

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

**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION,**  
**COMMUNITY CENTER, 1249 MARIN AVENUE**  
**MONDAY, DECEMBER 15, 2008**

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**EXECUTIVE SESSION**

**7:00 p.m.**

Closed session to discuss real property pursuant to Government Code Section 54956.8:

|                      |   |
|----------------------|---|
| Property:            | Proposed Pierce Street Park, located across from 737 Pierce Street.   |
| Negotiating Parties: | Caltrans, on behalf of the State; City Administrator & City Attorney, on behalf of the City.  |
| Property:            | Proposed Maintenance Center, 540 Cleveland Avenue   |
| Negotiating Parties: | City Administrator & City Attorney, on behalf of the City; Western Forge & Flange, represented by James Clayton & Company, 2271 Lava Ridge Court, Roseville, CA 95661 |

Closed session pursuant to Government Code Section 54956.9(b)(3)(A) to meet with Legal Counsel to discuss exposure to litigation

**OPPORTUNITY FOR THE PUBLIC TO SPEAK ON CLOSED SESSION ITEMS**

**ADJOURN TO CLOSED SESSION**

**8:00 p.m.**

Mayor Lieber, who led the Pledge of Allegiance to the Flag, called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

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

Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Charlie Adams, Finance Director; Ann Chaney, Community Development Director; Jeff Bond, Planning Manager; Judy Lieberman, Assistant City Administrator; Penelope Leach, Recreation & Community Services Director; Marc McGinn, Fire Chief.

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

Mayor Lieber reported that staff was given direction on both items.

**4. REORGANIZATION OF COUNCIL**

Jim Cleveland, Albany resident, asked to speak regarding point of order regarding yielding speaking time, if necessary, to another speaker who requests it. Mr. Cleveland asked that the Council be polled for the record to reaffirm this policy.

Mayor Lieber responded that there would be no change and that everyone would be given three (3) minutes and would then go back to Council.

**4-1. Election of Mayor and Vice-Mayor**

The following people spoke: Thelma Rubin, Albany resident; Anne Foreman, Albany resident; Paul Cooper, Albany resident; Leah Bernstein, Albany resident; Brian Johns, Albany resident; Diana Slout, Albany resident; Ruth Ganong, Albany resident; Eddie So, Albany resident; Leo Panian, Albany resident; Sally Douglas, Albany resident; Francesco Papalia, Albany resident; Margie Marks, Albany resident; Jackie (didn't get last name), Albany resident; Mia Kitahara, Albany resident; Clay Larson, Albany resident; Bill Dann, Albany resident; Rex Higgenbotham, Albany resident; Jim Cleveland, Albany resident; Caryle O'Keefe, Albany resident; Allan Maris, Albany resident; Robert Cheasty, Albany resident.

The comments were as follows: Speakers spoke in favor of Council Member Atkinson, Council Member Javandel, Council Member Thomsen & Council Member Wile to be nominated Mayor and Vice-Mayor.

**NOMINATION:**

Council Member Thomsen nominated Council Member Atkinson, Mayor and Council Member Javandel, Vice-Mayor and Council Member Javandel seconded the nomination

Mayor Lieber stated that usually the nomination is done one at a time and would prefer to vote for Mayor and then Vice-Mayor. Council Member Thomsen stated that her nomination stands.

The City Attorney stated that there is no policy on how the nominations are made.

**NOMINATION:**

Mayor Lieber nominated Council Member Atkinson, Mayor and Council Member Wile, Vice-Mayor and Council Member Atkinson seconded the nomination.

Council Member Thomsen stated that she believes all five (5) members of the Council are qualified to be Mayor and Vice-Mayor and that everyone has the necessary leadership skills. Council Member Thomsen noted that Council Member Javandel was not given a chance two years ago.

Council Member Javandel stated that he likes the nomination that represents the diversity of the City and if everyone truly wants to heal the division in the City that the Council needs to move away from a block. Council Member Javandel suggested that maybe the Council should adopt a specific policy and offered some suggestions: Seniority or who received the most votes.

