitions: Council supported the housing definitions.

Mayor Good closed the public hearing.

Staff discussed the changes that have been proposed and it was decided that the ordinance would be approved for first reading with the changes noted and that staff will bring back the changes in the second reading of the ordinance.

Council Member Javandel presented Resolution #05-48 – A Resolution of the Albany City Council Adopting a Negative Declaration Regarding Environmental Effects of Proposed Amendments to the Albany Zoning Ordinance to Add Provisions for Housing.

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Javandel and seconded by Council Member Maris to approve Resolution #05-48.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Javandel introduced Ordinance #05-06 – An Ordinance of the Albany City Council Amending Chapter XX, Planning & Zoning, of the Albany Municipal Code to Add Provisions on Housing. First Reading.

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Javandel and seconded by Council Member Maris to approve Ordinance #05-06 for First Reading with the changes made during the public hearing.

6-2. Public Hearing to consider Proposed Zoning Ordinance Section 20.40: Housing Provisions, including related Definitions in Section 20.08.

ON THE QUESTION:

Council Member Maris stated that the language in the Ordinance is as strong as it could be. Mayor Good noted that he would be voting no on the Ordinance, as he objects to the in-lieu fees.

VOTE ON THE MOTION:

AYES: Council Members Javandel, Lieber, Maris & Okawachi

NOES: Mayor Good ABSENT: None

Motion carried and so ordered.

7. UNFINISHED BUSINESS

7-1. Allocation of additional Measure F and Measure R Funds for the Rehabilitation Projects at Memorial, Ocean View and Terrace Parks and Update on the Terrace Park Community Room

(File #920-60 & 320-55)

Mayor Good stated that because he lives within 500' of Memorial Park he would be recusing himself and left the Council podium.

The Public Works Manager reported that on October 17, 2005, the Council approved conceptual designs for the park elements that were identified for replacement or rehabilitation at Memorial, Ocean View and Terrace Parks. Council requested that staff return with a report outlining the costs and budget for these projects.

The Park & Recreation Commission has recommended that Council allocate additional funds needed for this project from Measure F reserve for parks projects and Measure R reserve for ball fields and from the Measure R allocation for Pierce Street Park. In addition, the Commission directed staff to meet with the Terrace Park neighbors to determine what the neighbors and City needs will be for the proposed community room. The Public Works Manager announced that a meeting has been scheduled for November 16, 7:00 p.m., at the Senior Center.

The Public Works Manager stated that the initial estimate for the construction costs for this project ranged between \$2.14 million to \$3.12 million including costs for both ball field and non-ball field related elements. The new estimate, based on the options chosen by the Council for each park element totals \$2.9 million and includes \$200,000 for the Terrace Park community building and restroom and \$57,047 for public art.

The current available construction funding for the "non-ball field related" projects is \$1,425,029. The new estimated construction costs for these park features totals \$1,913,683, which results in a shortfall of \$488,654. The Commission recommends that Council allocate \$44,654 from the Measure F reserve, which would leave a balance of \$673,808 that may be needed for fund change orders, cost overruns, etc.

The current available funding for the "ball field related" projects is \$250,951 with the new estimated construction costs totaling \$995,690, which results in a shortfall of \$744,739. The Commission recommends that the Council allocate the remaining

7-1. Allocation of additional Measure F and Measure R Funds for the Rehabilitation Projects at Memorial, Ocean View and Terrace Parks and Update on the Terrace Park Community Room

\$650,000 from the Measure R reserve and \$94,739 from the Measure R allocation for the future Pierce Street Park. This action will deplete the Measure R reserve for Sports Fields and will leave a balance of \$310,854 in the Measure R Pierce Street Park fund.

Council Member Lieber stated that he has three concerns: 1) That no toxic chemicals be used to maintain the area and that local plants be planted that are sustainable. 2) The community gardens should have an area designated and that connections be put in for water and that Memorial Park should also have a community garden. 3) The trees at Ocean View Park have a little thinning done and not remove all the trees.

