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**MINUTES OF THE ALBANY CITY COUNCIL  
IN SPECIAL SESSION  
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE**

**Monday, December 13, 2010.**

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**7:00 p.m.**

**CITY COUNCIL CLOSED SESSION**

Call to order

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

Nan Wisher, Albany resident. A summary of the comments is as follows: It was noted that the staff report states the application for 1100 Eastshore is from Crown Castle and it should be Pacific Racing.

City Council convenes in the Council Chamber and then adjourns to Closed Session to discuss the following:

**CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Two cases)

Planning Application #10-027. Appeal of Planning and Zoning Commission action related to application for wireless antenna at 1100 Eastshore Highway (Golden Gate Fields). Applicant: Crown Castle for Verizon Wireless

Planning Application #09-031. City Council call for review of Planning and Zoning Commission action related to application for wireless antenna at 423 San Pablo Avenue. Applicant: Crown Castle for Verizon Wireless

**7:30 p.m.**

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

**ROLL CALL**

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

Absent: None

**STAFF PRESENT**

Beth Pollard, City Manager; Jacqueline Bucholz, City Clerk; Greg Stepanicich, Attorney; Jeff Bond, Planning Manager.

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

Attorney Stepanicich reported that no actions were taken.

**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 \$229,259.45; taxes, benefits & withholdings in the amount of \$192,425.49. Total payroll in the amount of \$421,684.94 .Payroll period: 12/3/2010.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$58,216.05; taxes, benefits & withholdings in the amount of \$44,072.30. Total payroll in the amount of \$102,288.35. Payroll period: 12/3/2010.

Staff recommendation: Ratify.

**4-2.** a. Mayor Wile appointments: Anne Goess, Arts Committee; Preston Jordan, Charter Review Committee; Karen Leeburg, Library Board; Heather Cunningham, Park & Recreation Commission; Ruth Cashmere, Social & Economic Justice Commission; Ken McCroskey Wait, Traffic & Safety Commission; Kathy Diehl, Waterfront Committee.

b. Council Member Lieber appointments: Michael Wallace, Charter Review Committee; Robert Cheasty, Civil Service Board; Jack Kenny, Community Media Access Committee; John Miki, Traffic & Safety Commission; Bill Dann, Waterfront Committee.

Staff recommendation: Information.

**4. CONSENT CALENDAR**

- 4-3.** Ratification of Planning & Zoning Commissioner: Council Member Lieber, Leo Panian; Mayor Wile, Peter Maass.

Staff recommendation: Ratify.

- 4-4.** Resolution No. 2010-64 – A Resolution of Intention to Approve Park Hours for Jewel’s Terrace Park, Ocean View Park and the Dartmouth Tot Lot.  
(File #920-10)

Staff recommendation: Approve.

- 4-5.** Buchanan/Jackson traffic signal & intersection safety improvements at Ocean View School.  
(File #590-40)

Staff recommendation: 1) Approve 100% construction plans for the Buchanan/Jackson Traffic Signal & Intersection Safety Improvements at Ocean View School. 2) Authorize the City Clerk to advertise for bids (Contract #10-22), contingent upon receipt of, and Council acceptance of, the offer of dedication and temporary construction easement (TCE) from the University of California.

Mayor Wile asked if anyone would like to remove an item and the following item was removed for discussion: Item 4-4.

**4-4. Resolution No. 2010-64.**

Council Member Atkinson removed the item with concerns regarding people using the park as a shortcut and asked whether this would be a problem with the new hours of closing. The Recreation & Community Services Director responded that the neighbors attended the meeting and agreed to the hours and noted that it would only be enforced if complaints of noise were received.

Council Member Lieber expressed concern with the hours noting he believed it was too restrictive and suggested that it be 6:30 a.m. and 9:30 p.m. The change should be for both time zones.

The City Manager suggested no action be taken tonight and that the Parks & Recreation Commission and the neighbors be informed of the possible change of time.

Council Member Thomsen suggested that this be done on a pilot basis and to come back to Council in one year to see how it is working.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Atkinson to remove Item 4-4 from the Consent Calendar with no action taken.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**4. CONSENT CALENDAR**

Preston Jordan, Albany Strollers and Rollers, asked that Item 4-5 be removed.

**4-5. Buchanan/Jackson Traffic Signal & Intersection Safety Improvements at Ocean View School**

A summary of the comments is as follows: It was noted that Strollers & Rollers have not had a chance to review the final plans and spoke about bulb outs that are extended and pose a hazard to bicyclists. It was also suggested that bulb outs be installed at Santa Fe. A request was made to approve this item tonight.

The City Manager responded that the City is against time limits regarding funding and grants and suggested that staff work with Strollers and Rollers regarding concerns.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Thomsen to approve the Consent Calendar, as submitted with the exception of Item 4-4.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**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.

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

Council comments: It was announced that Mayor Wile has been working with the School District on obtaining a grant for mental health and is pleased to announce that the Berkeley/Albany Mental Health Board has approved a grant for Albany schools.

The following people spoke: Ellie Marks; Martie Kiehl, El Cerrito resident. A summary of the comments is as follows: Spoke about cell phone use and brain tumors noting that legislation is needed to alert people to this health issue. It was suggested that Albany institute a moratorium on Smart Meters due to health concerns.

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

**6. PUBLIC HEARINGS**

Mayor Wile that the agenda order would be reversed and Item 6-2 would be heard first. Council Member Thomsen objected to this reversal. The City Manager noted that the City Attorney is out of the country and Mr. Stepanicich is filling in for him.

**6-2. Wireless Facility – 423 San Pablo Avenue – Call for Review**  
(File #450-50)

Mayor Wile announced that the applicant would be given 10 minutes to speak and then Nan Wishner, representing Albany Residents for the Responsible Oversight of Wireless (ARROW), would be given 10 minutes to speak.

The Planning Manager reported that the applicant Verizon/Crown Castle made a request to allow the removal of four existing wireless communication antenna enclosures located on an existing 65-foot high monopole and replacement with new antenna enclosures. The existing monopole is over the approved height of 48 feet. On October 14, 2010, the applicant submitted revised plans that reflect the installation of four antenna enclosures rather than six. On October 26, 2010, the Planning Commission reviewed the application. During the course of the meeting the applicant withdrew the application for the use permit. The Commission concluded that the proposal was similar to maintenance and did not require formal Commission action. The Commission referred the proposal to the staff for review as a ministerial action. .

On November 1, 2010, Council Member Atkinson made a request that the City Council review the Commission's decision, which is allowed under Section 20.100.080 of the Planning & Zoning Code.

In acting on a review, the City Council may: 1) Affirm the decision of the Planning & Zoning Commission. 2) Affirm the decision of the Planning & Zoning Commission with modifications. 3) Reverse the action of the Planning & Zoning Commission. 4) Return the matter to the Planning & Zoning Commission. 5) Take no action.

Mr. Stepanicich, Attorney for the City, noted that there is no application pending and that on this matter the Council is simply interpreting the Wireless Ordinance to determine whether the proposal qualifies as routine maintenance. If the proposal is not routine maintenance a use permit is required. Mr. Stepanicich stated the proposal appears to fall under subsection F (1) which requires a use permit. He stated that the next step would be to have the applicant file an application for a Conditional Use Permit. As a nonconforming structure, the applicant can ask for an exception to the height limit if it can show that there are no feasible alternative locations for the facility.

Mr. Parker, legal counsel for Crown Castle, noted that the City is not the original permitting agency, the California PUC was, which poses a serious question whether the City has jurisdiction over this. The basis of the appeal is not about health issues and quality of life but the replacement of four panels and no change in the visual appearance.

Mr. Parker stated that there is a conflict with the City's Ordinance and federal law and noted that LTE is a new technology affecting all wireless devices. Mr. Parker noted that if the approval is given then the maintenance would occur; however, it denied then this would be taken to federal court to be reviewed. Mr. Parker stated that Crown Castle has made an offer to clean up the appearance of the cell tower.

Ms. Nan Wishner, representing ARROW, noted that this is an upgrade and not routine maintenance and that the facility is non-conforming to Albany law and noted that if approved the City would be setting precedence on all non-conforming uses.

Ms. Wishner urged the Council to deny the request and invite the applicants to reapply in conformance with the City's Ordinance.

## **6-2. Wireless Facility – 423 San Pablo Avenue – Call for Review**

Mayor Wile opened the public hearing asked if anyone else wanted to speak at the hearing and the following people spoke: Maureen Crowley, Alban resident; Thea, Albany resident; Ed Fields, Albany resident; Berkeley resident; Julie Beck, Albany resident; Stephanie Thomas, Berkeley resident; Martie Kiehl, El Cerrito resident; Marcie, Albany resident; Ruth, Albany resident; Cherie, Albany resident.

A summary of the comments is as follows: Clarified the use of LTE noting this is not a phone service. This is a non conforming use and the burden is on Verizon to provide information that there is no other way to do this. Believe that there are other alternatives that would not violate the City's Ordinance. Expressed concern about setting precedence and is not intimidated by the threats of lawsuits. The cell tower is too close to a residential neighborhood. Urged the Council to deny the request noting this is not routine maintenance and that the City's Ordinance should be enforced.

Mr. Parker, legal counsel for Crown Castle, noted that this is not an expansion and reiterated that there is no change in the visual impact and there is no application pending. Mr. Parker noted that he was not intimidating or threatening the City and takes exception to that reference and noted that LTE benefits are immediate and will eventually come to cell phones. Mr. Parker reiterated their offer to clean up the appearance of the tower.

Mr. Greg Stepanicich, Attorney for the City, noted there is no denial being made on a pending application but that the Council is only interpreting the Municipal Code at this time. It is clear that this is an upgrade and not routine maintenance and noted the City is dealing with a non-conforming structure.

A summary of the City Council comments is as follows: It is clear that this is a non-conforming structure and the applicant is not seeking to conform to the Coder at this time and has not heard any argument, as to why the antenna must go at this location. This is an upgrade to a non-conforming pole and a Conditional Use Permit is required.

### **MOTION:**

Moved by Council Member Javandel, seconded by Council Member Thomsen that a determination is made that the proposed project is not routine maintenance but an upgrade to a nonconforming facility and return the matter to the Planning & Zoning Commission and staff for a Conditional Use Permit including a full analysis of whether alternative solutions are feasible if a new application is filed.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

## **6-1. Wireless Antenna at 1100 Eastshore Avenue**

The Planning Manager reported that the applicant is requesting approval to replace six existing cell phone antennas with nine new antennas and a microwave dish on an existing racetrack observation tower at Golden Gate Fields. The Planning Commission reviewed the application and concluded that approval of a use permit is not

**6-1. Wireless Antenna at 1100 Eastshore Avenue**

allowed under current provisions of the Planning & Zoning, as antennas are not allowed in the Waterfront zoning district.

Since the Planning Commission decision, staff has further reviewed whether the subject wireless facility is a permitted use at the racetrack. Based on this additional review as further explained in the staff report, staff believes that the Council could make an interpretation of the Zoning Ordinance and find that the existing wireless facility located at 1100 Eastshore Avenue is a permitted use. This determination would be based on the conclusion that the Wireless Ordinance did not intend to render this facility a nonconforming use. To date, the public testimony regarding this existing site is that it is an appropriate location for a wireless facility. Under this approach, staff recommends that the Council make it clear that only the wireless facility located at 1100 Eastshore Avenue is permitted in the Waterfront district. This facility is separated from any residential uses by the I\_80 Freeway and its location in a large commercial development is consistent with the purposes and intent of the Wireless Ordinance. As a permitted use, the Council could approve a conditional use permit for the upgrade to the facility.

Mr. Heard representing Verizon stated that this is an important project for Verizon and noted that LTE is the latest generation of wireless technology. Mr. Heard commented that if the application is denied that Verizon would have no choice but to take this to federal court and noted this is not a threat but giving the City the options open to Verizon.

Mayor Wile opened the public hearing and the following people spoke: Ed Fields, Albany resident; Nan Wishner, representing ARROW; Clay Larson, Albany resident; Michael Barnes, Albany resident.

A summary of the comments is as follows: Asked whether an analysis was completed on this application. Support staff recommendation and asked that conditions be added: preimposed monitoring, calculations showing RF emissions, clear signage on the tower.

Mr. Heard spoke to the conditions listed by Ms. Wishner and suggested that actual field testing be done and noted that by having a bench study that would address the issue of signage.

A summary of Council comments is as follows: It was noted that this is an upgrade to the facility but do not see a problem. It was asked that the suggestions submitted by ARROW be incorporated and that RF monitoring be done. The Planning Manager noted that the City Ordinance provides for this. Thanked the Planning Commission for a very difficult decision noting that the current Ordinance does not address the Waterfront district and agrees with staff's recommendation to consider the current wireless facility at the racetrack a permitted use.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Lieber that based upon the findings within the staff report and conditions set forth and reviewed this evening the wireless facility located at 1100 Eastshore Avenue is a permitted use in the Waterfront district at this specific location, and that a use permit be granted for the proposed modifications to the existing facility, as long as the racetrack is in use.

**6-1. Wireless Antenna at 1100 Eastshore Avenue**

**VOTE ON THE MOTION:**

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7. UNFINISHED BUSINESS**

**8. NEW BUSINESS**

**9. REORGANIZATION**

**9-1. a. Election of Mayor.**

Mayor Wile nominated Council Member Javandel as Mayor. No other nominations were submitted.

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

NOES: Council Member Lieber

ABSENT: None

Motion carried and so ordered.

**b. Election of Vice-Mayor.**

Council Member Wile nominated Council Member Atkinson, as Vice-Mayor. Mayor Javandel nominated Council Member Thomsen, as Vice-Mayor.

The following people spoke: Jackie Armstrong, Albany resident; Brian Parsley, Albany resident; Clay Larson, Albany resident; Jewel Okawachi, Albany resident; Francesco Papalia, Albany resident; Margie Marks, Albany resident; Caryl O’Keefe, Albany resident; Jim Cleveland, Albany resident; Allan Maris, Albany resident; Thelma Rubin, Albany resident; Peggy McQuaid, Albany resident; Ed Field, Albany resident.

A summary of the comments is as follows: Spoke in favor of having Council Member Thomsen, as Vice-Mayor noting that she was the highest vote getter when she was elected. It is believed this is politically motivated and that Council rotations should be considered. It was stated that the majority vote as a block and manipulate decisions. It was stated that the majority keep dividing the City. It is believed that the rotation process strengthens the Council. Asked why Mayor Javandel was not chairing this part of the agenda. It was noted that the voters reelected two members and no laws have been violated and supported the nomination of Council Member Atkinson. It was noted that all Council members get one vote and the Mayor and Vice-Mayor positions are ceremonial.

A summary of the Council comments is as follows: Spoke about the rotation and stated by his calculations he should be Vice-Mayor, as everyone else has held that position but him. It was noted that the nomination for Council Member Atkinson was made because of her work on the environment and schools.

At this time, the City Council wrote on a paper ballot whether to nominate Council Member Atkinson as Vice-Mayor. The City Clerk read the results as follows: Council Member Atkinson – yes; Council Member Lieber – yes; Council Member Wile – yes; Council Member Thomsen – no; Mayor Javandel – no.



**9. REORGANIZATION**

It was announced that Council Member Atkinson received 3 votes for her nomination as Vice-Mayor.

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

**10-1.** Council meeting schedule for January: Special meeting, Monday, January 10<sup>th</sup>; Regular meeting, Tuesday, January 18, 2011. The regular meeting of January 3<sup>rd</sup> has been cancelled.

**10-2.** Commission/Committee training: Monday, January 31, 2011, 6:30 – 8:30, Council Chamber, 1000 San Pablo Avenue, Albany.

The City Manager stated that former Mayor Wile had requested that no plaque be made for her service as Mayor; therefore, the Council and the City would like to present her with a blueberry plant.

Mayor Javandel thanked former Mayor Wile for her work and noted it has been a privilege to work with her and presented the plant on behalf of the City and Council.

**11. ADJOURNMENT**

10:10 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

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Farid Javandel  
Mayor

Attest:

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Jacqueline L. Bucholz, CMC  
City Clerk