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

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**8:00 p.m.**

Mayor Maris who led the Pledge of Allegiance to the Flag called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

Present: Council Members Good, Javandel, Lieber, Okawachi, & Mayor Maris  
Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Kim Denton, City Treasurer; Melinda Chinn, Recreation & Community Services Director; Ann Chaney, Community Development Director; Rich Cunningham, Public Works Manager; Billy Gross, Associate Planner; Robert Zweben, City Attorney; Amanda Bennett, Planning Clerk

Mayor Maris announced that the Council had met in an executive session to discuss Gann versus the City of Albany.

**3. CONSENT CALENDAR**

**3-1.** City Council minutes, 11/21/05 & 12/05/05.

Staff recommendation: Approve.

**3-2.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$22,339.08. Period: 12/01/05.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$235,351.59. Period: 12/02/05.

Staff recommendation: Ratify.

- 3-3. Council Member Good appointed Susan Adame to the Arts Committee.

Staff recommendation: Information only.

- 3-4. Schedule a public hearing to discuss the annual report on the status of Sewer, Storm Drainage and Capital Facilities In-Lieu Fees Collected, as of June 30, 2005 According to Government Code Section 66001 (AB1600).

Staff recommendation: Schedule a public hearing for Tuesday, January 17, 2006.

- 3-5. Resolution #05-60 – A Resolution of the Albany City Council Accepting Improvements as Complete and Directing the Filing of the Notice of Completion for Contract No. 05-07. (Resurfacing of Ocean View Park Tennis Courts)

Staff recommendation: Approve Resolution #05-06.

- 3-6. Mayor Maris appointing Roger Carlsen to the Parks & Recreation Commission.

Staff recommendation: Information only.

Mayor Maris asked if anyone would like to remove an item for discussion. No one wished to remove any of the items.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Good to approve the Consent Calendar.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**4. GOOD OF THE CITY/PUBLIC FORUM**

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

Peter Hobart, 908 Polk, stated that a couple of members of the Waterfront Committee made comments and attacks against the presenter at the last meeting and it made him embarrassed as a citizen.

Jim Cleveland asked for the agenda to be reordered so that 6-1 could be heard first so attendees with babysitters could leave earlier.

Ray Anderson, Albany Lions Club, reported that the breakfast with Santa went well. He thanked City staff and volunteers.

Dolores Dalton, 1045 Curtis, reported a flooding problem on the 1000 block of Curtis and Neilsen. She handed in photos of the problem. She asked that repair to alleviate this problem be prioritized. Peter Rosenfeld, 1038 Neilsen, expressed similar concern and request. Laura Allen, 1041 Curtis, expressed similar concern and request, and asked that the item be agendaized and responded to. Community Development Director Chaney noted plans have already been prepared, but there is no funding to implement them. The Council has already asked staff to prepare language for a bond measure on the June ballot. Council Member Lieber noted this item would be on the agenda at the January 17, 2006, meeting, as noted in item 3-4 on this agenda.

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

## 5. UNFINISHED BUSINESS

### 5-1. Recommendations from the Parks and Recreation Commission regarding outstanding issues related to the parks rehabilitation project.

- 1) Approve the new design for the area of Ocean View Park south of the Teen Center, which reduces the number of trees to be removed.
- 2) Approve the elimination of the community building/room at Terrace Park and restore the applicable funding to the contingency fund for other project related costs.
- 3) Accept the Arts Committee's recommendations for the public art features of the park rehabilitation project.
- 4) Defer the discussion of how the turf in the northern half of Memorial Park is to be removed and (post-installation) maintained pending further research and Commission action in January.
- 5) Receive the report from Siegel & Strain concerning the Memorial Park improvements as information only and concur with the Commission recommendation to proceed with the approved design for the entry promenade and plaza at Memorial Park

Community & Recreation Services Director Chinn reported that at the October 17, 2005 council meeting, the Council approved conceptual designs for the park elements that were identified for replacement or rehabilitation at Memorial, Ocean View and Terrace Parks. In addition, the council: 1) directed staff to return to the November 7, 2005 meeting with a report outlining the budget needed for these projects; 2) agreed to allocate 2% of the project budget for public art; and 3) agreed to proceed to the preliminary design phase with Landscape Architect John Cahalan.

