

## CITY COUNCIL MEETING

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

**November 14, 2017**  
**Council Chambers**

Mayor Wright called the meeting to order at 7:03 P.M., and City Clerk Simonsen called the roll.

Present: Council Members Wilson, Thorpe, Tiscareno, Ogorchock and Mayor Wright

### **PLEDGE OF ALLEGIANCE**

Mayor Wright led the Council and audience in the Pledge of Allegiance.

### **1. PROCLAMATIONS**

*Homeless Awareness Month, November 2017*  
*The Ambassador for Peace Medal*

On motion by Councilmember Wilson, seconded by Councilmember Ogorchock, the Council unanimously approved the Proclamations.

Teri House, on behalf of the Council on Homelessness, and Queen Adu Poku and Ezekiel Adu Poku thanked Council for the *Homeless Awareness Month* proclamation.

The Council presented *The Ambassador for Peace Medal* proclamations to Sergeant John McMullen, Command Sergeant Major Michael F. Collins, and Dr. John M. Huh. City Clerk Simonsen and Councilmember Thorpe presented medals to each recipient who thanked Council for the recognition and stated they were proud to have served.

### **ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS – None**

### **PUBLIC COMMENTS**

Ruth Boyer introduced herself as the new Antioch Library Manager and encouraged residents to get their library cards.

Willie Mims, East County NAACP/Pittsburg Black Political Association, stated he was here to observe the proceedings this evening.

### **COUNCIL SUBCOMMITTEE REPORTS**

Councilmember Wilson announced Antioch resident Maleah Meyer was missing and she encouraged resident to remain vigilant and report suspicious activity to the Antioch Police Department.

Councilmember Thorpe reported on his attendance at the Delta Diablo meeting on behalf of Mayor Wright.

Councilmember Ogorchock reported on her attendance at the League of California Cities meeting, CalPERS workshop, and announced she had been appointed to the Policy and Advocacy Committee for the Homeless Task Force.

## **MAYOR'S COMMENTS**

Mayor Wright announced he had been away on vacation and he encouraged residents to cherish time spent with their families.

### **2. COUNCIL CONSENT CALENDAR**

- A. APPROVAL OF COUNCIL MINUTES FOR OCTOBER 24, 2017**
- B. APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR NOVEMBER 1, 2017**
- C. APPROVAL OF COUNCIL WARRANTS**
- D. APPROVAL OF TREASURER'S REPORT FOR SEPTEMBER 2017**
- E. ORDINANCE NO. 2131-C-S SECOND READING – ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ADDING SECTION 5 TO CHAPTER 7 OF TITLE 5 OF THE ANTIOCH MUNICIPAL CODE PROHIBITING THE HOURLY RENTALS OF LODGING UNITS WITHIN CITY LIMITS (*Introduced on 10/24/17*)**

On motion by Councilmember Ogorchock, seconded by Councilmember Thorpe, the City Council unanimously approved the Council Consent Calendar.

## **PUBLIC HEARING**

### **3. ROCKETSHIP ELEMENTARY SCHOOL (Z-17-02, UP-17-01, V-17-05, AR-17-02)**

City Manager Bernal introduced Public Hearing Item #3.

Director of Community Development Ebbs and Contract Planner Valente presented the staff report dated November 14, 2017 recommending the City Council take the following actions: 1) Adopt the Resolution adopting the Rocketship Elementary School Project Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project; and 2) Introduce the Ordinance approving a Rezone of the project site from Regional Commercial District (C-3) to Professional Office District (C-0); and 3) Adopt the Resolution approving a Variance to allow a six-foot tall wrought iron fence within the front setback along Cavallo Road, a Use Permit for the construction of an elementary school, and Design Review, subject to conditions of approval.

Mayor Wright opened the Public Hearing.

Harrison Tucker, Director of Real Estate and Marie Gill, Regional Director of Rocketship Public Schools, gave a PowerPoint presentation of the project. They requested the City Council support the Planning Commission recommendations to approve the CEQA study, rezone, use permit, and a variance. They stated they hoped they could partner with the Council and make their vision a reality.

Sue Taylor, Antioch resident, expressed concern regarding traffic and illegal activity in the area as well as potential noise impacts from the school.

