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**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION,**  
**COMMUNITY CENTER, 1249 MARIN AVENUE**  
**MONDAY, NOVEMBER 2, 2009**

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**6:30 p.m.**

**CLOSED SESSION**

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS.**

**Anticipated Litigation – Government Code Section 54956.9**

City Council will meet with Legal Counsel to discuss anticipated litigation: 1) Hagen v. City of Albany; Claim #AL555. 2) Our Children's Earth v. City of Albany; Claim #AL610.

**ADJOURN TO CLOSED SESSION**

**7:30 p.m.**

Mayor Atkinson, 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, Thomsen, Wile & Mayor Atkinson  
Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Judy Lieberman, Assistant City Administrator; Ann Chaney, Community Development Director; Randy Leptien, contract Engineer; Rich Cunningham, Public Works Manager; Marc McGinn, Fire Chief; Brian Crudo, Battalion Chief; Penelope Leach, Recreation & Community Services Director.

**3. REPORT ON ACTION TAKEN IN CLOSED SESSION, IF ANY**

The City Attorney reported that no final decisions were made but direction was given to the City Attorney.

**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 unless otherwise modified by the City Council. 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.** a. Ratification of City of Albany net payroll in the amount of \$207,953.61; taxes, benefits & withholdings in the amount of \$248,349.90. Total payroll in the amount of \$456,303.51. Payroll period: 10/23/09.

**4-2.** b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$52,336.33; taxes, benefits & withholdings in the amount of \$55,009.38. Total payroll in the amount of \$107,345.71. Payroll period: 10/23/09.

Staff recommendation: Ratify.

**4-3.** Pension Payments for the month of October, 2009, in the amount of \$116,251.36.

Staff recommendation: Ratify.

**4-4.** Council Member Wile appointing Ken McCroskey to the Traffic & Safety Commission and Heather Cunningham, to the Parks & Recreation Commission.

Staff recommendation: Information only.

**4-5.** Stage Concept Design for Memorial Park.  
(File #920-60)

Staff recommendation: 1) Approve the Stage design submitted by Landscape Architect Karen McArdle and 2) approve up to \$36,000 for the completion of the project from State Proposition 40 funds.

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

#### **4. CONSENT CALENDAR**

##### **MOTION:**

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

AYES: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

Motion carried and so ordered.

#### **5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS**

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

The following people spoke: Robert Urhammer, Albany resident; Margie Karn, Albany resident; Si Lee, Albany resident; Clay Larson, Albany resident; Brian Parsley, Albany resident; Allan Maris, Albany resident; Katherine, Albany resident; Juanita Weaver, Albany resident; Francesca Papalia, Albany resident.

A summary of the comments is as follows: Presented a Chronological history of the Pierce Street Park. Friends of Albany Seniors urged the Council to provide funds for the expansion of the Senior Center. Asked when the second part of the Measure WW funding would be on the agenda. Announced a study session on the move of the Children's Center from UC Village to MacGregor High School, Wednesday, November 4, 5:30 -6:30 p.m. and expressing concern about the safety of the children. Urged voters to vote tomorrow and support Measures I & J. Thanked Chelle Putzer for the stage that she and her father built that has been used for many years. Spoke about a Constitutional Convention noting that one of the subjects for discussion is Campaign Financing and noted that Albany disbanded its Campaign Finance Ordinance. Spoke in favor community gardens along the Ohlone Greenway. Spoke in favor of a ferry system that could help in an emergency situation, especially if the Bay Bridge is out of order.

Council Member Wile acknowledged the work of Sarah Robinson who helped a bird in distress. She thanked City staff for their help in monitoring the oil spill over the weekend and asked citizens to keep a look out for oil on the beach.

#### **6. PRESENTATION/PUBLIC HEARING**

##### **6-1. H1N1 Clinic (File #560-85)**

The Battalion Chief reported that the Alameda County Public Health Department would be sponsoring a H1N1 vaccine clinic in Albany on Saturday, November 14, 8 – 12 Noon at the Albany Community Center, 1249 Marin Avenue. The Battalion Chief stated that only people who are uninsured and at high risk, this includes: Pregnant women; persons who live with or provide care for infants aged 6 months; children aged 6 months to 4 years; children and adolescents aged 5 – 18 years who have chronic medical conditions that put them at higher risk for flu-related complications.