At the November 7, 2005 meeting, the Council approved the additional funding from Measures R and F for the approved elements of the plan and asked to Commission to consider:

- Whether the plan for the southwest corner of Ocean View Park can be accomplished with the removal of fewer redwoods;
- The possibility of obtaining a grant from Waste Management for a green building at Terrace Park; and

- Whether the removal of the old turf and maintenance of the new turf at Memorial Park can be accomplished without use of any chemicals.

Subsequent to that meeting, the Commission held several public meetings to discuss the tree removals at Ocean View Park with the City Arborist, the community building at Terrace Park with the neighbors living in close proximity to the park, and the public art elements for the parks with the Arts Committee. At its December 8, 2005, meeting the Commission deliberated and made its final recommendations regarding the outstanding issues (with the exception of the use or non-use of chemicals as a means of turf removal as part of the rehabilitation project and as a means for treating weeds or fungus infestations as part of the future maintenance of the area).

The Council considered the items separately, as follows: 1) Approve the new design for the area of Ocean View Park south of the Teen Center, which reduces the number of trees to be removed.

Council Member Lieber asked whether the tree removal could be phased in order to preserve a windbreak. John Cahalan, the project Landscape Architect, indicated that would be difficult. Council Member Lieber asked whether the redwoods would be watered. Mr. Cahalan indicated it is best not to change watering patterns of established trees.

Mayor Maris asked what kind of trees would be planted. Mr. Cahalan indicated medium-size deciduous, canopy-forming trees were most likely. Mayor Maris asked whether the redwoods to be removed could be sold. Mr. Cahalan stated that was not likely, but they could be reused as bark chips and duff. Mayor Maris asked for consideration of keeping some of the pine trees. Mr. Cahalan indicated they are not in good shape. Mayor Maris asked what was going in the area west of the Teen Center. Mr. Cahalan explained that the trash enclosure would move there, freeing up space parking in the lot.

Council Member Javandel asked whether a fence could be added for the tot area. Mayor Maris suggested a fence with breaks in it. Council Member Lieber was in favor of a continuous tot fence. Geoff Piller, Park & Recreation Commission Chair, reported that fencing is offensive to teens. He stressed the urgency of moving forward with this project rather than continuing to refine it. Council Member Javandel stressed the danger of speeding traffic on Buchanan. He was open to a seat-wall if that was less offensive. Council Member Okawachi was in favor of the design, provided safety features were implemented and the teens and tots both received consideration.

Nan Wishner, San Carlos Avenue, would like long-term protection for the redwood trees. She suggested the trees to be removed could be made into benches. She requested that native plants be used.

**MOTION:**

Council Member Good moved approval and Council Member Okawachi seconded.

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

NOES: None

ABSENT: None

Motion carried and ordered.

**MOTION:**

Council Member Lieber moved to fence the entire play area and Council Member Good seconded. After discussion regarding fence specifics, there was agreement to ask staff to come back with a code tot barrier.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

- 2) Approve the elimination of the community building/room at Terrace Park and restore the applicable funding to the contingency fund for other project related costs.

Council Member Okawachi was disappointed there would be no community room or shelter at the site. Council Member Good noted that the neighbors had opposed addition of amenities. Council Member Lieber was also disappointed.

**MOTION:**

Council Member Good moved approval and Council Member Javandel seconded.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Good recused himself from items 3, 4, and 5, due to proximity to his residence.

- 3) Accept the Arts Committee’s recommendations for the public art features of the park rehabilitation project.

Council Member Okawachi asked whether there would be lighting and signage added to Terrace Park. Ms. Chinn stated there would not. Nan Wishner, Arts Committee, indicated there might be a tile sign in the north wall. Council Member Okawachi opined signage and lighting at the south entrance would make the park easier to find. Mayor Maris suggested that there be an open process, noticed in the paper and on the website. He hoped there could be a “signature” piece of art for the City, preferably one emphasizing the nurturing of young people.

**MOTION:**

Council Member Lieber moved approval and Council Member Javandel seconded.

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

NOES: None

RECUSED: Council Member Good

ABSENT: None

Motion carried and so ordered.

- 4) Defer the discussion of how the turf in the northern half of Memorial Park is to be removed and (post-installation) maintained pending further research and Commission action in January.

Council Member Lieber said that pesticide-free methods should be considered the preferred option for turf removal. Bill Algire, Project Manager, reported that herbicide removal would require using diesel trucks to haul several inches of topsoil to a landfill. City Administrator Pollard recommended deferring this item. Council Member Okawachi agreed. Council Member Lieber stated the city has a policy not to use chemicals.

