

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, JULY 6, 2009

Council Member Wile will be teleconferencing from 2085 Payette Court, Dorrington, California.

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 Lieber, Thomsen, Wile & Mayor Atkinson
Absent: Council Member Javandel (Excused)

STAFF PRESENT

Beth Pollard, City Administrator; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Jeff Bond, Planning Manager; Rich Cunningham, Public Works Manager; Randy Leptien, City Engineer; Charlie Adams, Finance Director; Kim Denton, City Treasurer; Penelope Leach, Recreation & Community Services Director; Marc McGinn, Fire Chief; Mike McQuiston, Police Chief.

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

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. CONSENT CALENDAR

4-1. Minutes, June 15, 2009.

Staff recommendation: Approve.

4-2. a. Ratification of City of Albany net payroll in the amount of \$191,374.58; taxes, benefits & withholdings in the amount of \$243,008.97. Total payroll in the amount of \$434,383.55. Payroll period:06/19/09.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$55,438.63; taxes, benefits & withholdings in the amount of \$55,688.38. Total payroll in the amount of \$111,127.01. Payroll period: 06/19/09.

Staff recommendation: Ratification.

4-3. a. Ratification of bills, claims and demands against the City of Albany in the amount of \$2,861,831.39. Period: 06/12/09.

b. Ratification of bills, claims and demands against the City of Albany in the amount of \$716,726.83. Period: 06/26/09.

c. Ratification of bills, claims and demands against the City of Albany JPA in the amount of \$672.00. Period: 06/12/09.

Staff recommendation: Ratify.

4-4. Pension payments for the month of June, 2009, in the amount of \$112,578.71.

Staff recommendation: Ratify.

4-5. Council Member Wile appointing Patti Donald, Waterfront Committee; Ruth Cashmere, Social & Economic Justice Commission.

Staff recommendation: Information only.

4-6. Resolution No. 09-21 – A Resolution of the Albany City Council to Adopt the Revised Albany Arts Committee Mission Statement and the New Duties and Functions.
(File #110-20)

Staff recommendation: Approve Resolution No. 09-21.

Mayor Atkinson asked if anyone would like to remove an item from the Consent Calendar. The following items were removed for discussion: Item 4-1 & 4-5.

4. CONSENT CALENDAR

4-1. Minutes, June 15, 2009

Council Member Lieber requested to remove the minutes from the Consent Calendar so they could be acted on separately, as he was absent at that meeting and would be abstaining.

4-5. Appointments

Council Member Wile spoke about her appointments to the Waterfront Committee and the Social & Economic Justice Commission and noted the qualifications of each appointee.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Atkinson to approve the Consent Calendar, as submitted with the exception of Item 4-1 that was removed from the Consent Calendar.

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

4-1. Minutes

MOTION:

Moved by Council Member Thomsen, seconded by Mayor Atkinson to approve the June 15, 2009 minutes, as submitted.

AYES: Council Members Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: Council Member Javandel

ABSTAIN: Council Member Lieber

Motion carried and so ordered.

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

For persons desiring to address the City Council on an item that is not on the agenda please note that City policy limits each speaker to three (3) minutes. The Brown Act limits the Council's ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

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

The following people spoke: Ray Anderson, Albany resident; Stephanie Williams, a representative from the Uhuro Movement; Wendy Snyder; Maureen Wagner. Miriam Walden, Albany Board of Education.

A summary of the comments is as follows: Spoke about the Lions Club breakfast on July 4th being a success. Spoke about an incident involving the Albany Police Department. Informed the Council about a possible tax measure on the November, 2009

5. GOOD OF THE CITY/PUBLIC FORUM/ANNOUNCEMENTS

ballot for the Albany School District. Representatives from the Uhuro Movement expressed concern that Council did not respond to their comments. The City Administrator advised the group that under the requirements of the Brown Act Council cannot discuss any item not on the agenda; however, staff will look into the allegations.

The Planning Manager announced that a public hearing would be held on July 28th by the Planning & Zoning Commission to discuss the UC Village Project.

The Fire Chief spoke to the Council about the new aerial fire engine and that it was used for the first time at 907 Buchanan.

Council Member Thomsen congratulated Clay Larson on being nominated Citizen of the Year and Anna Reutinger on being nominated Youth of the Year.

