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**MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION,
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
MONDAY, JANUARY 10, 2011**

7:30 p.m.

Mayor Javandel called the regular meeting of the Albany City Council to order on the above date and led the Pledge of Allegiance to the Flag,

ROLL CALL

Present: Council Members Atkinson, Lieber, Thomsen, Wile & Mayor Javandel
Absent: None

STAFF PRESENT

Beth Pollard, City Manager; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Jeff Bond, Planning Manager; Marc McGinn, Fire Chief; Mike McQuiston, Police 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, December 6, 2010.

Staff recommendation: Approve

4-2. a. Ratification of City of Albany net payroll in the amount of \$189,331.19; taxes, benefits & withholdings in the amount of \$248,575.97. Total payroll in the amount of \$437,907.16. Payroll period: 12/17/10; \$207,112.68; taxes, benefits &

4. CONSENT CALENDAR

withholdings in the amount of \$156,236.44. Total payroll in the amount of \$363,349.12. Period: 12/31/10.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$49,580.07; taxes, benefits & withholdings in the amount of \$60,695.92. Total payroll in the amount of \$110,275.99. Payroll period: 12/17/10. 58,216.05; taxes, benefits & withholdings in the amount of \$40,045.51. Total payroll in the amount of \$98,261.56.

Staff recommendation: Ratify.

4-3. Ratification of bills, claims and demands against the City of Albany in the amount of \$604.70. Period: 11/22/10; \$288,813.20. Period: 11/24/10. \$35,436.55. Period: 12/01/10. \$211,035.03. Period: 12/10/10. JPA: \$1,037.80. Period: 12/10/10.

4-4. a. Mayor Javandel appointments: Peter Goodman & Susan Adame, Arts Committee; Jeri Holan, Charter Review; Steven Schwartzberg, Civil Service; Clay Larson, Community Media Access; Linda Yamamoto, Library; Judy Kerr, Social & Economic Justice Commission; Janet Smith-Heimer, Sustainability; Lubov Mazur, Traffic & Safety; Brian Parsley, Waterfront.

b. Council Member Thomsen appointments: Peggy McQuaid, Arts Committee; Caryl O’Keefe, Charter Review; Jack Rosano, Civil Service; Naomi Sigal, Community Media Access; Sarah Whitmer, Library; Gary Class, Parks & Recreation; Del Price, Sustainability; Ruth Ganong, SEJC; Ray Anderson, Traffic & Safety; Francesco Papalia, Waterfront.

c. Council Member Lieber appointing Eddy So , Parks & Recreation Commission.

d. Council Member Atkinson appointments: Sheryl Black, Arts Committee; John Bailes, Charter Review; Kaz Mori, Civil Service; Ellen Toomey, Community Media Access; Rosalie Gonzales, Library; Steve Granholm, Waterfront.

Staff recommendation: Information.

4-5. Ratification of Planning & Zoning Commissioners:

a. Mayor Javandel, David Arkin.

b. Council Member Thomsen, Phil Moss.

Staff recommendation: Ratify.

4-6. Modification of inter-fund transfer schedule for 2009/10.

Staff recommendation: Approve the updated schedule of inter-fund transfers.

- 4-7.** Resolution No. 2011-1 – A Resolution of the Albany City Council Authorizing the City of Albany Fire Department to Contract with Fire Recovery USA for the Collections of Fire Engine Response Fees.

Staff recommendation: Approve.

- 4-8.** Ratification of pension payments in the amount of \$116,601.51 for the month of December, 2010.

Staff recommendation: Ratify.

Mayor Javandel asked if anyone would like to remove an item from the Consent Calendar. The following item was removed for discussion: Item 4-7.

4-7. Resolution No. 2011-1

Council Member Atkinson asked the Fire Chief to explain this Resolution and to also inform the Council of other cities that have joined with Albany regarding the use of photosensitive alarms.

The Fire Chief responded that the proposed Company is a California based company that has a very good reputation throughout the State with many other California cities using them.

The Fire Chief stated that currently Palo Alto and the City of Orange are on board regarding photosensitive alarms.

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

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 three (3) 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.

The following people spoke: Joan Larson, Albany resident; Brian Parsley, Albany resident.

A summary of the comments is as follows: The following Announcements were made: 1) That long time Albany resident and owner of Granny's Attic, Jean DeJong, passed away and asked that the meeting be adjourned in her memory. 2) That the Historical Society would be showing a video of the Storytelling that was held last year on Saturday, January 22, 9:30 to Noon at the Edith Stone Room. 3) On Saturday, February 12, 7:30-10:30 the Education and Community Foundation would having the annual Chocolate and Champaign Gala, at Northbrae Church.

