

ALBANY COMMON COUNCIL MINUTES OF A REGULAR MEETING

Monday, October 6, 2008

The Common Council was convened at 7:00 p.m. and was called to order by Council President Morris.

The roll being called, the following answered to their names: Council Members Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo and Smith.

Also present was the following staff: John Marsolais, Patrick Jordan, Barbara Samel and Cashawna Parker.

Council Member Ellis led the Pledge of Allegiance.

PUBLIC COMMENT PERIOD

1. Jonathan Grades, 194 Washington Ave., Ste 300, Albany, NY 12210 (Campaign for Independent Public Defense)
2. Ray Kelly, 112 State St. Albany, NY 12207 (Independent Public Defense Commission)
3. Marie Verzulli, 40 N. Main Ave., Albany, NY 12208 (Independent Public Defense Commission)
4. Marlon Anderson, 491 Livingston Ave., Albany, NY 12206 (Proposed Youth Curfew)
5. Rev. Stanley Skinner (ARISE), Trinity United Methodist Church, 235 Lark St., Albany, NY 12210 (Resolution 76.101.08R)
6. Alex Forster, 90 State St. Albany, NY 12210 (Youth Curfew)
7. Joe Cunniff, 10 Crosswell St. Albany, NY 12206 (License Agreement between City of Albany, Envy Lounge and Jillian's block parties)
8. Tom Ellis, 43 N. Pine Ave., Albany, NY 12208 (Paving streets)
9. Jim Travers, Ravena, NY (Plastic Bag Ban)

Council Member Conti made a motion to extend public comment for an additional 20 minutes, which was approved by unanimous voice vote.

10. Elizabeth Alexander, 279 Second St., Albany, NY 12206 (Youth Curfew)
11. Rev. Valerie Faust, 35 Wellington Ave., Albany, NY 12203 (Independent Public Defense Commission)
12. Allison Banks, 21 Ashley Dr., Ballston Lake, NY 12019 (Youth Curfew)
13. Jamar Hooks, 252 State St., Albany, NY 12210 (Youth Curfew)
14. Lou Ismay, Interfaith of NYC, P.O. Box 660, Altamont, NY 12009 (Independent Public Defense Commission)

APPROVAL OF MINUTES FROM PREVIOUS MEETING

Council Member Conti made a motion to approve the minutes from the August 4, 2008 and August 18, 2008 meetings, which was approved by unanimous voice vote.

CONSIDERATION OF LOCAL LAWS

Council Member Conti made a motion to hold the Local Laws on the pending agenda, which was approved by unanimous voice vote.

REPORTS OF STANDING COMMITTEES

Public Safety – Council Member Scalzo stated that the Committee met on Tuesday, September 23, 2008 to have a discussion on cameras in police vehicles, progress on the investigation on APD missing guns, and

the APD reorganization. He stated that the investigation is ongoing and the committee will continue to discuss these issues.

Finance, Taxation and Assessment – Council Member Sano stated that the Mayor’s proposed budget was released last Wednesday and the departmental budget meetings are being scheduled.

Planning, Economic Development and Land Use – Council Member Herring stated that the committee met to discuss Ordinance 2.12.08 relating to solar panels, which was favorably recommended out of committee with amendments.

Law, Buildings and Code Enforcement – Council Member Igoe stated that the committee would be meeting on October 15, 2008 to discuss Ordinance 66.81.07 (Smoking near healthcare facilities).

CONSIDERATION OF ORDINANCES

Council Member Fahey introduced the following, which was held:

Ordinance Number 60.101.08

AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF A PERMANENT EASEMENT TO 22 NEW SCOTLAND AVENUE LLC OVER, UPON AND UNDER PORTIONS OF THE CITY RIGHT-OF-WAYS OF NEW SCOTLAND AVENUE AND MYRTLE AVENUE IN THE CITY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. It is hereby authorized that the City of Albany grant a permanent easement to 22 New Scotland Avenue LLC over, upon and under portions of the City right-of-ways of New Scotland Avenue and Myrtle Avenue, adjacent to 22 New Scotland Avenue, in the City of Albany.

