



**BOARD OF ADMINISTRATIVE APPEALS  
ADMINISTRATIVE REVIEW PANEL**

**Council Chambers  
200 "H" Street**

**NOVEMBER 2, 2017  
3:00 P.M.**

**3:00 P.M.    ROLL CALL**    Deborah Simpson, Chairperson  
Ademuyiwa "Ade" Adeyemi, Vice Chairperson  
Andrew Schleder  
April Ussam-Lemmons  
Farideh Faraji,  
*Vacant*, Alternate

**PLEDGE OF ALLEGIANCE**

**1.    CONSENT CALENDAR**

**A.    APPROVAL OF ADMINISTRATIVE APPEALS SPECIAL MEETING MINUTES FOR  
SEPTEMBER 27, 2017**

STAFF REPORT

Recommended Action:    Motion to approve the minutes

**B.    APPROVAL OF ADMINISTRATIVE APPEALS MEETING MINUTES FOR OCTOBER 5,  
2017**

STAFF REPORT

Recommended Action:    Motion to approve the minutes

**C.    APPROVAL OF THE LEVY OF SPECIAL ASSESSMENTS ON CERTAIN  
PROPERTIES FOR UNPAID ADMINISTRATIVE CITATIONS & ABATEMENTS FOR  
THE MONTHS OF AUGUST AND SEPTEMBER 2017**

Recommendation:    The Board of Administrative Appeals shall confirm each assessment and the amount thereof, as proposed or as corrected and modified, and order it assessed against the property. The Board shall also direct that the same be recorded with the Contra Costa County Recorder's Office and thereafter the assessment shall constitute a special assessment and lien against the property.

STAFF REPORT

**PUBLIC COMMENTS—*Only unagendized issues will be discussed during this time***

**WRITTEN/ORAL COMMUNICATIONS**

**ADJOURNMENT**

**Notice of Availability of Reports**

This agenda is a summary of the discussion items/actions proposed to be taken by the Board of Administrative Appeals. Materials provided regarding the agenda items will be available at the following website: <http://www.ci.antioch.ca.us/CityGov/Agendas/default.asp> or at the City Clerk's Office located on the 3<sup>rd</sup> floor of City Hall, 200 H Street, Antioch, CA 94509, Monday through Friday, 8:30 a.m. to 4:30 p.m., for inspection and copying (for a fee). Copies are also made available at the Antioch Public Library for inspection. The meetings are accessible to those with disabilities. Auxiliary aides will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7009 or TDD (925) 779-7081.

**Notice of Opportunity to Address the Committee**

The public has the opportunity to address the Board on each agenda item. To address the Board, fill out a yellow Speaker Request form, available on each side of the entrance doors, and place in the Speaker Card Tray. This will enable us to call upon you to speak. Each speaker is limited to not more than 3 minutes. Comments regarding matters not on this Agenda may be addressed during the "Public Comments" section on the agenda. No one may speak more than once on an agenda item or during "Public Comments".

***PLEASE TURN OFF CELL PHONES BEFORE ENTERING COUNCIL CHAMBERS.***

**BOARD OF ADMINISTRATIVE APPEALS  
ADMINISTRATIVE REVIEW PANEL**

**Special Meeting**  
**4:00 P.M.**

**September 27, 2017**  
**Council Chambers**

Chairperson Simpson called the meeting to order at 4:00 P.M. on Thursday, September 27, 2017 in the Council Chambers.

**ROLL CALL:**

Present: Board Members Adeyemi, Ussam-Lemmons, Schleder, Faraji and Chairperson Simpson

Staff Present: Interim City Attorney, Derek Cole  
Administrative Services Director, Nickie Mastay  
Finance Director, Dawn Merchant  
City Clerk, Arne Simonsen  
Minutes Clerk, Kitty Eiden

**PLEDGE OF ALLEGIANCE**

Chairperson Simpson led the board, staff and public in the Pledge of Allegiance.

**1. CONSENT CALENDAR**

**A. APPROVAL OF ADMINISTRATIVE APPEALS MEETING MINUTES FOR SEPTEMBER 7, 2017**

On motion by Board Member Schleder, seconded by Board Member Adeyemi, the Board of Administrative Appeals unanimously continued the Minutes for September 7, 2017 to October 5, 2017.

**2. REGULAR AGENDA**

**A. GRIEVANCE HEARING: CONSIDER APPEAL OF OPERATING ENGINEERS LOCAL UNION NO. 3 REGARDING THE CITY MANAGERS DENIAL OF THE GRIEVANCE THAT SECTION 12.1(B) OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ANTIOCH AND OPERATING ENGINEERS LOCAL UNION NO. 3 HAS BEEN VIOLATED.**

Interim City Attorney Cole explained the manner in which the proceedings would be conducted.

**OATH**

City Clerk Simonsen administered the Oath for all persons intending to testify at the Grievance Hearing.

Interim City Attorney announced that both parties through the City Clerk agreed to a question and answer format similar to that of a courtroom proceeding. He recommended the Board deviate from the typical policies and procedures to allow for that process. Additionally, he noted the City's presentation would involve binders of exhibits and that had not been provided to the Union prior to the meeting.

David Tuttle, representing Operating Engineer Local No. 3, stated that it was his understanding all written materials needed to be submitted 72 hours prior to the hearing, which they had done. He noted if the City adopted the rule, it needed to apply to everyone.

City Clerk Simonsen clarified that he had informed Mr. Tuttle that if there were materials he wanted the Board to review prior to the hearing, they needed to be submitted 72 hours in advance so that they could be included in the packet. He noted he had made the same request of Administrative Services Director Mastay.

Interim City Attorney Cole reported it was not a legal requirement for materials to be submitted to the Board and exchanged with the other side. He recommended allowing the presentation to go forward and taking up the issue once the presentation was heard.

In response to Mr. Tuttle, Interim City Attorney Cole stated if both parties believed introduction would be helpful, he would suggest that they take five minutes to do so and then proceed into questioning.

## **INTRODUCTIONS**

Mr. Tuttle, Operating Engineers Local Union No.3, thanked the Board for hearing the grievance. He explained that their Union represented employees of the City of Antioch and a copy of their Memorandum of Understanding (MOU) was provided to the Board. He stated the MOU required the City provide a Medical-After-Retirement Reimbursement Plan (MAR Plan) so employees had the opportunity to maintain health insurance. He noted the plan was governed under California Government Code 22890 which stipulated that the contracting agency and each employee shall contribute a portion of the cost of providing the benefit. He further noted that he believed the City was confused regarding their obligation. He explained the City and the employee each paid a portion of the CalPERS retiree medical plan and then the MAR Plan reimbursed the employee for that cost. For example in 2018, a single employee enrolled in Kaiser would pay \$779.86; the employer contribution would be \$133.00, meaning that the employee would pay \$346.86 and then under the MAR Plan the City would reimburse the employee \$310.00 so the total out of pocket cost was \$336.00. However, the City was taking the employer contribution out of the reimbursement amounts and they believed employees should have the full amount they were entitled. He reported that they had asked the City to adopt a new process going forward; however, they were told that they wanted to continue with past practice. He stated he believed the City felt that they were entitled to withhold the money; however, the employer should not be able to take employee contributions to satisfy their obligation.

James Jones, Attorney on behalf of City of Antioch stated the existing MOU and MAR Plan were the documents for the Board to consider when determining if the City was paying correctly. He explained the MAR Plan determined the level of benefits a retiree received and the MOU and MAR Plan specifically stated the amount was capped. He stated the Union was arguing that the City should pay the capped amount plus an additional sum of \$128.00 each month; however, the City believed employees were entitled to the capped amount. He explained the \$128.00 was the city's contribution to CalPERS to assist the employee in buying medical benefits. He noted the cap in the MAR Plan was higher so the City issued a check to employees to make up the difference. He further noted employees were entitled under the MOU and MAR Plan the \$128.00 contribution to CalPERS, plus an additional amount that got them up to the cap. He stated that had been the City's practice for years and the City had always paid their obligations to the letter of the contract. He noted that they would be submitting a binder and it was his understanding that the Brown Act did not require it be submitted 72 hours in advance. He noted he had provided copies to the Union. He explained that the binder provided a history of the MAR Plan benefits that retirees had received over several MOUs and the Board would see that the City's practice had always been and the contacts had always said that employees received the contribution to CalPERS plus the extra amount that gets them to the cap.

City Clerk Simonsen recommended the Board allow Mr. Tuttle the opportunity to examine each witness for 10 minutes.

Interim City Attorney Cole recommended that witnesses sit in the staff chair with a microphone so all comments could be captured on the video.

### **WITNESSES**

#### **Kevin Scudero, City Employee Operating Engineers Local Union #3**

In response to Mr. Tuttle, Kevin Scudero introduced himself as a City employee who had been a member of the bargaining unit since 2004. He stated he was familiar with the MAR Plan through his involvement as one of the members of the negotiating team. He noted previous testimony regarding the cap amount was confusing since they were established in 1993 before they were members of CalPERS. He further noted to believe the minimum employer contribution (MEC) would be part of the cap would not make sense because their MOU specifically stated that the City should pay the MEC on behalf of the employee/retirees and it did not state that it should be taken out of the retiree allotment for medical-after-retirement. He clarified that MEC was the minimum employer contribution the City was required to pay CalPERS on behalf of employee's medical. He stated that he believed MEC was a State code and part of the MOU as a negotiated benefit for employees/retirees. He read from the staff report's exhibit #6 – California Government Code 22890 which stated "The contracting agency and each employee or annuitant shall contribute a portion of the cost of providing the benefit coverage afforded under the health benefit plan approved or maintained by the board in which the employee or annuitant may be enrolled." He commented that he believed that meant the employer and the employee each had a required contribution which prior to 2004 was \$16.00 and it had increased every year since then. He noted he was somewhat familiar with the MAR

Plan and understood that they had fixed caps and the employees were grandfathered in with a tiered system. He further noted it was his understanding that it was also the amount the City paid to the employees. In referencing the staff report's attachment "C" exhibit 1, page 6; he stated that the document showed the premium amount; the participants share as well as the employer share.

Mr. Tuttle thanked Kevin Scudero, stated that he had no further questions for him and that he was his only witness.

Mr. Jones dispersed binders to the Board Members, Interim City Attorney Cole and City Clerk Simonsen.

**Nickie Mastay, Administrative Services Director, City of Antioch**

In response to Mr. Jones, Administrative Services Director Mastay indicated that she had a binder with the exhibits and she was involved in gathering the documents.

*Referencing exhibit #1 – Grievance, Response to Grievance, Appeal of Grievance*

Administrative Services Director Mastay confirmed that the exhibit identified the nature of the grievance which was that the Operating Engineers Local Union No. 3 had recently found that the City was paying the \$128.00 MEC, but also deducting it out of the retirees check. She affirmed that the MEC was the minimum employer contribution that the City was obligated to make for each employee and retiree.

*Referencing exhibit #2 - MOU – Antioch City Employees' Assn Representational Unit IV (Excerpts) (w/attached 1993 MAR Plan, Units I, III and IV) 1994-1997*

Administrative Services Director Mastay confirmed that exhibit #2 was the MOU that existed just prior to the City entering the CalPERS program for its medical benefits. Referring to Article 12 section 12.1, she verified that just prior to the City entered CalPERS, employees had the option of Blue Cross or Kaiser Foundation Health. Referring to Article 12 section 12.7, she affirmed that contract stated the City would provide benefits according to a MAR plan which was attached to the contract as exhibit C. In referencing Exhibit "C" page 3, section B2 she confirmed that prior to going into CalPERS, there was a system where the retirees' benefits were capped so that they were not as great as the employee's benefits.

Mr. Jones indicated the caps were \$310.00 per single enrollee.

*Referencing exhibit #3 – California Gov. Code, Section 22890, 22892*

Administrative Services Director Mastay confirmed it was her understanding that the California Government Code described what contributions need to be made to CalPERS when the City enrolled employees. In referencing section 22892 (a), she verified that the government code required the City to adopt by resolution an amount fixed and filed with CalPERS that became

the statement of the employer's obligation. She agreed that when it began in 2004, the amount contributed had a minimum of \$16.00.

Referencing exhibit #4 – Screenshots – Resolutions #98-186-192, Resolution 98/189

Administrative Services Director Mastay confirmed when the City adopted the first resolution the City resolved it would pay to CalPERS the minimum employer contribution of \$16.00. She affirmed this exhibit was the resolution on file with CalPERS establishing the City of Antioch's obligation to CalPERS. She verified that the employee was entitled to \$310.00 a portion of which was the \$16.00 given to CalPERS.

Referencing exhibit #5 - MOU – Antioch City Employees' Assn. Representational Unit IV (Excerpts) (w/attached 1993 MAR Plan, Units I, III and IV) 1997-2001

Administrative Services Director Mastay confirmed that the 97-01 MOU was the first that existed when the City was part of CalPERS for medical benefits. She verified that section 12.7 describes the medical-after-retirement plan and indicated the benefits the retiree could get under the contract were set out in exhibit "C". She affirmed that Exhibit "C" B.2 said that even though the City was in CalPERS and was making a contribution of \$16.00 directly to CalPERS, the total benefit was an amount not to exceed \$310.00.

Referencing exhibit #6 – MOU – Antioch City Employees' Assn Representational Unit IV (Excerpts) 2001-2004

Administrative Services Director Mastay confirmed that section 12.1 stated the City would pay \$16.00 MEC to CalPERS and Section C discussed the medical-after-retirement benefits which indicated the City would provide the medical-after-retirement benefit in accordance with the plan on file with the Personnel Department.

Referencing exhibit #7 – MAR Plan – Units I, III and IV

Administrative Services Director Mastay confirmed the MAR plan was established to provide for City contributions toward medical insurance premiums for retired employees. She affirmed that the City's obligation was to provide an amount not to exceed the cap amounts so for a single, it was \$310.00 and single plus spouse, it was \$620.

Referencing exhibit #8 - MOU – Antioch City Employees' Assn Representational Unit IV (Excerpts) 2004-2005

Administrative Services Director Mastay confirmed the MEC increased to \$48.00 per month.

Following discussion, the Board agreed to adhere to the 10 minute per witness limitation.

**Austris Rungis, City of Antioch**

Referencing exhibit #8 - MOU – Antioch City Employees’ Assn Representational Unit IV (Excerpts) 2004-2005

Mr. Rungis confirmed exhibit 8 was the MOU that existed just prior to the MOU he had negotiated on behalf of the City of Antioch with the bargaining unit in 2005. He affirmed that as part of the negotiations, he had become familiar with exhibit 8 as it gave him the foundation to negotiate a new contract. He affirmed that 12.1 B. described the City’s minimum employer contribution to CalPERS. He verified Article 13 B. described the benefits as those in the MAR Plan which was on file with the Personnel Department (exhibit 7). He agreed that the MOU that existed before the one he negotiated was set up so that the City would pay the minimum employer contribution which was an amount not to exceed \$310.00 for a single or \$620 for an employee with a spouse. He confirmed that it was his understanding that the way they arrived at \$310.00 was that the City would contribute the minimum employer contribution directly to CalPERS and then it would provide a reimbursement check to the retiree for the difference to get that person up to \$310.00 or a person with a spouse up to \$620.00. He indicated he then negotiated a new memorandum of understanding exhibit 15 – MOU – Operating Engineers Local Union No. 3 – Representational Unit IV Excerpts 2005 – 2009.

Referencing exhibits #9 - Staff Report – Resolution Implementing Temporary Increase in MAR Plan CAPS (w/attached Dec 2002 MAR Plan, Units I, III and IV), exhibit #10 – Resolution 2005/05 & Minutes Implementing Temporary Increase in MAR Plan CAPS, exhibit #11 – Letter from Personnel Director to Retirees Re: MAR Plans, exhibit #12 – Staff Report – Resolution Allowing Temporary Increase in MAR Program CAPS to Lapse (with attached resolution), exhibit #13 – Staff Report – Update on Meeting w/Employee Groups Re: MAR Plans; and, exhibit #14 – Staff Report – Status of Discussion Related to MAR Plans (w/attached Actuarial Valuation of Post-Retirement Medical Benefits – 04.03.05)

Mr. Rungis confirmed that he was familiar with exhibits #9-14 related to the Union seeking to increase the cap and the City agreeing to a temporary increase subject to negotiations of the new labor contract (exhibit 15). He affirmed that at no time did anyone take the position that the City had the obligation to pay the cap plus the minimum employer’s contribution. He stated the practice was as described in the MOU (exhibit 15) and in the MAR Plan and administrative documents given to the union during the negotiations. He verified that the practice was that the City would contribute the existing minimum employer contribution to CalPERS and then make up the difference by giving a check to the retiree. He confirmed during the time he was doing negotiations, actuarial reports were generated, and there were significant unfunded liabilities of over \$10M-\$20M dollars existing at the time. He confirmed that the City could not have afforded to give an increase in the caps and pay for the minimum employer contribution each month. He affirmed that no one negotiated for that, the Union wanted the temporary caps made permanent which they received a quid pro quo. He stated there was no written proposal by the Union in 2005 to make it cap plus the MEC.

**Dawn Merchant, Director of Finance, City of Antioch**

Referencing exhibit #16 – Staff Report – Other Post-Employment Benefits (w/attached Draft Retiree Healthcare Plan, 06.30.17 Actuarial Valuation Executive Summary – Nov 2007)



Finance Director Merchant confirmed that she wrote the memorandum in November 2007 and #3 of the summary stated that the Internal Service Funds will last for a period of about 5 years, after which, additional funding from the City's General Fund will be required. She affirmed that retiree benefits were being provided from the Internal Service Funds and as of November 14, 2007 the City had a fund that might carry out 5-years. She verified that she was familiar with the actuarially report and there were significant unfunded liabilities. She confirmed that from her experience, the City could not have afforded to pay the retirees the minimum employer contribution plus the cap as it would have significantly increased the amount of the unfunded liability.

Referencing exhibit #17 – Retiree Healthcare Plan – 06.30.07 Actuarial Valuation (Excerpts)

Finance Director Merchant confirmed there was an unfunded liability of over \$24 million.

Referencing exhibit #18 – MOU – Operating Engineers Local Union No. 3 Representational Unit IV (Excerpts) 2009-2014

Finance Director Merchant confirmed the document indicated that the benefits would be those on file with the Personnel Department which was the MAR with the caps applied.

Referencing exhibit #19 – Retiree Healthcare Plan – 01.01.09 Actuarial Valuation Results (Excerpts)

Finance Director Merchant confirmed that there was an unfunded liability in the range of \$20 million.

Referencing exhibits #20 – Actuarial Valuation of Other Post-Employment Benefit Programs (01.01.11) (Excerpts), exhibit #21 - Actuarial Valuation of Other Post-Employment Benefit Programs (07.01.11) (Excerpts); and, exhibit #22 - Actuarial Valuation of Other Post-Employment Benefit Programs (07.01.13) (Excerpts)

Finance Director Merchant confirmed there were still millions of dollars in unfunded liabilities.

Referencing exhibit #23 – MOU – Operating Engineers Local Union No. 3 Representational Unit IV (Excerpts) 2014-2016

Finance Director Merchant confirmed the benefits provided under that contract were those on file with the Human Resources Department (Article 13) last page of exhibit 23. She affirmed the MAR on file had the caps in place.

Referencing exhibit #24 – Actuarial Valuation of Other Post-Employment Benefit Programs (07.01.15) (Excerpts)

Finance Director Merchant confirmed there was an unfunded liability of over \$10 million for the retirement plan.

*Referencing exhibit #25 – MOU – Operating Engineers Local Union No. 3 Representing Unit IV (Excerpts) 2016-2021*

Finance Director Merchant confirmed this exhibit was the MOU that existed today and section 12.1 said the City would pay the minimum employer contribution and it did not say it would pay the MEC plus the cap amount. She affirmed the MAR Plan benefits (Article 13) stated the benefits afforded were those set out in the MAR Plan on file with the Human Resources Department (exhibit 7) with cap amounts.

*Referencing exhibit #27 – Reimbursement Practices*

Finance Director Merchant confirmed an increase occurred raising the cap from \$310.00 to \$354.69 and to determine how much was reimbursed to an employee \$80.80 was the minimum employer contribution so the City gave that amount to CalPERS and a reimbursement of \$273.89 to the employee. She affirmed the combination of those two things equaled the cap that they were entitled to and it had always been calculated that way. She stated to her knowledge, no one had ever asked to change that calculation and the first time she had heard anyone say the employee should receive the capped amount plus the MEC was this grievance. She verified that history, the MOU, and the MAR Plan had always said the opposite.

**BOARD COMMENTS**

In response to Board Member Faraji, Mr. Jones clarified the total contribution of \$354.69 was made up of \$128.00 they gave to CalPERS and each retiree received a monthly reimbursement check to make up the difference. He reiterated retired employees received their benefits and the City delivered a \$128.00 payment to CalPERS on behalf of the employee and then they provided a check to the retiree for the difference between \$354.00 and \$128.00 for their monthly health benefits. He stated it was the City's position that they were paying exactly what they were suppose to pay.

In response to Board Member Faraji, Mr. Tuttle stated they believed employees had not received what they were promised. He stated the amount given to CalPERS in 2018 would be \$133.00; however, he agreed the current amount was \$128.00, which was what the City was suppose to pay each month according to the California Government Code. He stated the employee paid the majority of it and the benefit they were suppose to receive was a reimbursement of \$310.00; however, they were only receiving \$350.00 minus the employers contribution. He noted the employer was shifting the burden of their obligation under the statute from themselves to the retirees, which they believed was not fair. He further noted that if the City did not want to give the retirees the benefit, they should have negotiated better. He clarified that the employees and retirees deserved what they were promised; however, they were only receiving 2/3 of the benefit.

In response to Board Member Ussam-Lemmons, Mr. Tuttle explained retirees received a reimbursement check that was not itemized so they were not aware of how much the cap or CalPERS portion was suppose to be. He noted this item came to light because a member of

the negotiating team who was aware of the benefit recently retired questioned why his check was short. He further noted they questioned the City who responded that was the way it had always been done and they would continue doing so going forward. He stated it was then that they brought it to the attention of the Union and City to resolve; however, when those efforts failed, they filed the grievance.

In response to Board Member Faraji, Mr. Tuttle reported the amount the employer was suppose to pay to CalPERS had steadily increased. He reiterated that the check was not itemized and if it had been, he believed the issue would have come forward sooner. He stated there was a portion CalPERS required every month for health insurance and the employees portion was 2/3 of it or more, then there was an employer contribution portion and then the medical-after-retirement reimburses employees up to \$310.00. He stated they believed there was an employee part, employer part, and then the reimbursement part from the City to the employee which was the negotiated benefit the City was not paying.

In response to Board Member Adeyemi, Mr. Tuttle stated the dispute between the City and the Union was the amount that was being paid and the City should be paying the employees \$310.00 or \$354.00; however, they were taking the employer contribution out of the employee reimbursement. He stated he wanted the City to pay the employer contribution and pay members the full amount that they were obligated to under the plan. He noted it would be very expensive and they would be willing to negotiate. He explained the City negotiated and they signed the contract; however, their understanding of the contract differed. He explained that they believed the contract said that the employer has a contribution, the employee has a contribution and then there was suppose to be a reimbursement amount. He stated if that was what the contract said, they want the City to live up to the contract.

In response to Board Member Schleder, Mr. Tuttle stated he believed this issue had not come forward previously because it was such a small amount. He noted when the amounts changed throughout the years; he believed the retirees did not pay attention.

Kevin Scudero added that he had talked to the retirees and he believed the members were not aware of some of the details of the MOU. He noted the cap amounts were not in the MOU or available publicly and had to be obtained from Human Resources. Additionally, when former employees go from retiree age to medi-care, the amount changed so there was always fluctuation. He reported there was now a retiree who was part of the negotiations and had an expectation and that was why this came up now. He stated that just because it was not noticed for 20 years, it did not make it acceptable. He noted the contract language was clear that the City shall pay it on behalf of retirees and employees. He further noted they pay it on behalf of employees and they do not take it out of the allotments; therefore, they were treating retirees differently.

Board Member Faraji questioned if there was an agreement between the City and the Union that stipulated that the City was required to pay \$310.00 and \$128.00 a month.

Mr. Tuttle responded that the agreement indicated that the City would pay the MAR Plan which had a cap on the reimbursement of \$310.00. He noted that was the amount of money the City

was going to reimburse each of the retiree funds and outside that reimbursement, there existed an obligation for the City to pay \$128.00 every month. He stated the issue was that the Union believed the City should pay it and the City believed they should not.

Board Member Adeyemi questioned why retirees would not know the details of the MOU that had been in place since 2004.

Mr. Tuttle stated he believed the City had an obligation to provide the information and itemized checks to the employees so they did not assume they were reimbursed the correct amount.

Chairperson Simpson declared a recess at 5:30 P.M. The meeting reconvened at 5:46 P.M. with all Board Members present.

### **CLOSING REMARKS**

Mr. Tuttle stated he appreciated this opportunity and the Union had a good faith dispute with the City with regards to the amount of money that was supposed to be paid to retirees. He noted that they understood it to be complicated and potentially expensive; however it was a negotiated benefit listed in the MOU. He reiterated the MOU stated the City was going to pay per the terms of the MAR Plan and that benefit existed before the City was required to pay an employer contribution under the State statute which did not exist until 2004; however, the medical-after-retirement, cap and reimbursement amount existed well before that. He stated the idea that the cap and reimbursement amount was to be allocated to the City's employer contribution was infeasible. He noted the City was zeroing out their liability based on the fact the employees should receive this kind of reimbursement. He stated he thinks the State statute language was clear and there was an employer contribution, employee contribution, and there was the amount that was negotiated between the parties the retirees were suppose to receive. He noted it was also clear on who and when they were supposed to pay. He reiterated that if employees had received an itemized reimbursement check, they would have been able to realize what was occurring sooner. He stated they would appreciate the Board finding for the Union and supporting them in this regard.

Mr. Jones stated the Union fundamentally misunderstood how the CalPERS program worked. He noted if an employer wanted to enter into the CalPERS program to provide medical benefits to a retiree, the statute says the employer must contribute at least the minimum on behalf of employee, which was currently \$128.00. He noted the employer had provided the minimum contribution of \$128.00 and more up to a cap. He further noted the cap was \$354.00 for a single retiree enrolling in a plan and to reach the cap, the City paid \$128.00 to CalPERS which was used by the retiree to purchase insurance. He stated the total benefit could not exceed \$354.00; therefore, the City provided a check to the retiree. He noted it had been done this way for 20 years, no one had ever suggested that it should have been handled differently and every MOU and MAR Plan had indicated that it was to be handled in such a manner. He stated to suggest all the retirees over the past 20 years had not noticed was unreasonable as everyone was aware of the amount of money available in their retirement benefits to purchase medical plans. He stated employees had access to the MOU and the MAR Plan and key words in the MAR Plan were, "the city will pay as medical after retirement benefits an amount not to

exceed the cap". He stated the Union's argument was contradictory to the MOU and the MAR Plan because that amount would exceed the cap. He stated what the City gave to CalPERS and to the retiree must equal the cap which was the way it had always been done and the City met all of their obligations.

### **BOARD DISCUSSION / MOTION**

In response to Board Member Ussam-Lemmons, Board Member Adeyemi explained the City was contributing \$128.00 to CalPERS.

Board Member Adeyemi stated the City had been paying and also giving a check to the retirees. He noted the problem was that checks were not itemized. He noted retirees should be aware of their benefits so they could determine what type of insurance they could purchase; however, the Union had indicated that no one noticed the discrepancy for 20 years so it needed to be changed. He further noted the parties could negotiate; however, the current benefits were what had been provided.

Board Member Ussam-Lemmons stated if there was an error with an MOU, it was understandable that the Union had not noticed the shift of \$16.00. She noted retirees received a check that was not itemized and she doubted that they would question if the city's contribution was accurate. She stated there was an error on behalf of both parties that should be corrected.

Board Member Schleder explained that whether there was an error was up for debate. He noted typical retirees were 55 years old and aware of their retirement benefits. He further noted it seemed unusual that in 10 years no one had brought the item forward.

Board Member Ussam-Lemmons responded that it could have been an error from the retirees.

Chairperson Simpson clarified that the grievance was an appeal that the Operating Engineers Local Union filed and their argument was that the City had violated the MOU as it related to section 12.1B. She urged Board Members to focus on that section and whether or not the City violated the contract.

Board Member Ussam-Lemmons clarified that there was a misunderstanding in interpreting the MOU because there were not specific dollar amounts provided.

Chairperson Simpson stated the MOU was negotiated between the City and Union and both parties agreed to the wording in the contract. She noted the City showed the changes that had taken place during the years and the State statute talked about what was required. She stated the contract was negotiated every 4-5 years and it had not been changed to reflect an increase in the City's contribution.

On motion by Board Member Schleder, seconded by Board Member Adeyemi, the Board of Administrative Appeals denied the appeal of Operating Engineers Local Union No. 3 regarding the City Manager's denial of the grievance that Section 12.1(B) of the Memorandum of

Understanding between the City of Antioch and Operating Engineers Local Union No. 3 has been violated. The motion carried the following vote:

*Ayes: Adeyemi, Schleder, Faraji, Simpson*

*Noes: Ussam-Lemmons*

**PUBLIC COMMENTS** – None

**WRITTEN/ORAL COMMUNICATIONS** – None

**ADJOURNMENT**

Chairperson Simpson adjourned the Administrative Board of Appeals meeting at 6:08 P.M. to the next regularly scheduled meeting on October 5, 2017.

Respectfully Submitted,

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Kitty Eiden  
Minutes Clerk

**BOARD OF ADMINISTRATIVE APPEALS  
ADMINISTRATIVE REVIEW PANEL**

**Regular Meeting  
3:00 P.M.**

**October 5, 2017  
Council Chambers**

Vice Chairperson Adeyemi called the meeting to order at 3:00 P.M. on Thursday, October 5, 2017 in the Council Chambers.

**ROLL CALL:**

Present: Board Members Schleder, Ussam-Lemmons, Faraji, Vice Chair Adeyemi  
Absent: Chairperson Simpson

Staff Present: Interim City Attorney, Samantha Chen  
Administrative Analyst, Tamera Leach  
Code Enforcement Officer, Mike Aguirre  
Business License Representative, Sonia Johnsen  
Minutes Clerk, Kitty Eiden

**PLEDGE OF ALLEGIANCE**

Vice Chairperson Adeyemi led the board, staff and public in the Pledge of Allegiance.

**1. CONSENT CALENDAR**

**A. APPROVAL OF ADMINISTRATIVE APPEALS MEETING MINUTES FOR  
SEPTEMBER 7, 2017**

On motion by Board Member Schleder, seconded by Board Member Ussam-Lemmons, the Board of Administrative Appeals approved the minutes for September 7, 2017. The motion carried the following vote:

*Ayes: Ussam-Lemmons, Schleder, Faraji, Adeyemi*

*Absent: Simpson*

**B. APPROVAL OF ADMINISTRATIVE APPEALS SPECIAL MEETING MINUTES FOR  
SEPTEMBER 27, 2017**

On motion by Board Member Ussam-Lemmons, seconded by Board Member Faraji, the Board of Administrative Appeals approved to continue the Special Meeting Minutes for September 27, 2017. The motion carried the following vote:

*Ayes: Ussam-Lemmons, Schleder, Faraji, Adeyemi*

*Absent: Simpson*

**C. APPROVAL OF THE LEVY OF SPECIAL ASSESSMENTS ON CERTAIN PROPERTIES FOR UNPAID ADMINISTRATIVE CITATIONS & ABATEMENTS FOR THE MONTH OF JULY 2017**

On motion by Board Member Schleder, seconded by Board Member Ussam-Lemmons, the Board of Administrative Appeals confirmed each assessment and the amount thereof, as proposed or as corrected and modified, and ordered it assessed against the property. The Board also directed that the same be recorded with the Contra Costa County Recorder's Office. The motion carried the following vote:

*Ayes: Ussam-Lemmons, Schleder, Faraji, Adeyemi*

*Absent: Simpson*

**2. REGULAR AGENDA**

Interim City Attorney Chen explained the manner in which the proceedings would be conducted.

**OATH for all intending to testify**

Minutes Clerk Eiden administered the Oath for all persons present intending to testify.

- A. ADMINISTRATIVE CITATION NO. 2167 – APPEAL FILED BY EDDIE BEAUDIN FOR HIS PROPERTY LOCATED AT 403 GRANGNELLI AVENUE, ANTIOCH, REGARDING ANTIOCH MUNICIPAL CODE “BUSINESS LICENSE REQUIRED” [§3-1.103].**
- B. ADMINISTRATIVE CITATION NO. 2166 – APPEAL FILED BY EDDIE BEAUDIN FOR HIS PROPERTY LOCATED AT 1006 E STREET, ANTIOCH, REGARDING ANTIOCH MUNICIPAL CODE “BUSINESS LICENSE REQUIRED” [§3-1.103].**
- C. ADMINISTRATIVE CITATION NO. 2165 – APPEAL FILED BY EDDIE BEAUDIN FOR HIS PROPERTY LOCATED AT 2977 PALO VERDE WAY, ANTIOCH, REGARDING ANTIOCH MUNICIPAL CODE “BUSINESS LICENSE REQUIRED” [§3-1.103].**

Interim City Attorney Chen recommended consolidating all three citations and noted the appellant would have 15 minutes to speak.

Business License Representative Johnsen presented the staff reports dated September 28, 2017 recommending the Board of Administrative Appeals uphold \$200.00 Administrative Citations No. 2167, No. 2166 and No. 2165 issued on August 21, 2017, for properties located at 403 Grangnelli Avenue, 1006 E Street and 2977 Palo Verde Way.

Eddie Beaudin, reported he received a citation for Grangnelli Avenue address; however, he had not receive the citations for the E Street and Palo Verde Way addresses. He noted that as a businessman in Antioch, his business licenses were sent to his post office box. He stated he supported and voted for Measure O; however, he was not in favor of the excess citations/fines



especially the \$330.00 he could not appeal due to it being past the date of appeal. He reported he had paid \$3,363.00; \$2,250.00 which was his share and \$1,113.00 for the citations. He stated when he contacted City staff and informed them that the E Street and Palo Verde Way citations had not come to his residence and shortly thereafter, he received another notice to his current address with the other two properties handwritten on the notice. He noted he was appealing the amount of the citations because 10 days did not allow adequate time to file an appeal.

Business License Representative Johnsen explained the letter Mr. Beaudin received from MuniServices on June 2, 2017 was a notice of violation informing him that if he did not comply the next step would be a citation and that the annual tax per single family dwelling was \$250.00 per year. She noted the ordinance came into effect December 2014 so they collected for all three properties for 2015-2017. She clarified she had sent all three \$100.00 citations on July 28, 2017 and the reason she had written in the other two addresses was because MuniServices had attached with each correspondence, the business license application for the property owner to list his rental property addresses; however, Mr. Beaudin only had one address listed.

A member of the audience stated he wanted to speak regarding business license fees.

Vice Chairperson Adeyemi clarified that the item before the Board was the appeal from Mr. Beaudin.

Interim City Attorney Chen stated there would be an opportunity for the public to speak on non-agendized items during Public Comment following the Regular Agenda.

In response to Board Member Faraji, Mr. Beaudin stated within the 30 day period there were over \$1,100.00 in citations. He requested MuniServices provide him with copies of the letters they sent to E Street and Palo Verde Way addresses. He noted the City did not allow adequate time for a property owner to comply before increasing the citation amounts.

In response to Board Member Ussam-Lemmons, Business License Representative Johnsen explained 10 days after the citation a penalty was assessed so he had paid \$200.00 for each property and a \$50.00 appeal fee per property.

In response to Board Member Schleder, Business License Representative Johnsen reported MuniServices had not received any returned mail and it was a non-responsive account so they sent one last notice of violation prior to taking further action.

Board Member Faraji stated that since there was confusion with the addresses and Mr. Beaudin had been a business owner in Antioch who had always paid his fees, she suggested clearing this with the City without penalty. She expressed concern Mr. Beaudin had not informed the City that he had two additional rental properties and stated the City should now have one address to make sure he received the information.

Vice Chairperson Adeyemi opened the floor to public comment.

In response to Board Member Schleder, Mr. Beaudin stated he did not recall if the City conducted a rental inspection on his properties; however, a couple of them were on housing and the County had performed inspections.

Vice Chairperson Adeyemi closed the floor to public comment.

Board Member Ussam-Lemmons questioned if the Board was authorized to waive any citations or late fees for the citations.

Interim City Attorney Chen responded that she would have to look into that issue.

Code Enforcement Officer Aguirre responded the Board of Administrative Appeals had the authority to amend the fine on the administrative citation but not inspection fees. He noted there were no inspection fees regarding this citation.

Vice Chairperson Adeyemi opened the floor to public comment.

Business License Representative Johnsen stated the break down for fees would be \$750.00 (Business License Fee) per property, \$110.00 (first citation) per property, \$200.00 (second citation) per property and a \$50.00 (appeal fee) per property.

Vice Chairperson Adeyemi closed the floor to public comment

Vice Chairperson Adeyemi stated the letter was sent to Mr. Beaudin with the address on record with the County and the Board was not there to debate whether he received them. He noted as a citizen and business owner in Antioch it was his responsibility to be aware of the rules and regulations of the City.

Board Member Ussam-Lemmons agreed and discussed the importance of citizens and business owners complying with City regulations.

Vice Chairperson Adeyemi requested clarification from legal counsel with regards to the Board's purview for reducing or eliminating citation fees.

Interim City Attorney Chen stated that question was better suited for Code Enforcement and suggested reopening the public hearing to allow them to respond.

Code Enforcement Officer Aguirre explained that letters were sent out to educate citizens regarding the City's Municipal Code and when they failed to comply, the City issued a notice of violation and they were given 10 days to comply. He noted if the resident failed to comply, administrative citations were issued to motivate them to come into compliance. He explained when an item came before the Board; it was to determine if City employees had complied with the Municipal Code by giving the proper notices to citizens. He noted it was up to the Board to determine if City employees met the proper requirements and whether to uphold or dismiss the citations.

Mr. Beaudin stated Measure O was brand new and complex. He noted there were flaws as many rental property owners had not complied or received notices. He further noted he was busy and it was difficult to comply or be aware of what had occurred. He stated that the fees were excessive particularly if more than one property was owned.

In response to Board Member Faraji, Business License Representative Johnsen clarified that the citations were for not complying with the Measure O Ordinance after being notified of the violation.

In response to Board Member Ussam-Lemmons, Business License Representative Johnsen explained that Mr. Beaudin was appealing the \$200.00 citations.

Vice Chair Adeyemi closed the public hearing.

Board Member Ussam-Lemmons stated she was leery of amending the citation amount because she did not know what the outcome would be if that was considered.

Vice Chair Adeyemi questioned if the Board could amend the amount of the citations.

Interim City Attorney Chen responded that it would be a question for staff to respond to; however, her recommendation was for the Board focus on whether to uphold or dismiss the citation. She stated if the Board would like her to do further research, or if staff could not answer the Board's questions, the item could be continued or they could issue a ruling after the hearing if they did not feel comfortable ruling on it now.

Code Enforcement Officer Aguirre stated it was staff's job to enforce the municipal code and motivate residents to come into compliance. He reiterated that it was the Board's job to determine if staff took the correct steps to issue citations or abatements. He stated tools were put in place by the City Council to make sure there was compliance. He explained that citizens were noticed of the violation, given the proper time to comply and if they failed to do so, they were issued citations.

Board Member Ussam-Lemmons stated if a business owner or resident felt the timeframe between citations was not adequate, they were welcomed to address that issue with the City Council. She stated she understood Mr. Beaudin's concerns; however, the Board served to determine if the City complied accordingly with the steps to issue the citations.

On motion by Board Member Ussam-Lemmons, seconded by Board Member Schleder, the Board of Administrative Appeals denied the appeals and upheld \$200.00 Administrative Citations No. 2167, No. 2166 and No. 2165 issued on August 21, 2017, for properties located at 403 Grangnelli Avenue, 1006 E Street and 2977 Palo Verde Way. The motion carried the following vote:

*Ayes: Ussam-Lemmons, Schleder, Faraji, Adeyemi*

*Absent: Simpson*

**PUBLIC COMMENTS**

Khaled Abalshaer, stated he had previously lived in Daly City and currently lives in San Bruno. He noted he was not aware of the new ordinance and had not received any mail regarding the business license fee. He reported he discussed this issue with City Clerk Simonsen who advised him to come to the Board of Administrative Appeals to discuss the issue. He stated he wanted the fees to be waived because he was unaware of the law.

Vice Chair Adeyemi explained that it was up to Mr. Abalshaer to be aware of what was occurring in a city where he owned property. He noted the Board could not discuss the case because it was not agendized. He further noted concerns regarding the Municipal Code could be brought to the attention of the City Council. He stated if the case came before the Board, they would hear it and make a decision based on the facts.

Sam Abalshaer stated that they had paid the \$50.00 appeal fee and he did not understand why his item was not on the agenda.

Vice Chair Adeyemi reiterated that the appeal was not on the agenda; therefore, the Board would not have the authority to listen to a case.

Sam Abalshaer questioned how they should proceed.

Business License Representative Johnsen responded that she believed City Clerk Simonsen had Mr. Abalshaer's information; however, she did not know where he was in the process.

Sam Abalshaer reiterated that they had filed an appeal.

Khaled Abalshaer expressed concern that they had driven two hours to come to the meeting and it was difficult for him to take time off of work.

Vice Chairperson Adeyemi explained that they were citizens appointed by Council to serve on the Board and they could only deliberate on what was before them.

Khaled Abalshaer stated he had discussed this matter with City Clerk Simonsen who instructed him to come to the meeting on the first Thursday of the month at 3:00 P.M. He noted they had been there since 2:30 P.M. at which time Deputy City Clerk Garcia informed him that their appeal was not agendized. He noted that he felt staff did not know what they were doing and the Board was not very helpful.

Interim City Attorney Chen suggested communicating after the meeting and discussing the matter with the Clerk's office to figure out a way to place their item on the agenda. She noted for now, the Board had no jurisdiction to hear the case because it was not on the agenda.

**WRITTEN/ORAL COMMUNICATIONS – None**

**ADJOURNMENT**


Vice Chairperson Adeyemi adjourned the Administrative Board of Appeals meeting at 4:01 P.M. to the next regularly scheduled meeting on November 2, 2017.

Respectfully Submitted,

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Kitty Eiden  
Minutes Clerk

**STAFF REPORT TO THE BOARD OF ADMINISTRATIVE APPEALS FOR  
CONSIDERATION AT THE HEARING ON NOVEMBER 2, 2017**

**Prepared by:** Curt Michael, Code Enforcement Manager   
**Date:** October 23, 2017  
**Subject:** Approval of the Levy of Special Assessments on Certain Properties for Unpaid Administrative Citations & Abatements for the Months of August & September, 2017

**RECOMMENDATION**

The Board of Administrative Appeals shall confirm each assessment and the amount thereof, as proposed or as corrected and modified, and order it assessed against the property (Attachment "A"). The Board shall also direct that the same be recorded with the Contra Costa County Recorders Office and thereafter the assessment shall constitute a special assessment and lien against the property.

**FISCAL IMPACT**

The action will enable the City of Antioch to collect outstanding receivables against properties for the months of August & September in the amount of **\$22,970.00**

**BACKGROUND INFORMATION**

Pursuant to Antioch Municipal Code §1-5.09 the City may collect any past due Administrative Citation fines, Abatements or late payment charges by use of special assessment liens and all action for recovery of money.

A Notice of Intent to Record Lien was sent to each property owner who is entitled to notice reflecting the property address directly connected to conditions or activities on the subject real property, assessors parcel number, the municipal code violation, administrative citation fine and copy of the administrative citations.

**ATTACHMENT**

A: List of assessments

**CITATIONS ABATEMENTS FOR BOARD OF APPEALS - NOVEMBER 2, 2017**  
**AMENDED**  
**ATTACHMENT A**

AR	Case	APN	Amount	Site Address	Owner last	Owner first	Mailing address	Paid
AR149404	CD1706-024	065-050-030	\$1,300.00	WILBUR AVE APN065-050-030	ANTIOCH DIVERSIFIED DEV ASSOC		4505 LASVIRGENES RD, CALABASAS, CA 91302	
AR149479	CD1706-024	065-050-030	\$1,300.00	WILBUR AVE APN065-050-030	DIVERSIFIED DEV ASSPC		4505 LASVIRGENES RD, CALABASAS, CA 91302	
AR149606	CD1706-024	065-050-030	\$1,300.00	WILBUR AVE APN065-050-030	DIVERSIFIED DEV ASSPC		4505 LASVIRGENES RD, CALABASAS, CA 91302	
AR149506	CD1707-127	071-326-001	\$310.00	2913 ENEA WAY	DEAN	DAVID	2913 ENEA WAY	
AR149502	CD1708-012	066-032-019	\$420.00	A ST APN066-032-019	HISTORICAL HICKMOTT CANNERY		P.O. BOX 506, THORNTON, CA 95686	
AR149648	CD1708-138	076-576-010	\$310.00	2437 REDWOOD DR	HSBC BANK USA		2437 REDWOOD DR	
AR149649	CE1707-065	075-242-009	\$750.00	2000 ALVARADO DR	LOVE	JABBARR	709 MARJORAM DR, BRENTWOOD, CA	
AR149477	CD1611-039	066-191-005	\$5,700.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149478	CD1611-039	066-191-005	\$3,300.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149410	CD1611-039	066-191-005	\$2,950.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149411	CD1611-039	066-191-005	\$1,650.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149402	CD1611-039	066-191-005	\$500.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149403	CD1611-039	066-191-005	\$580.00	604 H STREET	MOURA	DEANNE K	P.O. BOX 4133, ANTIOCH	
AR149407	CD1705-129	065-291-013	\$1,300.00	1205 HARGROVE ST	STEWART	IVAN	1205 HARGROVE ST	
AR149505	CD1612-029	071-341-020	\$1,300.00	3101 BROOK CT	TOLBERT	VICTORIA A	3101 BROOK ST	
<b>TOTAL</b>			<b>\$22,970.00</b>					