The City Manager asked that people be aware of the Fire Code for the Council Chamber and to keep the aisles clear and that there are seats in the lobby and the conference room with a T.V.

It was announced today by the Governor that he would be eliminating all Redevelopment Agencies, which would mean approximately \$400,000 would be taken away from the City.

6. PRESENTATION/PUBLIC HEARING

6-1. American Red Cross Proclamation

Mayor Javandel read a Proclamation announcing that January is Blood Donor Month and presented it to Linda Evansoll, American Red Cross.

Ms. Evansoll noted that Albany has been a good City that has donated 300 units of blood, which saved many lives and announced a blood drive on January 17th. Mayor Javandel stated that donating blood is very easy and noted that he donates as often as he could and also noted that the Fire Department employees also donate blood often.

6-2. Appeal of Medical Marijuana Dispensary at 1019 Solano Avenue.

Mayor Javandel announced that the City had received numerous e-mails regarding this appeal, which are on file with the City Clerk.

The City Attorney noted that the Council tonight would either make a decision to uphold the decision of the Planning & Zoning Commission or reverse that decision. If the decision is to reverse the action of the Planning & Zoning Commission, staff would come back with Findings at the next meeting.

Council Member Lieber noted that both he and Mayor Javandel do not have a conflict as he lives 800' away from the proposed property and Mayor Javandel lives 1200' away.

The Planning Manager noted that on October 12, 2010, the Planning & Zoning Commission held a public hearing on the application of Erik & Bret Van Den Akker. After hearing public testimony, the Commission voted 3-0 to deny the application based on the YMCA at 921 Kains Avenue being a youth-oriented facility and the number of children that walk by the proposed dispensary on their way to and from school.

Mayor Javandel opened the public hearing and stated that he would like the audience to adhere to the rules of no clapping or booing when people speak. Mayor Javandel noted that the applicants would speak first, then the representatives from the neighborhood group and the time limit would be 10 minutes for each presentation. The speakers would be allowed 2 minutes to speak.

Mr. Van Den Akker stated that the reason for denial that the YMCA was too close to the building does not satisfy the legal requirement and noted that 65% of people attending the YMCA are adults and many youth services are offered offsite.

Mr. Van Den Akker handed in videos that were taken and show only 10 children walking by the proposed marijuana dispensary and also handed to the Council (5 copies) a bound book with additional information. No extra copies were provided for staff or the public.

Mr. Van Den Akker disagreed with the Police Chief's comments on safety and requested a delay on any action tonight until all information has been digested.

Chris Baynon, representing the neighborhood, stated that the neighborhood is adamantly opposed to this application noting that it does not comply with the Zoning Ordinance and is in violation of being too close to the YMCA. It is incompatible land use and detrimental to the neighborhood and has the potential to bring serious crime to

6-2. Appeal of Medical Marijuana Dispensary at 1019 Solano Avenue.

the neighborhood. It was noted that the marijuana dispensaries in Berkeley are on San Pablo Avenue and Telegraph Avenue, not in a residential neighborhood.

The following people spoke and unfortunately many names were not recorded, as the Clerk didn't hear the name. Fifty people spoke on this issue: Brooks Weitzman, Albany resident; Miya, Albany resident; Speaker; Chris Carter, Albany resident; Peter Schakow, Albany resident; Meghan Beynon, Albany resident; Stephanie Sala, Albany resident; Dan Driscoll, Albany resident; Speaker, realtor; Karen Erlich; Ed Fields, Albany resident; Melana, Albany resident; Speaker, Albany resident; Speaker; Speaker, child, Albany resident; Speaker; Karen Holtzmeiser, Albany resident; Paul Cruz, Albany resident; Liz Elliott, Albany resident; Speaker, child; Peggy McQuaid, Albany resident; Brian Parsley, Albany resident; John Cooly, architect for project; Speaker, Albany resident; Speaker, Albany resident; Megan Etheridge, Albany resident; Susan Wallace; Gary Class, Albany resident; Speaker, Albany resident; Robert Marshall, Albany resident; Kristina Osborn, Albany resident. Ebba DelaRosa; Ulum McKnight, Albany resident; Alene Pearson; Deborah Small, Albany resident; Pete Lauer, Albany resident; Greg Holtz, Albany resident; Angel Chen, Albany resident; John, Albany resident; Clay Larson, Albany resident; Mara Duncan, Albany resident; Speaker, Albany resident; Arden Smith, Albany resident; Speaker, Albany resident; Speaker, Albany resident; Marcy Lauer, Albany resident; Fidel, Americans for Safe Access; Matthew Kumin, Attorney representing appellant; Jody Hoffman; J. Michael Tucker, Albany resident;

