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**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION,**  
**COMMUNITY CENTER, 1249 MARIN AVENUE**  
**MONDAY, MARCH 16, 2009**

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**6:30 p.m.**

**CLOSED SESSION**

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

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:	842 Masonic Avenue, Albany
Negotiating Parties:	City Administrator and Rebecca Nemeth, Berkeley Hills Realty, on behalf of the City; Rita Smith, Rita Smith Realty, on behalf of property owner.

**7:30 p.m.**

Mayor Atkinson, 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 Javandel, Lieber, Thomsen, Wile & Mayor Atkinson  
Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Robert Zweben, City Attorney; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Jeff Bond, Planning

Manager; Barry Whittaker, Project Manager; Rich Cunningham, Public Works Manager; Marc McGinn, Fire Chief.

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

The City Attorney announced that Council Members Javandel and Thomsen recused themselves from discussion on the Pierce Street Park and did not attend that Executive Session.

The City Attorney announced that no decisions were made during both Executive Sessions and staff was given instructions on how to proceed.

**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, March 2, 2009**

Staff recommendation: Approve.

- 4-2. a.** Ratification of City of Albany net payroll in the amount of \$210,534.65; taxes, benefits & withholdings in the amount of \$264,240.66. Total payroll in the amount of \$474,775.31. Payroll period: 02/27/09.
- b.** Ratification of Albany Municipal Services JPA net payroll in the amount of \$56,202.31; taxes, benefits & withholdings in the amount of \$59,290.55. Total payroll in the amount of \$115,492.86. Payroll period: 02/27/09.

Staff recommendation: Ratify.

- 4-3. a.** Ratification of bills, claims and demands against the City of Albany in the amount of \$711,744.42. Period: 02/20/09.
- b.** Ratification of bills, claims and demands against the City of Albany in the amount of \$34,837.81. Period: 03/01/09.
- c.** Ratification of bills, claims and demands against the City of Albany in the amount of \$1,361,899.92. Period: 03/06/09.  
(File #300-40)

Staff recommendation: Ratify.

**4. CONSENT CALENDAR**

- 4-4.** 2009 Accessibility Ramps Project.  
(File #600-30)

Staff recommendation: 1) Authorize the City Administrator to execute a Professional Services Agreement with Jacobs Engineers to provide design services for the 2009 Accessibility Ramps Project in an amount of \$41,200. 2) Authorize the City Administrator to call for bids to construct the 2009 Accessibility Ramps Project – CIP Project P27. Staff will return to the Council for approval to award the construction contract.

- 4-5.** Pierce Street Pavement Rehabilitation and Bicycle/Pedestrian Path Project Environmental Review Contract with LSA Associates.  
(File #600-30)

Staff recommendation: Authorize the City Administrator to enter into a contract with LSA Associates, Inc. to provide environmental review services pursuant to CEQA for the Pierce Street Pavement Rehabilitation and Path Project in the amount of \$32,660.

- 4-6.** Purchase of Financial Management System and Maintenance Agreement.  
(File #600-30)

Staff recommendation: Authorize the City Administrator to execute agreements with Tyler Technologies for the purchase, installation and maintenance of Tyler Incode Financial Management System for 1) All-inclusive cost of software, installation and initial training in all applications purchased, not to exceed \$110,000. 2) The annual maintenance fee for the first year not to exceed \$20,000 with guaranteed renewal for a period of at least five (5) years, with specified caps on any fee increase.

- 4-7.** Measure C bonds activity and status annual report.  
(File #390-120)

Staff recommendation: Information only.

- 4-8.** Resolution No. 09-7 – A Resolution of the City of Albany, State of California, Authorizing the Issuance and Sale of Parcel Tax Bonds for the Purpose of Financing the Cost of Acquiring and Constructing Storm Drain Improvement Projects, Approving an Official Statement and Related Matters.  
(File #340-20)

**4. CONSENT CALENDAR**

Staff recommendation: Adopt Resolution No. 09-7 and authorize the City Treasurer, City Administrator and City Finance & Administrative Services Director to complete the documents required for issuance of bonds, in accordance with Resolution No. 09-7.