**7. UNFINISHED BUSINESS**

**7-1. East Bay Regional Park District Measure WW – Local Grant.**

(File #920-80)

a. Voting Procedures and Prior Action on Measure WW.

The City Attorney reported that this matter first appeared on the September 8<sup>th</sup> agenda. Council Members Javandel and Thomsen noted a conflict of interest, as they lived within 500 feet of the Pierce Street project. They also stated that they did not feel they could make decisions on allocations to other park projects, as they believed they could not segment those decisions. Mayor Atkinson lives within 500 feet of the Ohlone Greenway project and noted a conflict of interest.

It was decided that Council should cease making any further decisions until an opinion was sought from the Fair Political Practices Commission. An advice letter was received and concluded that the decision regarding allocation of funds could not be segmented. Therefore, since 3 Council Members had a conflict of interest under FPPC regulations, that one of the three Council Members with a conflict would have to be chosen by random selection in order to participate and achieve a quorum for the purpose of conducting business. These Council Members would continue to serve as the quorum for future agenda items on this topic. This is referred to as the Rule of Necessity, FPPC Regulation Section 18708, and implementing Government Code Section 87101.

The City Attorney recommended the following process: The City Clerk will prepare three pieces of paper, one will contain the word “participate” and the other two will be blank. Whichever Council Member draws the “participate” piece of paper would join Council Members Lieber and Wile, thereby forming a quorum.

The City Clerk had Council Members Javandel, Thomsen & Mayor Atkinson pick a piece of paper and Mayor Atkinson drew the “participate” paper.

Council Members Javandel & Thomsen recused themselves from the meeting and left the Chamber.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Wile to rescind prior action on this item.

AYES: Council Members Lieber, Wile & Mayor Atkinson

NOES: None            RECUSED/ABSENT: Council Members Javandel & Thomsen.

Motion carried and so ordered.

The Recreation & Community Services (R&CS) Director reported that Measure WW is an extension of Measure AA passed by East Bay voter 20 years ago. Measure WW will be used to continue to restore urban creeks, protect wildlife, purchase and save open space, wetlands and bay shoreline, acquire, develop and improve local and regional parks, trails and recreational facilities close to home for East Bay residents.

The R&CS Director noted that the Parks & Recreation Commission recommend the following allocations: Pierce Street Park, \$456,000; Teen Center Expansion, \$120,000; Ohlone Greenway Improvements, \$125,000; Improvements to the Cove at the

**7-1. East Bay Regional Park District Measure WW – Local Grant.**

Waterfront, \$50,000; Additional Rubberized Surface at Ocean View Park Playground, \$20,000. Total \$771,000.

The R&CS Director noted that staff recommends the following allocations: Improvements to the Cove at the Albany Waterfront, \$50,000; Teen Center Expansion, \$120,000; Additional Rubberized Surface at Ocean View Park Playground, \$20,000; Unallocated, \$581,000. Total \$771,000.

The R&CS Director stated that regarding the unallocated funds the City has been discussing three projects: Pierce Street Park – Measure F funds have been set aside and noted that negotiations with Caltrans needs to be completed and believe it premature to set additional money aside. Senior Center Expansion – staff is pursuing grants and if received would supplement with Measure WW funds. Ohlone Greenway project – no prioritized list at this time and it needs to go through a public process.

The following people spoke: Bob Urhammer, Albany resident; Del Price, Albany resident; Gary Class, Albany resident; Jewel Okawachi, Albany resident; Caryl O’Keefe, Albany resident; Brian Parsley, Albany resident; Bob Fiere, Albany resident; Joan Urhammer, Albany resident; Kathy Diehl, Chair Waterfront Committee; Francesco Papalia, Waterfront Committee member; Allan Maris, Albany resident; Jim Cleveland, Albany resident.

A summary of the comments is as follows: Expressed support for funding the Pierce Street Park; Support for the Committees and noted that Council should listen to the recommendations that are made. Support staff’s recommendation regarding the unallocated funds with the understanding that money would go to Pierce Street Park at the appropriate time. Expressed concern about the safety hazards at the Albany bulb and believes that safety trumps open space. Believe that money should not be spent on the Waterfront if the land is going to be turned over to the East Regional Parks District. Supported the recommendations from the Waterfront Committee and spoke about the Cove area.

Council Member Lieber thanked everyone for their comments and noted that Council is committed to the Pierce Street Park when a settlement is reached with Caltrans. Believes that the Waterfront is very important to this community and any improvements made would benefit everyone and the shoreline and agreed that the area should be made safer and additional bathrooms installed.

Council Member Lieber noted that the City needs to negotiate an easement with Caltrans for the Class 1 bike path and it would be a step forward in getting a park at Pierce Street. The City Administrator noted that the City has not received any objections from Caltrans but would need to go through the negotiation process.

Council Member Wile expressed concern that Caltrans has not been pressured sufficiently regarding the Pierce Street Park. Council Member Wile noted that she and the Mayor would be meeting with the Pierce Street neighborhood and believes the City needs to be more aggressive in making this happen.

Council Member Wile noted that the Cove area has broken glass and graffiti all over and asked if Measure WW could be used to take care of this problem. The R&CS Director responded no that the funds cannot be used for maintenance.

**7-1. East Bay Regional Park District Measure WW – Local Grant.**

Mayor Atkinson stated that she agrees with staff's recommendations and agree with Council Member Wile that the City needs to be more aggressive with Caltrans.

The City Administrator noted that the City does have a meeting scheduled in December with Assembly Member Nancy Skinner.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Wile to approve staff's recommendation for allocation of Measure WW funds, as follows: \$50,000 – improvements to the Cove at Albany Waterfront; \$120,000 – Teen Center Expansion; \$20,000 – additional rubberized surface at Ocean View Park Playground; \$581,000 unallocated. Continue to work for a settlement for the Pierce Street Park.

AYES: Council Members Lieber, Wile & Mayor Atkinson

NOES: None                    RECUSED/ABSENT: Council Members Javandel & Thomsen

Motion carried and so ordered.

**7-2. Pierce Street Pavement Rehabilitation and Path Project**

(File #820-20)

Council Member Javandel returned to the Chamber and stated that there is no conflict for him on this project. Council Member Thomsen recused herself from this item and remained outside the Chamber.

The Community Development Director reported that in October, 2009, the Traffic & Safety Commission approved the Final Mitigated Negative Declaration (MND) and 20% concept plans for this project and recommended that the City Council approve the Final MND and authorize staff and Kimley-Horn to proceed with Phase 2 of the design contract to develop 100% plans. The Commission also recommended that in designing the Cleveland option, the City Council should look at mitigating tree removal with planting of new trees, or implementing other design solution for screening purposes.

Pierce Street (Phase I): New paving on Pierce Street from northerly City limits to south end of 555 Pierce and from Calhoun to Buchanan Street. Narrowing of travel lanes from 20 to 12 feet (southbound) and from 14 to 12 feet (northbound). Loss of three (3) on-street angled parking spaces. Widening of sidewalk next to sound wall for a separated bicycle/pedestrian path. Three (3) raised crosswalks across Pierce Street. Parallel parking retained on east side of Pierce Street. Shave off portion of Albany Hill to improve visibility for drivers exiting 555 Pierce. Install 8' high wall between the path and freeway south of the sound wall (across from 555 Pierce Street). Reserve a section of the curb at 545 Pierce Street (Bridgewater complex) that comprises approximately three (3) parking spaces for loading/unloading between 8:00 a.m and noon; if unused after noontime, the curb section will revert to regular parking. Staff and the consultant will work with residents of 545 Pierce to establish the hours for loading and unloading.

The Community Development Director noted that no funding sources exist at this time for Segment 2 of the project.

**7-2. Pierce Street Pavement Rehabilitation and Path Project**

There are two issues to be discussed: 1) Negotiations with Caltrans for an encroachment permit, acquire an easement, or purchase the land outright through a fee simple arrangement. 2) Removal of trees – staff has met with the Parks & Recreation Commission where it was noted that tree preservation is important and everything should be tried to retain as many trees as possible.

The Community Development Director noted that the adopted CIP budget has adequate funds to cover 100% of the drawings.

The following people spoke: Jack Rosano, Albany resident; Brian Parsley, Albany resident.

A summary of the comments is as follows: Urged the Council to approve the recommendation noting this project has been a long time coming. Asked if a speed survey was done and the City Engineer responded yes and it showed cars going about 10 miles over the speed limit. It was noted that although this is a good idea, residents deserve a park before a bicycle/pedestrian path.

Council Member Javandel stated that a lot of hard work has been done on this project and commended staff and the consultants for coming up with a good design. Council Member Javandel spoke about the raised crosswalk, noting they should be 3 feet not 6 feet.

Council Member Wile agreed with Council Member Javandel that this is a good job well done.

Mayor Atkinson stated that she has spoken with many residents and believe this is a good compromise.

Council Member Lieber thanked staff noting that this project would make the City greener and bicycle friendly.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Javandel to approve 1) the Final Mitigated Negative Declaration on the Pierce Street Pavement Rehabilitation and Bicycle/Pedestrian Path Project. 2) Authorize the City Administrator to direct Kimley-Horn and Associates to proceed with final phase of the design contract in the amount of \$157,038 to prepare 100% construction plans and documents for Phase I (Pierce Street segment). 3) Direct staff to evaluate bicycle/pedestrian path alternatives that retain the existing trees along Cleveland Avenue, between Washington and Buchanan Streets, to the fullest extent possible (Phase 2).

AYES: Council Members Javandel, Lieber, Wile & Mayor Atkinson

NOES: RECUSED/ABSENT: Council Member Thomsen

Motion carried and so ordered.

Council Member Thomsen returned to the Chamber.

**8. NEW BUSINESS****8-1. Living Wage Ordinance**

(File #100-30)

The Assistant City Administrator stated that the Social & Economic Justice Commission (SEJC) presented its recommendations to the City Council in June, 2009, to adopt a Living Wage Ordinance. Council requested that the City Attorney draft an ordinance, based on the SEJC criteria, which was presented to the SEJC who passed the Ordinance.

According to the City Attorney, this Ordinance substantially follows the format of ordinances already adopted in other jurisdictions. As drafted, the Ordinance applies to service contractors and subcontractors who enter into a service contract with the City of \$25,000 or over per fiscal year, as well as to City financial aid recipients who receive direct assistance from the City in the amount of more than \$100,000 per fiscal year.

The wage rate is a minimum of \$11.93 per hour including wages and health benefits paid by the employer. If no health benefits are provided, the rate is \$13.54 per hour and the amount would be adjusted annually based on the Consumer Price Index.

Margie Marks, Chair SEJC, gave a report and went over all the statistics in the report and urged the Council to adopt the Ordinance.

The following people spoke: Caryl O'Keefe, Albany resident; Brian Parsley, SEJC.

A summary of the comments is as follows: Expressed concern that some of the City's employees are under living wage amount and urged the City to make adjustments before the Ordinance went into effect. Also would like to have seen additional data from the SEJC, including how much this Ordinance would cost the City. Thanked Margie Marks for all her hard work on this item and supported the Ordinance but asked that Council not vote tonight but have staff come back with additional information.

The Assistant City Administrator stated that the categories of employee under the Living Wage amount are part-time temporary and no full time employees. The Assistant City Administrator commented that staff is going to have to come up with a way to track contracts.

Council Member Lieber thanked the SEJC for the great start and noted he is a great supporter of unions and the City should be moving forward to include all City employees and to include the bargaining groups if a contract expires. Council Member Lieber stated that he would like to see the City move forward to cover employees who are not in the union.

Council Member Wile expressed concern that not all the data was presented and believe more time should be taken to think this through. Council Member Wile stated that she does support the Ordinance in principle but would like to see the fiscal implications.

Council Member Thomsen agreed that the financial research needs to be gathered and also has concerns about the time line for staff.

Council Member Javandel agreed with the other Council Members that this is a good idea but would like to see the financial impact to the City.



**8-1. Living Wage Ordinance**

Mayor Atkinson agreed that the financial information needs to be reviewed by the Council.

Council Member Lieber agreed that it was not unreasonable to have the information and would support sending this back to staff for additional financial information, present to the SEJC for its review. Council Member Lieber stated that the City does need to set an example by having all its employees meet the Living Wage standard.

Council Member Thomsen asked what would be a reasonable time line and was informed by staff that after the first of the year would be good.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Javandel to refer this item back to staff for financial analysis, including City employees covered by the Ordinance and send it back to the SEJC for its review. The information is to come back to Council after the first of the year.

AYES: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

Motion carried and so ordered.

**8-2. Spaying/Neutering of Unaltered Impounded Dogs and Cats**  
(File #500-10)

The City Administrator reported that Council Member Wile asked to have this item on the agenda. There is an overpopulation of homeless dogs and cats in the Albany area and many end up in a rescue shelter, where efforts are made to find them homes – many not always successfully. Sometimes the dogs and cats that found running loose by Animal Control officials have homes, but the owners/guardians have not taken the steps to have them spayed or neutered. By allowing unaltered animals to run loose there is the potential for additional unwanted animals to be born, which adds to the number of animals in the shelters.

Council Member Wile stated that Berkeley Animal Control is concerned and is trying to obtain uniformity in the Albany/Berkeley area and is asking that Albany adopt an Ordinance similar to Berkeley, which requires that impounded unaltered dogs and cats that are subject to its licensing requirements to be spayed or neutered at the owners/guardian’s expense before being returned to the owner/guardian.

Council Member Wile stated that she is recommending that the City Attorney be directed to draft an ordinance for Council review and action.

Council Member Thomsen expressed concern with this ordinance noting that she acknowledges that it is politically correct to do this but believes the ordinance is punitive to many people.

Council Member Lieber stated that he supports this ordinance and noted that many people are not responsible animal owners.

Mayor Atkinson also expressed concern and suggested that the ordinance have a section that allows a warning before any action is taken.

**8-2. Spaying/Neutering of Unaltered Impounded Dogs and Cats**

Council Member Wile commented that the ordinance is not designed to be a punishment but to prevent unwanted homeless animals. Council Member Wile stated that she would ask John Kindle, Albany resident and Animal Control Officer, to come and speak to the Council.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Wile to direct the City Attorney to draft an ordinance to include a five (5) days waiting period and have procedures for a hearing.

AYES: Council Members Javandel, Lieber, Wile & Mayor Atkinson

NOES: Council Member Thomsen                      ABSENT: None

Motion carried and so ordered.

**9. OTHER BUSINESS, REPORTS ON MEETINGS ATTENDED, ANNOUNCEMENT OF EVENTS/FUTURE AGENDA ITEMS.**

**9.1** Announce community meeting on conceptual design for the Senior Center expansion, Wednesday, 7 to 8 p.m., Senior Center, 846 Masonic Avenue.

Council Member Thomsen announced that she attended a meeting at the landfill regarding clean renewable energy.

Council Member Lieber announced that he attended a conference on Geo Thermal energy.

Council Member Javandel asked that the Traffic & Safety Commission look at having a law that prohibits truck parking on Buchanan. The City Administrator responded that the Traffic & Safety Commission is working on a law regarding certain size vehicles. Mayor Atkinson stated that she hopes it would also include trailers that have billboards that are parked on City streets.

The City Administrator made the following announcements: 1) A future agenda item will be forthcoming on a vacancy on the Alameda County Housing Authority. 2) Flu clinic at the Community Center, 1249 Marin Avenue, November 14, 8 – 12 Noon.

**10. ADJOURNMENT**

10:05 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting in memory of a former Albany Police Officer, Gil Mardilla and a moment of silence was observed.

**10. ADJOURNMENT**

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

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Marge Atkinson  
Mayor

Attest:

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Jacqueline L. Bucholz, CMC  
City Clerk