A summary of the comments is as follows: Expressed concern about children having to walk past the dispensary and property values being lowered. Spoke in favor of the dispensary and noted that the establishment would provide security; opposed to having the dispensary in this location. Spoke about the YMCA and programs it provides for children being close to the dispensary. It was noted that this type of business should not be in a residential area. Spoke in favor of dispensary and noted that the applicants are people of integrity. Spoke about the City's Zoning Ordinance and that the application does not meet the requirements. Disagreed with the applicant stating only 10 children walk by the building and noted a lot depends on weather and time of year. Spoke about research and the use of drugs. It was asked that the location be looked at in the Eastshore Highway area for this type of business. It was noted that the City should be looking for real business not one that sells drugs. It was suggested that the City put a moratorium on marijuana dispensaries so the City could review its Zoning Ordinance and that a task force be formed. It was noted that the current Zoning Ordinance is poorly crafted and extremely vague and that the City should slow down and take a real look at the Ordinance and agreed with the suggestion of a task force. Spoke about the applicant and how dedicated they are and the investment has been made to have security at the premise. It was noted that the applicants are not trustworthy and have given false facts. It was asked how the loitering issue would be handled. Spoke about marijuana and studies that reflect it does change the brain. Spoke about civil right issues and noted that the applicants would litigate this issue if they have to but would prefer to work with the City.

6-2. Appeal of Medical Marijuana Dispensary at 1019 Solano Avenue.

10:05 p.m. – Council recessed

10:11 p.m. - Council reconvened

Mayor Javandel stated that the applicant could make closing comments. Mr. Van Den Akker reiterated that the YMCA is primarily an adult facility and that marijuana dispensaries are safer than banks due to the security that is posted at the location.

Mayor Javandel closed the public hearing.

The City Attorney recommended that Council refer this matter to another meeting for a decision so that they can look at the binder that was distributed by the applicant to them and also so that the public has a chance to review this material.

The City Council disclosed for the record that they had been contacted by the Director of the YMCA regarding this application.

A summary of the Council comments is as follows: It was noted that this is a difficult situation and believe that people have the right to receive compassionate care; however, at this time would uphold the decision of the Planning & Zoning Commission. Thanked everyone that came tonight and spoke and/or sent e-mails. Would like to see the applicant do more work to make sure they are meeting definition of cooperation and are disappointed that the applicants are not working with the City to look for a better location.

The Chief of Police expressed concern about weapons on site and noted that the Ordinance prohibits firearms and stated that examples do exist regarding crime concerns and safety issues.

MOTION:

It was moved by Council Member Thomsen, seconded by Council Member Wile to continue this matter to the meeting of January 18, 2011.

ON THE QUESTION:

It was noted that the public hearing has been closed and that no additional public testimony would be heard.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

8. NEW BUSINESS

8-1. City Council Appointments to Regional and Local Bodies

Council discussed the various appointments and noted which one they would like to change.

MOTION:

It was moved by Council Member Atkinson, seconded by Council Member Thomsen to approve the following changes: JPA Sports Authority, Thomsen with Lieber, as the alternate. Water Transit Authority, Lieber with Thomsen, as the alternate. Climate Control Commission, Javandel with Lieber, as the alternate. Prevention

8-1. City Council Appointments to Regional and Local Bodies

Council, Thomsen with Akinson, as the alternate. Pension Board, Javandel with Wile, as the alternate.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

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

The following announcements were made: 1) January 17, Commit to Serve. 2) February 11, Codornices Creek. 3) Attended a reception at East Bay Hayward University.

10. ADJOURNMENT

10:50 p.m. – It was moved and seconded to adjourn the meeting with a moment of silence in memory of Catherine Kerr, founder of Save the Bay, the first organization devoted exclusively to protecting the San Francisco Bay, Jean DeJong, long time Albany resident and the victims of the shooting in Arizona.

Farid Javandel
Mayor

Attest:

Jacqueline Bucholz, CMC
City Clerk