Mr. Geoff Piller, Park & Recreation Commission, went over the proposed budget and noted that there is a meeting with the City Arborist on November 21 to discuss the tree issue and also reiterated the public meeting at the Senior Center on November 16, 7:00 p.m. to discuss the community building at Terrace Park.

Council Member Okawachi asked if the City had contacted Waste Management Authority for a green building grant and if not encouraged staff to apply. Council Member Okawachi also objected to the removal of 26 trees but agreed it the area did need thinning. Council Member Okawachi asked if staff was aware of an encroachment permit at Terrace Park and staff responded that they did not know anything about it but would check into it.

Council Member Javandel also agreed that all the trees should not be removed but that they should be pruned. Council Member Javandel stated that he would like to see plumbing lines installed for the community gardens and supported a grant from Waste Management for a grant for a green building at Terrace Park. Council Member Javandel asked that fencing be installed around the playground equipment at Ocean View Park.

The Public Works Manager stated that the City would not be planting exotic plants and noted that sustainable plants are usually less expensive. In response to community garden areas in each Park noted that this should not be a problem and could be included without much construction.

The Public Works Manager noted that regarding sustainable landscaping he would suggest that the City hire an independent contractor who is knowledgeable in sustainable landscaping to review the City's plan.

The following people spoke: Mr. Leon Rimov, Albany resident; Ms. Nan Wishner, Albany resident; Ms. Alison Seaback, Albany resident; Mr. Roger Carlsen, Albany resident; Ms. Mara Duncan, Albany resident; Resident of Francis Street; Ms. Kim Linden, Albany resident; Ms. Susan Arnold, Albany resident.

A summary of the comments is as follows: Noted the need for a bathroom at Terrace Park. Expressed concern that the City not remove all the trees at Ocean View and agreed that thinning is the best solution. Urged the Council not to use any chemicals on the maintenance of the parks. A comment was given that not all chemicals are bad and that the use should not be ongoing but only when it is absolutely necessary. Asked that fencing be put in not only at Ocean View but also at Memorial Park. Asked who would determine when it was absolutely necessary to use chemicals. Expressed concern

7-1. Allocation of additional Measure F and Measure R Funds for the Rehabilitation Projects at Memorial, Ocean View and Terrace Parks and Update on the Terrace Park Community Room

about the proposed community building at Terrace Park and is unclear about the proposed use. Noted sustainable buildings are a great idea, as long as the residents know they need to be involved to help with the green building. Expressed concern about the sandbox at the Tot Lot noting that it is not a clean area.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to continue the meeting past 11 p.m. for 15 minutes.

Motion carried

Council Member Lieber asked that the building be more defined and that the City not use portables. That the issue of the community room at Terrace Park be revisited after the community meeting and that input is reviewed. The City Administrator recommended that the community building be left in the budget at this time.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to approve staff's recommendation, as follows: Approve the recommendation of the Park & Recreation Commission that the City Council allocate an additional \$488,654 from the Measure F reserve for parks projects and \$744,739 from Measure R Ball Field funds for the park rehabilitation projects at Memorial, Ocean View and Terrace Parks.

AYES: Council Members Javandel, Lieber, Maris & Okawachi

NOES: None

Absent: None

RECUSED: Mayor Good

Motion carried and so ordered.

7-2. Panhandling in Albany

(File #585-25)

The Assistant City Administrator reported that the issue of panhandling was referred to the Social & Economic Justice Commission by the City Council. The Commission discussed this issue and recommend that the City Attorney be directed to draft an ordinance to control aggressive panhandling in the City.

The City Attorney and the Chief of Police were present at the Commission's meeting and noted the limitations in effectiveness of any ordinance but agree that having an ordinance specific to aggressive panhandling would be useful in restricting at least some of the objectionable behaviors.

MOTION:

Moved by Council Member Maris, seconded by Council Member Javandel to direct the City Attorney to prepare an ordinance to control aggressive panhandling in the City.

Motion carried and so ordered.