6. PRESENTATION/PUBLIC HEARING

6-1. Proclamation

Mayor Atkinson presented and read a Proclamation for Duane Silverstein, Seacology, on being named the Major League Baseball PEOPLE All-Stars Among Us winner, representing the Oakland Athletics.

Mr. Silverstein thanked the Mayor and showed a DVD on the work of Seacology.

6-2. Sewer System Management Plan

(File #1030-20)

The Community Development Director reported that the Bay Area Clean Water Agencies, which is a Joint Powers Authority, comprised of wastewater treatment and collection agencies, and the San Francisco Bay Regional Water Quality worked together to produce a guide for developing and implementing a Sewer System Management Plan (SSMP).

The SSMP is a document, which describes the activities that an agency uses to manage its wastewater collection system effectively and proactively. The City's SSMP was developed in three phases utilizing the guide issued by the Regional Water Board. Phase I, consisting of Elements 1,2,3 & 4 was completed August 31, 2006. Phase 2 consisting of Elements 5,6 and 7 was completed on August 31, 2007. Phase 3 consisting of Elements 8,9,10 & 11 was completed on August 31, 2008.

Following the completion of the third phase, an overview of each phase and an introduction was added and the document merged into a single plan,

Staff is recommending that the services of a financial planning consultant be obtained to determine whether or not long-term financing would be required to fund the program. A proposal was received from Bartle Wells Associates located in Berkeley. This firm proposes to perform these services on a time and materials basis for an amount not to exceed \$24,500. Bartle Wells and Associates have specialized in providing financial consulting services to wastewater agencies for more than 40 years and is very qualified to perform the requested services.

6-2. Sewer System Management Plan

Council Member Thomsen expressed concern about this being an unfunded State mandate and also concerned about the cost of the consultant.

The City Engineer responded that the SSMP is the new game in town and the intent is to eliminate sewer overflows and the City needs to get a jump on this in case it has to sell bonds.

Mayor Atkinson opened the public hearing and the following person spoke: Del Price, Albany resident, who asked about the content of the Plan and spoke to the cost.

There being no one else wishing to speak, Mayor Atkinson closed the public hearing.

Council Member Lieber stated that clean water is very important supports the staff recommendation and presented Resolution No. 09-36 – A Resolution of the Albany City Council Approving and Adopting the City’s Sewer Management Plan.

MOTION:

After reading the title of Resolution No. 09-36 and waiving reading of entire Resolution it was moved by Council Member Lieber, seconded by Council Member Wile to approve Resolution No. 09-36; and authorized the City Administrator to execute an agreement with Bartle Wells Associates in an amount not to exceed \$24,500 for development of a financial plan for the SSMP.

ON THE QUESTION:

Council Member Thomsen stated that she supports for the first part of the motion to approve Resolution No. 09-36 but expressed concern about the \$215 per hour fee for the consultant without seeing any specific work the firm has done. Council Member Thomsen requested to see the work Bartle Wells Associates has done for other clients.

Council Member Thomsen asked that the motion be split into two parts.

The City Engineer commented that Bartle Wells Associates is the premier wastewater experts and has personal knowledge of their work. The City Engineer noted that the Resolution must be approved by August but the contract could wait.

The City Engineer stated that he would ask Bartle Wells Associates to put together a portfolio, which would come back for Council review.

AMENDED MOTION:

Moved by Council Member Lieber, seconded by Council Member Wile to withdraw the contract authorization for a future agenda and to approve Resolution No. 09-36.

ON THE QUESTION:

Council Member Thomsen noted that staff has done a great job in the past managing the City’s sewer system and thanked them for their hard work.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

6-3. Master Fee Schedule
(File #100-90)

The Finance Director reported that each year the Master Fee Schedule comes before Council to amend the Fee Schedule and authorize an annual cost-of-living adjustment.

The Council has established an objective that fees cover the cost of services provided. The CPI for the San Francisco-Oakland-San Jose area has increased 3.1% over the prior year, triggering a general adjustment of service fees that reflect the cost of City employees to provide the services and out-of-pocket costs incurred by the City.

Mayor Atkinson opened the public hearing and the following people spoke: Caryle O’Keefe, Albany resident; Michael Wallace, Albany resident.