Section 2. The form, content, terms and conditions of such easement shall be approved by the Corporation Counsel.

Section 3. The Grantees shall not hinder, interfere with, prevent, delay, obstruct or adversely affect the Grantor in the reasonable exercise of its governmental operations or function.

Section 4. This ordinance shall take effect immediately.

Council Member Casey introduced the following, which was held:

Ordinance Number 61.101.08

AN ORDINANCE AUTHORIZING AND DIRECTING THE CONVEYANCE OF ALL THE RIGHT, TITLE AND INTEREST OF THE CITY OF ALBANY IN AND TO A PORTION OF HAMILTON STREET IN THE CITY OF ALBANY, NEW YORK AT PRIVATE SALE TO GIDEON LODGE #140 B’NAI B’RITH HOUSING DEVELOPMENT FUND COMPANY, INC. IN ORDER TO ESTABLISH A COMPLETE RECORD WITH THE COUNTY CLERK OF THE COUNTY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. It is hereby ordered and directed that all the right, title and interest of the City of Albany in and to a portion of Hamilton Street, adjacent to the rear of 400 Hudson Avenue, AKA B’Nai B’Rith, be sold at private sale pursuant to the provisions of Local Law No. 4 for 1984 to Gideon Lodge #140 B’Nai B’Rith Housing Development Fund Company, Inc. SUBJECT to all easements, restrictions and rights-of-way of record.

Section 2. It is hereby determined that the aforesaid property has been abandoned for municipal or public purposes.

Section 3. The form, content, terms and conditions of such conveyance shall be approved by the Corporation Counsel and shall be subject to the approval of the Board of Estimate and Apportionment, and if approved by said Board, the Mayor is hereby authorized and directed to execute a proper deed of conveyance for a valuable consideration.

Section 4. This ordinance shall take effect immediately.

Council Member Conti introduced the following on behalf of Council Member McLaughlin and made a motion for unanimous consent for passage, which was approved by unanimous voice vote,

Council Member Conti on behalf of Council Member McLaughlin, asked for passage and a roll call vote thereon:

Ordinance Number 62.101.08(UC)

AN ORDINANCE AUTHORIZING AND DIRECTING THE GRANT OF A PERMANENT EASEMENT TO SOUTHEND ASSOCIATES LP OVER, UPON AND UNDER A PORTION OF THE CITY RIGHT-OF-WAY OF EAGLE STREET IN THE CITY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. It is hereby authorized that the City of Albany grant a permanent easement to Southend Associates LP over, upon and under a portion of the City right-of-way of Eagle Street, adjacent to 100-104 Morton Avenue, in the City of Albany.

Section 2. The form, content, terms and conditions of such easement shall be approved by the Corporation Counsel.

Section 3. The Grantees shall not hinder, interfere with, prevent, delay, obstruct or adversely affect the Grantor in the reasonable exercise of its governmental operations or function.

Section 4. This ordinance shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, O’Brien, Rosenzweig, Sano, Scalzo, and Smith

Affirmative 13 Negative 0 Abstain 0

Council Member Casey introduced the following, which was referred to the Public Safety Committee:

Ordinance Number 63.101.08

AN ORDINANCE AMENDING CHAPTER 255 (PEACE AND GOOD ORDER) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE IX TO BE ENTITLED “YOUTH CURFEW”

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Chapter 255 of the Code of the City of Albany is hereby amended by adding thereto a new Article IX to read as follows:

**ARTICLE IX
YOUTH CURFEW**

Section 255-57. Definitions.

As used in this Article, the following terms have the following definitions:

Curfew hours – means 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

Emergency – means an unforeseen combination of circumstances of the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment – means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

Guardian – means a person who, under court order, is the guardian of the person of the minor or a public or private agency with whom a minor has been placed by a court.

Minor – means any person under 17 years of age.

