

Date Approved: January 17, 2012

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, DECEMBER 19, 2011**

6:45 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 item:

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION Pursuant to Government Code Subdivision (a) of Section 54956.9

Name of case: Before the Public Utilities Commission of the State of California, the Application of Crown Castle Solutions Corp. (U-6936-C) and Crown Castle GT Company LLC for Preemptive Approval of the Swap-Out of Four Antennas on Existing Cellular Tower in Albany, California on Behalf of Verizon Wireless

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION Pursuant to Government Code Subdivision (a) of Section 54956.9

Name of case: Before the US District Court Northern District Oakland Division: GTE Mobilenet of California Limited Partnership, a California limited partnership d/b/a Verizon Wireless vs. City of Albany Case No. 11-6155

APPOINTMENT OF A PUBLIC EMPLOYEE Pursuant to Government Code Section 54957 – City Clerk.

7:34 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, Minutes Clerk;
Judy Lieberman, Assistant City Manager; Jeff Bond, Community Development Director;
Penelope Leach, Community Services Director; Nicole Almaguer, Interim City Clerk.

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

Mayor reported that the City Council provided instruction to City's legal counsel to continue to defend what the City Council believes to be the correct decision on the two litigations.

Mayor also reported that the City Council has selected Nicole Almaguer to be the City Clerk on an interim basis, with a review in April.

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 5, 2011

Staff recommendation: Approve

4-2. a. Ratification of City of Albany net payroll in the amount of \$ 240,130.35; taxes, benefits & withholdings in the amount of \$ 207,283.05. Total payroll in the amount of \$ 447,413.40 . Payroll period: 12/2/2011

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$45,819.04 ; taxes, benefits & withholdings in the amount of \$ 32,127.67. Total payroll in the amount of \$77,946.71 . Payroll period: 12/2/2011

Staff recommendation: Ratify.

4-3. Ratification of Police & Fire Pension Plan payments in the amount of \$118,697.48 for the month of November, 2011.

Staff recommendation: Ratify.

4-4. Design work for safety improvements to the Marin Avenue-Santa Fe intersection at Marin Elementary School.

Staff recommendation: Authorize the City Manager to execute Amendment No. 2 to the Agreement for Consultant Services with AECOM for the design of Safety Improvements at the intersection of Marin and Santa Fe project (Contract No. C09-30) in the amount of \$49,500.

Mayor Javandel asked if anyone would like to remove an item and item 4-4 was removed for discussion.

Jeff Bond, Community Development Director delivered the staff report. Item 4-4 is an amendment to the contract with AECOM for the design work of the safety improvements at the intersection of Marin and Santa Fe. City Contract Engineer – Randy Leptien is also present to help present and answer questions. This project was identified in 2000 in the Traffic Management Plan as the number one priority traffic and safety improvement project at the intersection of Marin Elementary. A grant was received from Safe Routes to School in 2009 to improve pedestrian safety for this intersection. The end of the same year, City Council approved the initial contract with AECOM in the amount of approximately \$39,000 to prepare plans and specifications for this project. In 2010, the Traffic & Safety Commission had series of meetings to discuss the project. In the course of those meetings, the design had evolved in different ways which significantly altered the design and hence more funding is necessary for the design work. The primary safety issue is that currently the crosswalks don't line up with the corners of the intersection. Traffic & Safety Commission reviewed and recommended an alternative alignment that works functionally in terms of pedestrian safety and vehicle movements. It will also be less construction but requires redesign due to the topography of the site. The Traffic & Safety Commission recommended to approve the amendment and will work with AECOM to reduce the project cost as much as possible and with the goal to complete the project within the timeframe given by the grant.

Council Member Thomsen asked why the need to redesign if the first proposal was more complex and what the staff's thoughts on the amendment amount.

Council Member Wile recused herself.

Randy Leptien, City Contract Engineer, responded that the original proposal went in as a conceptual and not actual design. The Westerly crosswalk was not included in the original design. However it was discussed and decided that was an important crosswalk and should include it. In term of the amendment amount, it was considerably more than \$49,000. Staff knocked many items that were redundant or not necessary and reduced the amount down to less than \$50,000.