NEW BUSINESS**8-1. Social & Economic Justice Commission**

(File #110-60)

The Assistant City Administrator reported that the Social & Economic Justice Commission was formed by the City Council in April, 2005 and originally was proposed as the Social Policy Commission with a broad purview of addressing “social and environmental issues impacting the welfare of the residents of Albany as inhabitants of a local and global community”. However, as part of the discussion about the formation Council Member Lieber proposed that the name of the Commission be changed to “Social Justice” Commission and a member of the public suggested adding “Economic” to the name of the Commission. A friendly amendment was made to add the words “Economic”, therefore, the name Social & Economic Justice Commission.

At the first Commission meeting a question was raised regarding the scope of issues that should be addressed with regard to the word “environmental”. The wording of the Resolution was not changed by Council only the name of the Commission. The Resolution still references “social and environmental issues” and not “economic” issues. However, it is staff’s understanding that the title change was not meant as a limitation with regard to the issues that might be addressed by the Commission.

Council Member Lieber stated that the original Resolution is clear and the consensus was that no topic was off limits.

Ms. Peggy Thomsen, member of the Commission, stated that the word economic was put in to clarify. Ms. Ruth Ganong, member of the Commission, stated that environmental issues are covered by the Park & Recreation Commission and should not be a part of this Commission’s charge. Ms. Mara Duncan, member of the Commission, stated it is difficult to discuss social and economic issues without mentioning environmental in the Commission’s purview.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel that Resolution #05-15 be amended on lines 6, 14 & 27 to include the language “social, economic and environmental”.

Motion carried and so ordered.

MOTION:

Moved by Council Member Maris, seconded by Council Member Javandel to extend the meeting 20 minutes.

Motion carried and so ordered.

8-2. Potential Appeal of Proposed Project at El Cerrito Plaza

(File #420-35)

The Community Development Director reported that on November 2, 2005, the El Cerrito Planning Commission certified the Final EIR and approved a variety of incentives for the proposed 128 unit residential project at El Cerrito Plaza. The City of Albany expressed a variety of objections to aspects of this project at the Commission meeting and in prior letters during the EIR process.

8-2. Potential Appeal of Proposed Project at El Cerrito Plaza

The City's objections relate to traffic and height of the project and of particular concern is that the primary access to the project is through Albany. In addition, the proposed height of the closest building to Albany would be nearly 60 feet, whereas Albany's height limit in the adjoining neighborhood is 35 feet.

The Community Development Director noted that in order to appeal the El Cerrito Planning Commission decision an appeal must be filed by November 17, 2005. The North Albany Neighborhood Association and the Behrens Neighborhood Association are reportedly planning to file appeals, as well. The City could file jointly or with the neighborhood associations.

Mayor Good stated that he prefers the City file a separate appeal. Mr. Leon Rimov, Albany resident, suggested that the City of Albany close Talbot and Evelyn. A representative from the North Albany Neighborhood Association and Mr. Charles Burris, Behrens Neighborhood Association both stated that their groups were going to file an appeal.

The City Attorney asked that authorization be given not only to file an appeal but if necessary a lawsuit.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Maris to file a separate appeal and work with the neighborhood associations, and if necessary to file a lawsuit. Also that staff continue working on the process to close the streets.

ON THE QUESTION:

Council Member Lieber stated that the City has been looking at closing the streets for some time and not just for this issue. The City is looking at what is best for the City of Albany no matter what the City of El Cerrito does.

Council Member Maris stated that he supports transit-orientated projects, but that the City of Albany should go ahead with traffic studies to show the impact to the City of Albany.

Council Member Javandel stated that the Traffic & Safety Commission has made a recommendation regarding this and recommend a study be done regarding closing the streets and not just in response to the proposed development but what exists today.

Mr. Leon Rimov expressed concern about mutual aid access on Cornell and Mr. Alan Riffer urged the City to make sure that all the bases are covered.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

MOTION:

Moved by Council Member Maris, seconded by Council Member Lieber to extend the meeting past 11:35 p.m.

Motion carried and so ordered.

9. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS

Council Member Maris stated that he attended a Congestion Management Authority meeting in which a report was made available regarding traffic patterns in Alameda County.

Council Member Lieber stated that he attended an Albany Unified School District Advisory Committee in which discussion was held regarding additional classroom space.

10. 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