Operator – means any individual, firm, association, partnership, or corporation, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent – means a person who is a natural parent, adoptive parent or step-parent of another person or at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public Place – means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common area of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

Remain – means to linger or stay, or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury – means any bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ.

Section 255-58. Curfew Offenses.

(A) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(B) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment with the city during curfew hours.

(C) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

Section 255-59. Defenses.

(A) It is a defense to prosecution under Section 255-58 that the minor was:

(1) accompanied by the minor's parent or guardian;

(2) on an errand at the direction of the minor's parent or guardian, without any detour or stop;

(3) in a motor vehicle involved in interstate travel;

(4) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(5) involved in an emergency;

(6) on the sidewalk, abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(7) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor; or

(8) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.

(B) It is a defense to prosecution under Subsection A that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

Section 255-60. Enforcement and Penalties.

A. Before taking any enforcement action under this Article, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Article unless the officer reasonably believes that an offense has occurred and that based on any response and other circumstances, no defense is present.

B. Any person who violates any provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.

Section 2. This ordinance shall take effect immediately.

Council Member Conti introduced the following, which was referred to the Planning, Economic Development and Land Use Committee:

Ordinance Number 64.101.08

AN ORDINANCE AMENDING ARTICLE XIII (SUPPLEMENTARY LOT, HEIGHT AND YARD REGULATIONS) OF CHAPTER 375 (ZONING) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO THE INITIATION OF A COMPLAINT TO TERMINATE A NONCONFORMING USE WHICH IS CONSIDERED A GENERAL NUISANCE

The City of Albany, in Common Council convened, does hereby ordain and enact as follows:

Section 1. Section 375-91 of Chapter 375 of the Code of the City of Albany is hereby amended to read as follows:

§ 375-91. General nuisances.

Upon a complaint registered by the Commissioner [or], 50% of the property owners within 200 feet of a nonconforming use or the Common Council Member in whose ward such nonconforming use is situated, which is considered to be a general nuisance or a hazard to the health, safety, welfare and morals of uses or structures within 200 feet of such nonconforming use or uses, the Board of Appeals shall hold a public hearing and make a finding with respect to the nuisance or hazardous condition which exists and shall determine the necessity of terminating such nonconforming use. Such uses shall be terminated within such reasonable time as shall be determined by the Board as related to the reasonable amortization of the capital investment in such uses.

Section 2. This ordinance shall take effect immediately.

Council Member Igoe introduced the following, which was referred to the Law, Buildings and Code Enforcement Committee:

Ordinance Number 65.101.08

AN ORDINANCE AMENDING CHAPTER 133 (BUILDING CONSTRUCTION) TO ADD A NEW ARTICLE XIII (PUBLIC ASSEMBLY SPACE INSPECTIONS) TO THE CODE OF THE CITY OF ALBANY

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Chapter 133 of the Code of the City of Albany is hereby amended by adding thereto a new Article XIII to read as follows:

**ARTICLE XIII
PUBLIC ASSEMBLY SPACE INSPECTIONS**

§133-81. Definitions.

A. Except as otherwise expressly provided, the following words, whenever used in this chapter, shall have the following meanings:

ADMINISTRATOR — The Chief of the Department of Fire, Emergency and Building Services or his designee.

BUILDING OWNER — Any person, firm or corporation owning, operating, controlling or maintaining buildings covered by this chapter.

INSPECTOR — Any person who possesses an inspector's license in accordance with the provisions of this chapter and who is engaged in the business of inspecting buildings which contain an area of public assembly.

INSPECTOR'S LICENSE — A license which is issued to an inspector who has proven his or her qualifications and ability and has been authorized by the Administrator to possess this type of license. It shall entitle the holder thereof to engage in the business of inspecting buildings which contain an area of public assembly.

LICENSE — A written license, duly issued by the Administrator, authorizing a person, firm or company to carry on the business of performing inspections of buildings which contain an area of public assembly.

§133-82. Mandatory building inspection.