A summary of the comments is as follows: Asked a question about direct and indirect fees noting it appears to be double charging the residents. Supported the Resolution noting that the violation of Planning & Zoning and building code fees are low.

There being no one else wishing to speak, Mayor Atkinson closed the public hearing.

Mayor Atkinson questioned the ambulance fees and the Fire Chief responded that the fire truck goes out with the ambulance and the individual’s insurance is charged for both vehicles.

Council Member Thomsen presented Resolution No. 09-35 – A Resolution of the Albany City Council Establishing and Amending the City of Albany Master Fee Schedule for Various Permits, Services and Fines, Effective July 1, 2009.

MOTION:

After reading the title, and waiving reading of entire Resolution, it was moved by Council Member Thomsen and seconded by Council Member Lieber to approve Resolution No. 09-35.

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

6-4. Zoning Ordinance Amendments
(File #450-20)

The Planning Manager reported that the Planning & Zoning Commission voted to recommend that the City Council approve Ordinance 090-011 and associated findings.

The Planning Manager stated that Council received an e-mail from Clay Larson regarding some concerns and noted that he would respond to that e-mail.

Entertainment Permits: The change shifts the responsibility to the Planning & Zoning Commission noting that the decision can be appealed to the City Council.

Height Limits: The change lowers the basement height allowed from 6’ to 4’ changing the point from where it is measured. Limits the height of buildings to 3 stories.

Daylight Planes: The change modifies the amount of sunlight allowed in.

The Council discussed the amendments and the following items were of concern: Section 16: Add a process for exceptions to side yard fence requirements on corner lots;

6-4. Zoning Ordinance Amendments

Section 11 and 12: Eliminate alternative 1B in order to ensure setback at rear property line; Section 6:

Limit buildings to three stories; Section 14: Keep as conditional use permit to ensure 300-foot public notice. Discussed Section 5, 23 and 25 regarding entertainment permits and concluded that no change is necessary.

Mayor Atkinson opened the public hearing and the following person spoke: Clay Larson, Albany resident. A summary of his comments is as follows: Thanked staff for addressing concerns in e-mail and believes that Council is the appropriate body to review entertainment permits and agreed that 3 stories is the appropriate height limit.

There being no one else wishing to speak, Mayor Atkinson closed the public hearing.

After considerable discussion by the City Council, the Planning Manager suggested that instead of acting on the Ordinance tonight and to keep it as a comprehensive ordinance that it be referred back to the Planning & Zoning Commission.

MOTION:

Moved by Council Member Lieber, seconded by Council Member Thomsen to refer Ordinance No. 09-011 back to the Planning & Zoning Commission for their review and comments on the areas of concern to the Council at its meeting of July 14 and continue the public hearing of the City Council on the ordinance to the Council meeting of September 21, 2009.

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

NOES: None

ABSENT: Council Member Javandel.

Motion carried and so ordered.

7. UNFINISHED BUSINESS

8. NEW BUSINESS

**8-1. Proposition 40 Funds State of California 2002 Resources Board
(File #920-60)**

The Recreation & Community Services Director reported currently there is a remaining balance of approximately \$51,000 of unallocated Proposition 40 funds. These funds were earmarked for a new roof and HVAC system at the Senior Center; however, due to the recent purchase of the property next to the Senior Center that project would now come under the expansion project, which will not be completed by March 2011. The deadline for using the Proposition 40 funds is March 2011, therefore, the funds need to be redirected.

Staff is recommending the redirection of funds, as follows: 1) The installation of a rubberized surface that would cover a portion of the play area at Ocean View Park. 2) The installation of a permanent stage at Memorial Park.

Mayor Atkinson asked how many events are held at Memorial Park and was informed four (4) music events, the Arts Festival and July 4th.

8-1. Proposition 40 Funds State of California 2002 Resources Board

Council Member Wile asked if the City would be able to include electricity needs to the stage. The Recreation & Community Services Director responded there is not enough money now but the stage would be ready when the funds are available.

Christine Mullarkey, Vice-Chair Parks & Recreation Commission, supported the redirection of funds noting that it would be great to have a permanent gathering place at Memorial Park and the rubberized surface at Ocean View Park would make it accessible to everyone.

