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CITY OF ALBANY, CALIFORNIA



ALBANY CITY HALL
1000 SAN PABLO AVENUE
ALBANY, CALIFORNIA 94706

***Item 5-4:
Amend Chapter XIV "Work On
Public Property" of the Municipal
Code-Small Wireless Facilities -
Ordinance No. 2019-08***

CITY COUNCIL MEETING
December 2, 2019

From: [Clay Larson](#)
To: [Rochelle Nason](#); [Peggy McQuaid](#); [Michael Barnes](#); [Peter Maass](#); [Nick Pilch](#)
Cc: [Justin Fried](#); [citycouncil](#)
Subject: Re: Comments on Agenda Item 5-6
Date: Friday, July 12, 2019 3:03:04 PM

Mayor Nason, City Council Members;

I am writing to comment on Consent Calendar Item 5-6. City staff are proposing to amend an existing contract with Parisi Transportation Consulting, adding \$100,000 to the contract amount. The stated purpose of the contract is for "On-Call Transportation Planning Services". The staff report notes vaguely that, "On-call transportation planning services support the City Council's strategic plan goal to Foster a Healthy and Sustainable Urban Village by supporting implementation of various street safety and active transportation capital improvement projects."

The staff report background information references the consultant's work in 2017 to determine the feasibility of a bikeway on "Kains and Adams Streets (*sic*)", as well as the consultant's subsequent development in 2018 of a pilot project for bicycle boulevards on Kains and Adams.

I am writing to point out that there were significant flaws both in the initial Kains and Adams Bikeway study and in the subsequent pilot project. For the initial study, Parisi offered two different, incorrect interpretations of California law regarding parallel parking. This obfuscated the discussion of parking and as result this issue is still not resolved. The Kains and Adams bikeways were not included in the 2012 Active transportation plan because of neighborhood opposition. In rejecting the projects, the Council called for "public outreach targeted at residents along Kains Avenue <and> Adams Street." Parisi conducted some general public outreach, but it was not directed Kains and Adams residents. There was absolutely no attempt to measure the level of support among residents on Kains and Adams for the projects. In fact, a current on-line petition shows that there is significant opposition to the pilot project in the affected neighborhoods. I passed out a petition in the 600 block of Adams and got signatures opposing the pilot project from households located in every parcel on the block. More generally, the feasibility study did not make any attempt to measure existing conditions (e.g., bicycle ridership numbers on Kains and Adams and on Sam Pablo Avenue) in order to demonstrate the need for the proposed complicated and expensive bicycle infrastructure.

Parisi's 2018 pilot project was also flawed. The Council tasked the Traffic and Safety Commission with the responsibility to develop a recommendation for a pilot program of the projects. The responsibility apparently fell on the consultant and City staff. The Commission held only one meeting where for the most part it rubber stamped the consultant's plans (FN#1). The proposed "pilot" project called for the permanent installation of concrete bollards, signage, and striping. Again, there was no proposed plan for determining existing conditions and no criteria for determining the success of the pilot project. Perhaps the consultant assumed that the Traffic and Safety Commission would fill in the gaps here. If so, it was clear that the commission was not up to this task. There were other unfilled gaps. The Council asked for updates on the Orientation Center for the Blind's position on a Cerrito Creek bridge and a final determination of the acceptability of proposed bikeways with Public Safety. This information was not available at the December 2018 meeting of the Traffic and Safety Commission.

The bottom line here is that residents on Kains and Adams may be asked accept significant changes to traffic and parking in their neighborhoods. There is considerable opposition to the proposed bikeways. There has been no further action taken by the City since the Traffic and Safety Commission rubber stamped the pilot project in December. One must wonder whether the delay in any follow-up is an attempt to see if the opposition subsides.

As noted above, the proposed amendment to the Parisi contract would more than double the amount of the 2018 contract, which itself was approved by the Council, without the going through the competitive bid process. The original 2017 contract for the Kains Adams feasibility was awarded competitively. However, as noted above that study was very flawed. Accordingly, I would recommend that the Council at the very least determine what the additional largesse for the vendor will be used for and consider disapproving the proposed amendment to the professional services contract.

Clay Larson

FN#1 – In a remarkably megalomaniacal moment, the Traffic and Safety Commission proposed addressing the parallel parking issue by seeking relief from the State legislature.

From: [Edward FIELDS](#)
To: [citycouncil](#); [Jeff Bond](#); [Anne Hersch](#); [Anne Hsu](#)
Subject: Council Meeting Comment, Item 5-4, Ordinance No. 2019-08, 12/02/19
Date: Thursday, November 28, 2019 8:09:36 AM

[EXTERNAL EMAIL.]

Council Members,

Even though this item is on the Consent Calendar, I hope you will take time to discuss the material in the Staff Report. Despite the FCC's attempt to take away "local zoning authority", including the new FCC Order, the question remains. What parts of the relevant section below are still applicable? And how can the City of Albany apply them?

Thank you,

Ed Fields

47 USC 332(c)(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local

government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

From: [Preston Jordan](#)
To: [citycouncil](#)
Subject: draft sign ordinance flaws?
Date: Sunday, December 1, 2019 8:01:50 AM

[EXTERNAL EMAIL.]

Hello City Council-

Please do not pass the draft sign ordinance without addressing the apparent errors and including the clarifications described below.

Thank you for your consideration.

Preston

Time limitation

According to *Ladue v. Gilleo*, 512 U.S. 43 (1994), "Local governments cannot enforce a general rule forbidding all signs on residential property." <https://supreme.justia.com/cases/federal/us/512/43/> Proposed section 20.32.50(A) prohibits noncommercial signs on residential property outside of the proscribed period surrounding elections. This violates the aforementioned U.S. Supreme Court decision because it would prohibit all signs on residential property for more than a year at a time (the period from one general election to the next primary election).

Adoption of the ordinance in its current form would require the City to enforce the removal of the hundreds of non-commercial signs residents have placed in their yards outside of the proscribed period. Signs such as those declaring, in part, "science is real," among other phrases. It is unlikely the City intends to expend the effort, and therefore funds, to carry out this action. This suggests the City's will selectively enforce the prohibition only with regard to campaign signs. If so, this action would de facto violate *Reed v. Town of Gilbert*, 576 U.S. ____ (2015) <https://supreme.justia.com/cases/federal/us/576/13-502/>, which generally requires government action to apply to all noncommercial signs equally without regard to their content.

Maximum sign area limitation

The combination of 20.32.040(C), 20.32.050(C), and 20.32.080(A) limits the number of four-square foot signs to two per residential property. This limit has been struck down as too restrictive by the Fourth Federal Circuit Court (*Arlington County Republican Committee v. Arlington County*, 983 F.2d 587 (4th Cir., 1993)).

City sponsored-signs

20.32.045(E) allows "City sponsored signs" "for up to thirty (30) days on City property." "City sponsored" is not defined. As such it could be construed to include signs such as those that comprise "Fall into Haiku". However, those signs are up for more than 30 days. It would be useful to include a definition of "city sponsored signs" in the ordinance. If the signs comprising Fall into Haiku fall under that definition then upward adjustment of the 30 day

limit should be considered.

Sign noticing

20.32.045(E) allows "City sponsored signs" "for up to thirty (30) days on City property with prior notice and authorization by City of Albany staff. The notice shall include the time duration for installation and locations of City property." The ordinance does not include the timing and distribution requirements of the notice. Without such requirements, notice could be provided in a manner that fulfills the ordinance without meeting the intended goal of informing interested residents.

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Preston Jordan
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"If you don't like the news ... go out and make some of your own." - Scoop Nisker