It is mandated by the State of New York Department of State that there shall be fire safety and property maintenance inspections of buildings, which contain an area of public assembly. An area of public assembly is defined as defined by the State Building Code.

§133-83. Inspectors; administrator to maintain list of inspectors.

Building owners shall use inspectors qualified by the City of Albany. The Administrator shall maintain a list of qualified inspectors.

§133-84. License required.

No person, firm or company shall inspect buildings which contain an area of public assembly within the City of Albany unless an inspector's license has been issued as described herein.

§133-85. Application for inspector's license; information required.

A. Any person, firm or company wishing to engage in the business of performing inspections of buildings which contain an area of public assembly within the City of Albany shall make application for a license to inspect with the Administrator on a form to be provided by the Administrator.

B. Said applications shall contain information for the following provisions:

1. If a person, the name, residence and business address of the applicant.
2. If a partnership, the name, residence and business address of each partner.

3. If a domestic corporation, the name and business address of the corporation and the name and residence of the principal officer of said corporation; if a corporation other than a domestic corporation, the name and address of an agent located locally who shall be authorized to accept service of process or of official notices.
4. The number of years the applicant has engaged in the business of performing inspections of buildings, which contain an area of public assembly.
5. The approximate number of persons, if any, to be employed by the applicant and, if applicable, satisfactory evidence that employees are or will be covered by workers' compensation insurance.
6. Satisfactory evidence that the applicant is or will be covered by general liability insurance.
8. Such other information as the Administrator may require.

§133-86. Qualifications of inspectors; term of license.

No such license shall be granted to any person, firm or company unless he, she or it shall prove to the satisfaction of the Administrator that he/she or it has met the current qualifications of inspectors as set forth by the New York State Department of State under Part 434 of Chapter XII of Title 19 (NYCRR) or other relevant criteria established by the Administrator which evaluates the qualifications of inspectors herein. If the applicant is found by the Administrator to be qualified, the Administrator shall grant a license. Licenses shall be issued for one year.

§133-87. Fees.

The following fees shall be paid by the applicant prior to the issuance of any license required herein:

Original application fee: \$75

License fee per inspector (annual): \$250

Certificate fee: \$50

§133-88. Suspension and revocation of licenses.

A license issued pursuant to this chapter may be suspended or revoked by the Administrator upon certification that any one or more of the following reasons exist:

- A. Any false statement as to material matter in the application.
- B. Fraud, misrepresentation or bribery in securing a license.
- C. Violation of any provision of this chapter.

§133-89. Hearing required; notice; decision.

No license shall be suspended or revoked until after a hearing before the Administrator upon notice to the licensee of at least 10 days at the last known address appearing on the license, served personally or by registered mail. The notice shall state the date, hour and place of the hearing and set forth a statement of facts constituting the grounds for the charges against the licensee. The Administrator shall suspend or revoke the license or dismiss the proceeding.

§133-90. Appeals.

Any person whose license is revoked or suspended may appeal from such determination to the Board of Zoning Appeals within 30 days thereafter. The Board shall, within 30 days after such hearing, issue a decision.

§133-91. Compliance with New York State Uniform Fire Prevention and Building Code.

A. It shall be the responsibility of individuals, firms or companies licensed as described herein to ensure that those individuals who have been licensed shall perform inspections in compliance with the New York State Uniform Fire Prevention and Building Code and to be prepared to certify such compliance.

B. Whenever a provision of this chapter is found to be inconsistent with any provision of applicable local or state law, code or regulation, the state law shall prevail. This chapter is not intended to establish more stringent or more restrictive standards than standards set forth in applicable state law.

§133-92. Annual inspection; display of certificate.

A. There shall be annual fire safety and property maintenance inspections of buildings which contain an area of public assembly.

B. A certificate of inspection, issued by the Administrator shall be displayed within the area inspected.

§133-93. Insurance requirements.

A. Any person, firm or corporation licensed under this chapter shall submit to the Administrator an insurance policy or certified copy thereof, issued by an insurance company authorized to do business in the State of New York, to provide general liability coverage of at least \$1,000,000 for injury or death, with coverage of at least \$500,000 for property damage.