Council Member Wile stated that she is looking forward to working with both Council Member Javandel and Thomsen. Council Member Wile noted that the Mayor and Vice-Mayor should be people who have the time and energy to meet with people whenever necessary.

Council Member Atkinson stated that she agrees that all five members are qualified and that everyone on the Council has a voice.

Mayor Lieber commented that he too would work positively with all members of the City Council.

Council Member Javandel noted there is a lot of work to be done by the Council and hopes that it is distributed among all members of the Council, as everyone needs to be utilized.

Mayor Lieber stated that the last nomination would be voted on first (Council Member Atkinson, Mayor and Council Member Wile, Vice-Mayor.

**VOTE ON THE LAST NOMINATION:**

AYES: Council Members Atkinson, Wile & Mayor Lieber

NOES: Council Members Javandel and Thomsen

ABSENT: None

Nomination approved.

Mayor Atkinson took her seat as Mayor and stated that she is looking forward to working with everyone on the Council and asked that everyone be respectful of each other.

Mayor Atkinson thanked former Mayor Lieber for this guidance over the past two years and presented him with a plaque.

**5. 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.)

- 5-1.** a. Ratification of City of Albany net payroll in the amount of \$224,010.28; taxes, benefits & withholdings in the amount of

\$190,260.52. Total payroll in the amount of \$414,270.80. Payroll period: 12/05/08.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$60,747.27; taxes, benefits & withholdings in the amount of \$45,898.86. Total payroll in the amount of \$106,646.13. Payroll period: 12/05/08.

Staff recommendation: Ratify.

**5-2.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$273,007.23. Period: 11/26/08.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$40,136.71. Period: 12/01/08.  
(File #300-40)

Staff recommendation: Ratify.

**5-3.** Pension Plan Side Funds Payment.  
(File #390-85)

Staff recommendation: Authorize the payment of \$1 million from the Pension Property Tax Fund to reduce the PERS Safety Police & Fire Pension Plans side funds.

**5-4.** Ocean View Sports Field Improvements.  
(File #600-30)

Staff recommendation: 1) Approve plans and authorize the City Clerk to advertise for bids for the Ocean View Improvements Project - CIP Project P59; 2) Authorize the City Administrator to award a contract for construction, as long as the construction, design and project management costs do not exceed \$127,604, which is the amount of the Roberti-Z'berg grant funds approved for this project of \$119,604 plus \$8,000 in contingency funds from Measure R. 3) Authorize the City Administrator to enter into an agreement with Greg Jacobs Engineering to provide Project Construction Management Services for up to \$10,000.

**5-5.** Codornices Creek Restoration Project between San Pablo and Kains Avenues – Contract for final engineering and landscape plans.  
(File #600-30)

Staff recommendation: Approve a contract with Restoration Design Group (RDG) to prepare final engineering and landscape plans for

Codornices Creek Restoration between Kains Avenue and San Pablo Avenue. The contract amount is \$98,211.

- 5-6.** Resolution No. 08-76 – A Resolution of the Albany City Council Procedures for Consideration of Development Agreements.  
(File #410-20)

Planning & Zoning Commission recommendation: Adopt Resolution No. 08-76.

- 5-7.** Resolution No. 08-77 – A Resolution of the Albany City Council Authorizing the City of Albany Fire Department to Accept a Grant Award from the Federal Emergency Management Agency Assistance to Firefighters Grant in the amount of \$500,000 for an Aerial Fire Truck.  
(File #345-30)

Staff recommendation: Adopt Resolution No. 08-77.

- 5-8.** Ordinance No. 08-12 – An Ordinance of the Albany City Council Amending Section 9-1.4(b) and (c) of the Municipal Code to Decrease the Speed Limit on Cleveland Avenue and Eastshore Frontage Road to 25 mph and add “After Eastshore Frontage Road” (a.k.a. Eastshore Highway).  
(File #590-40)

Staff recommendation – Adopt Ordinance No. 08-12 – Second Reading Pass-to-print.