Nick Pilch, Chair Park & Recreation Commission, stated that he supports the recommendation and believe both projects are worthwhile.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Wile that the remaining Proposition 40 funds be redirected, as follows: 1) The installation of a rubberized surface that would cover a portion of the play area at Ocean View Park. 2) The installation of a permanent stage at Memorial Park.

ON THE QUESTION:

Mayor Atkinson stated that she would like to see the stage area at Memorial Park is a priority and that if any money is left over that it goes towards the electrical portion of the stage.

Council Member Lieber agreed and asked that staff bring back plans on the electrical portion so that Council can get a better idea of the costs. The Recreation & Community Services Director stated that she would get a design and a cost estimate back to Council.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

8-2. Albany Meeting Cable Casting Policy

(File #1050-60)

The KALB Supervisor informed the Council of the programs that are currently in place either through cable TV or through web streaming and noted that the City has made a number of leaps over the last few years.

Jack Kenny, Chair of the Community Media Access Committee, supported the recommendation to increase the number of meetings that would be cablecast.

Clay Larson, Member Community Media Access Committee, thanked the City for making government more transparent.

Council Member Lieber stated that he supports the additional cable casting and web streaming, as many people cannot come down to the actual meetings.

Council Member Thomsen noted that initially she was against cable casting but is glad to be proven wrong and now supports the program.

Mayor Atkinson asked if cable casting more meetings would be a burden to staff and the KALB Supervisor responded that the meetings recommended to be cablecast are scheduled for Monday and Tuesday and that there is always staff available on those days.

8-1. Proposition 40 Funds State of California 2002 Resources Board

Occasional meetings of other commissions and committees could be accommodated if there is sufficient advance notice and they can be fit into the staffing schedule.

Mayor Atkinson asked if a plan was in the future for working with Albany High School and staff responded yes it is looking at cable casting athletic and other events.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Lieber to adopt the following policy: 1) Cable cast all Waterfront Committee meetings. 2) Cable cast all Planning & Zoning Commission meetings, or select meetings of general or specific interest. 3) Adopt the Social & Economic Justice Commission recommendation of allowing other commissions/committees to request cable casts of its meetings.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

8-3. Review of Draft 2009 Housing Element of the General Plan

(File #420-30)

The Planning Manager reported that the Planning & Zoning Commission is recommending that the City Council authorize staff to send the draft 2009 Housing Element of the General Plan to the State of California Department of Housing and Community Development for review and comment.

In summary, the 2009 Housing Element must include four main elements: 1) Review of the previous Housing Element. 2) Assessment of housing needs. 3) Inventory of Potential sites for housing development. 4) Analysis of City regulatory framework related to developing housing.

The City of Albany's current Housing Element was approved in 1992, as part of the comprehensive update to the City's General Plan. Since that time, draft updates have been prepared and reviewed by the State. The recent updates, however, have not been formally adopted by the City nor approved by the State.

Under State law, Bay Area municipalities must complete the preparation of the new housing element by June 30, 2009. The process includes compliance with CEQA requirements and review of a draft Housing Element by the State. The City of Albany, like other Bay Area cities, will not meet the statutory deadline. Staff has met with State representatives and does not anticipate significant consequences, as long as the City continues to work in good faith to complete the Housing Element.

The following people spoke: Dell Price, Albany resident; Rolfe Bell, Albany resident.

A summary of comments is as follows: Congratulated staff in getting to this point and stated that she does support mixed uses but expressed concern about development with existing businesses and associated costs. Urged the City to deal with more substance and the relationship with the existing Housing Element. Expressed concern that Albany could not come up with the expected 50% affordable housing.

8-3. Review of Draft 2009 Housing Element of the General Plan

MOTION:

Moved by Council Member Lieber, seconded by Council Member Wile to authorize staff to send the draft 2009 Housing Element of the General Plan to the State of California Department of Housing and Community Development for review and comment.

ON THE QUESTION:

Council Member Lieber stated for clarification there would be no displacement of any business/property and noted that Albany would get affordable housing through the UC Village project.

Council Member Thomsen expressed concern about the unrealistic mandates set by the State and that the City maintain its sense of community. Thanked staff and the Planning & Zoning Commission for the work done and does support preserving existing housing. The City needs to hang on to its goals and should work with the League of California Cities regarding these issues.