B. Such policies, or duly certified copies thereof, or an appropriate certificate of insurance, approved as to form and sufficiency by the Corporation Counsel, shall be delivered to the Administrator before or at the time of issuance of a license. In the event of any material alteration or cancellation of any policy, at least 30 days' notice thereof shall be given to the Administrator, City Hall, Albany, New York 12207.

§133-94. Enforcement.

It shall be the duty of the Administrator to develop an enforcement program, which will ensure compliance with regulations and requirements set forth herein. This will include but not be limited to identification of property locations which are subject to said regulations and requirements; issuing notifications to violating property owners or operators; witnessing periodic inspections in order to ensure satisfactory performance by licensed individuals, firms or companies; and assisting in development of public awareness programs during the initial licensing period subsequent to enactment of this chapter and as warranted thereafter.

§133-95. Liability.

This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm or corporation owning, operating, controlling or maintaining buildings covered by this chapter for damages to person or property caused by any defect therein, nor does the City of Albany assume any such liability or

responsibility therefor or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising thereunder.

§133-96. Penalties for offenses.

Any inspector or building owner who shall violate any of the provisions of this chapter, upon conviction thereof, shall be fined in an amount not exceeding \$1,500 or be imprisoned for a period not exceeding 15 days, or both such fine and imprisonment.

Section 2. This ordinance shall take effect thirty (30) days after passage.

Council Member Fahey moved to amend and as amended asked for passage and a roll call vote thereon:

Ordinance 2.12.08 (As Amended)

****WAITING ON AMENDED LEGISLATION FROM LAW DEPT.****

**Note: There was discussion from Council Member Fahey regarding making the installation of solar panels for residents easier and thanking the Planning staff for rewriting the city code with NYSERTA. She also discussed this legislation possibly being a model for other municipalities.*

Ordinance 2.12.08 (As Amended) was Co-Sponsored by Council Members Calsolaro, Conti, Rosenzweig, Sano, Scalzo and Smith.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, and Smith

Affirmative 13 Negative 0 Abstain 0

The remaining ordinances on the pending agenda were held at the request of Council Member Conti.

CONSIDERATION OF RESOLUTIONS

Council Member O'Brien offered the following, asked for passage and a roll call vote thereon:

Resolution Number 73.101.08R

AUTHORIZING THE IMPLEMENTATION, AND FUNDING IN THE FIRST INSTANCE 100% OF THE FEDERAL-AID AND STATE "MARCHISELLI" PROGRAM-AID ELIGIBLE COSTS, OF A TRANSPORTATION FEDERAL-AID PROJECT, AND APPROPRIATING FUNDS THEREFOR (CENTRAL AVENUE ROAD REHABILITATION PROJECT [P.I.N. 1754.45, .122 PIN EXTENSION])

WHEREAS, a Project for the Highway Reconstruction of Central Avenue (Route 5) from the City Limit to Everett Road, City of Albany, P.I.N. 1754.45 (the Project”) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 80% Federal funds and 20% non-federal funds; and

WHEREAS, the City of Albany desires to advance the Project by making a commitment of 100% of the non-federal share of the cost of Construction.

NOW, THEREFORE, the Common Council, duly convened does hereby

RESOLVE, that the Common Council hereby approves the above-subject project; and it is hereby further

RESOLVED, that the Common Council hereby authorizes the City of Albany to pay in the first instance 100% of the federal and non-federal share of the cost of Construction work for the Project or portions thereof; and it is further

RESOLVED, that the sum of \$15,100,000.00 (Fifteen million one hundred thousand dollars and no cents) has already been appropriated from Ordinance Nos. 14.41.01, 15.42.01 and 34.41.06 and made available to cover the cost of participation in the Preliminary Engineering Phase (\$1,247,000.00); Right of Way Incidentals Phase (\$33,000.00) and the Construction and Construction Inspection Phases (\$13,820,000.00) of the Project; and it is further

RESOLVED, that the additional sum of \$1,404,384.00 (One million four hundred four thousand three hundred eighty four dollars and no cents) (\$55,000.00 for Preliminary Engineering and \$1,349,384.00 for Construction) is hereby appropriated pursuant to Ordinance Nos. 15.42.01, 34.31.06 and 9.22.08 and made available to cover the cost of participation in the Construction phase of the Project; and it is further

RESOLVED, that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the Common Council of the City of Albany shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof; and it is further

RESOLVED, that the Mayor of the City of Albany be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Marchiselli Aid on behalf of the City of Albany with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality’s first instance funding of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefor that are not so eligible; and it is further

RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, this Resolution shall take effect immediately.

**Note: There was discussion from Council Members Igoe on the unfair portion that the City of Albany has to pay in contrast to the Town of Colonie. Council Member O’Brien agreed. Council Member Conti clarified the amount the City of Albany would pay.*

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, O'Brien, Rosenzweig, Sano, Scalzo, and Smith

Negative -- Igoe

Affirmative 12 Negative 1 Abstain 0

Council Member O'Brien offered the following, asked for passage and a roll call vote thereon:

Resolution Number 74.101.08R

AUTHORIZING THE IMPLEMENTATION, AND FUNDING OF THE ELIGIBLE COSTS OF A TRANSPORTATION PROJECT, TO FULLY FUND THE 10% LOCAL SHARE OF PROJECT COSTS, AND APPROPRIATING FUNDS THEREFORE (CENTRAL AVENUE REHABILITATION PROJECT)

WHEREAS, a Project for the design, reconstruction, and improvement of the City-owned street known as Central Avenue in Albany, New York (the "Project") is eligible for funding obtained by CDTA for the purpose of advancing a Bus Rapid Transit Project on NY5, that calls for the apportionment of the cost of such program to be borne at 90% federal and state funds administered by CDTA and 10% local share; and

WHEREAS, the City of Albany desires to advance the above project by making a commitment of 10% of the attributable costs of the Project through in-kind services provided by City staff.

NOW, THEREFORE, BE IT RESOLVED, that the City of Albany Common Council, duly convened does hereby approve the above subject Project.

BE IT FURTHER RESOLVED, that the Common Council hereby authorizes the City of Albany pay the local share of the cost of the Project through the use of in-kind services with the transit share of such costs, to be applied directly by the Capital District Transportation Authority (CDTA) pursuant to Agreement.

RESOLVED, that in the event the full Multimodal 2000 Program costs of the project exceeds the amount appropriated above, the City of Albany Common Council shall convene as soon as possible to appropriate said excess amount immediately upon the notification by CDTA thereof.

RESOLVED, that the City Engineer of the City of Albany be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for funds on behalf of the City of Albany with CDTA in connection with the advancement or approval of the Project and providing for the administration of the Project and the City's funding of the its share of eligible Project costs through in-kind services and all Project costs within appropriations therefore that are not so eligible; and it is further **RESOLVED**, that a certified copy of this resolution be filed with CDTA by attaching it to any necessary Agreement in connection with the Project.

RESOLVED, that this Resolution shall take effect immediately.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, O'Brien, Rosenzweig, Sano, Scalzo, and Smith

Negative -- Igoe

Affirmative 12 Negative 1 Abstain 0

Council Member Calsolaro offered the following, asked for passage and a roll call vote thereon:

RESOLUTION NUMBER 75.101.08R

RESOLUTION OF THE COMMON COUNCIL SUPPORTING AND URGING THE ENACTMENT OF ASSEMBLY BILL 11841/SENATE BILL 8767 ENTITLED: “AN ACT TO AMEND THE REAL PROPERTY TAX LAW, IN RELATION TO CERTAIN STATE LEASED OR STATE-OWNED LANDS”

WHEREAS, the City of Albany is New York’s capital city; and

WHEREAS, the City of Albany is the location of many government buildings and office complexes, including the Nelson A. Rockefeller Empire State Plaza and W. Averill Harriman State Office Campus; and

WHEREAS, 53.69% or over fifty-three percent of the assessed property value within the City of Albany is exempt from taxation; and

WHEREAS, as a result of such exemption due to Albany’s status as host city of state government an additional and undue property tax burden is placed on the residents of the City of Albany to provide essential services financed through a reduced tax base; and

WHEREAS, the responsibility to provide services is not limited to residents of the City of Albany but also commuters and visitors to our city; and

WHEREAS, the City of Albany receives less per capita state aid than other cities within our region and within the state due to inequitable funding formulas; and

WHEREAS, legislation has been proposed to partially compensate the City of Albany for the assessed value of the W. Averill Harriman State Office Campus which represents valuable property that has been removed from the tax rolls; and

WHEREAS, such legislation is appropriate and equitable and will help ease the tax burden for City of Albany property tax payers.

NOW THEREFORE BE IT RESOLVED, that the Common Council of the City of Albany supports and urges the adoption of A.11841/S.8767 which would provide payments in lieu of taxes for the W. Averill Harriman State Office Campus; and

BE IT FURTHER RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Governor Paterson, the leadership of the New York State Legislature, the Chairs of the Senate Committee on Finance and Assembly Committee on Ways and Means and Senator Neil Breslin and Assemblymembers Ron Canestrari and Jack McEneny.

**Note: There was discussion from Council Member Calsolaro regarding this legislation being similar to one vetoed earlier this year and the need to keep send our State officials the message that Albany needs it’s fair share of state funds.*

There was discussion from Council Member Sano regarding the state having different standards, the burden falling on residents, and the need for proper state aid.

There was discussion from Council Member O'Brien regarding the plan for Harriman Campus changing when the Governor's administration changed.

There was discussion from Council Member Conti supporting this legislation and reminding members of the need to control expenditures and not rely on state aid that was unlikely to happen considering the state's financial situation.

There was discussion from Council Member Rosenzweig regarding the ability of Harriman Campus to be developed without the state releasing the land and it being critical to work together with each other and legislators.

Resolution 75.101.08R was Co-Sponsored by Council Members Conti, Fox, Igoe, O'Brien, Rosenzweig, Sano, and Scalzo.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, and Smith

Affirmative 13 Negative 0 Abstain 0

Council Member Ellis offered the following, asked for passage and a roll call vote thereon:

Resolution Number 76.101.08R

RESOLUTION SUPPORTING THE CREATION OF AN INDEPENDENT PUBLIC DEFENSE COMMISSION AND STATEWIDE PUBLIC DEFENSE SYSTEM AS RECOMMENDED BY THE KAYE COMMISSION

WHEREAS, the right of accused individuals to legal representation regardless of their financial ability to hire an attorney is a hallmark of this State and Nation's commitment to equal justice; and

WHEREAS, the right to counsel is enshrined in the landmark decisions *Gideon v Wainwright* (United States Supreme Court, 1963) and *People v Witek* (New York State Court of Appeals, 1965) and decisions following them; and

WHEREAS, New York State's commitment to equal justice dates back to colonial days, as the *Witek* decision noted, and our courts had a century-long tradition of appointing counsel for the poor by the time the Sixth Amendment to the United States Constitution was adopted as part of the Bill of Rights; and

WHEREAS, in 1965 New York State began requiring the counties and New York City to provide legal services mandated by law, setting out in Article 18-B of the County Law a variety of programs that could be adopted for that purpose, all at local expense; and

WHEREAS, County Law Article 18-B also requires the counties and New York City to provide counsel for eligible litigants in various non-criminal matters in which a right to counsel exists, including certain Family Court matters; and

WHEREAS, the public defense system established by Article 18-B, local costs for which were originally envisioned as being offset by state revenue sharing funds, has devolved into an underfunded state mandate that financially burdens the counties and New York City; and

WHEREAS, experience and studies show that the county-by-county public defense system created by Article 18-B fails to ensure efficient, high-quality representation to eligible clients across the state, resulting in an ongoing crisis in the justice system; and

WHEREAS, major flaws in the current patchwork system include lack of enforceable standards, lack of independence of the defense function, lack of adequate funding, and lack of accountability; and

WHEREAS, some eligible clients are denied counsel altogether or face delays in getting counsel; and

WHEREAS, public defense lawyers often lack the time, resources, or training to research and investigate every client's case, to talk with and listen to every client, and to determine a strategy to further each client's best interest; and

WHEREAS, public defense clients and their lawyers often lack access to services necessary to prepare and conduct their cases, including interpreters, investigators, social workers, sentencing advocates, immigration experts, and others; and

WHEREAS, a commission appointed by Chief Judge Judith S. Kaye concluded in 2006 that a new, fully state-funded, statewide public defender system headed by an independent public defense commission is needed to guarantee the right to counsel in New York State; and

WHEREAS, this new system is to be truly independent, entirely and adequately state funded, authorized to provide mandated legal service providers statewide through regional offices and contracts with programs able to meet relevant standards, and required to engage in standards-based, ongoing oversight of mandated legal services; and

WHEREAS, bi-partisan legislation to implement the recommendations of the Kaye Commission has been introduced in both houses of the New York State Legislature; and

WHEREAS, the recommendations of the Kaye Commission also have the support of the Governor.

THEREFORE, BE IT RESOLVED, that the Common Council supports the creation by New York State of an independent public defense commission heading a statewide public defender system as recommended by the Kaye Commission and supported by the Governor and State Legislators of both parties.

BE IT FURTHER RESOLVED, that the Common Council agrees with the Kaye Commission that as to this much-needed public defense reform "the time for further study is over" and "[t]he time for action is now."

RESOLVED, that the Common Council of the City of Albany, New York encourages the Chief Judge, the Governor, State Legislators of both parties, and others to continue efforts to bring about public defense reform.

Copies of this resolution are to be sent to:
New York State Chief Judge Judith S. Kaye

New York State Governor David Paterson
The leadership in the New York State Senate and Assembly
Chairs of the Codes and Judiciary Committees of the New York State Senate and Assembly
New York State Senator(s) _____
New York State Assemblymember(s) _____
New York State Association of Counties
The Campaign for an Independent Public Defense Commission

**Note: There was discussion from Council Member Ellis stating he was glad to be able to introduce this legislation. HE stated that he had met with the Public Defenders offices and was told how underfunded the department is and in order to have equal justice under the law, there needs to be proper funding.*

There was discussion from Council Member Smith regarding how important it is in this country for the legal system to operate without discrimination and being glad for the opportunity to support this legislation.

Resolution 76.101.08R was Co-Sponsored by Council Members Calsolaro, Casey, Conti, Fahey, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo and Smith.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative -- Calsolaro, Casey, Conti, Ellis, Fahey, Fox, Herring, Igoe, O'Brien, Rosenzweig, Sano, Scalzo, and Smith

Affirmative 13 Negative 0 Abstain 0

The remaining resolutions on the pending agenda were held at the request of Council Member Conti.

MISCELLANEOUS AND UNFINISHED BUSINESS

RESOLVED THAT THE FOLLOWING PERSONS BE AND HEREBY APPOINTED COMMISSIONERS OF DEEDS FOR THE CITY OF ALBANY, NEW YORK FOR THE TERM ENDING DECEMBER 31, 2008, AND WAIVE THE READING OF THE NAMES:

Otter, Mary, Albany County Probation Department, 60 S Pearl St, Albany, NY 12207

ADJOURNMENT

Council Member Conti asked that Council Members McLaughlin and Timmons be excused.

A motion was made for adjournment.

Council President Morris stated, hearing no objections, that the Council was adjourned.

A true record of the Common Council Minutes of October 4th, 2008.

**CASHAWNA PARKER
LEGISLATIVE AIDE TO THE COMMON COUNCIL**