- 4-9.** Resolution #09-9 - A Resolution of the Albany City Council Directing the Filing of the Landscaping and Lighting Assessment District Annual Report (Assessment District No. 1988-1 and 1996-1). (File #360-20)

Staff recommendation: Adopt Resolution No. 09-9

- 4-10.** Codornices Creek Maintenance Contract – Shelterbelt Builders. (File #600-30)

Staff recommendation: Authorize the City Administrator to enter into a contract between the City and Shelterbelt Builders in the amount of \$15,000 for maintenance of lower Codornices Creek restoration areas from the western boundary of the project to 6<sup>th</sup> Street.

- 4-11.** Work Plan Status Report. (File #100-30)

Staff recommendation: Receive and review status report and direct staff to agendize a process and timeline for development of a new set of goals and work plan in coordination with the City’s organizational analysis and updating of the 2009-10 budget.

Mayor Atkinson asked if anyone would like to remove an item from the Consent Calendar. The following items were removed for discussion: 4-4, 4-5 & 4-8.

**4-4. 2009 Accessibility Ramps Project.**

Council Member Lieber asked if this was a continuation of upgrading City streets for accessibility? The Community Development Director responded that this is for the curb ramps at the corners, which are either non-existent or substandard. The Community Development Director stated that Community Development Block grant monies must be used for low income or capital projects and noted that this project is a very good use of the money.

**4-5 Pierce Street Pavement Rehabilitation & Bicycle/Pedestrian Path**

Council Member Thomsen requested that this item be voted on separately, as she is going to recuse herself and leave the Chamber and would come back for the rest of the agenda.

Council Member Thomsen left the Council Chamber.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Wile to authorize the City Administrator to enter into a contract with LSA Associates, Inc. to provide environmental review services pursuant to CEQA for the Pierce Street Pavement Rehabilitation and Path Project in the amount of \$32,660.

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

NOES: None

ABSENT: Council Member Thomsen

Motion carried and so ordered.

Council Member Thomsen returned to the Council Chamber and took her place at the podium.

**4-6. Purchase of Financial Management System & Maintenance Agreement**

Council Member Lieber stated that \$110,000 for purchase and \$20,000 for maintenance is a lot of money to upgrade a system and asked about the stability of the Company for future maintenance of the system. The Finance Director responded that he reviewed a lot of financial system providers and believes this is the premier company for municipal financial software at this time.

The Finance Director noted that he checked with current clients and that the company has been in business for over 20 years and feels very confident that the company would be around to service the system.

Council asked some questions about on exactly what this program encompasses and was informed by the Finance Director that it does ledger work, payroll, accounts payable, accumulate costs, electronic time cards and has other capabilities that the City is not purchasing at this time.

**4-8. Resolution No. 09-7 Issuance of Tax Bonds**

The City Administrator asked that this item be pulled from the Consent Calendar and acted on as a separate item.

**MOTION:**

Moved by Council Member Javandel, seconded by Council Member Thomsen to approve the Consent Calendar with the exception of Items 4-5 & 4-8.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**4-8. Resolution No. 09-7 Issuance of Tax Bonds**

The City Administrator stated that the action for issuance of bond, which has a 13 year term and is a way for the City to fund the Neilson Street sewer.

Council Member Lieber presented Resolution No. 09-7 – A Resolution of the Albany City Council Authorizing the Issuance and Sale of Parcel Tax Bonds for the Purpose of Financing the Cost of Acquiring and Constructing Storm Drain Improvement Projects, Approving an Official Statement and Related Matters.

**MOTION:**

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Lieber and seconded by Council Member Javandel.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

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

Mayor Atkinson asked the Fire Chief to speak about the newly acquired fire engine. The Fire Chief stated that due to a FEMA grant the City was able to purchase a demo fire truck from a plant in Wisconsin, which saved the City a lot of money.

The Fire Chief explained that the new fire engine could reach 6 floors, which is any business in Albany with the exception of 555 Pierce Street and has a life span of 30 years.

Council Member Wile announced that Shamrock Shenanigans, a block party and sale would be held on March 21, 11 – 5 p.m. at 1361-1399 Solano Avenue.

Council Member Wile asked Nick Mildenhall, Meals on Wheels Coordinator, to come to the podium to present Certificates of Appreciation to the Meals on Wheels volunteers.