Mayor Javandel summarized that this project is more complex in scope of work than the initial design which was to be done within the existing paved area. Now with the changes, it is moving curbs away instead of closer to the intersection. Plus the extra rounds of review would add to the cost of the project.

Council Member Atkinson asked since this is a change from the original design and the City is dealing with budget issues, if there is a way to consider something that's closer to the City's budget?

Randy Leptien, City Contract Engineer, responded that this project is a \$640,000 grant to solve the number one safety issue in the City that was identified approximately twelve years ago. Although the project is \$100,000 over budget and the overrun is in process, however this process is very valuable in that this is to replace a system for that intersection that may be in failure mode. Staff and consultants will do as much as possible to reduce the cost without compromising safety and will bring this back to Council in March.

Ken McCrosky, Chair of Traffic & Safety Commission, stated that this dangerous angular intersection is not only a problem for the school but also for the City. After the completion, it will be a vast improvement for the City and the students.

Ed Fields, resident, asked how the amount of \$170,000 came about on the spread sheet. He stated the original contract was for approximately \$39,000 with a change order of \$10,000 and now another change order of \$49,000 came to the sum of approximately \$100,000.

Randy Leptien, City Contract Engineer, responded that the \$170,000 was before cutting our certain non-essential or non-related to traffic signal amounts in order to move this project forward.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Lieber to approve the Consent Calendar item 4-4.

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

NOES: None ABSENT: None

RECUSED: Council Member Wile.

Motion carried and so ordered.

Council Member Wile returns to the Council Chambers.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Wile to approve the remainder of 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: David Skinner, Albany resident; Ronnie Davis, Albany Library Branch Manager; Eddy So, Albany resident.

A summary of the public comments is as follows: Request & comments for traffic calming on Dartmouth to be put on the City Council Agenda calendar; Food for Fines program at the Albany Library; Safety issues on recent robberies around schools and Solano Avenue; if any plans to address personal safety issues in the City; Council should direct Transportation board to enhance bike safety education to bike riders.

Council Member Wile announced that the Food can be donated to Alameda Food Bank. There are food barrels at the Albany YMCA. Council Member Wile's December salary is contributed to the Alameda County Food Bank.

City Attorney Zweben announced the Court of Appeal has dismissed the Vitalgen appeal on the request of the appellant.

6. PRESENTATION/PUBLIC HEARING

- 6-1.** Resolution No. 2011-58 – A Resolution of the Albany City Council in Appreciation of Robert J. Zweben, City Attorney, for his more than 33 Years of Service to the City of Albany.

Staff recommendation: Approve Resolution No. 2011-5.

Mayor Javandel presented the resolution. City Attorney Zweben will be retiring from City of Albany on December 31, 2011.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Lieber to approve Resolution No. 2011-5.

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

NOES: None ABSENT: None

Motion carried and so ordered.

City Attorney Zweben introduced his family and friend and thanked the City Council for the presentation of the resolution. He has served thirty-two different elected City Councils. He appreciates what the Councils have done for the City, that he worked with wonderful staff, and he will miss all.

Council Members and Mayor commented to thank City Attorney Zweben. He has treated Council fairly, a great resource for the Council, held professional stands, and worked with Council to do the right thing the right way.

7. UNFINISHED BUSINESS

- 7-1.** Resolution No. 2011-57 - Amendment of Buchanan/Marin Overhead Utility Conversion District and Approval of Agreements with PG & E

Staff recommendation: Approve Resolution No. 2011-57 amending the Buchanan and Marin Overhead Utility Conversion District, providing for Phased Construction and approving Agreements with PG & E

Community Development Director Bond delivered the staff report. This is a technical step in the process for the Buchanan/Marin Overhead Utility Conversion District. The funding is from PG & E. The project cost has been revised from 2.7 million to 4 million. PG & E will fund approximately 3 million. Phase I of the project is to convert from San Pablo east to Masonic. Phase II of the project is to convert from Eastshore to San Pablo. The decision is to amend the boundary of the District and to authorize the City Manager to execute project.

Council Member Lieber asked the impact on the reconfiguration of the bike lanes. City Contract Engineer Leptien responded there would be no impact, that the utility poles on the Marin section would have to be moved to accommodate the Marin bike lanes and therefore it made sense to do the undergrounding there instead of moving the poles.

Mayor Javandel opened for public comments.

No comment from the public.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Wile to close public hearing and approve Resolution No. 2011-57 amending the Buchanan and Marin Overhead Utility Conversion District, providing for Phased Construction and approving agreements with PG & E.

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

NOES: None ABSENT: None

Motion carried and so ordered.

8. NEW BUSINESS

- 8-1. Contract with the County of Alameda for Additional Library Services, Fiscal Year 2011/2012, in the amount of \$690,895.

Albany Library Advisory Board recommendation: The Library Board voted to send the contract to Council for consideration without a recommendation.

Staff recommendation: Approve contract between the City of Albany and the County of Alameda for Additional Library Services for Fiscal Year July 1, 2011 – June 30, 2012.

Assistant City Manager Lieberman delivered the staff report. The County's budget for Albany Library has been decreasing while the City's contribution for Albany library has been increasing. Some of this is to be expected during this economic time, while some of it is unclear. The County is undertaking a project to review and analyze the revenue and financial support for the branches, but this work will not be completed for about nine months. Without a contract in place, Library services would have to be cut. County Supervisor's office provided assistance to clarify some information and to negotiate in exploring other options through the revenue and cost analysis.

The Council welcomed Judy Lieberman back. Council Member Atkinson appreciates being able to move forward while seeing what options there are. Council Member Lieber stated that Albany continues to raise taxes, and the citizens are paying directly for the Library services. It would be difficult for him to support, however if the contract is not passed, the Library will cease to function. The Library Board will continue to meet and looking at alternatives.

The following people spoke: Alan Riffer, Library Board Chair; David Danby, Albany resident; Caryl O'Keefe, Albany resident; Steve W., Library Clerk; Julie Winklestein, Albany resident. A summary of the public comments were: County has not fulfilled their end of obligation on previous contracts, how will this contract be fulfilled? County has not been informative and lack transparency in term of the revenue allocation. The contract language should be explored to include certain conditional languages.

Council Member Atkinson commented on the County Librarian's letter. City needs to make sure that City gets our money's worth. City would not want the County to be using the City's contribution to support the whole system. Council Member Lieber stated that he is hopeful for this process, while noting that the outcome of the study may be that the City may see things that we may not want to see at the end. Council Member Thomsen stated that she appreciates the Library Board working to get information and Library staff working hard to continue services. Although there is a the lack of transparency, City needs to go forward. Council Member Wile asked if the contract is signed, is there way to add amendments?

Assistant Manager Lieberman stated that the contract is just for the extra hours funded by the City taxes, and does not dictate how the Library should be staffed. City Attorney Zweben commented that Council can propose language to modify the contract to the paragraph that talks about termination or renegotiation. He also reminded Council that this is a contract for 6 months. City Manager Pollard suggested that City can write a cover letter to the County consisting of tonight's discussion and signed by the Mayor.

Council Member Lieber commented that the letter should be looked at by the Chair of the Library Board before it is sent out.

Mayor Javandel asked if City can request County to provide the allocation formula under the Government Code for public record request. Library Chair Riffer stated that his understanding is such document doesn't exist. There is only material allocation, but not revenue allocation.

Assistant City Manager Lieberman stated that this agreement is only for 25 additional open hours and is not a contract on the Library services. The letter from Mayor should show intent of what the City expects to receive from the contract even though portions of the contract may not be met.

MOTION:

Moved by Council Member Atkinson, seconded by Council Member Wile to approve contract between the City of Albany and the County of Alameda for Additional Library Services for Fiscal Year July 1, 2011 – June 30, 2012 and to include the letter based on discussion tonight.

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

NOES: Council Member Lieber

ABSENT: None

Motion carried and so ordered.

8-2. Follow up regarding budget balancing strategies and public opinion survey.

Staff recommendation: That Council determine its preference for type of public opinion survey to be conducted, and provide direction to staff regarding selection of firm if a random sample is the preferred type, and direction regarding the draft public opinion survey topics and questions.

Environmental Specialist Almaguer delivered the staff report. In November, Council received an update on budget balancing strategies and discussed funding mechanism. A public opinion survey was considered. Staff has done some research and returning to Council with updates. Through research, other cities have been found to use professional firm to conduct telephone surveys. Other options may be mail survey or web-based survey.

Council Member Thomsen commented that a community committee should be considered. Community involvement can be positive and useful. As for phone surveys, many people may not be available to take a telephone survey. Council Member Lieber supports using a professional firm as initial outreach and also involving the public going forward. Council Member Atkinson also supports using a professional firm. The City needs to find out what the community thinks if the City wants to have a measure passed. Mayor Javandel commented that professional firms can help us out better. City wants to make sure that the answers obtained are good answers based on good questions formulated. City Manager Pollard stated that a task force could either be before or after the survey. The survey and the task force can be done in conjunction with each other.

Caryl O'Keefe, Albany resident, stated that the City, under current times, need to have the best advice about which options available before going to the voters. If the professional firm get non-responders, they would usually draw up answers from similar group to form the data. The questions may be written up by psychologist when using a professional firm.

Council Member Lieber asked about the question of cars and parking spaces per unit. This is a question about infill and how big the resident can build things which is non-revenue related. Council Member Atkinson thinks the parking is a problem for units on San Pablo. It will be a chance to figure out what the community thinks in regards to number of spaces per unit. City Manager Pollard stated that this was an issue raised by Planning & Zoning, Sustainability, and Traffic & Safety. The issues are raised for affordable housing units, studio and senior units. Council Member Thomsen clarified that Council Member Lieber is concerned that this is not a revenue issue, but an issue of interest. It should be included at the end of the survey. Council Member Wile stated that this is a development issue. The City can ask the professional firm to look over the questions and reorder them, and return to Council. City Manager Pollard stated that survey questions are not typically brought to public forum because it may pollute the data. Mayor Javandel stated that this is a policy question and not a revenue question, but is linked to parking permits and paid parking which is revenue related.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Wile to move forward with Godbe Research with a sample size of 400 to institute the survey for the City and future funding to include all of the issues brought forward by staff.

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

NOES: Council Member Thomsen

ABSENT: None

Motion carried and so ordered.

9. NEW BUSINESS

9-1. Contract for services with *Today in America* Television Show

Staff recommendation: That Council authorize the City Manager to enter into a contract with *Today in America with Terry Bradshaw* for \$24,800 for the production of a television segment highlighting community, sustainability, and economic development in Albany to be aired nationwide, with licensing rights granted to the City.

Community Services Director Leach delivered the staff report. The TV show *Today in America* is a 30 minute show that highlights businesses, business trends, etc. Albany can be featured as hidden gems for cities that support these business trends.

No question from Council.

Clay Larson, Albany resident, stated that this is not a fit for Albany. Larger cities can be benefitted nationwide. There is many value but not worth \$25,000. Emilie Raguso, Albany Patch, commented that there is the Albany Film Fest which many locals would create films. Instead of paying the production crew, the City should consider seeing more creations from local artists or students.

Council Member Thomsen commented that based on information she has heard, \$25,000 is not a good price. Council Member Lieber concurs. He would like to see production from in-house, school, or private citizens. Mayor Javandel is concerned with what is the object that will be served. From everyone's comments, he has a strong sense that the City can have the same production for a much lower cost. It would be hard to say it's a good expenditure for our resources. City Manager Pollard advised that even for a production done by students, funds would still need to be allocated. That should be a separate discussion that can be brought back later in the context of the budget.. Mayor Javandel stated that this is a reactionary item, and Council do not have to jump on an alternative.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Thomsen to pass on the offer.

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

NOES: None ABSENT: None

Motion carried and so ordered.

9-2. Alameda Countywide Transportation Plan, Transportation Expenditure Plan and Proposed Extension of Measure B

Staff recommendation: Provide feedback to the Alameda County Transportation Commission on the Draft Alameda Countywide Transportation Plan (CTP),

Transportation Expenditure Plan (TEP), and proposed extension and augmentation of Measure B.

