

Approved: June 7, 2010

NOTE: These minutes are subject to Council approval and are not verbatim; however, tapes are available for public review.

MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION,
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
MONDAY, MAY 17, 2010

7:30 p.m.

Mayor Wile called the regular meeting of the Albany City Council to order on the above date and Boy Scout Troop 24 & Pack 3 led the Pledge of Allegiance to the Flag,

ROLL CALL

Present: Council Members Javandel, Lieber, Thomsen & Mayor Wile
Absent: Council Member Atkinson (Excused)

STAFF PRESENT

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Richard Cunningham, Public Works Manager; Randy Leptien, City Engineer; Marc McGinn, Fire Chief, Brian Crudo, Battalion Chief,

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

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. Minutes, May 3, 2010.

Staff recommendation: Approve

4. CONSENT CALENDAR

- 4-2.** a. Ratification of City of Albany net payroll in the amount of \$200,072.43; taxes, benefits & withholdings in the amount of \$156,403.93. Total payroll in the amount of \$356,476.36. Payroll period: 05/07/10.
b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$51,227.09; taxes, benefits & withholdings in the amount of \$39,109.86. Total payroll in the amount of \$90,336.95. Payroll period: 05/07/10.

Staff recommendation: Ratify.

- 4-3.** Ratification of bills, claims and demands against the City of Albany in the amount of \$16,847.77. Period: 04/01/10.

Staff recommendation: Ratify.

- 4-4.** Council Member Thomsen appointing: Caryl O’Keefe, Charter Review Committee; Del Price, Sustainability Committee.

- 4-5.** Consideration of Claim #AL616; William’s family.
(File #170-60)

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

- 4-6.** Catherine’s Walk Upgrade.
(File #600-30)

Staff recommendation: Authorize execution of an informal contract for repair and related improvements to the public right-of-way called Catherine’s Walk, located between Hillside and Washington Avenues.

- 4-7.** Award Contract for Lower Codornices Creek Restoration, Step 2, Phase 3, to complete the restoration of the creek between 6th & 8th Streets and construction of a Class 1 bicycle/pedestrian trail along this segment. Contract no. C10-2.
(File #600-30)

Staff recommendation: Award the contract in the amount of \$751,867.00 to William P. Young Construction, Inc. of San Leandro, California.

- 4-8.** Contribution to City, Non-Profit, Local Public Agencies, Individuals and Other Organizations for Albany projects or programs.
(File #100-30)

Staff recommendation: That no allocation be made for grants to non-profit agencies in the current 2009-10 fiscal year.

4. CONSENT CALENDAR

- 4-9.** Resolution No. 2010-17 – A Resolution of the Albany City Council Supporting the Creation of Alameda County Transportation Commission and Approval of the Joint Powers Agreement Therefor; Approval of Amendment to Joint Powers Agreement for the Alameda County Congestion Management Agency.
(File #600-40)

Staff recommendation: Approve Resolution No. 2010-17.

Mayor Wile asked if anyone would like to remove an item from the Consent Calendar and the following items were removed for discussion: 4-8 & 4-9.

4-8. Contributions to Non-Profit, Local Public Agencies, Individuals and Other Organizations for Albany projects or programs

Ray Anderson, Albany resident, stated that he realizes the economic hard times but urged the Council to continue giving to the non-profit groups.

4-9. Resolution No. 2010-17 – Creation of Alameda County Transportation Commission

Council Member Lieber stated that the creation of the Alameda County Transportation Commission shifts the power for transportation dollars to South County from North County, which cannot be avoided. However, this is good for Albany even though the City does not have many votes it actually gets a seat on the Commission. Council Member Javandel stated that the percentage of votes remains unchanged and Council Member Thomsen noted that South County has always been supportive of Albany.

MOTION:

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

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

NOES: None

ABSENT: Council Member Atkinson

Motion carried and so ordered.

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

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

The following people spoke: Catherine, Transition Albany; Brian Crudo, Albany Fire Department.

A summary of the comments is as follows: Asked the Council to look at the City Code regarding the section of beekeeping and asked that they be put in the same category as chickens. Announced a public health drill, June 5, 10-2, entitled “Operation Hot Foot”

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

and noted that the drill would be to see how well medication could be hand-delivered to all residents in the event of a pandemic.

Summary of Council announcements: 1) Attendance at the East Bay Regional Park District to familiarize the District with the Voices to Vision document. 2) Bike to Work Day was held and 448 people went through the energizer station. 3) Attendance at the California State Budget forum that was held at the Albany Little Theatre.

6. PRESENTATION/PUBLIC HEARING

Mayor Wile read and presented a Proclamation to Scout Troop 24, Berkeley and Pack 3, Albany for their service and commitment to the environment. Mr. Stephen Pree, U.C. Village read a letter of commendation for the work performed.