VOTE ON THE MOTION:

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

8-4. Ordinance No. 09-09 – Cumulative Remedies

(File #100-95)

The City Treasurer reported that submitted for Council review is an amendment to the Business License Ordinance regarding persons operating a business in Albany without first having obtained a business license. The current Ordinance requires the exclusive enforcement tool of charging people with a misdemeanor and there are no fines associated with this citation. Adopting Ordinance No. 09-09 would provide for administrative citations and would set citation fees for first, second and third offenses within one year.

The proposed Ordinance would allow the City Treasurer to issue an administrative citation to any person(s) operating a business in Albany of any type who has not obtained a business license. The fine for the first violation is \$100, \$200 for the second violation within one year and \$500 for each additional violation within one year.

Mayor Atkinson asked if anyone would like to speak and the following person spoke: Rolfe Bell, Albany resident; Clay Larson, Albany resident.

A summary of the comments is as follows: Spoke about other city ordinances and asked the Council to be aware of nuances in the Ordinance. Supported revenue based business license stating that the license based on revenue rather than the number of employees is more lucrative and fairer.

Council Member Lieber introduced Ordinance No. 09-09 – An Ordinance of the Albany City Council Amending Section 5-1.24 Cumulative Remedies of the Albany Municipal Code.

8-4. Ordinance No. 09-09 – Cumulative Remedies

MOTION:

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

ON THE QUESTION:

Council Member Lieber stated that he agreed that the City should collect the business license by gross receipt noting that the City could then see how the business is doing.

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

8-5. Ordinance No. 09-010 – Recovery of Attorney Fees

(File #100-95)

The City Administrator reported that Ordinance No. 09-010 authorizes the City to seek attorney fees and reimbursement of its related costs to nuisance abatement actions when the City prevails.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Wile to extend the meeting five (5) minutes.

Motion carried and so ordered

Council Member Lieber introduced Ordinance No. 09-010 – An Ordinance of the Albany City Council Adopting Section 1-12 Recovery of Attorney Fees of the Albany Municipal Code.

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

8-6. Ordinance No. 09-012 – Amending the Flood Damage Prevention Regulations (Urgency)

(File #100-95)

The Community Development Director reported that during a visit from a representative from FEMA’s National Flood Insurance Program, it was pointed out that the City’s Flood Damage Prevention Regulations (Section 20.52.030 of the Planning & Zoning Code) reflects an incorrect date relative to the Flood Insurance Study. Albany’s Code has the date of November, 1978 and it should be August 1, 1978.

Ordinance No. 09-012 amends the Code to reflect the correct date but must be passed as an urgency Ordinance, by at least a 4/5th vote.

Council Member Thomsen introduced Ordinance No. 09-012 – An Urgency Ordinance of the City of Albany Amending the City’s Flood Damage Prevention Regulations of the Albany Municipal Code.

8-6. Ordinance No. 09-012 – Amending the Flood Damage Prevention Regulations (Urgency)

MOTION:

After reading the title, and waiving reading of entire Ordinance, it was moved by Council Member Thomsen and seconded by Council Member Wile to approve Ordinance No. 09-012, as an Urgency Ordinance.

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

NOES: None

ABSENT: Council Member Javandel

Motion carried and so ordered.

**8-7. 2009 Annual League of California Cities Delegate
(File #140-20)**

The League of California Cities has an annual conference and prior to the conference each City Council may designate a voting delegate and up to two alternates. The 2009 Conference is scheduled for September 16-18 in San Jose and the Voting Delegate or Alternate is expected to attend.

MOTION:

Moved by Council Member Thomsen, seconded by Council Member Wile to appoint Mayor Atkinson, Voting Delegate and Council Member Lieber, Alternate

Motion carried and so ordered.

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

Council Member Thomsen announced that the Sport Field JPA had a meeting and it was reported that the next phase is the softball field.

Council Member Lieber stated that he would be bringing forward to Council a resolution regarding radio frequency and associated health issues.

10. ADJOURNMENT

10:40 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

10. ADJOURNMENT

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

MARGE ATKINSON
MAYOR

ATTEST:

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK