



ALBANY CITY COUNCIL – MINUTES

City Hall Council Chambers
1000 San Pablo Avenue, Albany, CA
Tuesday, February 18, 2020

Date Approved March 2, 2020

6:00 p.m.

SPECIAL MEETING – CLOSED SESSION

1. CALL TO ORDER

2. 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:

2-1. Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)(1)

Name of Case: Saraswati v. City of Albany, et al., (U.S. District Court, Northern District of California, Case No. 3:17-CV-04940-MMC)

2-2. Conference with Legal Counsel – Anticipated Litigation
Government Code Section 54956.9(d)(2) (1 case)

ADJOURNMENT OF CLOSED SESSION

7:30 p.m.

REGULAR MEETING

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Council Member Barnes led the Pledge of Allegiance.

2. ROLL CALL

Present: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

Absent: None

3. CEREMONIAL MATTERS

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

Mayor Pilch reported the Council approved a settlement in Saraswati v. City of Albany, et al., and gave direction to staff regarding Item 2-2.

5. CONSENT CALENDAR

5-1. Minutes, February 3, 2020

Staff recommendation: Approve

5-2. Ratification of Payroll – Payroll Period: 1/31/2020; Net Payroll: \$485,188.00; Taxes, Benefits, Withholdings: \$250,570.14; Total: \$562,362.08



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Staff recommendation: Ratify

- 5-3.** Ratification of Bills, Claims and Demands – Ratification of bills, claims and demands against the City of Albany in the amount of: \$169,104.37 (1/31/2020), \$163,804.62 (2/7/2020)

Staff recommendation: Ratify

- 5-4.** Letters of Support for SB 54 and AB 1080

Mayor Pilch recommendation: that the Council note and file the letters as submitted

- 5-5.** 2020 Tree Planting – Authorization to Execute Commercial Tree Care Company Contract No. C20-41 for \$31,808

Staff recommendation: that the Council adopt Resolution No. 2020-20 to authorize the City Manager to execute Contract No. C20-41 with Commercial Tree Care Company in a not-to-exceed contract of \$31,808 to procure and plant new trees in accordance with City tree planting guidelines using LLAD 88-1 funds appropriated as part of the FY 19-20 Public Works operating budget

- 5-6.** Marin Avenue Tree Pruning – Authorization to Execute Commercial Tree Care Company Contract No. C20-40 for \$26,460

Staff recommendation: that the Council adopt Resolution No. 2020-19 to authorize the City Manager to execute Contract No. C20-40 with Commercial Tree Care Company in a not-to-exceed contract of \$26,460 to complete the required pruning along Marin Avenue using LLAD 88-1 funds appropriated as part of the FY19-20 Public Works operating budget

- 5-7.** Resolution Authorizing the Commitment of A1 Base City Allocation Funds to Satellite Affordable Housing Associates

Staff recommendation: that the Council adopt Resolution No. 2020-18 authorizing the commitment of Alameda County Measure A1 Base City Allocation for development of the 62-unit affordable housing project located at 755 Cleveland Avenue

- 5-8.** Fiscal Year 2020-21 Community Development Block Grant Project Applications and Agreement with Alameda County

Staff recommendation: that the Council adopt Resolution No. 2020-21 authorizing:

1. The submission of FY 2019-20 Community Development Block Grant project applications to Alameda County
2. The City Manager to enter into an Agreement with Alameda County for the use of FY 2020-21 Community Development Block Grant funds

- 5-9.** Alameda County Mayors Letter on Public Safety Power Shutoff Legislation



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Mayor Pilch recommendation: that the Council approve to add City of Albany to the list of cities signing onto Berkeley Mayor Jesse Arreguin’s letter on support for bills regulating Public Safety Power Shutoff events. The resolution referenced in the email is not proposed at this time.

Mayor Pilch asked if anyone wishes to remove an item from the consent calendar. No one removed an item from the consent calendar.

MOTION:

Moved by Vice Mayor McQuaid, seconded by Council Member Nason, to approve the consent calendar.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

6. GOOD OF THE CITY/PUBLIC COMMENT

Mayor Pilch opened the Good of the City.

No one provided comments.

7. COUNCIL SUBCOMMITTEE REPORTS, COUNCIL MEMBER REPORTS ON APPOINTED REPRESENTATION OF ALBANY, AND OTHER MEETINGS AND EVENTS

7-1. City Council Subcommittees:

Council Subcommittees	Subcommittee Members	Last Report Date
Albany Waterfront Park (Albany Bulb)	McQuaid & Nason	12/02/2019
Alta Bates Hospital	Pilch & McQuaid	11/18/2019
Cannabis Ordinance	Pilch & Maass	
Community Inclusivity	Pilch & McQuaid	10/21/2019
San Pablo Avenue Corridor Project	Pilch & Nason	10/07/2019
Youth Engagement	McQuaid & Maass	01/21/2020

Vice Mayor McQuaid reported high school seniors participating in the Youth in Government program will tour City Hall and the Police Department and meet with department heads to learn about local government on March 2. Council Members are invited to dinner with the students at 5:00 p.m. in the Council Chambers. During the Council meeting, a proclamation will recognize Youth in Government.

Mayor Pilch reported the Cannabis Ordinance Subcommittee has prepared draft language. City Manager Nicole Almaguer added that an item will be scheduled for a March Council meeting.

7-2. City Council Appointed Representation of Albany

Bodies	Appointee	Alternate
Alameda County Mayors’ Conference	Pilch	McQuaid



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Alameda County Transportation Commission	Pilch	Nason
Alameda County Waste Management Authority	Pilch	Maass
Association of Bay Area Government	Maass	Barnes
East Bay Community Energy JPA Board	Pilch	McQuaid
East Bay Sports Field Recreational Authority JPA	Maass	Barnes
Housing Authority of Alameda County	McQuaid	N/A
League of California Cities (East Bay)	McQuaid	Barnes
Alameda County Library Advisory Commission	Amy Apel	Sarah Levin
Berkeley/Albany Mental Health Board	Erlinda Castro &	(Vacant)
City/AUSD/UC - 2X2X2	Pilch	McQuaid
Police & Fire Pension Fund Board	Pilch	McQuaid
Alameda County Paratransit Advisory & Planning Committee (PAPCO)	Margaret Patterson	N/A

Vice Mayor McQuaid reported the Housing Authority of Alameda County will meet on February 19. The interview panel will recommend two candidates for Executive Director to the Board of Supervisors.

Council Member Maass reported Vice Mayor McQuaid and he attended the Association of Bay Area Governments (ABAG) General Assembly meeting on February 7. The topic for discussion was housing and the Regional Housing Needs Assessment (RHNA).

Mayor Pilch reported Vice Mayor McQuaid and he attended the Mayors' Conference where they learned about the Census. He attended a meeting of the StopWaste Projects and Programs Subcommittee and learned about vendors that process reusable food ware.

7-3. City Council Meetings and Events

Vice Mayor McQuaid reported all Council Members attended the Chamber of Commerce mixer. Mayor Pilch and she attended the ribbon-cutting ceremony for the new building at Albany High School. In addition, she attended Coffee with a Cop and the Youth in Government Day in Sacramento.

Council Member Nason reported she attended the February 11 Berkeley City Council meeting to address the Council regarding the Albany CARES program. While there, she learned the Berkeley Council has decided to terminate its collaboration with Albany regarding mental health. The Berkeley Council is interested in leasing land located in Albany from Caltrans for people living in their recreational vehicles. The property is located near the railroad crossing of Buchanan. A fence blocking public access to the trail that extends from Eastshore Highway to the Second Street cul-de-sac is complete.

Mayor Pilch reported he spoke with the Mayor of Berkeley and offered to discuss Berkeley's leasing of land in Albany. He attended the Voter Participation Project meeting and participated in the Climate Mayors conference call.



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8. CITY MANAGER REPORT

City Manager Almaguer reported more than 85 people attended the recycling workshop. Fire Department personnel visited the Recreation Department's Friendship Club and spoke about fire safety awareness and emergency preparation and evacuation. Recruitments are open for an Albany representative to the Paratransit Advisory and Planning Committee (PAPCO) of the Alameda County Transportation Commission (ACTC) and for five members for the Financial Advisory Committee. The specific plan for San Pablo Avenue will launch in February. In response to community concerns, Albany Unified School District (AUSD) Superintendent Wells has worked with City staff to identify a location for two basketball courts.

9. PRESENTATION

9-1. Public Bank Presentation

Mayor Pilch recommendation: for information only

Margie Lewis, Friends of the Public Bank of the East Bay, reported AB 857 establishes a pathway for cities and regions in California to create public banks. A public bank can enable financing for affordable housing, small business loans, renewable energy infrastructure, clean energy, and other critical economic needs. Interest paid to a public bank will be passed to member municipalities. Investment decisions will be based on the values a public bank's board of directors adopts. Public banks are designed to handle cities' banking needs; will partner with community banks and credit unions to make affordable loans to local small businesses and individuals; and address the needs of unbanked and under-banked people. Friends of the Public Bank of the East Bay plans to develop an academy to educate non-banker board members and to expand financial literacy.

Jake Varghese, Friends of the Public Bank of the East Bay, advised that the Public Bank of North Dakota offers economic incentives to businesses, charges low interest rates, refinances student loans for North Dakota residents at low interest rates, and offers to refinance student loans as an incentive for people to work in North Dakota. Each year, the Public Bank of North Dakota returns an average profit of 18 percent to the state.

9-2. Quarterly Financial Update

Staff recommendation: for information purposes only

Finance Director Heather Rowden presented the staff report. The second quarter ended December 31, 2019. Most departmental expenses occur monthly. Risk management and non-departmental expenses typically are paid once per year. Over the past four years, revenues and expenses have increased year over year. For fiscal year 19-20, expenses appear to have increased significantly. This is caused by all expenses being paid from the general fund and transfers being made from the appropriate funds to reimburse the general fund. Revenues are not received evenly over the fiscal year because property taxes are received in the second and fourth quarters. As of February 14, the City has 29 properties registered to collect and remit the transient occupancy tax (TOT). Since January 31, the City has received approximately \$33,000



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in TOT revenues. Business license fees were due January 31, and staff mailed 2,050 renewal notices. Business licenses payments received on or before the due date have been processed.

A summary of comments from the public is as follows: the Gateview community wants to work with the City to identify short-term rentals in Gateview.

A summary of Council comments is as follows: a request for staff to explain in the budget to actuals report any budgeted amounts that are not the adopted budget amounts; support for increased transparency of Airbnb properties.

10. PUBLIC HEARING

10-1. PA 18-037 Application for a New Townhouse Project at Northwest Corner of Portland & Kains Avenue (634 Kains Avenue)

Planning & Zoning Commission recommendation: that the Council adopt Resolution No. 2020-17 approving the project entitlements for the Portland & Kains Townhouse project. The Planning & Zoning Commission adopted the following resolutions:

1. The Planning & Zoning Commission adopted P&Z Resolution No. 2019-08 on September 11, 2019 forwarding a recommendation to the City Council to approve the Density Bonus and Design Review requests
2. The Planning & Zoning Commission adopted P&Z Resolution No. 2019-13 on December 11, 2019, forwarding a recommendation to the City Council to approve the Commercial Parking Reduction for the adjacent restaurant use and Tentative Map requests

Staff recommendation: that the Council review the project and adopt Resolution No. 2020-17 approving the project entitlements for the Portland & Kains Townhouse project

Jean Eisberg, Lexington Planning, presented the staff report. The applicant proposes a nine-unit townhome project bordered by Kains, Portland, and San Pablo Avenues. Four lots are under common ownership. The applicant proposes a lot line adjustment to create a parcel for the townhomes and a flag lot containing a restaurant. The flag lot would have two zoning districts, the San Pablo Commercial (SPC) and R-3. Zoning for the townhome lot would remain R-3. The applicant requests design review, State Density Bonus Law application, a tentative map, an affordable housing agreement, a restaurant parking reduction, a tree removal permit, and a lot line adjustment. The Planning & Zoning Commission has provided recommendations for design review and parking reduction. The Parks & Recreation Commission could not make a recommendation for the tree removal permit. A proposed condition of approval requires the applicant to retain the mature trees, if possible. The project is before the Council for action on the State Density Bonus Law application, the tentative map, and an affordable housing agreement. The project is consistent with the Zoning Ordinance and the General Plan land use designation.

Portland Avenue is defined as the front yard of the project and Kains Avenue as the side yard. Individual entrances and garage entrances will be located along Kains. Ground-level open space



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will be located at the rear of units. Units will have three stories. The design is contemporary, attached townhomes with open gable roofs, a variety of window sizes, front stoops at the ground level, and alternating upper-level decks. The application includes one below-market-rate (BMR) unit for low-income households, which satisfies the City's inclusionary housing requirement; waivers to reduce the front and rear setbacks; a waiver to reduce the daylight plane and height limit; and a concession to allow the front stoops to encroach into the street side setback.

The lot line adjustment would reduce the number of parcels from four to two, which would be legally conforming. A future project on the flag lot would have to meet standards for both SPC and R-3 zoning designations. A lot with two zoning designations is unusual in Albany, and the Planning & Zoning Commission asked the applicant to prepare a hypothetical development project for the lot. The restaurant and adjacent Taco Bell have an informal shared parking agreement. The City recognized the agreement when it approved a variance to allow seven parking spaces for Taco Bell. The total number of existing parking spaces for both restaurants is 51. Because the shared parking agreement has not been recorded, staff chooses not to recognize the agreement. The applicant requests a parking reduction of five spaces. An on-street parking survey conducted on Thursday and Friday, December 5 and 6, 2019, found 50 percent and 77 percent occupancy respectively at lunchtime and 50 percent occupancy at dinnertime on Thursday. An off-street parking survey conducted on Friday and Monday, January 10 and 13, 2020, found 78 percent and 71 percent occupancy respectively at lunchtime, 42 percent occupancy in the late afternoon on Friday, and 71 percent occupancy at dinnertime on Friday.

A letter from the public refers to General Plan policies with emphasis on context and density, setbacks with daylight planes, and the definition of front yard. The applicant has requested a waiver to reduce the daylight plane. The Code defines the front of a corner lot as the smaller dimension of the lot. The City Council Strategic Plan identifies goals and objectives to promote housing availability and to implement the Housing Element. The project is located on a Housing Element site. The lot has the capacity for 18 units, and the applicant proposes nine units on approximately a third of the site. In order to deny the project, reduce the density of the project, or make the project infeasible, the Council would have to identify specific adverse impacts to public health and safety.

David Trachtenberg, Trachtenberg Architects, advised that he modified bike parking and the balconies at the request of the Planning & Zoning Commission.

A summary of comments from the public is as follows: the project will improve the neighborhood; the applicant should be required to comply with the daylight plane on Kains Avenue; the Council should change the parking requirements if it's not going to comply with them; the project will provide housing for families; an inquiry about a minimum owner occupancy requirement; the project will negatively impact on-street parking.

Planning Manager Anne Hersch indicated the City does not have any requirements regarding owner occupancy. The Council has the discretion to review parking spaces serving commercial districts.



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A summary of Council comments is as follows: the Council may want to consider the loss of on-street parking in the commercial zone; support for the project; requiring the applicant to comply with the daylight plane could adversely impact the design; parking permits may be needed to preserve parking; the units could have accessory dwelling units in the future; one parking space per unit is acceptable; a reduction of five parking spaces is reasonable; the parking surveys show some parking will be available after the project is constructed; if something has to be adjusted regarding the daylight plane on Kains, staff should take care of it; the project is near BART; children can walk from the project to the middle and high schools.

MOTION:

Moved by Council Member Maass, seconded by Council Member Nason, to adopt Resolution No. 2020-17 approving the project entitlements for the Portland & Kains Townhouse project with staff to adjust the daylight plane if needed.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

10-2. Proposed Repeal and Replacement of Chapter 20.32 "Signs" of the Albany Municipal Code - First Reading

Planning & Zoning Commission recommendation: that the Council introduce for first reading Ordinance No. 2020-01 repealing and replacing Chapter 20.32 "Signs" of the Albany Municipal Code. The Planning & Zoning Commission adopted the following resolutions:

1. Planning & Zoning Resolution No. 2019-07 a Resolution of Intention to initiate Code amendments to Chapter 20.32 "Signs" of the Albany Municipal Code on April 24, 2019
2. Planning & Zoning Resolution No. 2019-11 forwarding a recommendation to the City Council to adopt Chapter 20.32 "Signs" of the Albany Municipal Code on November 13, 2019

Staff recommendation: that the Council introduce for first reading Ordinance No. 2020-01 repealing and replacing Chapter 20.32 "Signs" of the Albany Municipal Code

Planning Manager Hersch presented the staff report. Regulations for signs are rooted in constitutional law, and case law typically determines how signage can be regulated. The current sign ordinance was established in 1978. Jurisdictions may regulate signage as to time, place, manner, and development standards by Zoning District. Jurisdictions may not regulate content or treat signs differently based on content. Since the Council's prior review, staff has eliminated definitions for public property and election period; eliminated the section for temporary non-commercial sign display during election periods; clarified the definition of exempt sign; included temporary non-commercial signage in Section 20.32.055; clarified the applicability for commercial operations in Section 20.32.075; included yard sign and temporary non-commercial signage in Table 1.20.32.090 and identified them as permit exempt; included a definition of yard sign; noted temporary non-commercial signs are permitted in all Zoning Districts; increased the time period for temporary signage displays to 90 days. Staff requests direction regarding the time duration for temporary, non-commercial signage. The ordinance does not address A-frame signage or



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establish restrictions or a prohibition for A-frame signage. The ordinance correlates to General Plan Policy LU-6.5 and Action LU-6.H and the 2019-2021 Strategic Plan.

A summary of Council comments is as follows: support for no time restriction on temporary, non-commercial signage because it would be difficult to enforce; a time period is needed so that the City can enforce removal of deteriorated signs based on complaints; staff, the Council, and the Economic Development Committee may consider a program that removes A-frame signage and allows electronic signage with rolling information; complaint-based enforcement will not work because the time period will begin when the complaint is made; a courtesy letter could be a reasonable solution; having an enforcement provision is important; the ordinance contains a provision about dilapidated signage.

MOTION:

Moved by Vice Mayor McQuaid, seconded by Council Member Maass, to introduce for first reading Ordinance No. 2020-01 repealing and replacing Chapter 20.32 "Signs" of the Albany Municipal Code with no time limit for temporary non-commercial signage.

AYES: Council Members Barnes, Maass, and Nason, Vice Mayor McQuaid, Mayor Pilch

NOES: None

Motion carried and so ordered.

11. UNFINISHED BUSINESS

12. NEW BUSINESS

12-1. Inclusivity and Diversity Resolution Proposed by the Social & Economic Justice Commission

Social & Economic Justice Commission recommendation: that the Council:

1. Provide direction to staff on the preparation of an annual Diversity Report on the City website that provides an easily accessible way for interested parties to examine the Equal Employment Opportunity data that the City has already compiled, and to update the Diversity Report each time the City collects EEO data on its workforce composition
2. Provide direction to staff to add questions about demographic categories to the City's composition of boards and commissions

Staff recommendation: that the Council provide direction to staff on the Social & Economic Justice Commission's proposed Inclusivity and Diversity Resolution

Assistant City Manager Isabelle Leduc presented the staff report. The 2019-2021 Social & Economic Justice (SEJC) Work Plan includes the development of an annual Albany diversity report card and a survey on inclusivity. In odd-numbered years, the Human Resources Department collects data from the EEO-4 survey, which employees voluntarily complete at the time of their hire. The SEJC has identified the EEO-4 survey report as containing data that can be posted on the City website without any personally identifiable information. The SEJC requests the City begin collecting demographic data of residents who serve on City Advisory Bodies. Currently, the City does not collect demographic data from Advisory Body members. The City



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Attorney has advised staff not to expand the categories of data beyond those identified in the EEO-4 survey as there is no identified legal basis for gathering additional data. The U.S. Equal Employment Opportunity Commission (EEOC) enforces federal laws prohibiting employment discrimination, and the City has an Equal Employment Opportunity Policy.

Gregory Downs, Social & Economic Justice Commission Chair, reported that entities share EEO-4 reports to demonstrate that their workforces are representative of the people they serve. With this data, citizens can assess where the entities are succeeding in engaging with diverse populations and where more work is needed. This data for City employees is not private data, but the public cannot easily access it. The SEJC proposes to make the data accessible on the City website and requests the Council to consider expanding data collection to applicants for Advisory Bodies. After consulting with staff, the SEJC concluded use of the existing data categories would be best.

City Manager Almaguer indicated the City Attorney has advised that data may be collected from Advisory Body members but not applicants.

A summary of Council comments is as follows: a suggestion to add a link to the data on the Human Resources Department webpage; some concern about privacy for Advisory Body members; collecting data from Advisory Body members may be labor intensive; with the turnover in Advisory Body members, the data may be skewed or irrelevant; resources may be better spent on recruiting Advisory Body applicants than on protecting confidential information; opposition to collecting data from Advisory Body members.

13. FUTURE AGENDA ITEMS

None

14. ANNOUNCEMENT OF CITY MEETINGS AND EVENTS

14-1. Upcoming City Events

- A. Bollywood Dance Party, Friday, February 28, 7:00 PM – 9:00 PM, Albany Community Center

14-2. Upcoming City Meetings

- A. Climate Action Committee Meeting, Wednesday, February 19, 7:30 PM, City Hall Council Chambers
- B. Planning & Zoning Commission Meeting, Wednesday, February 26, 7:00 PM, City Hall Council Chambers
- C. Traffic & Safety Commission Meeting, Thursday, February 27, 7:00 PM, City Hall Council Chambers



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15. ADJOURNMENT

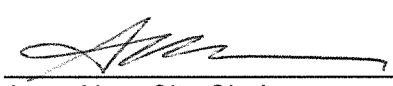
10:13 p.m. There being no further business before the City Council, Mayor Pilch adjourned the meeting.

Minutes submitted by Anne Hsu, City Clerk.



Nick Pilch
Mayor

Attest:



Anne Hsu, City Clerk