

Date Approved: May 16, 2011

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 2, 2011**

---

**7:00 p.m.**

**CLOSED SESSION**

Call to order.

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

The following people spoke: Marcie Lauer, Albany resident; Chris Beynor, Albany resident; Don Driscoll, Albany resident; Kristine Osborne, Albany resident; Ms. Pearson, Albany resident. Brian Parsely, Albany resident.

A summary of the comments is as follows: Expressed concern that a lawsuit had been filed but urged the Council to stand by their original decision and not make any concessions. Asked the Council for guidance on what they need from the residents of the City. Urged the Council to place a moratorium on marijuana dispensaries and take that time to rework the Ordinance.

City Council convenes in the Council Chamber and then adjourns to Closed Session to discuss the following: Conference with Legal Counsel, Tom Brown and City Attorney, pursuant to Government Code Section 549569 (Subdivision (a) of Section 549569)

Vitalgen Cooperative, Inc. Brett Van Den Akker and Erik Van Den Akker vs. City of Albany, Case #RG11571558 & Case #11571312

**7:30 p.m.**

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

**ROLL CALL**

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

\*Also sitting as the Municipal Services Authority JPA Board of Directors.

**STAFF PRESENT**

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Randy Leptien, Contract City Engineer; Kim Denton, City Treasurer; Aaron Walker, Human Resource Manager.

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

The City Attorney reported that Council met with Attorney Tom Brown and the City Attorney to discuss the litigation that was received regarding the location of the marijuana dispensary. Staff was authorized to proceed defending the City's decision.

**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, April 4, 2011.**

Staff recommendation: Approve

- 4-2.** a. Ratification of City of Albany net payroll in the amount of \$200,299.85; taxes, benefits & withholdings in the amount of \$157,297.33. Total payroll in the amount of \$357,597.18. Payroll period:  
b. Ratification of City of Albany net payroll in the amount of \$186,557.16; & withholdings in the amount of \$251,993.98. Payroll period: 04/22/11.  
c. Ratification of Albany Municipal Services JPA net payroll in the amount of \$52,049.39; taxes, benefits & withholdings in the amount of \$39,623.58. Total payroll in the amount of \$91,672.97. Payroll period: 04/08/11.  
d. Ratification of Albany Municipal Services JPA net payroll in the amount of \$50,005.91; taxes, benefits & withholdings in the amount of \$59,942.04. Total payroll in the amount of \$109,947.95. Payroll period: 04/22/11.

Staff recommendation: Ratify.

- 4-3.** a. Ratification of bills, claims and demands against the City of Albany in the amount of \$32,339.02, Period: 03/22/11; \$20,318.13, Period: 04/01/11; \$417,944.97, Period: 04/01/11.  
b. Ratification of bills, claims and demands against the Joint Powers

Authority in the amount of \$4,979.81, Period: 04/01/11; \$609,666.13,  
Period: 04/15/11.  
(File #300-40)

Staff recommendation: Ratify.

- 4-4.** Agreement with URS Corporation to provide an engineering study for the replacement of existing sanitary sewer and storm drain pipe on Peralta Avenue.  
(File #600-30)

Staff recommendation: Authorize the City Manager to enter into an to exceed \$29,640 with URS Corporation to prepare a study outlining alternatives for the replacement of the storm drain pipe located between 1004 and 1006 Peralta Avenue and a conflicting sanitary sewer in Peralta fronting these two residences.

- 4-5.** Resolution No. 2011-21 – A Resolution of the Albany City Council Authorizing City Staff to Submit and Implement the Program Plan Application for the City of Albany Para transit Program for Fiscal Year 2011-12.  
(File #1060-95)

Staff recommendation: Approve Resolution No. 2011-12.

- 4-6.** Pierce Street Rehabilitation and Segment I Bikeway Project.  
(File #600-30)

Staff recommendation: 1) Authorize the City Manager to Award the Bid to the lowest responsible bidder. 2) Approve the contract for construction management services with: Kimley-Horn Associates in the amount of \$95,295; Gale Rossi in the amount of \$43,750; Jacobs Engineering in the amount of \$43,500.

- 4-7.** Appointment of City Clerk.  
(File #700-700)

Staff recommendation: Appoint Judy Lieberman, Assistant City Manager.

- 4-8.** Ratification of Police & Fire Pension payments in the amount of \$115,373.43 for the month of April, 2011.

Staff recommendation: Ratify.

Mayor Javandel asked if anyone would like to remove an item for discussion and Council Member Lieber removed Item 4-1.

**4-1. Minutes**

Council Member Lieber asked for the following language to be included in the minutes: Good of the City – Page 3: A question was asked about the difference in tonnage when the pickup is City wide versus an individual call to Waste Management for pickup. Announcements - Page 7: Requested that when an individual Council Member requests a future agenda item that their name is included in the minutes: Added Council Member Lieber's name before the Code amendment and Council Member Atkinson's name before the single payer item.

**MOTION:**

Moved by Council Member Wile, seconded by Council Member Thomsen to approve the Consent Calendar, as submitted with the correction to the minutes.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Thomsen requested that the previous motion be withdrawn, as she needs to recuse herself on Item 4-6.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Thomsen to withdraw previous motion.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**MOTION:**

Moved by Council Member Wile, seconded by Council Member Atkinson to approve the Consent Calendar noting that Council Member Thomsen left the Chamber.

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

NOES: None

ABSENT: None

RECUSED: Council Member Thomsen.

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.

The following people spoke: Francesca Papalia, Albany resident; Susan Schwartz, Friends of Five Creeks; Dave Reid, Friends of Five Creeks; Brian Parsley, Albany resident; Jack Kenny, Community Media Access Committee; Ray Anderson, Albany resident.

A summary of the comments is as follows: Spoke about Memorial Day and the 10<sup>th</sup> anniversary of 9-11 and requested that the Council do something special either on Memorial Day or the 9-11 anniversary. Also mentioned was the news that the Navy Seals had killed Osama Bin Laden. Council Member Lieber noted how proud he was of the President and the special units and noted this is a sign of change that the Country does not need a big military but need police for the world. It was announced by the President

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

of Five Creeks the work the group has accomplished over the last year. Spoke about volunteers and the ability to engage residents of the City. Expressed concern that the City Council still has better health benefits than the employees and believe the time has come for them to look in the mirror. Announced the first Albany Film Festival to be held on Saturday, May 21<sup>st</sup> 12-9 p.m. Community Center and it was noted that over 60 films have been submitted. There will also be a gala the night before on Friday, May 20<sup>th</sup>, 7-8:30 p.m. Announced the closing of the Albany Chamber of Commerce storefront on Solano Avenue noting they have been there for 50 years. It was noted that the West County Times did an article on a local business in Albany. It was announced that longtime Albany resident, Marjorie Keck, will be celebrating her 90<sup>th</sup> Birthday.

A summary of City Council comments is as follow: The following announcements were made: 1) Council Member Wile announced she had met with U.C. representatives on the Whole Earth Food project at Monroe and San Pablo Avenue; 2) a demonstration on Solano Avenue will be held on Wednesday, 3:50 p.m., in support of the schools and urged people to wear red that day. It was noted that this is Teacher Appreciation month and Mayor Javandel donated his City paycheck to that. 3) Bike to Work Day, May 12<sup>th</sup> and urged people to participate and noted that there would be an energizer station at Marin/Masonic.

## 6. PRESENTATION/PUBLIC HEARING

### 6-1. Presentation of Proclamations:

Mayor Javandel noted that he would read the proclamations to Juliet Chiarella and Jennifer Smith for their special contribution to the Connect Academy at Albany High School. It was noted that both could not be present to accept the proclamations, however, Council Member Wile would accept on their behalf.

### 6-1. Thanking Jacqueline Bucholz, City Clerk for Thirty-Six Years of Service to the City

Resolution No. 2011-13 – A Resolution of the Albany City Council Thanking Jacqueline Bucholz for Her Thirty-Six Years of Service to the City. Mayor Javandel read the Resolution in its entirety and presented it to Jacqueline Bucholz, City Clerk. The City Council made individual comments and thanks to the City Clerk for her years of service.

The City Clerk thanked the Council for their kind words and noted what an honor it has been to be Albany's City Clerk for the past 36 years.

After checking the video, the Resolution was not approved by the City Council; therefore, it will go back on Consent Calendar at the May 16, 2011 meeting for approval.

### 6-3. Albany's Community Branding Project.

(File #470-75)

Mr. Tripp Muldrow of Arnett Muldrew & Associates introduced himself and noted that he has met with City staff and took a tour of the City and also had the first

meeting with community members today. They also had held a work shop before the City Council. All of this is part of developing Albany branding images and materials that can be used for economic development, signage, etc. Mr. Muldrow noted that there would be other workshops between May 2 and May 4 and the Reveal Presentation on Wednesday, May 4, 1-3 p.m. in the Council Chamber.

## **7. UNFINISHED BUSINESS**

### **7-1. Contract for Services for Albany Hill Creekside Master Plan Update (File #600-30)**

The Recreation & Community Services Director reported that the Albany Hill Master Plan was developed 20 years ago and staff is recommending an update to at least portions of the plan to better direct staff in prioritizing resources.

The City Council approved up to \$50,000 to update the Plan from the Landscape & Lighting District Measure R funds so that a consultant(s) could be hired to work with the community, the Parks & Recreation Commission and staff to update the Albany Hill Creekside Master Plan.

The Parks & Recreation Commission at its meeting of March, 2011, reviewed and edited the Request for Proposals to solicit consultants to assist in developing and writing the vegetation and management portion of the updated Plan. After a review, it is recommended that Cheryl Miller and Associates be hired. The consultant's proposal is for \$49,950, which includes a \$2,250 contingency.

Mayor Javandel asked if anyone would like to speak on this item: Gary Class, Chair Parks & Recreation Commission; Susan Schwartz, President, Five Creeks; Dave Ried, Five Creeks.

A summary of the comments is as follows: It was stated that it is very important to provide additional data that is critical for this area. It was also noted that the Parks & Recreation Commission have spent a lot of time on this item and have taken it very seriously. Believe that money is being spent heedlessly and it is a waste when the \$50,000 could be put to a better use and urged Council not to authorize the contract.

A summary City Council comments is as follows: Felt that the \$50,000 could be used in a different way without spending it on consultants. Expressed concern about the need to incorporate integrated pest management, and setting aside for the consultant and then not having money to implement. It was asked whether the property owners on the Hill are responsible for maintaining fire conditions on their lots. Noted that it is important to make informed decisions and additional information will give the Council the capability to do that. It was recommended that another work session with the Parks & Recreation Commission and the public be scheduled.

### **MOTION:**

It was moved by Council Member Lieber, seconded by Council Member Wile to approve up to \$50,000 using Measure R funds so that a consultant could be hired to work with the community, Parks & Recreation Commission and staff to update the Albany Hill Creekside Master Plan.

**7-1. Contract for Services for Albany Hill Creekside Master Plan Update**

**AMENDED MOTION:**

It was moved by Council Member Thomsen to amend the motion to include a work session with the Parks & Recreation Commission before moving forward.

**WITHDREW ORIGINAL MOTION:**

Council Member Lieber withdrew original motion, second agreed.

**MOTION:**

It was moved by Council Member Lieber, seconded by Council Member Atkinson to schedule a work session with the Parks & Recreation Commission, the public and staff prior to the regular Council meeting and then at the regular Council meeting vote on the recommendations.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-2. 100% Workplace Smoke Free Resolution**

(File #560-90)

Mayor Javandel stated that with the help of Council Member Lieber he is bringing that back to Council for action noting that a Whereas Clause has been added that supports SB575.

Council Member Lieber asked that once the Resolution has been adopted that it be sent to the Albany representatives on the Senate and Assembly and also to the Governor and the author of SB575.

Council Member Wile presented Resolution No. 2011-15 – A Resolution of the Albany City Council Supporting 100% Smoke-Free Indoor Workplaces in California.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Wile and seconded by Council Member Lieber to approve Resolution No. 2011-15.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-3. Associated Community Action Program.**

(File #600-40)

The City Manager reported that the purpose of this item tonight is to recommend an additional contribution to fund the wind-down of the Associated Community Action Program (ACAP). It is being recommended that an additional contribution of \$121,539 be authorized.

The status of the wind-down was discussed with the ACAP Board and the Alameda County City Managers Association. The ACAP Board provided direction to the Management Partners to proceed with the wind-down plan.

### 7-3. Associated Community Action Program.

A summary of the City Council comments is as follows: It was suggested that the City receive more detailed reports from the Interim Director. It was noted that Albany is one of the smaller cities in the JPA and have not received the benefits from ACAP but now a big drain is being put on the City budget. It was discussed in length whether the City could legally not pay as much as the bigger cities but rather a proportionate amount. The City Attorney stated the City signed an agreement and unless it is litigation he doubted that there would be support for this. It was noted that the County loaned a payment to ACAP and believe the cities should not have to pay for that.

The City Manager suggested that the Council authorize \$75,385 and after additional information is provided then the rest of the money could be appropriated.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Atkinson to approve the payment of \$75,385, and before any other funds are appropriated, that an itemized statement is provided to the City.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

### 7-4. Amendment to the PERS Contract

(File #720-60)

The Human Resources Manager reported that as part of the negotiations with the Albany Police Officer's Association that they would start cost sharing of the PERS costs effective on or after June 27, 2011. The police employees will begin to pay 9% of wages towards the employer contribution to PERS.

Before Council is the Resolution and Ordinance that is required to be approved with PERS for the cost sharing to take place.

Council Member Thomsen presented Resolution No. 2011-22 – A Resolution of Intention to Approve an Amendment to the Contract between the City of Albany and the Board of Administration of the California Public Employees' Retirement System.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Thomsen and seconded by Council Member Wile to approve Resolution No. 2011-22.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

Council Member Thomsen introduced Ordinance No. 2011-02 for First Reading – An Ordinance of the Albany City Council Authorizing an Amendment to the Contract



**7-4. Amendment to the PERS Contract**

Between the City of Albany and the Board of Administration of the California Public Employees' Retirement System. (The final Resolution and Ordinance will be on the June 6, 2011 agenda).

**MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Thomsen and seconded by Council Member Wile to approve for First Reading Ordinance No. 2011-02.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**b. Tax Deferred Member Paid Contribution to PERS**

(File #720-60)

The Human Resources Manager noted that this is a companion Resolution, which allows the City under the IRS Code, Section 414(h)(2) to designate employee contributions to the California Public Employees' Retirement System (PERS) as being treated as employer contributions for tax purposes.

During the recent negotiations with the Albany Police Officer's Association, the City agreed to have employees make the PERS contributions on a pre-tax basis.

Council Member Atkinson presented Resolution No. 2011-23 – A Resolution of the Albany City Council Approving Tax Defer Member Paid Contributions – Internal Revenue Code Section 414(h)(2) Employer Pickup.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Atkinson and seconded by Council Member Lieber.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**8. NEW BUSINESS****8-1. Report from Mayor Javandel, as Appointee to the Alameda County Transportation Commission.**

Mayor Javandel reported that as the City's appointee to the Alameda County Transportation Commission he would like to give a report. Mayor Javandel noted that the Congestion Management Agency merged with ACTIA and ACTA and formed the Alameda County Transportation Commission.

Mayor Javandel noted that the funding is based on a per capita basis and spoke about the various committees within the Commission and noted that the delivery of capital projects has been successful.

**8-1. Report from Mayor Javandel, as Appointee to the Alameda County Transportation Commission.**

Council Member Lieber congratulated the Mayor, as being the first one to represent the City on this County Commission.

No action required information only.

**JPA Business**

**1. NEW BUSINESS**

**1-1. Tax Deferred Member Paid Contributions to PERS**  
(File #760-60)

The Human Resources Manager reported that this is the same action, as the previous item but applying to the JPA employees.

Authority Member Thomsen presented Resolution No. JPA2011-3 – A Resolution of the Albany Municipal Services Authority to Tax Defer Member Paid Contributions – Internal Revenue Code 414(h)(2) Employer Pickup.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Authority Member Thomsen and seconded by Authority Member Wile to approve Resolution No. JPA2011-3.

AYES: Authority Members Atkinson, Lieber, Thomsen, Wile & Chair Javandel

NOES: None

ABSENT: None

Motion carried and so ordered.

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

**9-1.** Farmer’s Market Grand Opening, Wednesday, May 4, 3-7 p.m. Solano Avenue between San Pablo Avenue and Adams Street.

**9-2.** Bike to Work Day, Thursday, May 12, 2011.

Mayor Javandel stated that after the business meeting, the Council would be adjourning into closed session and noted that he and Council Member Thomsen would be recusing themselves from the discussions and that Vice-Mayor Atkinson would take over.

Council Member Lieber stated that he would be bringing a future agenda item to refer to Planning & Zoning Commission the development of an ordinance to reduce the carbon footprint regarding open fire pits and other pollutants and that a smoke recovery system must be used if an open fire pit is used.

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

Council Member Atkinson announced that Transition Albany is hosting an event to capture resident’s expertise on how to become more resilient and sustainable. Council Member Atkinson noted that she attended as a delegate the Democratic Convention.

Mayor Javandel asked the Council to adjourn in memory of Charles F. McGlashan, Marin County Supervisor.

**CLOSED SESSION**

9:40 p.m. Council adjourned into Closed Session to discuss the following: Real property pursuant to Government Code Section 54956.8:

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON THIS ITEM**

Property:	4.5 acre vacant land adjacent to Cleveland Avenue & Pierce Street.
Negotiating Parties:	City Attorney & City Manager on behalf of Caltrans on behalf of owner.
Under Negotiation	Terms and conditions of acquisition of property.

**REPORT ON ACTION TAKEN IN CLOSED SESSION.**

Vice-Mayor Atkinson announced that the City Council authorized staff to remove the approximately 0.33 acre Parcel 3, referenced in Exhibit “A” of Resolution Nos, 2011-7(a) and 2011-17, from the scope of the purchase and purchase agreement, at this time, and gave direction to staff on pursuit of Parcel 3 for acquisition, easement, lease, license, use agreement, or other mechanism, for the primary purpose of providing a regional bicycle/pedestrian path.

**10. ADJOURNMENT**

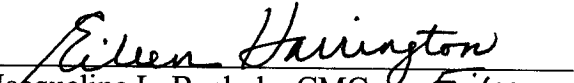
9:55 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

**10. ADJOURNMENT**

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

  
Farid Javandel  
Mayor

Attest:

  
~~Jacqueline L. Bucholz, CMC~~ Eileen  
City Clerk Harrington

*Deputy*