- 5-9.** Setting January 21, 2009, for a public hearing to consider the first reading of an ordinance to amend the Planning & Zoning Code for purposes of creating a Tobacco Retailer Licensing Program and land use regulations for tobacco retailers.  
(File #410-20)

Staff recommendation: Approve

- 5-10.** Council Appointments to Boards, Commissions, Committees.  
a. Council Member Wile: Karen Leeburg, Library Board.  
b. Council Member Javandel: Peter Goodman, Susan Adame, Arts Committee; Linda Yamamoto, Albany Library Board; Jerri Holan, Charter Review; Steven Schwartzberg, Civil Service; Christine Mullarkey, Park & Recreation Commission; Brian Parsley, Social & Economic Justice; Janet Smith-Heimer, Sustainability Committee; Lubov Mazur, Traffic & Safety Commission; Clay Larson, Waterfront Committee.

Staff recommendation: Information.

- 5-11.** Planning & Zoning Commission appointments:
  - a. Mayor Lieber reappointing Leo Panian.
  - b. Council Member Javandel reappointing David Arkin.
  - c. Council Member Wile reappointing Peter Maas.

Staff recommendation: Ratify.

- 5-12.** Interim Agreement with U.S. Postal Service for Codornices Creek Phase 3, as required by California Resources Agency for existing River Parkways Grant.  
(File #600-50)

Staff recommendation: Approve.

- 5-13.** Status of Sewer, Storm Drainage, Capital Facilities In-Lieu Fees and Parkland In-Lieu Fees Collected as of June 30, 2008 according to Government Code Section 66001 (AB1600).  
(File #390-95)

Staff recommendation: Receive comments, if any, from residents regarding the Development Impact Fee Report made available to the public on December 1, 2008.

Mayor Atkinson asked if anyone would like to remove an item and the following items were removed for discussion: 5-3, 5-4 & 5-7.

### **5-3. Pension Plan Side Funds Payment**

Allan Maris, Albany resident asked the current status of the Pension Fund. The Finance Director responded this is an ad valorem tax and the City has to pay off the liability; however, the fund is in good shape and believes this is a prudent use of the money.

The following people spoke: Jon Ely, Albany resident; Robert Cheasty, Albany resident.

A summary of the comments is as follows: Questioned using the tax for the PERS money and believes the voters approved a sunset clause. Spoke about being on the blue ribbon committee that recommended the tax.

### **5-4. Ocean View Sports Field Improvements**

Roger Carlson, Albany resident, spoke about not being invited to any meeting between the City and the School District and noted that open meetings are needed

The following people spoke: Rex Higgenbotham, Albany resident; Brian Parsley, Albany resident; Frank Knowles, Albany resident.

A summary of the comments is as follows: Spoke about the condition of Memorial Park Field. Expressed concern that the School District is trying to correct its

Title 9 problems and noted that Memorial and Ocean View need to be equitable fields. Noted that there is a huge demand for playing fields in Albany and expressed concern that Ocean View Park is fenced off.

**5-7. FEMA Grant – Fire Department**

Fire Chief McGinn introduced James Boito, AFD, who wrote and applied for the grant. Firefighter Boito noted that he has been involved with approving Federal grants and over the years has learned what is needed to get a grant. Firefighter Boito commented that over 7,000 grants were received and Albany was lucky to have received this grant in the amount of \$500,000 for an Aerial Fire Truck.

Council Member Lieber congratulated Firefighter Boito and noted what a big deal this is and that the new truck will save lives.

Council Member Wile asked questions about the equipment fund and also offered her congratulations.

Mayor Atkinson asked whether this vehicle would be loaned to other departments and the Fire Chief responded probably not, as most departments have an aerial truck.

Council Member Thomsen offered her congratulations and stated that Firefighter Boito is to be commended.

Council Member Javandel noted the value of training for Albany employees and that it is a wise investment of time and money.

