



ALBANY CITY COUNCIL – MINUTES

City Hall Council Chambers
1000 San Pablo Avenue, Albany, CA
Tuesday, September 25, 2018

5-1

5:00 p.m.

SPECIAL MEETING

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

Council Member Barnes led the Pledge of Allegiance.

2. ROLL CALL

Present: Council Members Barnes, Maass, and Pilch, Vice Mayor Nason, Mayor McQuaid
Absent: None

3. OPPORTUNITY FOR THE PUBLIC TO SPEAK ON THE FOLLOWING ITEMS

3-1. Public Report on Partial Settlement in Litigation Against the City of Albany by the Albany Lions Club

Staff recommendation: that the Council report out regarding the partial settlement in the litigation against the City of Albany by the Albany Lions Club

City Manager Nicole Almaguer presented the staff reported and introduced attorneys Andrew Dhuey and Bridget Clarke.

Andrew Dhuey advised that he made constitutional arguments on behalf of Vice Mayor Nason and the City in the lawsuit initiated by the Lions Club. He would handle the appeal of constitutional issues and property law issues to the Ninth Circuit Court of Appeals. The partial settlement resolves the Lions Club's civil rights claims against the City. The validity and enforceability of the Lions Club's easement remains unresolved. His position is the easement is unenforceable because the easement must comply with the laws applicable to the land which the easement burdens. He intends to file a motion to expedite the proceedings before the Ninth Circuit Court of Appeals; however, a decision may not issue for as long as two years.

Mayor McQuaid reported that the partial settlement requires the Lions Club to dismiss with prejudice all causes of action asserted in the complaint including all claims for recovery of monetary damages, attorney's fees, and court costs. The City is required to pay \$125,000 to the Lions Club for all monetary damages, attorney's fees and court costs. The City's insurance provider will pay \$100,000 of the \$125,000 amount. The partial settlement does not constitute an admission of liability by any party to the lawsuit. The parties will jointly request Judge Alsup enter a final judgment on the issues presented in the City's counterclaim and will retain their rights to appeal to the Ninth Circuit Court of Appeals all issues presented in the counterclaim. However, neither party will seek recovery of monetary damages, attorney's fees, or court costs from the other party as part of an appeal. No evidence exists to support and the City continues to firmly deny the Lions Club's allegation that the Fire Chief and the rest of the City defendants acted with animus toward Christianity. The Fire Chief and other City officials were concerned that the electrical system to the cross posed a fire hazard to the neighborhood and the Hill itself. The Council finds it troubling in the current fire environment that a city could face potential liability for addressing a fire hazard solely because the danger happens to be posed by a religious symbol. The Mayor and Vice Mayor plan to write a letter to the City's representatives in the California Legislature and in Congress pointing out the undesirable public policy effects of this aspect of the



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case and urge that greater protections be adopted for cities and officials. The City settled this aspect of the case solely because it is able to do so for a monetary amount that is likely much smaller than the expense of a burdensome trial and to avert any risk of an irrational jury award. The City of Albany continues to pursue removal of the cross through the judicial process. The actions of the Lions Club have so far cost the City of Albany in excess of \$200,000 exclusive of the \$100,000 contribution to the settlement by the City's risk management pool. This sum could have been considerably greater if Mr. Dhuey had not donated his representation of one Council Member and his assistance to the City's legal team. The City Council is extremely disappointed in the Albany Lions Club for their continued insistence that a religious symbol be prominently displayed in a public space despite the numerous requests for its removal by members of the Albany community. Mayor McQuaid read Reverend Julie Wakelee-Lynch's letter in support of an appeal of the ruling and in opposition of a religious symbol placed on public land.

The following persons spoke: Larry Hicok, Roy Torkington, Bryan Marten, Ellen Davis-Zapata; Tree Gelb Stuber.

A summary of comments is as follows: appreciation for the Mayor's comments; because of the partial settlement, the City will not be able to manage the parkland properly because of the fear of another lawsuit; support for the Council agreeing to the partial settlement; a suggestion for the Albany Lions Club to follow its bylaws and to use the settlement funds for a purpose supported by its mission statement; support for removal of the cross.

A summary of Council comments is as follows: the City wanted to defend itself and its officials in the litigation, but the settlement was practical and allowed the appeals to proceed; suggestions for the Lions Club to donate all settlement funds to local charities or to utilize the funds for removal of the cross; the Lions Club's actions have tarnished its reputation; in having PG&E remove electricity to the cross, the Fire Chief acted professionally and in the public's interests.

4. **ADJOURNMENT**

5:36 p.m. There being no further business before the City Council, Mayor McQuaid adjourned the meeting.

Minutes submitted by Anne Hsu, City Clerk.

Peggy McQuaid
Mayor

Attest:

Anne Hsu, City Clerk