Mr. Mildenhall stated that there are more than 20 volunteers who go out rain or shine making sure that homebound seniors receive a hot meal. Mr. Mildenhall invited anyone who is interested in becoming a volunteer to contact the Senior Center.

Mr. Mildenhall then gave out all the Certificates of Appreciation to the people who were in attendance and stated that he would make sure the rest are given to the volunteers who did not attend the meeting.

Council Member Thomsen stated that the Meals on Wheels volunteers do a real service and want to thank everyone involved for doing a wonderful job including Nick for his coordination of the program.

Mayor Atkinson opened the Good of the City/Public Forum and asked if anyone would like to speak.

Brian Parsley, Albany resident. A summary of his comments is as follows: Expressed concern about the location of a medical marijuana dispensary located at 533 San Pablo Avenue. It was noted that this location is 940' from Albany Hill Park and the City is being asked to waive the 1000' radius. It was noted that there is an Ordinance on the books and the City should follow it and that there is medical marijuana located at Ranch 39, which is very close for Albany residents.

The Planning Manager announced a roundtable discussion with the Planning & Zoning Commission about the 2009 Housing Element Update on Tuesday, March 31, 2009, 7 p.m. at the Community Center.

**6. PRESENTATION/PUBLIC HEARING**

**7. UNFINISHED BUSINESS**

**7-1. Monthly Progress Report: Civic Center Project.**

(File #200-20)

The Public Works Manager stated that the Civic Center Project is past the halfway mark and completion is currently projected for September, 2009. At this point a total of 31 Contract Change Orders have been issued for added work and total \$269,203 or approximately 3.4% of the total job or 6.2% of the contractor's billings to date. The Change Orders are funded from the project contingency of \$1,444,500 and represents less than 20% of the contingency at this 50% point in project progress.

The Project Manager gave a power point presentation showing photos of the project to date. Janet Tam, project architect, stated that she believes the project is going great and noted how well the City staff and contractor work together.

Council Member Lieber asked about public art for the building and the City Administrator responded that there is no budget at this time but maybe there would be additional funds for landscaping and public art in the future.

Council Member Wile commented on the achievement of the project coming in under budget.

Council Member Thomsen asked when the Council would have a walk through and was told probably in a couple of months.

The following people spoke: Brian Parsley, Albany resident. A summary of the comments is as follows: Asked a question about the EOC and whether it is going to have solar panels and a separate generator? The Public Works Manager responded that the Fire Station would have the power source.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Javandel to authorize proceeding with interior modifications to City Hall in accordance with plans previously presented to Council, at an estimated cost of \$200,000, with this added scope to be funded from unexpended contingency allowance from the first half of the project.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**7-2. Campaign Finance Reform Task Force**

The City Attorney reported that he would like to see the Task Force established for six (6) months and after three (3) months to have a work session with the City Council to make sure everyone is on the same wave length. The City Attorney noted

## 7-2. Campaign Finance Reform Task Force

that he would recommend that the Task Force not focus on the Attorney fee issue, as he is not sure that would be productive.

Council Member Lieber stated that he agreed with the City Attorney on a lot of issues; however he believes the entire Act should be repealed but noted after the Ordinance was redone it did seem to work better. Council Member Lieber stated that he did not believe it necessary to form the Task Force noting that the Council and the Social & Economic Justice Commission have spent a lot of time on this subject.

Mayor Atkinson commented that she is not sure what would be accomplished by the establishment of the Task Force.

The following people spoke: Ruth Ganong, Albany resident; Caryl O'Keefe, Albany resident; Margie Marks, Albany resident; Robert Cheasty, Albany resident.

A summary of the comments is as follows: Asked that the scope of this Task Force be looked at. Supported the establishment of the Task Force and agreed with the comments made by the City Attorney. Noted that there needs to be transparency in the election process so that people understand the procedure. Believe that the Ordinance should be clear so that any reasonable person could understand it.

The City Attorney responded that he disagrees that the existing Ordinance is confusing and noted that the sticky issues were the ones that came from State law.

### **MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Wile that a Campaign Finance Reform Task Force is established, as follows: 1) Five members, one appointed by each Council Member. 2) The City Attorney will serve as advisor to the Task Force. 3) The City will request Robert Stern from the Center for Governmental Studies, or an alternate representative, to also act as an advisor to the Task Force. 4) The charge of the Task Force is to review the existing ordinance and determine if further modifications to or repealing of the Act are appropriate or desirable; per the recommendation of the Social and Economic Justice Commission to investigate public campaign financing and the issue of legal actions. 5) The Task Force shall expire within six (6) months with a work session held with the City Council after three (3) months.

### **ON THE QUESTION:**

Council Member Javandel stated that he is more interested in getting information out to the voters and supports public financing with a threshold for candidates and if the threshold is accepted then the City puts in funding. Council Member Javandel stated that he does not want the Task Force to get caught up in the finance part and to make sure it is an equitable process with the focus being on distribution of information.

### **VOTE ON THE MOTION:**

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

NOES: None

ABSENT: None

Motion carried and so ordered.



**8. NEW BUSINESS**

**8-1. Ordinance No. 09-04 – Public Works Projects, Contracts & Procedures**

(File #100-95)

The City Attorney reported that in November 2008, the voters approved modifications to Section 4.03 of the City Charter, which authorizes the Council to establish by ordinance procedures for the administration of public works contracts.

The City Attorney commented that Ordinance No. 09-04 establishes guidelines for how public contracts would be administered. It was noted that Section 13-5 establishes the threshold dollar amounts for contracts and the type of informal or formal bidding that is required, as follows: A. Up to \$30,000 can be awarded by the City Administrator, or designee, after seeking oral or written prices. B. Up to \$100,000 can be awarded after seeking three (3) written bids (quotes). C. \$100,000 and up requires a formal bidding process.

Council Member Javandel introduced for first reading Ordinance No. 09-04 – An Ordinance of the Albany City Council Adopting Chapter 13 Public Works Projects, Contracts and Procedures.

**MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Javandel and seconded by Council Member Wile to approve Ordinance No. 09-04 for first reading.

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

NOES: None

ABSENT: None

Motion carried and so ordered.

**8-2. Ordinance No. 09-05 – Massage Establishments, Technicians and Services**

(File #100-95)

The City Attorney reported that the State passed SB 731, which would allow, but not require, massage therapists to obtain a State massage certificate. This bill partially preempts local agencies from regulating certified massage therapists, but leaves local agencies free to regulate non-certified massage therapists.

Ordinance No. 09-05 contains modifications to make Albany’s code provisions consistent with State law SB 731. Section 5-13.4(f) was added to provide that is such State legislation is adopted; State certified therapists would be exempt from the ordinance. In addition, the educational requirements contained in the proposed ordinance mirror the requirements of SB 731.

Council Member Lieber added the following, page 3, line 25: Add RN and LVN and noted that on page 4, line 17, Nurses are mentioned. Page 11, line 21: Delete reference to same sex sharing a room and add that clients would be offered dressing rooms.

**8-2. Ordinance No. 09-05 – Massage Establishments, Technicians and Services**

Council Member Javandel introduced Ordinance No. 09-05 – An Ordinance of the Albany City Council Amending Section 5-13, Massage Establishments, Massage Technicians and Massage Services of the Albany Municipal Code.

**MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Javandel and seconded by Council Member Wile to approve Ordinance No. 09-05 for first reading.

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

NOES: None ABSENT: None

Motion carried and so ordered.

**8-3. Ordinance No. 09-06 – Service of Notices**

(File #100-95)

The City Attorney reported that this is a housekeeping provision that follows the existing section on publication of notices. The new section would include provisions for service including personal service, service by mail, and posting the notice. It also includes provisions stating when a mailed notice would be effective and states that failure to receive a notice would not affect the validity of any proceeding.

Council Member Javandel introduced Ordinance No. 09-06 – An Ordinance of the Albany City Council Adopting Section 2.35 Service of Notices of the Albany Municipal Code.

**MOTION:**

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Javandel and seconded by Council Member Lieber to approve for Ordinance No. 09-06 for First Reading.

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

NOES: None ABSENT: None

Motion carried and so ordered.

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

**9-1. Announcements**

Mayor Atkinson announced the following: 1) Invited Robert Hartman, General Manager, Golden Gate Fields, to speak to the Council regarding an update on the bankruptcy proceedings. 2) Attended the Mayors’ Conference in Dublin.

Council Member Javandel announced that he attended the Cub Scout pancake breakfast.

**10. ADJOURNMENT**

9:30 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