Community Director Bond delivered the staff report. This item is in regards to two documents from the County: Alameda Countywide Transportation Plan (CTP) and Expenditure Plan & proposed extension of Measure B (TEP). The CTP identifies and prioritizes project and programs in the County. It guides the Commission transportation investments over a 25-year horizon. The TEP is basically for Measure B that is taxes collected and spent. It is the major funding stream for transportation projects in the County. This is in response to the downturn of the economy which is running about \$800 million short. The TEP is the key item. These funds go to a variety of uses. Major portion goes to transit. Other uses are commute corridor, local streets, highway, bicycle and pedestrian improvements, sustainable programs and others. There is approximately \$20 million eligible for funding in the plan that is allocated to Albany.

Council Member Lieber commented that even with the possible changes that may change the voting power of the Alameda County Transportation Commission (ACTC) Board, the City should be supporting of the letter from Berkeley's Mayor on points as transparency and "Fix-It-First" policy. Mayor should draft a letter similar to Berkeley and also present "Bicycle First" community program.

Mayor Javandel stated that ACTC Board will vote on the expenditure plan on January 26, 2012. It will be the recommendations to all cities. City's letter should be similar to Berkeley Mayor's letter but push for flexibility of the solutions of the project. The solutions should not be defined. It is the problems that should be defined with flexibility for the solution and not locked into the solution. City should also advocate to push for 20% of the Local Streets & Roads fund should be dedicated to bicycle/pedestrian projects. The letter should also advocate for youth pass programs, support provisions for flexibility on alternatives, and geographic equity in overall funding.

Nick Pilch, Albany resident, commented that he thinks the Mayor is headed in the right direction. More money is needs for programs versus projects. The Strollers & Rollers signed up to a Community Vision Platform which touched on many points the Mayor have stated. There is also a letter from the Sierra Club highlighting similar points.

Council Member Thomsen commented that the most important thing is fairness. The City should have our fair share to spend the fund and also need the flexibility.

MOTION:

Moved by Council Member Wile, seconded by Council Member Lieber to have a letter written by Mayor Javandel to include the five points from the Berkeley letter and also add the point of flexibility on projects and 20% from Local Streets and Roads fund going to the bicycle project and flexible alternatives for youth path program.

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

NOES: None ABSENT: None

Motion carried and so ordered.

- 9-3. Resolution No. 2011-60 – Opposing the Sale and Purchase of Rat and Mouse Poisons Deemed an Unreasonable Risk to Children, Pets and Wildlife.

Council Member Wile recommendation: Approve Resolution No. 2011-60.

Council member Wile presented the resolution. This resolution has also passed in the City of Berkeley and City of San Francisco. This resolution has to do with documentations by the US Environment Protection Agency about ten rodenticides that has been documented to raising unreasonable risks to children, pets and non-targeted wildlife. She suggested that Council should pass this resolution and approach businesses that are continuing to sell these and encourage them to cease and desist because of the health risk to public.

Council Member Lieber supports this resolution and indicated all “cides” such as insecticides, pesticides and herbicides should not just be placed on grocery shelves.

Council Member Atkinson asked if there are alternatives and where these rodenticides are sold. Council Member Wile responded that there are many other alternatives that are not toxic, and these rodenticides are sold at Safeway and Target. She is happy to be the person to approach these businesses.

Mayor Javandel stated that Albany is more agile and hence adopting this earlier than other cities.

MOTION:

Moved by Council Member Wile, seconded by Council Member Thomsen to approve Resolution No. 2011-60.

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

NOES: None ABSENT: None

Motion carried and so ordered.

10. 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).

Council Member Atkinson wishes Happy Holidays and a good vacation to all.

City Manager Pollard commented that it will be the Mayor’s Birthday in 1 hour 45 minutes.

- 10-1.** Cancel the regular meeting of Tuesday, January 3, 2012, due to the lack of pressing business. The next City Council Meeting will be **Tuesday, January 17, 2012.**

Mayor Javandel announced the dates of next Council Meeting on Tuesday due to Monday the 16th is a holiday.

11. ADJOURNMENT

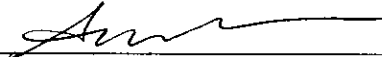
10:17 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Anne Hsu, Minutes Clerk.



Farid Javandel
Mayor

Attest:



Anne Hsu
Minutes Clerk