The following citizens spoke in support of the Rocketship Elementary Charter School Project: Nancy and Marty Fernandez, William Wallace, Rebeca Garcia, Fernando Navarro, Walter Ruehlig, Jorge Navarrete, Senior Pastor of Templo Santo, Jessica Duran, Natalie and Andrea Lebron, Thomas McNell, Debora Allen, Angel Luevano, Todos Unidos, Randolph Hopkins, Dr. Lemont A. Francies, Delta Bay Church of Christ/Pastor Rocketship, Gil Murillo, Jennifer Alfonso, Jeff Belle Contra Costa County Board of Education, Debra Vinson, Antioch Unified School District Vice President, Matthew Hart and Richard Pagano, Antioch Chamber of Commerce. They noted the project would provide high quality educational opportunities for Antioch families. Some citizens also supported the project as an investment in the community that would foster economic development and revitalize the area improving property values. They urged Council to approve the CEQA study, rezone, use permit, and a variance for the Rocketship Elementary Charter School Project.

Willie Mims, East County NAACP/Pittsburg Black Political Association, discussed the importance of conducting a traffic study for the project and securing offsite parking agreements. He wished Rocketship Elementary School success.

#### Rebuttal

Harrison Tucker explained a traffic study was completed through the CEQA process and they were providing 49 parking stalls, which in comparison to other schools was an improvement. Additionally, he stated they had committed to a BART shuttle and ride share subsidy program. He noted they also had three offsite parking letters of interest.

Mayor Wright closed the Public hearing.

In response to Councilmember Tiscareno, Ms. Gill and Mr. Tucker explained the MOU agreement as well as the safety and security plan.

Captain Morefield explained that it was too early to quantify a reduction in calls for service due to the security cameras in the Cavallo Road area; however, they had assisted in apprehensions and preventing crime.

Councilmember Tiscareno thanked the Antioch Police Department for focusing on areas of concern and stated he liked that there was interest in revitalizing this neighborhood.

In response to Councilmember Tiscareno, Director of Community Development Ebbs stated the City was consistent and fair with all applications they received.

Captain Morefield announced that Maleah Meyer, who was previously reported as missing, had been located and returned home.

In response to Mayor Wright, Captain Morefield stated he had observed the circulation plan at another Rocketship School and it was very well-organized. He noted a security guard would be a level of deterrent and protection for the area.

Councilmember Ogorchock stated blight in the area would be eliminated with a gate on the school property and the security guard would also benefit children walking to Kimball Elementary School. She congratulated the school for their successful application process and stated she believed it would be an asset to the area.

In response to Councilmember Wilson, Mr. Tucker stated they had a long standing relationship with a unionized contractor who would be responsible for a large portion of the work. He noted they had also directed the general contractor to prioritize local labor.

Mayor Wright thanked the applicant for their investment in Antioch and providing a local charter school opportunity. He congratulated the parents in attendance for being dedicated to their children and their educational experience.

Councilmember Thorpe stated he had met with many of the speakers this evening and he enjoyed hearing their opinions. He expressed concern regarding how the project would impact local schools. He noted the project would be an economic investment that would reduce criminal activity. He stated his vote on this item would be for Nancy and Marty Fernandez in recognition of their hard work in the community.

Councilmember Tiscareno stated he had not questioned the Project Labor Agreement (PLA) as that issue was not before the Council this evening. He spoke in support of public schools and noted it was unfortunate that they did not have the resources they needed. He stated as a labor advocate they encouraged choice and educational opportunities. He noted this project would have a positive impact in the City and for children in Antioch.

Councilmember Thorpe stated he wanted to send a strong message to the Antioch Unified School District Board of Education, to have the political will to make schools stronger and safer in order to compete with schools like Rocketship.

**RESOLUTION NO. 2017/122**  
**RESOLUTION NO. 2017/123**

On motion by Councilmember Ogorchock, seconded by Councilmember Thorpe, Council unanimously 1) Adopted the Resolution adopting the Rocketship Elementary School Project Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project; and 2) Introduced the Ordinance approving a Rezone of the project site from Regional

Commercial District (C-3) to Professional Office District (C-0); and 3) Adopted the Resolution approving a Variance to allow a six-foot tall wrought iron fence within the front setback along Cavallo Road, a Use Permit for the construction of an elementary school, and Design Review, subject to conditions of approval.

Mayor Wright declared a recess at 9:17 P.M. The meeting reconvened at 9:33 P.M. with all Councilmembers present.

#### **COUNCIL REGULAR AGENDA**

#### **4. PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS FOR ONE MARINA PLAZA ANTIOCH, CALIFORNIA**

City Manager Bernal introduced Regular Agenda Item #4.

Economic Development Program Manager Zepeda presented the staff report dated November 14, 2017 recommending the City Council adopt a resolution approving the Purchase and Sale Agreement (PSA) and Joint Escrow Instructions for the sale of One Marina Plaza, Antioch, California (also known as "Humphrey's Restaurant") with Sean McCauley Investments, Inc., a California Corporation and authorize the City Manager to execute the PSA.

In response to Councilmember Tiscareno, City Consultant Alan Wolken explained that as part of the purchase and sales agreement, once the property was transferred to SMI Investments, it was his obligation to keep building tenanted.

Sean McCauley, Sean McCauley Investment Inc. (SMI), added that he wanted an operator like Zephyr's Grill and Bar; however, he was not concerned with his ability to find a good operator once the building was revitalized. He noted he had a vested interest in bringing in a successful tenant.

Mayor Wright stated he was excited to see the project move forward. He questioned if there was some assurance that renovations would occur.

Mr. McCauley reported he had pulled permits, installed fencing and had lumber delivered. He noted the first stage of construction would include ADA compliance and outside improvements.

Councilmember Ogorchock stated she was familiar with Mr. McCauley's business and he was a man of his word.

#### **RESOLUTION NO. 2017/124**

On motion by Councilmember Thorpe, seconded by Councilmember Ogorchock, the Council adopted a resolution approving the Purchase and Sale Agreement (PSA) and Joint Escrow Instructions for the sale of One Marina Plaza, Antioch, California (also known as "Humphrey's Restaurant") with Sean McCauley Investments, Inc., a California Corporation and authorize the City Manager to execute the PSA.

**5. FINAL DETERMINATION OF BOARD OF ADMINISTRATIVE APPEALS DECISION REGARDING: GRIEVANCE HEARING 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**

City Manager Bernal introduced Regular Agenda Item #5.

City Attorney Cole presented the staff report dated November 14, 2017.

Kevin Scudero, City employee and Negotiator for Operating Engineers Local Union No. 3, gave a PowerPoint presentation regarding their position on the Grievance which clarified that they had a clearly negotiated benefit in the Memorandum of Understanding (MOU) that was negotiated after they joined California Public Employees' Retirement System (CalPERS) Medical to specifically address the Minimum Employee Contribution (MEC) issue and the MOU or MAR (Medical After Retirement) plan did not allow for an MEC deduction from the retiree healthcare benefit. He requested the City Council overturn the decision of the Board of Administrative Appeals and interpret the MOU without deducting the retiree benefit from the MEC.

James Jones, Legal Counsel on behalf of the City of Antioch, explained that the City had provided MAR benefits through CalPERS for several years and paid those benefits the same way for each of those years. He stated until now, the Union had not questioned how the City calculated the benefit and had not negotiated for a different method for the MAR payments to be made to retirees. He explained that statements made in the presentation were outside of the administrative record because they were not evidence presented to the Board of Administrative Appeals. He clarified that the MOU incorporated the MAR plan that stated retiree's benefits were capped. He noted as stipulated in section 12.1 of the MOU, the City paid the MEC to CalPERS and then reimbursed retirees up to the cap. In referencing the PowerPoint presentation, he clarified that there was a deduction made of \$128 with regards to the benefit provided to employees. He explained employees had the MEC plus an amount they could apply to a flexible benefits plan. Additionally, he noted past MOUs indicated that if the MEC rises, the City shall reduce its contribution to the flexible benefits plan. He stated at the Board of Administrative Appeals hearing, the City's negotiator stated that he had negotiated the 2005 MOU with the Union and at that time, they were focused on retiree benefits and renegotiated the caps knowing how the City had been calculating the MAR benefits.

