

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: May 17, 2010
Reviewed by: AC

SUBJECT: Extension of Workday Hours for BART Seismic Retrofit Project

REPORT BY: Rich Cunningham, Public Works Manager
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STAFF RECOMMENDATION

That the City Council consider BART's request to begin their weekday seismic retrofit construction work at 7:00 a.m., instead of the 8:00 a.m. start time currently required by ordinance.

BACKGROUND

Albany has an ordinance that governs construction activity to ensure that the community environment is not significantly degraded by contractors working on different-sized projects. This specific Municipal Code language is located in Section 8-1.7.g. and states:

Construction and demolition activities conducted within the City of Albany are permitted in the City of Albany, except as follows, which are prohibited:

Operating or causing the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work between weekday and Saturday hours of 6:00 p.m. and 8:00 a.m., or 6:00 p.m. and 10:00 a.m. on Sundays or legal holidays such that the sound therefrom creates a noise disturbance across a residential or commercial real property line, except for emergency work of public service utilities shall be prohibited.

One of the components of the ordinance is a limit on what time the construction work may begin and when it must end on a given weekday. It also governs weekend work among other things. The ordinance defines the weekday work hours as being between 8:00 a.m. and 6:00 p.m. The most noticeable impact from contractors is usually noise, which in the BART case is likely to be the main outcome of extending the workday.

BART's construction management group has made a formal request of the Council to allow the contractor to begin their workday at 7:00 a.m. instead of the prescribed 8:00 a.m. for the duration of the seismic retrofit project (approximately seven months).

Their reasoning for the change is contained in this portion of their application letter:

“BART Contract 15PE-110 has agreed with the other cities adjacent to Albany on the work hours of weekdays from 7AM to 6PM, which is longer than the standard work hours of 8 AM to 6 PM specified in Albany’s Encroachment Permit. In order to have consistent work hours for all the cities covered under this contract, we request that the City of Albany allow BART Contract 15PE-110 to have the standard work hours as weekday from 7 AM to 6 PM.”

Knowing that the BART proposal has an impact on a large segment of the community, staff mailed a notice of this proposal, including the date of the City Council meeting, to property owners and residents adjacent to the Ohlone Greenway.

The notice reads as follows:

“The purpose of the meeting is to consider a request by Bay Area Rapid Transit (BART) to change the weekday hours of construction from 8:00 a.m. to 7:00 a.m. as it relates to the planned BART Earthquake Safety Program. Current Ordinance regulations limit weekday hours of construction from between 8:00 a.m. and 6:00 p.m. No change is being requested to either the evening or weekend time limits. Construction will involve retrofitting the BART columns along Ohlone Greenway, which is estimated to take about 7 months to complete. No specific start date has yet been identified.”

DISCUSSION

If the City Council wishes to grant an exception to the construction hours, there are several possible alternatives that could be taken, such as a Variance, an Exception, or possibly a commitment from BART to limit the decibel output between 7:00 and 8:00 a.m.

1. Variance

Contractors wishing to work outside the normal hours must request that the City Council approve a variance per Section 8-1.12, which states the following:

8-1.12 Variances.

If any person can prove to the City Council that a diligent investigation of available noise abatement techniques indicates that immediate compliance with the requirements of this Chapter would be impractical or unreasonable, a variance from the provisions contained in all or a portion of this Chapter may be issued, after appropriate notice and hearing, by the City Council, with suitable conditions to minimize the public detriments caused by such exception. Any such permit shall be of short duration as reasonable, not exceeding three (3) months but renewable for two (2) additional three (3) month periods upon a showing of good cause, and shall be conditioned by a schedule for compliance and by details of methods therefor in appropriate cases.

2. Special Provisions (Exceptions)

The City Council consider an exception to the hours of construction under Section 8-1.7.d Special Provisions (Exceptions), which is as follows:

8-1.7.d. Public Health, Welfare and Safety Activities. *The provisions of this Chapter shall not apply to construction or maintenance and repair operations conducted by public agencies and/or utility companies or their contractors which are deemed necessary to serve the best interests of the public and to protect the public health, welfare and safety, including, but not limited to street sweeping, debris and limb removal, removal of downed wires, restoring electrical service, repairing traffic signals, unplugging sewers, vacuuming catch basins, repairing of water hydrants and mains, gas lines, sewer, storm drains, roads, sidewalks, etc.*

3. Decibel Reduction between 7:00 and 8:00 a.m.

BART has also suggested that the hours be extended if BART is able to assure the City and neighborhood that the decibel level between 7:00 and 8:00 a.m. would not exceed “Nighttime” limits for Residential land uses.

General Discussion

BART has acknowledged the potential impact of an earlier start but has also presented the potential benefit of extending the work hours to start at 7:00 a.m. Their reasoning is that if the workday is longer, then the overall length of time spent to complete the job in Albany will be shorter, thus lessening the overall community impact.

As a practical matter, this logic is sometimes difficult to equate in verifiable terms as there are other factors besides the length of the work day that determine the length of the project. Some of those factors include weather, equipment downtime, unforeseen interferences, etc. and the net gain from changing the workday length becomes unclear. This is not to say that the concept is invalid but the extension of workday hours is in reality as much for the convenience of the contractor as it is for the expedience of completing the project.

Therefore, a central issue for Council to decide is whether or not the impact on the community from the noise starting earlier in the day is acceptable versus the potential for hastening the completion of the project.

SUSTAINABILITY IMPACT

There is no calculable impact that staff can derive from a change in workday length. There may be anecdotal conclusions regarding energy efficiency that might be gained from having a more continuous construction process (because of an extended workday) but the means to assess this is beyond the resource capacity of staff.

FINANCIAL IMPACT

No direct financial impact, as the project costs are being borne by the BART project.

Attachment

Letter from BART requesting extended hours of construction