Council Member Lieber expressed his concern about the hazards of chemicals, and that the consultants might not have the same concerns. Council Member Javandel wanted to defer this item.

Alan Riffer, Park & Recreation Commission Vice Chair, expressed concern that Council Member Lieber may be insinuating that the Commission is not concerned about the health of the children in Albany.

Nan Wishner suggested hiring consultants who specialize in not using chemicals. Kim Linden, Park & Recreation Commission member, agreed the consultants might not be on our side. Roger Carlson, Park & Recreation Commission Member, noted that not all chemicals are equal, and that chemical-free removal has its costs, too.

**MOTION:**

Council Member Javandel moved deferral and Council Member Lieber seconded.

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

NOES: None

RECUSED: Council Member Good

ABSENT: None

Motion carried and so ordered.

5) Receive the report from Siegel & Strain concerning the Memorial Park improvements as information only and concur with the Commission recommendation to proceed with the approved design for the entry promenade and plaza at Memorial Park

City Attorney Zweben reported that state regulations do not apply because the building is not an historical landmark. He further noted the Council has the discretion to make determinations under CEQA. Council Member Okawachi asked whether the changes would affect the likelihood of achieving landmark status. Burton Edwards, of Siegel & Strain, who had reviewed the project, stated that squaring-off the entry stair is the most important in that regard.

**MOTION:**

Council Member Javandel moved approval, amended by toning down the walkway pavement color. Council Member Lieber seconded.

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

NOES: None

RECUSED: Council Member Good

ABSENT: None

Motion carried and so ordered.

Council took a five-minute recess.

**5-2. Annual adoption of City Investment Policy.**

City Treasurer Denton reported pursuant to Government Code Section 53607 the City Council must annually delegate investment authority either to itself or to the City Treasurer, as appropriate. In addition, pursuant to Government Code Section 53646, the City Treasurer must annually render to the City Council a statement of investment policy to be considered at a public meeting.

There were no changes to the investment policy from that which was adopted last year. The composition of the City's investment portfolio is reported quarterly in the Cash and Investments Treasury Report. The majority of the City monies are invested in the Local Agency Investment Fund (LAIF), which is part of the State of California's Pooled

Money Investment Account (PMIA). The investment policy for the PMIA closely mirrors that of the City of Albany's, and their policy was attached to the staff report.

Council Member Lieber stated he has concerns that the City invest only in companies that serve people and not corporations, war, and hate, and he will make a recommendation to the Social & Economic Justice Commission at a later date.

**MOTION:**

It was moved by Council Member Good and seconded by Council Member Javandel to approve Resolution #05-58 – A Resolution of the Albany City Council Re-Delegating Investment Authority to the City Treasurer and Adopting the Investment Policy for the City of Albany.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**6. PRESENTATION/PUBLIC HEARING**

- 6-1.** Appeal of Planning & Zoning Commission approval of Planning Application #05-067, extension of Conditional Use Permit for Albany Berkeley Chinese School, 720 Jackson Street (Vista Elementary School Site).

Associate Planner Gross reported the Planning and Zoning Commission originally heard this item on October 11, 2005, and again on October 25, 2005. Public testimony was given, and concerns discussed included maintenance on the site, use of the portable building located at the southwest portion of the site, waste management trucks backing out from the site, the location of the dumpsters, violation of drop-off and pick-up procedures, monitoring of children at the school, and parking of vans and staff cars on the lot and street. After discussion among the Commission members at the October 25, 2005, meeting, and the addition of several conditions, the Commission approved the application to extend the conditional use permit by a vote of 5-0.

This approval is being appealed to the City Council by James Cleveland, 724 Cerrito, and Linda Koenig, 720 Cerrito, on the basis that the CEQA findings necessary to enable a permit renewal are incorrect, and therefore the application for the extension of the conditional use permit should be denied.

As part of the CEQA process, during the initial conditional use permit approval for the two private schools (Albany Berkeley Chinese School and Bright Star Montessori School) in 1999, the City of Albany planning staff performed an Initial Study. This documents reviews the environmental impact of various aspects of a project. These areas include:

- Aesthetics
- Agriculture Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Hazards and Hazardous Materials

- Hydrology/ Water Quality
- Land Use/ Planning
- Mineral Resources
- Noise
- Population/ Housing
- Public Services
- Recreation
- Transportation/ Traffic
- Utilities/ Service Systems

After reviewing the specific questions contained in the Initial Study, each area was determined to have “no impact”. It was noted that the project would be contained within existing structures, involved no construction or earth movement, and was similar to the type of use previously existing at the site (Vista Elementary School). The applicants proposed an intensity of usage that was generally less than or equal to the intensity of usage by Vista School, except for the longer hours of operation. Staff therefore recommended the adoption of a Negative Declaration, which the Planning and Zoning Commission did on January 11, 2000.