Michael Eggener, representing OE3, reported that he was present at the Board of Administrative Appeals hearing and the issue was with regards to section 12.1b. He noted the wording in the MOU was specific stating the City shall pay the CalPERS required MEC on behalf of each active and retired employee who participated in the City's health insurance plan. He further noted that they feel the City was not doing what was required and moving forward, they requested that it be corrected.

Rebuttals

Kevin Scudero clarified there was no mention in the MOU with regards to an MEC deduction off the benefit rate and the negotiated benefit stated that the City was to pay it. In referencing the 2005 MAR, he noted they created a tiered system which was implemented in 2007 and they went from a defined benefit plan to a defined contribution plan. He stated he believed the benefit was not open to interpretation and the MOU and MAR plan were clear.

James Jones stated he believed the Union was asking Council to only consider section 12.1b of the MOU which was only one portion of the calculation. He clarified the MEC was given to CalPERS on behalf of the retirees to purchase medical benefits and in addition to that amount the City paid retirees \$226.00. He noted when negotiations took place in 2005, the City could not have afforded to increase the caps and pay the MEC due to the unfunded liabilities. He stated if the Union wanted to renegotiate the amount of the MAR benefits for retirees; it had to be done at the bargaining table because the MOU was clear in stating retirees received a capped amount that included the MEC.

Mayor Wright closed the hearing.

In response to Council, Mr. Jones explained article 13 of the MOU stated the City would provide benefits in accordance with the MAR plan and the caps resided in the MAR plan. He stated the Board of Administrative Appeals had agreed with the City Manager upholding his decision thereby denying the grievance.

Councilmember Ogorchock stated she believed due process had been served and questioned if retirees had been involved in negotiations.

Interim City Attorney Cole stated the adoption of the MOU followed the same process that had been going on for years. He stated Council should consider the document and if they find there was ambiguity, they could look at circumstances surrounding the adoption. He stated if Council felt the language in the document was susceptible to only one meaning, they should base their interpretation on the document itself.

Mayor Wright stated the basis of the argument was that 12.1 stated the City would pay the MEC and 12.7 referenced the MAR plan which stated the payment shall not exceed the capped amounts.

In response to Councilmember Wilson, Mr. Scudero explained that the retirees expected to receive a check without \$128.00 being deducted from the reimbursement.

In response to Mayor Wright, Mr. Scudero stated the MAR plan caps were put into place prior to the variable MEC and once it was instituted, they put 12.1 into the contract to address the issue. He stated they believed the MOU supported their position. He stated the cap was negotiated in 1993 when they were not on PERS medical or in a system that had an MEC and in 2002, they felt they needed to negotiate a benefit that required the City to pay it which was 12.1b. He noted they assumed it had been implemented that way based on their negotiations.

In response to Councilmember Thorpe, Mr. Eggener reiterated they did not believe 12.1b was being applied because it was being paid and then taken back out.

Councilmember Tiscareno stated the current MOU supersedes all others. He noted this matter was up to interpretation and should have been taken to an arbitrator who was an expert in collective bargaining. He stated there was ambiguity with some of the language; however, 12.1 stated the City would pay the MEC and the caps were not disputable.

In response to Councilmember Tiscareno, Kevin Scudero stated that this benefit was addressed during the last negotiation and they came to the realization of how it was being implemented after they had agreed to the MOU.

Councilmember Tiscareno stated that he was trying to support the Union's position; however, he could not do so with the information presented this evening. He suggested the Union clarify the language during the negotiation process. He suggested Mr. Scudero utilize the process to move the grievance forward.

Mr. Scudero stated in hindsight, they should have made the language in the MAR plan stronger. He noted they were arguing based on the intent and they felt the past and the current MOUs supported their interpretation.

City Attorney Cole reminded Council that speaker's rules stated that it was the goal of Council to conclude business by 11:00 P.M.

City Clerk Simonsen added that at 11:00 P.M. Council could review the remaining agenda items to determine if they wanted those items continued.

On motion by Councilmember Tiscareno, seconded by Councilmember Ogorchock, the Council unanimously upheld the Board of Administrative Appeals determination.

Discussion ensued regarding the remainder of the agenda items, with Council agreeing to hear Items #6 and 7 this evening.