**MOTION:**

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

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**6. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS**

Council Member Lieber stated that he would like to read two proclamations that he issued before he left office as Mayor: 1) Thanking Nan Wishner for all her commitment and time volunteered to the City. 2) Thanking Cheryl Taubenfeld for her support and recognized their 19<sup>th</sup> wedding anniversary.

Council Member Wile announced a meeting with Barbara Lee regarding the Green Job Corps.

The following people spoke: Jim Cleveland, Albany resident; Allan Maris, Albany resident.

A summary of the comments is as follows: Spoke about the financial situation of the Country and noted that he tried to tell the Council about this problem but was cut off and hoped that in the future Council would listen to citizens. Noted the projects that the Berkeley/Albany Mental Health Board is involved with and also hoped the Council would work on a new City motto.

**7. PRESENTATION/PUBLIC****7-1. Auditor Reports**

The Finance Director reported that the Council engaged the CPA firm of Caporicci & Larson to serve as independent auditors of the City's financial reports. The scope of work performed encompassed examination of the City's Comprehensive Annual Financial Report, the annual financial reports of the Albany Reinvestment Agency, the Albany Police and Fire Relief or Pension Fund, ACTIA Measure B funds, Transportation Development Act Report and the City of Albany Appropriation Limit.

The auditors also report their findings and recommendations regarding the City's internal control structure and compliance with terms of grant agreements.

Mr. Ahmed Badawi, Caporicci & Larson, noted that the City is well run and has no problems that need to be changed and looks forward to a long relationship.

No Council action required.

**8. UNFINISHED BUSINESS****8-1. Monthly Progress Report: Civic Center Project**

(File #200-20)

The Public Works Manager submitted the monthly progress report and noted that the City continues to stay within the contingency budget.

The following people spoke: Clay Larson, Albany resident; Allan Maris, Albany resident.

A summary of the comments is as follows: Noted that the contractors are experiencing good weather right now and asked when the move back date is expected. Asked the percentage of the project that is completed. The Project Manager stated that the move back date is August/September, 2009.

Council Member Wile asked if one part of the project is complete could employees move back even though the rest of the project is not finished. The Public Works Manager stated that this would be difficult due to mechanical systems, such as the heating, electrical and noted that the project was not bid in phases.

No action required.

**9. NEW BUSINESS****9-1. Ferry Terminal – Draft Environmental Impact Report/Statement**

(File #1060-25)

The Community Development Director reported that the San Francisco Bay Area Water Emergency Transportation Authority (WETA) has been working in partnership with the Federal Transit Authority (FTA) to operate a new ferry service between the San Francisco Ferry Building and the Berkeley/Albany waterfront. The goal of the project is to provide another mode of transportation to San Francisco.



Comments on the EIR are due to WETA by December 16, 2008. The Waterfront Committee, Traffic & Safety Commission and Planning & Zoning Commission have reviewed the document. The Waterfront Committee recommends Alternative B, The Planning & Zoning Commission favor either Alternative A or B. The Traffic & Safety Commission are neutral on the site location, but favored the concept of a ferry terminal being located in the Berkeley/Albany area.

The Community Development Director stated that Alternative B would be located between the landside end of the Berkeley Fishing Pier and Hs Lordships Restaurant.

The following people spoke: Robert Cheasty, Citizens for Eastshore Park; Clay Larson, Waterfront Committee member; Bill Dann, Waterfront Committee member; Allan Maris, Albany resident.

A summary of the comments is as follows: Supported the recommended letter with comments and noted that dredging causes negative impact on the wildlife. It was noted that there are 15 threatened species in the Bay Area. Noted that the Waterfront Committee did not vote on the comment letter, however, individual members made comments. Supported the idea of a ferry service. Disagreed with the statement that the Waterfront Committee did not vote on the comment letter noting that the Committee did take a vote. Noted that the DEIR failed to look at critical intersections and the parking situation.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Javandel to approve forwarding a comment letter to the San Francisco Bay Area Water Emergency Transportation Authority.