Since the original approval, staff has found that the extension of the use permit was exempt from CEQA per Section 15301 of the CEQA Guidelines, which states that the operation of an existing public or private structure involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination is categorically exempt from the provisions of CEQA.

As part of the October 25, 2005 approval by the Planning and Zoning Commission, a condition of approval required that ABCS enter into a maintenance contract to ensure upkeep of the site. The contract had not been entered into at this time, but ABCS had agreed to enter into a contract if the decision of the Commission was upheld. Staff had included a site plan that showed the basic location of the areas that each school was currently responsible for. If the action of the Commission were upheld, staff would require that ABCS enter into the maintenance contract with a private contractor of their choice as soon as possible.

As a result of discussions with the owners of the property, Albany Unified School District (AUSD), it was determined that the portable building at the south end of the site was moved there for storage purposes by AUSD. After the building was placed there, ABCS asked AUSD for permission to use the building, which AUSD granted (not knowing that this would require an amendment to the conditional use permit).

When Planning staff was originally made aware of the new building, which was owned and placed by AUSD, staff did not check further to determine if the change would require an amendment to the use permit. However, during the preparation of the P&Z Commission staff report for October 25, 2005, staff became aware of condition of approval J-2, which states “No new exterior construction or additions are needed or proposed. Exterior changes for private school purposes will require Design Review approval from the Planning and Zoning Commission.”

Therefore, staff asked the Commission to determine whether or not ABCS could continue to use the portable building as classroom space. At the meeting, the Commission stipulated that the building should be moved if access by Waste Management trucks could not be improved, but did not direct ABCS to stop using the portable building.

Waste Management truck access to the site.

Due to the location of the portable building and the fencing, Waste Management vehicles were not able to turn around and exit the site; instead trucks had to be backed out of the property, causing early morning noise from the warning beep. As part of the Fire Department conditions, the existing fencing in the southwest portion of the site will have to be removed, and a new access gate will be built at the bottom of the driveway leading from Cerrito Street to the school property. The removal of the fencing will allow the dumpsters to be relocated, and the Waste Management trucks will again be able to exit the driveway going forward.

As included in the notice of action, ABCS will be required to work with the Traffic & Safety Commission to enter into a Joint Traffic Management Plan, which may include the creation of a formal pick-up/ drop-off zone on Jackson Street. The process is intended to be similar to that recently completed by the Traffic & Safety Commission for all of the public schools in Albany.

There have been comments received during each public hearing that ABCS was not properly monitoring children at the site. Staff obtained all records that the Community Care Licensing Division (CCLD) had regarding ABCS, including complaint investigations and facility evaluation reports. ABCS has been cited for violations for not having proper documentation of teachers, for having a ratio of students to teachers greater than that allowed by law, and for the physical condition of the facility.

Staff asked CCLD if the violations on record were enough to warrant the revocation of ABCS childcare license. CCLD responded that although ABCS has repeatedly had similar violations, CCLD had not found any conditions that made them seriously consider beginning revocation proceedings because the violations were not of the type that indicated a serious risk to the safety and well-being of the children at the school.

On November 1, 2005, at the request of James Cleveland, the Fire Department conducted a site visit of the school site, specifically looking at access from Cerrito Street. As a result of this meeting, the Fire Chief sent a letter to ABCS (Attachment 7) stating that the Fire Department must have unobstructed access to the school at all times, and provided a list of conditions that must be met within 90 days of the November 1, 2005 meeting at the site (i.e. February 2, 2006).

As a result of the letter, staff consulted the City Attorney, and chose to ask the Commission to amend the prior Notice of Action to include the Fire Department's conditions. While the Fire Dept. conditions did not require incorporation into the CUP in order to be enforced, it was determined there was a benefit in providing the opportunity for public comments and in placing the conditions into a single document.