**6. APPROPRIATION OF EXPENDITURES FOR ENCUMBRANCES AND PROJECT BUDGETS OUTSTANDING AS OF JUNE 30, 2017 TO THE 2017/18 FISCAL YEAR BUDGET AND OTHER FISCAL YEAR 2018 BUDGET AMENDMENTS**

City Manager Bernal introduced Regular Agenda Item #6.

Finance Director Merchant presented the staff report dated November 14, 2017 recommending the City Council adopt the resolution appropriating expenditures for encumbrances and project budgets outstanding to the 2017/18 fiscal year budget and approving amendments to the 2018 fiscal year budget.

**RESOLUTION NO. 2017/125**

On motion by Councilmember Ogorchock, seconded by Councilmember Thorpe, the Council unanimously adopted the resolution appropriating expenditures for encumbrances and project budgets outstanding to the 2017/18 fiscal year budget and approving amendments to the 2018 fiscal year budget.

Council also directed staff to bring back the remaining 50 percent use of the salary savings at mid-year budget review.

**7. RESOLUTION APPROVING ONE (1) ECONOMIC DEVELOPMENT DIRECTOR POSITION AUTHORIZING THE APPROPRIATE BUDGET ADJUSTMENT**

City Manager Bernal introduced Regular Agenda Item #7.

Administrative Services Director Mastay presented the staff report dated November 14, 2017 recommending the City Council take the following actions: 1) Discuss the funding for one (1) Economic Development Director; and 2) Adopt a resolution approving one (1) Economic Development Director position and authorize the appropriate budget adjustment.

Councilmember Tiscareno stated he wanted the Economic Development Director to take a leadership role and asked for that to be included in the job description.

Administrative Services Director Mastay clarified that developing a marketing plan would be one of the Economic Development Director's duties and they would be working in conjunction with the City Manager to develop the plan. She stated job duties would be clarified when they go to market for the position.

Mayor Wright agreed with Councilmember Tiscareno and stated that they would like to view the job description prior to going out to market.

Councilmember Ogorchock stated she believed that it was staff's job to develop the job description and agreed that it needed to contain strong language. She questioned what the additional costs and benefits would be for the position.

Councilmember Thorpe stated if Council was to move forward, he would like to use the strategic goals/planning sessions to determine how to proceed with economic development. He voiced his support for funding the position.

City Clerk Simonsen stated since Exhibit "A" was not referenced in the resolution, Council could pass the resolution and give direction to staff regarding any information they would like added to the description/qualifications.

Mayor Wright stated the direction was to add a bullet point emphasizing the leadership role for the Economic Development Director.

Councilmember Wilson voiced her support for the position and defining the job duties. She stated it would be an investment and was needed to assist with economic vitality. She noted funding

needed to be addressed as well as how it would affect the Economic Development Program Manager's duties.

Mayor Wright commented that due to the lengthy hiring process, he supported going out to market as soon as possible while Council continued to work on the strategic plan.

Allen Payton, Antioch resident, spoke in support of the City hiring an Economic Development Director and suggested Council consider changing the position to an Economic Development Director/Assistant City Manager.

Councilmember Ogorchock expressed concern that the City was considering hiring an Economic Development Director without a budget for the position.

Following discussion, Mayor Wright suggested approving the position and discussing the outstanding issues during the strategic planning session and mid-year budget review.

Councilmember Thorpe requested staff bring back a budget for this position as soon as possible.

**RESOLUTION NO. 2017/126**

On motion by Councilmember Thorpe, seconded by Councilmember Wilson, the Council unanimously adopted a resolution approving one (1) Economic Development Director position and authorized the appropriate budget adjustment.

**PUBLIC COMMENTS** – None

**STAFF COMMUNICATIONS**

City Manager Bernal announced City Hall would be closed November 23-24, 2017 for the Thanksgiving holiday and the next City Council meeting would be held on November 28, 2017.

**COUNCIL COMMUNICATIONS**

Councilmember Ogorchock requested staff research the feasibility of Trust 115 for the City's unfunded liabilities.

Councilmember Thorpe reminded staff to agendaize a Smart Growth Adhoc Committee item.

**ADJOURNMENT**

With no further business, Mayor Wright adjourned the meeting at 11:42 P.M. to the next regular Council meeting on November 28, 2017.

Respectfully submitted:

*Kitty Eiden*

KITTY EIDEN, Minutes Clerk