**ON THE QUESTION:**

Council Member Javandel stated that the traffic details need to be addressed more clearly and completely and agrees that Alternate B is superior.

Council Member Thomsen agreed that Alternate B is the most manageable and supports that alternative.

Council Member Lieber noted that he sits on the Advisory Board for WETA and supports the letter and stated that if the Albany site is approved it would be parked cars along the Waterfront area.

**VOTE ON THE MOTION:**

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**9-2. Review of City Commissions, Committees and Boards**

(File #110-20)

The City Administrator reported that the City has 11 Commissions, Committees and boards and noted that by periodically reviewing the list, purposes and general composition (not individual members but how they are appointed) of the City's Commissions, Committees and Boards.

Staff reviewed the charge of the Social & Economic Justice Commission and the Sustainability Committee and believes that by combining the issues of social and economic justice with environmental sustainability into one commission, the City would

have the full spectrum of sustainability considered in one body. It would have the further benefit of being more efficient with staff time.

Staff is recommending 1) That Council review the charges and general composition, and if any changes are desired, refer the change to that group for comment and to staff for recommendation back to the Council. 2) Consider reorganizing the Social & Economic Justice Commission and the Sustainability Committee into one Commission. 3) Authorize establishing an Economic Development Working Group for a period of up to six months and appoint two Council Members to that group.

Council Member Lieber stated that he would like to table this item due to the time of night. Council Member Wile noted that she would like to address the establishment of an Economic Development Working Group.

Council Member Javandel stated that if the Council merges the Social & Economic Justice Commission and the Sustainability Committee that each Council Member should have two (2) appointments and that these appointees be ex-officio members of all other City Commissions, Committees and Boards.

The following people spoke: Peter Goodman, Arts Committee member; Brian Johns, Social & Economic Justice Commission; Brian Parsley, Social & Economic Justice Commission; Mara Duncan, Social & Economic Justice Commission.

A summary of the comments is as follows: Noted that the Arts Committee scope of work is larger and believe that with at least 10 members the strengths could be diversified. Asked that before any action is taken regarding merging Commissions, Committees and Boards that public debate take place. Noted that both the Social & Economic Justice Commission and the Sustainability Committee have big projects before them and preferred to keep the two separate.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Javandel to extend the meeting by 15 minutes.

Motion carried and so ordered.

**MOTION:**

Moved by Council Member Lieber, seconded by Council Member Wile that the Mayor and Vice-Mayor be appointed to the Economic Development Working Group and that staff come back with the parameters for the group. The Group to be comprised of the City's Economic Consultants, Todd Abbott, Chamber of Commerce, Allen Cain, Solano Avenue Association, the Assistant City Administrator and the Finance Director.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**9-3. Mayoral Appointments to Local & Regional Boards**

(File #110-30)

Mayor Atkinson appointed members and alternates to local and regional boards, commissions and committees.

Council Member Lieber questioned the appointment of Council Member Javandel to the Congestion Management Agency due to a conflict of interest, as he works for the City of Berkeley.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Wile to extend the meeting 10 minutes.

Motion carried and so ordered.

Council Member Wile disagreed noting that the City Attorney has reviewed this and found it not to be a conflict. Council Member Wile stated that Council Member Javandel's experience with traffic matters makes him well suited to this position. Council Member Wile commented that she trusts Council Member Javandel that if a conflict happens that he would excuse himself.

A copy of the appointments is attached to the official minutes.

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

**10-1.** The City Council has scheduled a work session for **Monday, January 5, 2008, 7:30 p.m.**, 1249 Marin Avenue – Economic Development. Note: No regular Council meeting is scheduled

**10-2.** The next regular City Council meeting is scheduled for **Wednesday, January 21, 2009, 8:00 p.m.** due to the holiday on the 19<sup>th</sup> and the School Board meeting on the 20<sup>th</sup>.

**11. ADJOURNMENT**

11:20 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

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MARGE ATKINSON  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK

