

**CITY OF ANTIOCH
CITY COUNCIL MEETING**

**Regular Meeting
7:00 P.M.**

**February 13, 2007
City Council Chambers**

5:30 P.M. – CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATOR – Employee Organizations: APOA (Antioch Police Officers Association) and Management Employee Group. This Closed Session is authorized by Government Code Section 54957.6.

Mayor Freitas stated there was no reportable action.

Mayor Freitas called the meeting to order at 7:00 P.M. on Tuesday, February 13, 2007 in the City Council Chambers and City Clerk Martin called the roll.

ROLL CALL

Present: Councilmembers Kalinowski, Davis, Moore, Simonsen and Mayor Freitas

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Davis led the Council and audience in the Pledge of Allegiance.

ANNOUNCEMENTS OF BOARDS AND COMMISSIONS

City Clerk Martin reported voluntary positions were open for the Board of Administrative Appeals and the Economic Development Commission, with a deadline of March 16 at 5:00 P.M. She further noted there would be upcoming positions available for the Park & Recreation Commission in the near future.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Community Development Deputy Director Wehrmeister provided an explanation of the Architectural and Landscaping Design Survey, available on the City's website, and stated this was the first step in the Design Guideline process for the City. She further encouraged community participation, noting the information would be available on the City's website through March 14, 2007.

Civic Center Project Manager Karste announced the *Mayor's Prayer Breakfast* would be held on March 23, 2007 at Humphrey's Restaurant from 7:00 to 9:00 P.M.

Karen Kops, Homeless Animals Response Program, explained the functions of the program and provided additional information to the City Council for their review.

Devi Lanphere, Antioch Chamber of Commerce, expressed her appreciation to the Mayor for his participation at the recent Gala for the Citizen and Business of the Year event. She announced the 7th Annual Eastern Women's Conference would be held at

LMC in the near future and the State of the City Luncheon would be held May 9, 2007 at the Blue Rock Center located on Lone Tree Way.

PUBLIC COMMENTS

Douglas Tokes, resident, distributed recent photographs of code violations for RV parking to the Council and provided addresses and expressed concern in terms of safety and appearance. He suggested City and School officials provide RV parking for citizens, due to the lack of space available within the community. Mr. Tokes also questioned a recent raise received by the County Supervisors and asked if the raise would affect their retirement. He also questioned whether or not the color scheme of a building located at 212 E 18th Street had been approved by the Design Review Board.

Paul Bartlett, resident, expressed concern regarding a recently installed barricade on Empire Mine Road and stated car drivers were ignoring the barricade and using the road. He also expressed concern regarding fences having been cut on Deer Valley Road, as well as vandalism, garbage, gun fire and traffic safety issues. Mayor Freitas requested City Manager Jakel refer these issues to the Police Department for additional code enforcement. He further requested Community Development Director/City Engineer Brandt provide photographs of these violations to the Council.

Ken Lee, resident, expressed concern regarding several areas around the City he felt were neglected, including an exposed garbage bin at the Chrysler dealership.

Wayne Steffen, resident, invited the public to the upcoming work/building event for the Community Built Playground scheduled for May 16 through May 20.

COUNCIL RESPONSE TO PUBLIC COMMENTS

None.

1. COUNCIL CONSENT CALENDAR

Councilmember Moore pulled Consent Calendar Item No. P and Mayor Freitas pulled Item Nos. B and O.

A. APPROVAL OF COUNCIL MINUTES FOR JANUARY 23, 2007 (#301-02)

B. APPROVAL OF COUNCIL WARRANTS (#401-01)

C. REJECTION OF CLAIMS

1. Eugene Frits, #06/07-1692 (trip and fall)
2. Karen Sanders, 06/07-1707 (pothole)
3. Ilaisanne Hettig, #06/07-1684 (personal injury)
4. Mercury Casualty Company/Marquita Arias, #06/07-1705B (vehicle damage)
5. Peter Martin Quichis, 06/07

DENY THE APPLICATION FOR LEAVE TO PRESENT A LATE CLAIM:

1. Jeanette A. Thomas, #05/06-1691 (vehicle tow)

D. LEGISLATION AND ADVOCACY

- E. ORDINANCE NO. 1087-C-S RESCINDING THE INTERIM STUDY PERIOD (“MORATORIUM”) FOR MASSAGE PARLORS AND OTHER ESTABLISHMENTS PROVIDING MASSAGE SERVICES IN ALL ZONING AREAS (*Introduced 1/23/07*) (#701-05)**

- F. REQUEST FOR OVERNIGHT TRAVEL (ONE NIGHT) LEAGUE OF CALIFORNIA CITIES (#301-01)**

- G. RESOLUTION NO. 2007/07 AUTHORIZING INVESTMENT OF CITY MONIES IN LOCAL AGENCY INVESTMENT FUND (LAIF) (CHANGING SIGNATORIES) (#401-02)**

- H. LOCKBOX SERVICES (#401-02)**

- I. TREE CITY USA SIGNAGE (#202-01)**

- J. CONSIDERATION OF BIDS FOR THE CITY PARK RENOVATION, (PW 205-F) (#1402-03)**

- K. APPROVAL OF PROPOSAL FOR ENGINEERING SERVICES TO COMPLETE ROUTE 4 EAST TRANSPORTATION MANAGEMENT SYSTEM PROJECT (PW 642) (#1102-03)**

- L. RESOLUTION NO. 2007/08 ACCEPTING IMPROVEMENTS FOR SAND CREEK RANCH SUBDIVISION, UNIT 5, TRACT NO. 8885 (WILLIAM LYONS HOMES, INC), PW 639-5 (#802-02)**

- M. RESOLUTION NO. 1007/09 AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT GRANT DEED OVER A PORTION OF PARCEL ‘E’ (NELSON RANCH UNIT 1, TRACT 6893 [488 M 1]) TO COMCAST OF CALIFORNIA, INC. (PW 547-1) (#802-02)**

- N. RESOLUTION NO. 2007/10 DIRECTING ENGINEER OF WORK TO PREPARE CONSOLIDATED REPORT FOR THE ANNUAL LEVY OF ASSESSMENTS FOR LANDSCAPING DISTRICTS (#806-03)**

- O. ENTRY SIGNAGE LOCATIONS (#202-01) *Con’t to 2/27/07***

- P. AUTHORIZATION TO PURCHASE A SECURITY ENCLOSURE FOR THE ANIMAL SHELTER FRONT COUNTER (#1302-01) *Con’t to 2/27/07***

- Q. AUTHORIZATION TO PURCHASE TWO MOBILE DATA SYSTEMS (MDS) UNITS FOR THE ANIMAL CONTROL VEHICLES (#1302-01)**

R. APPROVE AWARD OF PROPOSAL NO. 906-0103-07F FOR THE REPLACEMENT OF THE POLICE FACILITY JAIL VIDEO SYSTEM (#1301-01)

S. RESOLUTION NO. 2007/11 ACCEPTING WORK AND DIRECTING CITY ENGINEER TO FILE A NOTICE OF COMPLETION AND AUTHORIZING FINAL PAYMENT TO S.R.P. COMPANY FOR THE CHICHIBU PARK BOCCE BALL COURT REHABILITATION (P.W. 113-P8R) (#1402-03)

On motion by Councilmember Moore, seconded by Councilmember Davis, the City Council unanimously approved the Consent Calendar, with the exception of Item Nos. B, O and P, which were removed for further discussion.

ITEM B - Ken Lee, resident, expressed regarding the amount of money paid to Antioch Toyota, Nissan, Chrysler, Jeep, Mazda and Scion owned by Mr. Nokes. He asked what the benefits were to the citizens of Antioch to pay back these amounts quarterly for the past 2-3 years.

Mayor Freitas pulled Warrant No. 100407, page 6, for the Kirker Creek Apartments and requested the Manager of Kirker Creek Apartments review this with the police department and report back to the City.

On motion by Councilmember Simonsen and seconded by Councilmember Davis, the City Council unanimously approved Consent Calendar Item No. B.

ITEM O — It was the consensus of the City Council to continue Consent Calendar Item No. O to the next regularly scheduled City Council meeting.

ITEM P — Barbara Sobalvarro, President of Friends of Animal Services, expressed her concern regarding the proposed security glass for the Animal Shelter Facility's front counter, questioning its effect on customer service, as well as its perception to the public. She further asked if this item could be continued until the arrival of the new Animal Services Supervisor.

Councilmember Moore also shared Ms. Sobalvarro's concerns, and felt there was inadequate information presented at this meeting, and requested staff further research this item.

Councilmember Davis understood Ms. Sobalvarro's concerns, but wanted to ensure there was a balance between customer service and personnel safety. Police Captain Cantando interjected the safety of the Shelter's staff was paramount and there had been numerous incidents with upset residents.

Mayor Freitas requested that this item be continued to the City Council meeting of February 27.

PUBLIC HEARING

2. APPEAL OF FINAL ENVIRONMENTAL IMPACT REPORT AND DESIGN REVIEW APPROVAL TO EXPAND THE WAL-MART IN THE WILLIAMSON RANCH PLAZA (#202-03) (Continued from 10/24/06 and 1/9/07).

City Attorney Nerland requested Councilmember Moore state for the record he had received sufficient materials from City Staff, including an audio tape from the October 24 hearing to assure he was sufficiently informed to participate in the discussion tonight. Councilmember Moore stated he had received all pertinent information previous to this public hearing and had taken the opportunity to review the information in its totality. He stated he was prepared to proceed with tonight's public hearing.

City Attorney Nerland stated the City Council hearing on October 24 regarding the Environmental Impact Report (EIR) and the design review issues had been closed followed by a unanimous motion to continue the matter. Since that date, Staff had endeavored to address the issues raised at the public hearing, in particular, a question regarding the size of the store in relationship to the prior Williamson Ranch approvals, as well as security issues, primarily related to the proposed 24/7 operation. City Attorney Nerland further stated in the interim period between the October 24, 2006 hearing and this hearing, an Appellant court case regarding a Wal-Mart in a nearby city, would have some bearing on the square footage issues raised by residents at the October 24, 2006 meeting of the Antioch City Council. Both the appellants and the applicant sent letters to the City Council regarding this case in January, 2007 and it has been recommended the letters become part of the record. City Attorney Nerland added that by not conceding any of the legal issues since the October 24, 2006 meeting, the applicant had decreased the size of the project by approximately 8,000 sq. ft. and a revised site plan had been provided Council with the Staff Report. In addition, following the comments at the October 24 hearing, the police department had proposed additional Conditions of Approval to address the security issues raised, and a copy of these conditions and Wal-Mart's response, were also included in the current Staff Report. Although this information did not rise to the level of requiring recirculation of the EIR, and per Staff's recommendation the public hearing be opened after the Staff presentation to allow the applicant, appellants and public the opportunity to comment, the issues should be focused on the reduction of square footage and new conditions of approval, per the police department.

Senior Planner Oshinsky provided an overview of the Staff Report dated February 8, 2007.

OPENED PUBLIC HEARING

Mark Wolfe, representing Elaine Parsons, Kathleen Hampton and the California Health Communities Network, distributed and referred to a letter dated February 13, 2007 and a handout entitled "Williamson Ranch Floor Area Summary & Entitlement Chronology". He further stated in reviewing the Staff Report he felt the City Council had discretion to vote no on this project, and the Council would be on solid and legal ground because Wal-Mart did not have a vested right, per the Staff Report. Mr. Wolfe stated for the record, he had just received today a vast amount of information prepared in response to comments submitted on the Final EIR Analysis from the City's quality, noise and traffic

consultants and felt both the public and he needed additional time to review this information, should the Council decide to vote yes tonight. Therefore, he respectfully requested the Council continue this item and allow the public to review these materials, as well as refer the change in the plan to the Design Review Board.

Councilmember Kalinowski requested Staff to bring forward past information regarding Wal-Mart's 2004 expansion to the garden center.

Kevin Loscotoff, Public Affairs Manager for Wal-Mart in Northern California, spoke to past hearings and felt that all outstanding issues have been resolved with City Staff and the police department. He urged the Council's approval of the proposed project and felt it would be a benefit to the community.

Brett Jolley, representing Antioch Concerned Citizens for Smart Growth, expressed concern to having just received information today, as stated by Mr. Wolfe, and based on his brief review he felt the documents did not cure many of the holes pointed out in the EIR, in terms of air quality, energy and urban decay. Moreover, he felt the EIR errata is an improper attempt to rehabilitate the EIR without including this information in the EIR and this was an improper manner to follow. Mr. Jolley further felt Wal-Mart did not have a vested right, in that: 1) As a matter of law in California, an EIR was not prepared for vested or entitled projects, they were prepared for projects that need entitlements, 2) A 24-hour use is not authorized in the Williamson Ranch final development plan and, 3) The project exceeds the square footage maximum. He urged the City Council to deny this project based on the fact this project was not authorized by the final development plan.

Judy Davidoff, representing Wal-Mart, stated that the original entitlements for the Wal-Mart store, are final and approved, and this project did fall within the entitlements. Also, per a review by City Staff, the requested uses were permitted in this final approval; furthermore, Wal-Mart was before the Antioch City Council for Design Review. Ms. Davidoff further stated that when Wal-Mart agreed to the EIR, it was to allow the community to have full participation and have all issues fully analyzed. With respect to the "American Canyon" case, she felt that Mr. Wolfe was misconstruing this case. She further objected to a continuance, as requested by Mr. Wolfe and Mr. Jolley. Ms. Davidoff stated the development plan for Williamson Ranch did not preclude a 24 hour operation. However, he did state a 24-hour convenience store would require a use permit. She requested that the Council deny the appeals.

Gregg Feere, Contra Costa Building and Construction Trade Council and resident, felt Wal-Mart was never approved and was passed under a different development name, thereby bringing in Wal-Mart after the fact. He further referred to a study written by Congressman Miller regarding "Everyday low wages, the hidden price we all pay for Wal-Mart" and expressed concerns to past and current Wal-Mart actions, in terms of the community subsidizing Wal-Mart's employees. He further expressed concern to additional crime that a 24 hour operation may cause, and did not want any additional burdens placed on the City's police department. Mr. Feere stated his opposition to the project and urged the Council to support the appeal.

Councilmember Simonsen stated per the City Attorney's suggestion to hear *only* new information on this item, he urged the Council to limit the public's input to new information only.

Pastor Henry Kelly, Grace Temple Church, stated his support of Wal-Mart and spoke to Wal-Mart's aid and assistance in benefiting low income residents, in terms of employment and donations to the community.

Code Gordon, resident, expressed concern to Wal-Mart's business practices, in terms of low wages, being a non-union company, and encouraging their employees to seek public assistance. He further felt spoke to other Wal-Mart's throughout the United States that violated environmental laws and stated his objection to Wal-Mart's proposed expansion.

Rev. Henry Dillihant, III, stated that he felt Wal-Mart was an asset to the community, in terms of providing jobs and donations to local churches.

Pam Aguilar, resident, expressed concern to Wal-Mart not doing more for the community, and felt that they brought additional poverty into the community and were a deterrent to other small businesses.

Janelle Mota, resident, urged the City Council to deny the appeals and stating she felt Wal-Mart was an asset to the community.

Martha Ann Carter, resident, expressed concern to the expansion of Wal-Mart and felt it would create additional traffic, crime and harm the environment.

Ken Lee, resident, spoke to other communities that have congested traffic due to Wal-Mart stores, and expressed concern to the manner in which the food is packaged and brought into Wal-Mart and felt that storage issues should be addressed.

George Van Hasselt, resident and President of Antioch Concerned Citizens for Smart Growth, expressed concern regarding Wal-Mart expanding its store and felt it would be a detriment to the City. He expressed his concern regarding Wal-Mart threatening the City with a lawsuit if the City Council votes against the proposed expansion. He felt there were other alternatives available for the City, in terms of smart growth.

John Nunes, resident, urged the Council to approve the appeal and reject the EIR and the Design Review approval, and expressed concern to Wal-Mart's negative impacts to the community, as well as other areas throughout the country. He stated this expansion could be a detriment to small businesses and the revitalization of the downtown area.

Jeff Clark, resident, expressed his concern regarding the expansion of Wal-Mart, citing additional traffic and the potential tarnishment to the image of Antioch.

A break was taken at 8:55 P.M. and reconvened at 9:16 P.M. with all City Councilmembers present.

Suzanne Fleeger, resident, expressed her concern living near the Wal-Mart store, and felt the existing safety issues would be heightened with the expansion.

Joseph Horn, resident, stated his opposition to the Wal-Mart expansion.

Douglas Tokes, resident, read from a recent article that spoke to Wal-Mart expansions that have occurred throughout the United States and stated his opposition to this expansion.

Mayor Freitas read an e-mail sent from Mr. Bob Oliver, resident, stating his opposition to the expansion of Wal-Mart.

Manuel Flores, resident, expressed concern to a 24-hour Wal-Mart Superstore, in terms of additional crime.

Emil Stein, resident, stated his opposition to the expansion of Wal-Mart and felt it would be a detriment to smaller businesses.

Mayor Freitas read a prepared statement from Ms. Lisa Phelan, resident, stating her opposition to the expansion of Wal-Mart.

Kay Trail, resident, felt the expansion of the Wal-Mart expansion would be a benefit to the community and felt Antioch would benefit from additional revenue and job opportunities.

Jose Munoz, resident, opposed the Wal-Mart expansion and read a prepared statement in opposition. He felt that Wal-Mart would have negative effects on the surrounding communities and it would be a detriment to the community, in terms of low wages.

Johnnie Mariscal, resident of Brentwood, spoke in favor of the expansion of Wal-Mart and felt it would benefit the community, in terms of job opportunities and revenue for the City.

Norma Hernandez, resident, stated her opposition to the expansion of Wal-Mart and felt it would further hurt the middle class of the community.

Devi Lanphere, Antioch Chamber of Commerce CEO, voiced her approval of the expansion of Wal-Mart and felt it would not hurt smaller businesses within the community. She stated that she was satisfied with the proposed security measures.

Michelle Camp, resident, spoke in favor of economic development but felt a 24 hour Wal-Mart would bring additional crime and traffic to this specific area.

Danny Campbell, resident, expressed concern regarding Wal-Mart's employment practices and low wages. He urged the Council to approve the appeal.

Sam Jilden, resident, expressed concern to the expansion of Wal-Mart and felt it would be a detriment to the smaller businesses. He further expressed his concerns regarding

Wal-Mart's business practices regarding job opportunities and low wages for their employees.

John Craig, resident, supported the expansion of Wal-Mart and did not feel there would be a negative effect on the environment.

Rich Matosich, Assistant Manager of Wal-Mart, Antioch, spoke on behalf of the expansion of Wal-Mart and felt it would further generate job growth, careers and benefit the quality of life within the community. He further spoke to Wal-Mart's support of local charities and local schools.

Mayor Freitas read prepared statements from the following residents that spoke in favor of the expansion of Wal-Mart:

- Ricardo Rodriguez
- Michelle Mayers
- Gleyda Rodriguez
- Bruce Dea

CLOSED PUBLIC HEARING

Per his earlier request that Staff provide him with information regarding the past expansion of Wal-Mart's garden center, Councilmember Kalinowski stated that he was satisfied with the information.

Responding to Councilmember Simonsen regarding Project Specific Condition Nos. 63 and 64, Police Captain Cantando explained the police department was concerned that liquor could be stolen after 2:00 A.M. Councilmember Simonsen stated that if this were to be conditioned as such, he questioned why other stores on Lone Tree Way were not also conditioned in the same manner.

Councilmember Simonsen felt with the addition of Bypass 4, traffic would decrease in the future and stated he was satisfied with air quality issues, noise factors, proposed security measures and the store's operational aspects.

On motion by Councilmember Simonsen and seconded by Councilmember Davis, the resolution denying the appeals and upholding the decision of the Design Review Board certification of the Final Environmental Impact Report (FEIR) for the proposed Wal-Mart expansion (State Clearinghouse No. 2005052009 failed by the following vote:

AYES: Simonsen and Davis

NOES: Kalinowski, Moore and Freitas

City Attorney Nerland requested the opportunity to prepare a Resolution to reflect the action just taken by the City Council for consideration. Mayor Freitas stated the item would be brought back to the City Council on February 27, 2007.

PUBLIC COMMENTS

None.

COUNCIL COMMUNICATIONS

Councilmember Moore expressed concern to recent youth violence and stated he had received tremendous amount of support from the community to address new programs and/or existing programs to address this issue.

Councilmember Davis requested the code enforcement issues be brought back on a future agenda and requested staff provide him with the number of citations issued. Mayor Freitas stated this issue would be brought back in July and a detailed analysis would be brought back at the next meeting. In speaking to crime issues, Councilmember Davis requested a "Shot and Spotter" program be reviewed and he distributed pamphlets to the Council for their review.

ADJOURNMENT

There being no further business, Mayor Freitas adjourned the City Council meeting at 10:35 P.M. to the next regularly scheduled meeting of February 27, 2007.

Respectfully Submitted,

L. JOLENE MARTIN, CMC
City Clerk

Approved:

DONALD P. FREITAS, Mayor

Attest:

L. JOLENE MARTIN, CMC
City Clerk