7. UNFINISHED BUSINESS

7-1. Charter Review Committee Reports.

(File #660-25)

a. Elected/Appointed City Attorney.

Chair Wallace reported that this issue was referred by the City Council in February, 2010 with the following directives: 1) Prepare a ballot measure for the November, 2010 election. 2) Asked for additional information, such as contract costs, impartiality with a divided Council, pros/cons, civil right discussions, RFP from StopWaste.Org regarding hiring an appointed attorney. 3) A sunset clause to be added. 4) City Attorney to prepare the ballot language with review by the Committee.

Before Council tonight is the ballot language with a sunset clause that was approved by the Committee. The Committee discussed the issue of the Attorney Impartial Analysis and was divided on the question of whether the current City Attorney should prepare the Analysis. After discussion, it was approved that the City Council engages outside counsel to write the Attorney Impartial Analysis.

Mayor Wile asked if the public would like to comment on this. No one came forward.

A summary of the Council comments is as follows: A question was asked what would happen if the measure fails and was informed that the position would remain unchanged for a 4-year term. Agreed that this should go to the voters and that outside counsel should be retained to write the Impartial Analysis.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel to place the question of whether the City should have an elected or appointed City Attorney before the voters at a future election. That the City engages outside counsel to write the Impartial Analysis.

7-1. Charter Review Committee Reports.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Atkinson

Motion carried and so ordered.

b. Roles of City Administrator and City Manager.

Chair Wallace reported that in December 2009, the City Council referred to the Charter Review Committee consideration of a Charter change from a City Administrator to a City Manager form of government. This came from a recommendation made by the Citygate Organization Study. The Committee was asked to investigate the typical roles of a City Administrator and City Manager and come up with a list of pros/cons.

Mayor Wile asked if anyone would like to speak and the following people spoke: Ed Fields, Albany resident; Caryl O’Keefe.

A summary of the comments is as follows: Asked which Department Heads the Manager would hire/fire and noted that the City Clerk is in the Charter and reports to the City Council. Believe that if it isn’t broken then do not fix it. Maybe more discussion is needed to find out what is best for Albany.

A summary of the City Council comments is as follows: Not in favor of this change but would consider if the City had a directly elected Mayor. A question was asked if the Council could just change the title, without a Charter change. The City Attorney responded that he would not be comfortable doing that. A name only, without change of duties could be done through a ballot measure. Appreciate the work the Charter Review Committee did on this and agreed that the City could customize the position anyway they want and that would include the name change without change of duties. Believe that the process now in place is very collaborative and would not want to change how employees are hired/fired. However, would consider a name change only. Would like to see the position change from City Administrator to City Manager, as the Manager works day to day with the employees and understands the performance issues better.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Javandel to direct the City Attorney to come back at the next meeting with language changing the tile of City Administrator to City Manager with no change in job functions.

ON THE QUESTION:

Council Member Lieber stated that he would not want to put this on the November election and Council Member Thomsen stated that would not want to have a special election for this.

AMENDED MOTION:

Moved by Council Member Lieber that the motion include that this to come back after the November election.

Council discussed that maybe the language should be in place before a new Council is elected and that at the next meeting Council could decide what happens next.

7-1. Charter Review Committee Reports.

AMENDMENT WITHDRAWN

VOTE ON MOTION:

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

NOES: None ABSENT: Council Member Atkinson

Motion carried and so ordered.

8. NEW BUSINESS

8-1. BART Construction Hours

(File #100-30)

The Public Works Manager reported that the City has an ordinance that governs construction activity to ensure that the community environment is not significantly affected by contractors working on different-sized projects. The hours for construction work are 8a.m. – 6p.m and 10a.m. – 6p.m on Sundays or legal holidays.

BART is requesting that they be allowed to begin their weekday seismic retrofit construction work at 7 a.m. instead of 8 a.m.

Mollie MacArthur, BART, spoke to the Council noting that BART would like to start at 7a.m. and abide by the nighttime lower noise criteria, and as a concession would stop the work an hour earlier.

Mayor Wile asked if anyone would like to speak and the following spoke: Ray Anderson, Albany resident; Kristina Osborn, Albany resident; Unknown speaker.

A summary of the comments is as follows: Spoke in favor of the project but preferred the 8a.m. start time and noted that the noise vibrates loudly to the hills. Agreed with the noise issue and stated that a compromise would be to agree to the earlier start time but BART would have to agree to clean the tracks regularly to help with the noise. Believe that this is an ongoing problem and a condition should be made that BART lowers the trains speed through the residential area.

A summary of the City Council comments is as follows: Expressed concerns with the 7a.m. start time and would rather have a longer ending time. Dialogue with BART needs to continue regarding the noise from the tracks. Noted that a variance should not be given to BART, as the starting and ending time impacts a residential area.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Thomsen to direct staff to retain existing noise start and end times regarding the BART project.

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

NOES: None ABSENT: Council Member Atkinson

Motion carried and so ordered.

8-2. Increase in Sewer Service Charge

(File #1030-20)

The Public Works Manager reported that the Bay Area Clean Water Agencies (BACWA), which is a Joint Powers Authority comprised of wastewater treatment and

8-2. Increase in Sewer Service Charge

collection agencies, and the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) worked together to produce a guide for developing and implementing a Sanitary Sewer System Management Plan (SSMP). As a result of this, the Regional Water Board issued new requirements for public sanitary sewer collection system agencies to develop and implement a SSMP in three phases over a three-year period.

During the same time, the State Water Resources Control Board (State Water Board) determined there is a need to adopt statewide regulations for collection systems in California to provide statewide consistency. An order was adopted that requires the development and implementation of a SSMP by all public sewer collection system agencies in California in several phases within 51 months of the adoption of the order.

It is being recommended to increase the sewer service charge by up to two dollars per month plus the previously authorized CPI adjustment in each of the next successive five years and then by the CPI through FY 2016/17.

The Public Works Manager noted that in order to increase the sewer service charge a Public Notice must be sent to the record owner of each affected property. The notice must indicate the amount, basis, reason and time of hearing. Within 45 days of mailing the notice, the City Council may then hold a public hearing to consider whether an increase is appropriate. Written protests from a majority of property owners will prevent imposition of the fee or charge.

Staff is recommending that the public hearing be held on July 19, 2010 at which time public comment would be invited and report on comments oral and written protests will given by staff.

The estimated cost to mail the notice to each property owner and conduct the public hearing is approximately \$8,000.

The Public Works Manager stated that if the proposed increase is not implemented the proposed sewer spot repair and capital replacement programs will have to be reduced to meet the funds available. This would increase the probabilities that Sanitary Sewer Overflow will occur and expose the City to unknown costs relating to the response, cleanup and administrative penalties.

The City Attorney noted that the EPA has filed a lawsuit and additional demands would be put on cities after 2012/13. All communities would have to comply with court and administrative orders and that this is an unavoidable issue.

Mayor Wile asked if anyone would like to speak and the following people spoke: Preston Jordan, Albany resident. Caryl O'Keefe, Albany resident.

A summary of the comments is as follows: Suggested that the Council look at an exemption to be in place for low income families. Agreed with previous speaker and would like seniors added to the exemption. Also don't believe there is any other choice and maybe the City should ask for additional increase to get ahead. The City Engineer stated that he would have to check to see whether low income/senior exemptions would be allowed.

A summary of the City Council comments is as follows: Agreed that the City has no choice but to increase the fee and noted that there are definitely challenges to be faced.

8-2. Increase in Sewer Service Charge

Believe that this is the most reasonable approach, however, expressed concern that the seniors and low income people may not be able to afford this.

Council Member Lieber presented Resolution No. 2010-23 – A Resolution of the Albany City Council Declaring the Intention to Authorize an Increase in the Sewer Service Charge by Up to Two Dollars per Month Plus the Previously Authorized CPI Adjustment in Each o the Next Successive Five Years and Then by the Consumer Price Index (CPI) through FY 2016/17.

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Lieber and seconded by Council Member Javandel to approve Resolution No. 2010-23.

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

NOES: None

ABSENT: Council Member Atkinson

Motion carried and so ordered.

8-3. Ballot Measures

(File #630-30)

a. Amendment to Measure N of 2000 – Paramedic Engines.

The Fire Chief stated that before his presentation on Measure N he would like to acknowledge the work of Battalion Chief, Brian Crudo, who put on the H1N1 clinic with the County Health Department. The Fire Chief noted that the Battalion Chief came into his office yesterday with a check in the amount of \$23,700 for reimbursement for the H1N1 clinic.

The Fire Chief reported that in 2000, 78.1% of the voters approved upgrading the current Basic Life Support (BLS) fire engines to Advanced Life Support (ALS) paramedic engines. This measure currently staffs at least one paramedic on each of the two fire department engines during all shifts at a fixed cost of \$18 per parcel per year. Additionally, Measure N currently provides annual monies to periodically purchase new ambulances, monthly continuing education training and paramedic equipment.

Beginning in FY 2010/11 the paramedic engine program would be operating in a deficit. Therefore, staff is recommending an amendment to Measure N in November by asking Albany voters to approve an annual Consumer Price Index (CPI) increase, not to exceed 5%. CPI increases have averaged an approximate 2% annually over the past six years. If this measure is approved, the percentage increases would mirror the existing EMS ambulance assessment increases. This proposed increase would fund a paramedic engine reserve fund and cover additional operating costs incurred by the dramatic increase in the number of annual engine responses.

Mayor Wile asked if anyone would like to speak. No one came forward.

A summary of the City Council comments is as follows: Questioned the logic of putting the 5% cap in the measure noting that some people may vote no believing the increase is 5%. The City Administrator suggested that no cap be mentioned and just have

8-3. Ballot Measures

language regarding the CPI. Noted that the ALS service is excellent and saves many lives and definitely supports this measure and will get out during the election to try and get it passed.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Javandel direct staff to prepare an ordinance and ballot language to be put on the November 2, 2010 ballot to amend Measure N of 2000, Advanced Life Support (ALS) paramedic engines.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Atkinson

Motion carried and so ordered.

b. Utility Users Tax.

The City Attorney reported that in 1995, the Council adopted a telephone, gas and electric user's tax that is codified in Section 4-4 of the Municipal Code and under this Ordinance a 7 percent tax is levied on charges for these services.

Since that time, there have been changes in the technology and regulatory landscapes that affect primarily the telecommunication component of the Utility User Tax (UUT) ordinances.

It is staff's recommendation that the City obtain voter approval of its UUT ordinance and modernizing the language to more closely reflect current conditions. Features of a modern communications tax ordinance include updated definitions, technology-neutral language so that users and service suppliers are treated equally and address potential litigation and technology risks. As people use more wireless communications, it becomes increasingly important to have an ordinance that can accommodate the changing technology in order to retain the City's revenue base.

The City Administrator stated that some cities are reducing their UUT tax to encourage the voters to approve passage of the measure. Albany's current tax is 7% and the question is whether to retain the current rate or to reduce the rate. If the rate is reduced, staff would recommend it go to 6.5%.

Mayor Wile asked if anyone would like to speak and the following person spoke: Preston Jordan, Albany resident. A summary of the comments is as follows: Spoke about the Climate Action Plan and suggested a wider spectrum of options be used, such as encouraging people to use less gas and electric.

A summary of the City Council comments is as follows: Support the measure and would like to go with a slightly reduced tax. Noted that a lot of education is going to be needed so that the voters understand the measure. Asked that staff make sure with the clean up language that the measure captures everything.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Lieber to direct staff to prepare an ordinance and ballot language to be put on the November 2, 2010 ballot to update the City's Utility Users Tax and to bring back the gas and electric section.

8-3. Ballot Measures**VOTE ON THE MOTION:**

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

NOES: None

ABSENT: None

Motion carried and so ordered.

c. Medical Marijuana

The City Administrator reported that in 1996, California voters approved Proposition 215, which allows people to use marijuana under certain circumstances for medical reasons. In 2006, 54% of Albany voters supported an advisory ballot measure to allow a medical marijuana dispensary to be located in Albany. An Ordinance was approved allowing one dispensary in Albany, subject to restrictions on physical location, approval of a use permit and other regulations. No dispensary has been located to date in Albany, although there has been interest from dispensary operators.

The City of Oakland in 2009 became the first city where voters chose to levy a tax on medical marijuana dispensaries. The tax approved was a 1.8 percent tax on the gross receipts of licensed dispensaries. The City of Berkeley is considering placing a cannabis business license tax on the November, 2010 ballot along the lines of the Oakland tax.

The City Administrator stated while Albany does not currently have a medical marijuana dispensary, there is the potential for one to locate to the City. By establishing the tax before one opens, it allows a potential operator to account for the tax in his/her business plan. One of the principles behind business license taxation is a recognition that business activity relies on City services to operate and therefore should share, along with property owners and residents, in funding the cost of those services.

Based on the gross receipts of the dispensaries in Oakland and Berkeley, tax revenue could be up to approximately \$100,000 on a for-profit business or \$20,000 for a 2,000 square foot non-profit dispensary using the draft Berkeley language.

If the ballot measure is not passed, a dispensary would likely fall under the general provisions of the business license and would currently be taxed at the rate of \$239 as a base and \$49 per employee, subject to annual cost of living adjustments.

Mayor Wile asked if anyone would like to speak. No one came forward.

A summary of the City Council comments is as follows: Support this measure and believe that this type of business should be paying their fair share. Like the idea of having a level playing field and agree this should be established before a business comes into the City.

MOTION:

Moved by Council Member Javandel, seconded by Council Member Lieber to direct staff to prepare an ordinance and ballot language to be put on the November 2, 2010 ballot to establish a business license tax for cannabis businesses.

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

The following announcements were made: 1) Attended the State budget forum at Albany High School, Little Theatre, which was well attended and the citizens passed tax measures to support children, families and health care. 2) Albany hosted the Alameda County Mayor's Conference and recognized the speakers from Albany High School and MacGregor School's Culinary Department.

10. ADJOURNMENT

9:30 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.

Joanne Wile
Mayor

Attest:

Jacqueline L. Bucholz, CMC
City Clerk