

Date Approved: November 21, 2011

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

**MINUTES OF THE ALBANY CITY COUNCIL
IN REGULAR SESSION,
CITY COUNCIL CHAMBER, 1000 SAN PABLO AVENUE
MONDAY, NOVEMBER 7, 2011**

5:00 p.m.

CLOSED SESSION

CALL TO ORDER

OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS

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

Employment and Appointment of a Public Employee pursuant to Government Code Section 54957.7 – Recruitment and selection of City Attorney.

Conference with Legal Counsel, City Attorney, pursuant to Government Code Section 549569 (Subdivision (a) of Section 549569) regarding pending litigation: VitalGen Cooperative, Inc. Brett Van Den Akker and Erik Van Den Akker vs. City of Albany, Case #RG11571558 & Case #11571312

7:35 p.m.

CALL TO ORDER

Mayor Javandel called the regular meeting of the Albany City Council to order on the above date and lead 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; Anne Hsu, Minute Clerk; Jeff Bond, Community Development Director; Nicole Almaguer, Environmental Specialist; Anne Hersch, City Planner.

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

Mayor reported that City Council had discussion, and no action was 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. Minutes, October 17, 2011

Staff recommendation: Approve

4-2. a. Ratification of City of Albany net payroll in the amount of \$ 195,975.02; taxes, benefits & withholdings in the amount of \$ 171,786.09. Total payroll in the amount of \$ 367,761.11. Payroll period: 10/7/2011

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$47,069.18; taxes, benefits & withholdings in the amount of \$ 33,112.04. Total payroll in the amount of \$ 80,181.22. Payroll period: 10/7/2011

c. Ratification of City of Albany net payroll in the amount of \$ 206,139.68; taxes, benefits & withholdings in the amount of \$282,963.39. Total payroll in the amount of \$ 489,103.07. Payroll period: 10/21/2011

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$50,078.26; taxes, benefits & withholdings in the amount of \$ 53,731.50. Total payroll in the amount of \$ 103,809.76. Payroll period: 10/21/2011

Staff recommendation: Ratify.

- 4-3. a. Ratification of bills, claims and demands against the City of Albany in the amount of: \$492,502.04 (9/30/2011), \$18,479.37 (10/1/2011), \$350,491.68 (10/14/2011), \$645,890.43 (10/28/11), \$18,479.37 (11/1/11)

b. Ratification of bills, claims and demands against the Joint Powers Authority of Albany in the amount of: \$100.00 (10/14/2011)

Staff recommendation: Ratify

- 4-4. Ratification of Police & Fire Pension payments in the amount of \$118,697.48 for the month of October, 2011.

Staff recommendation: Ratify.

- 4-5. A resolution of the Albany City Council Approving the Application For Grant Funds for the Urban Greening Grant Program Under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) For the Codornices Creek/San Pablo Avenue Gateway Project.

Staff recommendation: That the City Council approve Resolution No. 2011-55.

- 4-6. Memorandum of Understanding between City of Albany and Albany Fire Fighters' Association (AFFA)

Staff recommendation: Approve Resolution No. 2011-54 – A Resolution of the City Council of City of Albany Approving the Memorandum of Understanding between City of Albany and Albany Fire Fighters' Association (AFFA)

Mayor Javandel asked if anyone would like to remove an item and no items were removed for discussion.

MOTION:

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

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

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.

Please go to our website at www.albanyca.org to view all future Commission and Committee meetings.

Mayor Javandel opened Good of the City/Public Forum/Announcements and the following people spoke: Peter Goodman, Albany Arts Committee; Emilie Raguso, Albany Patch; Allen Cain, Solano Avenue Association.

A Summary of the comments is as follows: Arts Committee has selected the next Poet Laureate (2 year term appointment) for the City of Albany – Toby Bielawsky. Albany Patch is starting an experimental live blogging of the City Council Meeting. Solano Avenue Association is encouraging businesses that will enhance Solano Avenue and complement the existing businesses. There is a homeless man at the corner of Solano and Masonic who is one of the reasons potential tenants or prospective businesses are turning away from Solano Avenue.

Mayor Javandel announced that since the Waste Management rate increase, the City Council acknowledge the public may be surprised at the rate increase and acknowledged the work of staff.

6. PRESENTATION/PUBLIC HEARING

- 6-1.** Appeal of the Planning and Zoning Commission's Decision to Deny the Application for Design Review and Conditional Use Permit for a Wireless Antenna at 423 San Pablo Avenue.

Staff recommendation: That the City Council uphold the decision of the Planning and Zoning Commission and deny the application for Design Review and Conditional Use Permit for a Wireless Antenna at 423 San Pablo Ave., based on the attached findings.

Jeff Bond, Community Development Director, delivered the staff report. This is an application to allow the removal and replacement of existing wireless communication antenna enclosures on existing 65ft monopole. There are currently two different sets of antennas on the pole. The upper is Verizon Wireless, and the lower is Metro PCS. Under current zoning codes, the maximum height of a monopole is 48 feet. This means that the current monopole at 65 feet is legal non-conforming. Among the objectives of the City's Codes is not to extend the life of legal non-conforming structures. He also noted for the record that "the health consequences of an application of this nature would not be in the purview of the City. It's not something the City Council should be considering in making

their decision.” There were two primary issues raised in the appeal hearing: 1) Applicant believes the information presented in the hearing is satisfactory to demonstrate that no other sites are feasible. Planning & Zoning Commission was unable to make the findings to approve the exception. 2) The handling of the application was flawed. Public hearings usually are scheduled after application is complete, but in this case, it was clear that the City wasn’t going to get to a complete application from the applicant. The City scheduled the hearing without waiving any rights to get the information for Council and Commission to make a proper decision.

Mayor Javandel clarified with staff that one of the objectives of the City’s Planning & Zoning Code is not to extend the life of legal non-conforming structures. The structure or equipment can remain so long as not to expand in use. The intent is that legal non-conforming structures or equipment will eventually phase out when it reaches its useful life. When it does, it will be time to bring future use or future structure into compliance with the Code. This applies across the board not just with telecommunication antennas, but for all uses.

Robert Zweben, City Attorney clarified with the applicant that copies of correspondence received in the last few days by the City is also received by the applicant.

Jonathan Kramer, City retained RF expert, presented a summary of his report. He is disclosing that he is an attorney but not appearing under that capacity. Mr. Kramer asked the City to solicit information from Verizon after the last Council meeting, but the answer received from applicant wasn’t very informative. He stated that this is a modification, not a repair and not maintenance. It’s a deploying of a new radio network. He judged the project to be one that has not been fully disclosed to the Council. His stated that the City doesn’t have a record from the applicant that supports a conclusion that this is the one and only site which is worthy of the special request.

Mayor Javandel clarified with Mr. Kramer that the City is not flat. The extra 20 feet height that the applicant claimed to be significant can be gained by moving south on San Pablo.

Joe Parker, representing Crown Castle – applicant, made the presentation. The project consists of replacing four existing panels with four new ones and is still within the scope of the original approval by the California Public Utilities Commission. The Albany Municipal Code requires alternative site analysis for new wireless facilities; however, this is not a new construction project. Mr. Parker made clarification to Mr. Kramer’s report: Applicant considered sites in the City of El Cerrito and other co-location opportunities. El Cerrito currently has a wireless moratorium. There will be no new ground cabinet installed. Existing diplexers will be removed. No remote actuators will be installed. Additional coaxial cabling will be installed under the wood slats. Rear-mount cabling will be employed if commercially available as oppose to bottom-mount. The physical appearance will not change; it will even improve the appearance if City approves to mitigate the site. Additional design considerations: 1) replace existing mounting brackets. 2) Repaint pole and panels; 3) Replace pole in its entirety. Mr. Parker concluded that this is not an expansion of the facilities. The project complies with Albany Municipal Code because it eliminates the need for additional cell sites. The

replacement of antennas at the existing site is the least intrusive. Verizon is willing to undertake substantial mitigation measures at the existing facilities to improve its appearance. The project will benefit to City's residents on improved wireless services.

A summary of Council's questions that were answered by Mr. Parker and Stephan Iachella – Verizon RF Engineer, are as follows: Verizon will install eight additional cables with the four existing, totaling 12 cables; these cables will go under the existing wooden slabs; Verizon will not install any other electronic devices or cables that's not proposed on the plan already; If the pole will be replaced, it will be the same height; With the ground level increase heading south, the height increase will not be significant enough; The plans and photo simulation are approximate only showing major elements and may not have all the details.

The following people from the public spoke: Nan Wishner; Ed Field; Robert Marshall; Julie Beck; Clay Larson. A summary is as follows: The City doesn't have the information to make the necessary findings; The main issue is the height and aesthetics; The existing wooden pole should be investigated for the condition underground; El Cerrito's moratorium was for one year and was just renewed in May for a second year; A new pole is a non-starter, would like the existing pole to reach the end of its useful life; support to upholding the Planning and Zoning decision; If this application is not denied, it will set precedence for other carriers; and Verizon has no basis for legal action. It was also clarified that the soils report is of the soil and not the structural integrity of the pole.

Council Member Lieber added that regardless of the outcome tonight, Verizon needs to check to make sure the safety of the public and the pole.

Greg Stepanicich, City retained legal counsel, clarified with Mr. Parker and Mr. Iachella that there are four enclosures now. There are four existing antennas within four enclosures. The proposed would be six antennas within four enclosures. The original application for six enclosures was withdrawn which is a different application than this one in discussion.

Mr. Kramer stated that with his prior report commenting on aesthetics, it was not based on reviews of the City's Code. He agreed with Mr. Parker on the typo that it should be Verizon and not AT&T. The additional cables installed will be visible. Mr. Kramer didn't look at El Cerrito as a viable location due to the moratorium in place. The drawings submitted are not construction drawings but zoning drawings.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Thomsen to close public hearing.

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

NOES: None ABSENT: None

Motion carried and so ordered.

Mr. Stepanicich stated before Council deliberation, this is a non-conforming pole. The non-conforming structure's life should not be prolonged or extended. Only routine maintenance to ensure the safety of the non-conforming structure. The characteristic of this application involves the requirement of Conditional Use Permit and Design Review. The

Council also decided that this is a modification of the facilities. The Federal Law recognized that cities can reserve full zoning power with respect to wireless facilities and can fully exercise their zoning power. The deviation in this application is in height of 17 feet. Under City's Code, when it's a deviation from the development standards, the only way to have a Conditional Use Permit approved is by granting an exception. The Standards of granting the exception is "Strict compliance would not provide for adequate radio-frequency signal reception and that no other alternative solutions which would meet the Development Standards are feasible." Verizon and Crown Castle decided that an alternative site analysis is not needed, but it's not their decision to make. It is brand new equipment providing new services contrary to the City Codes of non-conforming structure. If the City does not apply its exception standards, it would be giving a preference to one provider over another.

No questions from the Council.

Mr. Stepanicich asked to correct a few typographic errors on the resolution. 1) Page 2 the last whereas, it should be: can "be" conducted. 2) Page 5 towards the top paragraph, add "as clarified by Mr. Kramer during the hearing" after the date November 2, 2011. 3) Page 5, finding d, 4th line: providing wireless services to "the" area of the City...

MOTION:

Moved by Council Member Wile, seconded by Council Member Lieber to uphold the decision of the Planning and Zoning Commission and deny the application for Design Review and Conditional Use Permit for a Wireless Antenna at 423 San Pablo Avenue, based on the attached findings and staff report; and to revise accordingly and adopt Resolution 2011-56.

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

NOES: None ABSENT: None

Motion carried and so ordered.

7. ORDINANCES

- 7-1. The Albany City Council will consider an Urgency Ordinance which would repeal the City's existing Medical Marijuana Ordinance. The proposed ordinance would prohibit medical marijuana dispensaries in the City of Albany. The proposed ordinance was prepared as a result of recent case law in California which restricts the City's ability to impose location and operational restrictions on medical marijuana dispensaries.

Staff recommendation: That the City Council of the City of Albany waive first reading and adopt Urgency Ordinance 2011-08, prohibiting medical marijuana dispensaries in the City of Albany.

This action would allow the City to preserve the status quo. This item could be revisited at a future time if and when the legal ambiguities are clarified.

- If there are not four (4) votes to enact an urgency ordinance, then the ordinance maybe passed for first reading. This action requires three votes.
- If a ban is enacted, direct staff to report back to the City Council in six months with an informational staff report summarizing any new legal developments affecting medical marijuana dispensaries.

Anne Hersch, City Planner, delivered the staff report. This is a request rescinding our current Medical Marijuana Ordinance contained in Albany Municipal Code Section 20.20.110. Recent case law renders the City unable to continue utilizing the Ordinance in its current state. Since the City is unable to utilize the Ordinance, the staff is recommending that Council adopt the Urgency Ordinance and that staff to report back in six months with informational report summarizing any new legal developments associated with the recent case law. In 2005, City adopted a moratorium restricting the approval of medical marijuana dispensaries. The Advisory Measure on the 2006 ballot was passed with 54% vote. In 2007, the Council approved Ordinance 07-01 creating a conditional use permitting process. The recent decision of the court of appeals restricts a jurisdiction's ability to impose land use and operating regulations for medical marijuana dispensaries. Should the Council adopt the Urgency Ordinance, it would not create any conflicts with the Federal Law.

No questions from the Council.

The following people spoke in support of the Council to adopt the Urgency Ordinance: Don Driscoll; Marcy Lauer; Robert Marshall; Ed Field.

Council Member Lieber stated that there is a lack of compassion for the patients who need medical marijuana. He believes that this is not an action that Council should take. The Medical Marijuana Ordinance should be reviewed again and brought back to Council to address the ambiguities in the ordinance. He also commented that Council should not be bullied into a decision. Prohibition didn't work before and will not work this time. Council Member Thomsen stated that case law does not give the City control over this issue. She is willing to move to approve the ordinance. Mayor Javandel added that as far as meeting the intent of the voters, the case law changed the ability to do that.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Wile to enact the Urgency Ordinance 2011-08 and waive first reading.

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

NOES: Council Member Lieber ABSENT: None

Motion carried and so ordered.

8. UNFINISHED BUSINESS

8.1. Golden Gate Fields/Albany Waterfront Task Force

Staff recommendation: That Council clarify its expectations of the Albany Waterfront Task Force and request an interim report from the Task Force for the special City Council work session of Sunday, December 4, 2011, that contains members' understandings to date of the strengths, challenges, questions, concerns, and suggested direction associated with the proposal to locate a second campus and other development on the Golden Gate Fields property on the waterfront.

Council Member Lieber recused himself as his wife works for the Lawrence Berkeley National Laboratory.

The City Manager delivered staff report. As previously reported, the Golden Gate Fields property is one of the six finalists for the possible selection of the second campus of the Lawrence Berkeley National Laboratory. The owner of the property is also proposing some private development in addition to the Lab's second campus. At the September 19th City Council Meeting, the Council voted to establish a task force with the purpose "to focus specifically on the developer's proposal for the waterfront; to monitor and assess changes; to request and understand tradeoffs, options and alternatives; and to help determine both the strengths and challenges of the proposal as it adapts to address community concerns and needs." The Task Force has met four times since establishment. One of the points during the discussion was whether the Task Force should be making recommendations; and what the Council may be seeking from the Task Force in terms of clarifying and conveying the information to the community. During the last City Council Meeting, the Council voted to establish a work session with the task force members to receive information about what the task force has been learning to date. This meeting tonight is an opportunity to give direction to the Task Force; to help understand what their roles are in terms of having a voice and commenting on the information received. Staff recommendation is that consistent with what the Council typically asks from its advisory bodies, to ask for report on the pros and cons rather than recommendations.

The following Albany residents spoke: Jim Cleveland, Nan Wishner, Allan Maris, Peggy McQuaid, Caryl O'Keefe, and Norman LaForce – Sierra Club. A summary of the comments are: 1) There is uncertainty in federal funding for energy research; 2) Why the December 4th date if the University and the Lab is going to make a decision by Thanksgiving? 3) It is important for the Task Force to know their role is fact finding and not to take a position or make recommendations. 4) The City should have some balanced presentation on the Lab's safety records in the communities where it has operated. 5) the motion made in the Task Force meeting was to ask the Council to encourage the Lab to make a proposal with the understanding that the citizens of Albany had to vote, A summary of the Council's comments are: The role of the Task Force is to gather facts and to provide pros and cons. Their mission initially is fact finding and should continue with fact finding work. It's important to recognize what time frame is needed realistically to get information. Even with the December 4th date, the fact finding work will not be all done.

Whether the Lab makes a decision by November, the fact-finding process should continue. Council Member Thomsen disclosed that she met with members of CAS (Citizens for the Albany Shoreline) & CESP (Citizens for East Shore Parks) and the developer to obtain information. Council Member Wile met with her appointees of the Task Force to re-iterate that their role is fact finding.

Beth Pollard, City Manager stated the focuses for the next Task Force meetings:
November 13th – economic and physical impacts;
November 20th – identify strengths and challenges.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Atkinson to re-iterate the purpose of the task force to be a fact finding group. That they present City Council with the pros and cons, challenges, and opportunities related to the project as best as they can, given the information they have.

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

NOES: None ABSENT: None

RECUSED: Council Member Lieber

Motion carried and so ordered.

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

(Council and staff announcements: Council Member reports on State, regional and local boards, commissions and committees to which they are appointed by the City Council; Council Member announcement of requests for future agenda items. No public comment will be taken on announcement of future agenda items).

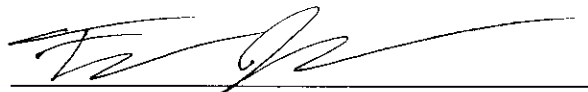
No reports or announcements from the Council.

Emilie Raguso – Albany Patch announced the event of Coffee with the Cops on November 8th, 5 – 6 p.m. at the Royal Ground on Solano Avenue.

10. ADJOURNMENT

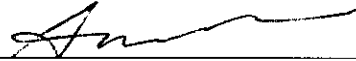
10:08 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Anne Hsu, Minute Clerk.



Farid Javandel
Mayor

Attest:



Anne Hsu
Minute Clerk