At the November 22, 2005 Planning and Zoning Commission meeting, the Commission amended the conditional use permit include a condition of approval related to the Fire Department requirements. The specific language of that condition of approval is as follows:

J-9 By February 2, 2006, the applicant must comply with the following to the satisfaction of the Fire Department:

1. Access gate from Cerrito St. This access gate would be best if it was placed at the bottom of the driveway. A swinging gate would give access to the fire department vehicles and would prevent children from walking out on the street and to the private

- resident next to your school. The gate entrance must be at least 20 feet wide. The current gate must be removed, as it does not meet current fire code.
2. Remove all temporary fencing. Temporary fencing shortens fire apparatus turnarounds.
  3. Move all garbage collection away from fire access.
  4. Adjust play structure, as discussed, to improve fire access and turnaround.
  5. Build a permanent fence around play structure that is not to be used by children. This fence must be built inside the play area to maximize fire access.
  6. All low-level plate glass windows, must be protected from possible broken glass.
  7. Fire access must be labeled on the pavement in red "Fire Access".
  8. Submit all plans through the City of Albany Building Department. Failure to comply with the stated requirements and date will result in a \$100 per day fine.
  9. If the applicant fails to complete the actions stated above, the approval of the CUP shall be null and void and the right to operate the Albany Berkeley Chinese School shall cease.

As of the date of this staff report, ABCS had complied with items #6, and had submitted plans to the Building Department regarding the access gate from Cerrito St. (item #1). ABCS reports that when the access gate is installed, the contractor will complete all of the other items on the list. Planning staff discussed the property with the Fire Department, which stated that fire access to the site would be adequate with the changes listed above.

Linda Koenig stated that the school site used to be park-like, but has become an eyesore. She also felt the portable building was poorly sited. She read a statement from her husband, Gary Koenig, regarding the hazardousness of waste management trucks backing out of the site.

James Cleveland asked for the tape of the Planning & Zoning meeting to be included in the record because he was not allowed to speak. He disagreed with many of staff's analyses. He was concerned about the health, safety, and financial liability risks. He detailed the violations the school and its employees had been cited for. He demonstrated the difference in field of vision when driving forward versus backward.

It was 11:00 p.m. Council Member Okawachi moved to extend time 20 minutes. Council Member Lieber seconded.

Anthony Wang, ABCS Principal, spoke in favor of the application, and answered Council Members' questions about the operation of the school and current and/or future compliance with the conditions of approval. Tom Pixley (sp) El Cerrito resident and ABCS parent stressed the value of the school to the community.

Jane Anne Lamph (sp) Hillside Homeowners Association asked where they should turn if there are future problems.

It was 11:20 p.m. Council Member Javandel moved to extend time 20 minutes. Council Member Lieber seconded.

James Cleveland stated that these were CEQA findings the planning staff got wrong: lack of fire department access; the property was an eyesore; the use was not well screened; were there 60 or 80 students; the garbage bin that had not been emptied quite

some time; the siting of the portable building; and paving on school property leading to Mr. Wang's adjacent private property.

Michael Young (sp) Albany resident and ABCS parent spoke in favor of the application. Ms. Wang, ABCS Board, spoke in favor of the application.

Council Member Good asked why no one from AUSD was at the meeting. Charlie Blanchard, AUSD Board President, stated Dr. Wong from AUSD was not able to attend. He noted that this item had not been discussed by the Board. Council Member Javandel emphasized to the applicant that any future changes need to be brought to the attention of staff to avoid more difficulty. Council Member Okawachi stressed the importance of following the rules, such as background checks for the teachers.

**MOTION:**

It was moved by Council Member Good and seconded by Council Member Javandel to support the approval of the application to extend the conditional use permit.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7. NEW BUSINESS**

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

(Brief information reports from City Council Members and/or staff.)

- 8-1.** The City Council meeting of **Tuesday, January 3, 2006** has been cancelled and due to the Martin Luther King, Jr. Holiday the next regular meeting of the City Council will be **Tuesday, January 17, 2006**.

It was 11:45 p.m. Council Member Okawachi moved to extend time 20 minutes. Council Member Lieber seconded.

Mayor Maris reported he had attended the Waterfront Committee meeting and noted many at the meeting opposed the Caruso project. Mayor Maris pointed out that the Waterfront Committee members seem to have a more balanced view and will have a fair and thorough review process.

He stated he was considering contacting the El Cerrito Mayor regarding the appeal hearing on the El Cerrito Plaza Development.

Mayor Maris asked for a moment of silence for Bill Johnson, who had been an active Lion, and Bill Hartung, who had worked hard in the Friends of the Albany Library. There was a moment of silence.

**9. ADJOURNMENT**

11:55 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Amanda Bennett, Planning Clerk

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ALLAN MARIS  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK