

**CITY OF ANTIOCH
PLANNING COMMISSION MINUTES**

**Regular Meeting
6:30 p.m.**

**April 17, 2013
City Council Chambers**

CALL TO ORDER

Chairman Baatrup called the meeting to order at 6:30 p.m. on Wednesday, April 17, 2013, in the City Council Chambers. He stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Thursday, April 25, 2013.

ROLL CALL

Present: Commissioners Motts, Sanderson, Westerman, Miller, Hinojosa
Chairman Baatrup and Vice-Chair Azevedo
Absent: None
Staff: Community Development Director, Tina Wehrmeister
APD Captain, Steve McConnell
City Attorney, Lynn Nerland
Minutes Clerk, Cheryl Hammers

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

None.

NEW ITEM

Presentation to Mike Langford

CONSENT CALENDAR

1. Approval of Minutes: February 20, 2013

On motion by Commissioner Westerman, and seconded by Vice Chair Azevedo, the Planning Commission approved the Minutes of February 20, 2013.

AYES: Baatrup, Azevedo, Motts, Sanderson, Westerman, Miller,
Hinojosa
NOES: None
ABSTAIN: None
ABSENT: None

END OF CONSENT CALENDAR

NEW PUBLIC HEARING

2. **Z-13-02** . The City of Antioch is proposing to amend the Zoning Ordinance in order to regulate Community Supervision Programs. Regulations would be applicable City-wide. This project is exempt from the California Environmental Quality Act.

Community Development Director, Tina Wehrmeister provided a summary of the staff report dated April 11, 2013. She added that on the dais there was also a letter from Supervisor Federal Glover dated April 17, 2013, a memorandum from Jessie Warner dated April 16, 2013, and a letter from the American Civil Liberties Union (ACLU) dated April 17, 2013, which came in right before 5:00 pm today.

Commissioner Hinojosa asked staff to define recreation center under Section 9 to which CDD Wehrmeister said that when the section was drafted staff had in mind City run community centers and recreation centers.

Commissioner Motts clarified with staff that agencies currently in place could continue but could not expand if they were nonconforming uses unless they meet requirements and that the \$2,000.00 deposit is for all use permits which covers time and materials pursuant to the hourly rate contained in the master fee schedule.

Commissioner Sanderson clarified that Section 9-5.3836 subsection C3 was aimed more at smoking than resting and CDD Wehrmeister responded in the affirmative.

Commissioner Baatrup stated that the difficult thing is that they don't want to exacerbate crime, that other communities also struggle with this and asked staff if this was compared with what other counties are proposing. CDD Wehrmeister said that to her knowledge, she is not aware of another city currently proposing this type of ordinance but that there may be ones who already have regulations in place.

Commissioner Miller asked staff if the things contained in the letter from Supervisor Glover such as items 1, 2 and 3 on page 4 had been researched. CDD Wehrmeister responded that while these letters did come in with short notice, that the Planning Commission has the ability to go through the ordinance and make changes to what staff has recommended.

CA Nerland said that as to item 3, she is not aware of any other agencies who have blanket fee waivers for non-profits, that the City is not in the profit making business and that the fee covers expenses to process use permits including staff time.

Vice Chair Azevedo asked staff if the transferees were actually returning to the community where they lived prior to convictions or is this for anyone who chooses to move to the community after their release. CDD Wehrmeister said that the probation representative here tonight may be able to answer more accurately but that any programs established in this community would be available to previously incarcerated

individuals living anywhere in the county provided that their terms of release would allow them to travel to Antioch.

Chairman Baatrup asked staff about options tonight being to adopt the ordinance as recommended, make changes to the ordinance or postponing to address concerns and the consequences of that option.

CDD Wehrmeister stated that they can make a recommendation to City Council to adopt, to not adopt or if more information is needed, the item could be continued. However City Council has adopted an urgency ordinance effective for a 45 day period. She said that if the Planning Commissioners continue the item, staff would recommend that the City Council extend the urgency ordinance. The City Council could choose not to extend the urgency ordinance and the City would be without regulations in place.

Commissioner Motts asked staff about the existing facilities such as the one on 4th Street. Captain McConnell said that individuals are released back to the County of their last legal residence prior to their incarceration. Therefore, if the individual resided in Antioch prior to incarceration, they are generally released back to Antioch and the services in Antioch would benefit those released to Antioch.

Commissioner Westerman said that with respect to the 1500qseparation from public or private schools and parks, drawing a radius around each one would seem to not leave much left.

CDD Wehrmeister said that staff can prepare a radius map.

Chairman Baatrup clarified with staff that there are currently restrictions on uses around schools and parks such as adult oriented uses and liquor establishments.

Commissioner Sanderson clarified with Captain McConnell that the current AB-109 releases are non-violent offenders.

Commissioner Hinojosa asked staff if other sites were considered appropriate with a use permit other than the three being recommended to which CDD Wehrmeister said that several were considered but that these three stood out to have the least potential impact to sensitive uses.

Chairman Baatrup clarified with staff that they could locate in the three places without a conditional use permit but could locate in other places if they go through the use permit process.

Vice Chair Azevedo asked staff if parolees have restrictions put on them for travel distance as conditions of parole to which Captain McConnell said that parolees sign a contract upon release into the Post Release Community Supervision program and there is a stipulation that the individual not travel more than 50 miles from their residence without approval.

Commissioner Motts confirmed that conditions can be placed on use permit requests for

Community Supervision Programs for whatever unique circumstances are applicable to that location.

Commissioner Westerman clarified with staff that facilities under the Community Supervision Program could provide a variety of things including mentoring, group instruction or support services, one-on-one counseling, resume and job counseling and one-stop shopping for someone requiring a variety of services.

Vice Chair Azevedo asked staff about the RFP for housing counseling. Staff responded that the RFP was unclear regarding group homes, that it appeared to be more focused on services not actual housing arrangements, but the question could be redirected to County Probation.

OPENED PUBLIC HEARING

Jessie Warner, Contra Costa County Probation Coordinator, explained that County Probation was expanding services. She reminded the Commission that these are individuals who are already in the community and are returning to their homes. She said that their goal is to come up with the best way to help individuals successfully re-enter communities and not commit new crimes, engaging them in employment, substance abuse, counseling and stable housing. She said that the vast majority of individuals in the program are on regular adult supervision and that there are about 100 people in Antioch under AB109 supervision. Ms. Warner said that there are dozens of providers in the area doing their part for public safety but that transportation is a big issue for people. She said that Antioch was the only City in the county and possibly the state that is considering an ordinance like this.

Commissioner Hinojosa asked Ms. Warner if the program was optional or mandatory and if individuals are opting in or is it a requirement of their probation.

Ms. Warner responded that AB109ers would be offered these services and that if they are referred they are required to make an attempt. She said that they want to encourage the City to open doors to these services and for individuals to have access due to barriers created by past felonies.

Commissioner Miller asked Ms. Warner if their position is against amending the ordinance to provide any restrictions for services.

Ms. Warner said that County Probation's preference in general would be no restrictions so programs would be available; that individuals are asking for services and they want to make them accessible. She stated that there would definitely be classrooms, workshops, and transitional employment opportunities.

Vice Chair Azevedo asked staff if the ordinance takes place would it allow transitional employment or limit employment of individuals only in zones specified.

CDD Wehrmeister said that the intent of the ordinance is to regulate the actual Community Supervision Program office but not to restrict local employers from hiring

previously incarcerated individuals. She said for background, this came to staff's attention when a vendor funded by Probation to provide job education services to medium/high risk offenders came to ask about a location next to the Senior Center. The County Probation Department refused to be involved in discussions with this vendor. From staff's perspective, County Probation was not providing guidance to vendors about selecting appropriate locations for program success. When staff was notified of the County RFP release, staff decided to ask the City Council if they would like staff to draft regulations since County Probation was not actively involved in locating the programs which they are funding.

Ms. Warner responded that probation was awarded a grant from the Department of Justice to engage people prior to release. That this carries a lot of factors, including past crimes, behaviors, substance abuse and issues with past employment which are all factored in. The Probation Department started a program teaching people to think differently and that they have graduated three classes thus far.

Chairman Baatrup stated that if the goal is for individuals to be successful and to steer them away from crimes, this ordinance gives the opportunity to steer vendors away from areas of high crime and help in the planning process for use permits to allow them to be more successful.

Ms. Warner stated that was a good way to think of it and it hadn't been presented that way.

Commissioner Motts asked Ms. Warner if it was true that the largest impact is parole violations as opposed to worse crime to which she said that violators of parole are going to jail instead of prison. She thanked the Commission for time to consider the ordinance and said that they will be doing a more complete presentation at the City Council meeting.

Jolene Forman with ACLU of Northern California went over the main points of their letter which was provided on the dais. She said that are gravely concerned about the potential ordinance and that they strongly urge the commission to reject the ordinance which is contrary to the public safety realignment legislation. She said they also have concerns that this may be in violation of state and federal law. She said that once you take into consideration parks and schools and one another there are very limited areas. Ms. Forman said that the staff report has flawed justification for the ordinance and that these services have been proven to reduce recidivism. She said that not making these services available will make the community less safe and that there is not an influx of people coming to Antioch to utilize services but that they are coming back to Antioch and would be here anyway and not accessing services. Ms. Forman stated her concerns that the ordinance will disproportionately impact African Americans and could be in violation of state and federal laws. She asked that the Planning Commission not adopt this ordinance and that facts be reviewed to make adjustments. She said that they did look at a map of parks in the City, that these service providers would be limited to where buses don't go and individuals would have to take multiple buses making it very hard for people to access services. Ms. Forman said that the three areas that are non use permit areas are very limited in accessibility and one area doesn't have an

office area on it but is just an empty lot. She is concerned about costs and that the anti-loitering is broad and vague and organizations won't know how to comply with them.

Discussion ensued between Commissioner Sanderson and Ms. Forman regarding the suggested disproportionately impact to African Americans.

There was discussion between Vice Chair Azevedo and Ms. Forman regarding addressing zoning concerns and making services accessible.

Ms. Forman asked that they reject the resolution or to take time to do a strong analysis before moving forward. She said that the staff report is not accurate.

Commissioner Azevedo said that it is responsible for the City to look at those things and Ms. Forman stated that the more accessible these services are, the more likely people will graduate making the community safer.

Commissioner Hinojosa clarified with Ms. Forman the 149 number given on page 3 represented the total since created and that the number for Antioch was just over 100.

David Fraser with the Supervisor's office spoke to say that there is actually only two locations proposed and that the third is a county facility which is completely full. He said that it is not practical for services to end at 7:00 p.m. and that the \$2,000.00 permit fee is a lot of money to many organizations and that services are needed to be provided to all AB109ers. He asked that the City make it so that some can be placed in this community without too many restrictions or too much expense.

Commissioner clarified with Mr. Fraser that closing should be extended past 7:00 p.m.

Commissioner Motts said that if the City has no say in placement of services, then the hours become more of an issue but that 7:00 p.m. is restrictive. Mr. Motts said that most people feel that they don't have control over where things are located.

Mr. Fraser stated that he has received emails reflecting misperceptions from the community over this, that he doesn't believe group homes are part of this and that maybe we need to look at where the middle of the road is: create well being but not make restrictions so difficult to address the other side.

Chairman Baatrup: said that there appears to be urgency to take action and that the RFPs appear to have grant funding to 2014.

Ms. Warner stated that the County operates on a fiscal year and if passed and accepted would be funded.

CLOSED PUBLIC HEARING

CA Nerland clarified the comment regarding recidivism rate and that what has happened with extreme court system budget cuts that prosecutors will recommend probation be revoked rather than expend the cost to try an individual for a new crime.

Therefore, the public comment that California's high recidivism rate is only due to previously incarcerated individuals going back to prison for only drug offenses or missing meetings+was misleading. She said in response to the attorney for ACLU who referenced the case against Antioch regarding the City's community policing efforts that the ACLU did not win their case.

Commissioner Miller clarified with staff that the medium to high risk term refers to their risk of reoffending not necessarily the type of crime they would commit.

Vice Chair Azevedo said that he thinks this ordinance is a responsible act for the City of Antioch. He said that we zone certain areas for certain uses to mitigate issues that can arise regarding types of zoning. He thinks these programs are important to prevent people from returning to prison and that there is need to help them but that he does not find the ordinance to be onerous. He said that things can be changed like extending the hours of operation and finding an alternative to the county building given the City's size. Mr. Azevedo said he would have no problem recommending to City Council that they implement this ordinance with a few changes that will help the Community Supervision Program to be successful.

Commissioner Miller agreed that the ordinance is needed with changes.

Commissioner Sanderson agreed with the Commissioners but agreed with Mr. Fraser that a balance needs to be struck. She said that as to locations, she doesn't know if there is enough information with regard to public transportation to get to the locations. She said that if an entity wants they can apply for a use permit, that she understands the costs for a use permit can be expensive but at the same time if the fees are waived for these nonprofits, there will be many others asking for waivers as well. She feels it is not unfair to ask them to cover expenses to operate outside the three locations. She said that there is a needed change to the ordinance regarding time to extend operating hours to 10:00 pm. She said that to the third requirement regarding smoking, that she suggest they discourage smoking. As to the 1500' distance requirement there has been a lot of good argument but she is interested in the opinions of the other commissioners. Ms. Sanderson stated that with those provisions, she can support the ordinance.

Chairman Baatrup stated that a lot of parks are located in residential areas and would not impact these facilities.

CA Nerland pointed out that there is a map behind the dais which shows parks in green but that parks are usually created with subdivisions.

Commissioner Hinojosa clarified with staff that the 10th Street corridor which is mixed use would be allowed by a use permit as long as the distance restriction is met that the Commission chooses.

Discussion ensued between the Commissioners concerning the definition provided in the Ordinance specifically referencing the inclusion of AB109.

CA Nerland requested a ten to fifteen minute recess for an opportunity to confer with staff.

Recess 8:30-8:40 p.m.

CA Nerland stated that she has spoken with CDD Wehrmeister and APD Captain McConnell and stated that there are two options. Both options include deleting from the definition %Community Supervision Programs may also be known as AB109 Post Release Community Supervision Programs+; recommending the hours of operation 8:00 am to 10:00 pm; leaving section (B)(2) the same; and deleting %est area+from section (B) (3). Then as to the location of the use, one option was that these uses are permitted by right in three locations and a use permit would be required in Business and Professional Office zones. The second option was to allow in Business and Professional Office zone unless within 1500 feet of schools, parks, recreation centers, senior living facilities or other Community Supervision Program uses at which point they would need a conditional use permit and not be allowed within 500 feet of schools, parks, recreation centers, senior living facilities or other Community Supervision Program uses.

Commissioner Hinojosa said that revising the language makes sense, keeping a minimum radius of 500 feet. She said that Council considers seniors to be sensitive uses and wonders if that should be added. She was also worried about allowing Community Supervision Programs in a mixed commercial district which is very different than a commercial district.

CA Nerland said that with regard to the mixed use zoning, if the Planning Commission is ready tonight to recommend an Ordinance, it can be requested that staff bring more information to City Council next Tuesday.

CDD Wehrmeister said that mixed use locations are primarily limited to the 10th street corridor, downtown, and the entire area near E-Bart.

Commissioner Hinojosa made a motion adopting the resolution recommending the City Council adopt the ordinance with modifications to include:

Section 9-5.203, the definition be revised to remove %Community Supervision Programs may also be known as AB109 Post Release Community Supervision Programs+

In Section 3, Subsection (C) (1) to extend the hours of operation to 8:00 am to 10:00 pm.

In Section 3, Subsection (D) to obtain a conditional use permit within 1500 feet of parks, schools, recreational centers, senior living facilities or other Community Supervision uses and banned if within 500 feet of those uses.

Commissioner Miller added that Section 3, Subsection (C) (3) to delete %and rest area+

CA Nerland clarified that the use be permitted and may be allowed in Business and Professional Office zones but would be required to obtain a conditional use permit within 1500 feet of parks, schools, recreational centers, senior living facilities or other Community Supervision Program uses and banned if within 500 feet of those uses.

RESOLUTION NO. 2013-04

On Motion by Commissioner Hinojosa and seconded by Vice Chair Azevedo, the Planning Commission recommended that the City Council adopt the Ordinance amending the Antioch Municipal Code dealing with Community Supervision Programs with the following changes:

- Section 2 9-5.203, the definition be revised to remove %Community Supervision Programs may also be known as AB109 Post Release Community Supervision Programs+.
- Section 3, Subsection (C) (1) to extend the hours of operation to 8:00 am to 10:00 pm.
- Section 3, Subsection (C) (3) to delete %and rest area+.
- Section 3, Subsection (D) to state %Community Supervision Programs shall be allowed in Business and Professional Office zones but would be required to obtain a conditional use permit if located within 1500 feet of parks, schools, recreation centers, senior living facilities or other Community Supervision Program uses and banned if within 500 feet of those uses.+.

AYES: *Baatrup, Azevedo, Westerman, Motts, Sanderson, Hinojosa, and Miller*

NOES: *None*

ABSTAIN: *None*

ABSENT: *None*

3. Election of Chair and Vice Chair

Chairman Baatrup opened up for nominations.

Vice Chair Azevedo nominated Commissioner Motts for Chair and Commissioner Sanderson for Vice Chair. Commissioner Miller seconded the motion.

Commissioner Motts declined and Vice Chair Azevedo retracted the motion.

Vice Chair Azevedo nominated Commissioner Sanderson for Chair and Commissioner Hinojosa for Vice Chair.

There was a brief discussion regarding expiration of terms.

On motion by Vice Chair Azevedo, seconded by Commissioner Miller, the Planning Commission members present appointed Virginia Sanderson as Chair and Krystal Hinojosa as Vice-Chair.

AYES: *Baatrup, Azevedo, Westerman, Motts, Sanderson, Hinojosa and Miller*
NOES: *None*
ABSTAIN: *None*
ABSENT: *None*

CA Nerland asked to re-open the public hearing for clarification.

REOPEN PUBLIC HEARING

CA Nerland wanted to clarify that when the commission talked about the distance requirements that it also intended to include other Community Supervision Programs as a sensitive use to which Chairman Baatrup said that it would carry that over from the original language.

Vice Chair Azevedo stated that it is limiting areas that can be zoned and permitted, specifying these three areas but that they can be close to each other.

CA Nerland said that these uses could go anywhere where Business and Professional Offices are permitted if they follow requirements but that they would need a Conditional Use Permit within 1500 feet of schools, parks, recreation centers, senior facilities or other Community Supervision Programs and let the Conditional Use Permit process determine whether that makes sense.

Commission Sanderson confirmed that the previous motion maintained the original language that the ban include not only public or private school, park, recreation center and senior facility but also any other Community Supervision Program within those requirements.

On Motion by Commissioner Sanderson and seconded by Vice Chair Azevedo, the Planning Commission confirmed the concentration restriction was part of the prior action related to the proposed Ordinance for Z-13-02:

Section 9-5.3836

- **(D) Community Supervision Programs shall be allowed in Business and Professional Office zones but would be required to obtain a conditional use permit if located within 1500 feet of parks, schools, recreation centers, senior living facilities, or other Community Supervision Programs and banned if within 500 feet of those uses. This distance shall be a radial distance measured from property line to property line.**

AYES: *Baatrup, Azevedo, Westerman, Motts, Sanderson, Hinojosa, and Miller*
NOES: *None*
ABSTAIN: *None*
ABSENT: *None*

ORAL COMMUNICATIONS

None.

WRITTEN COMMUNICATIONS

None.

COMMITTEE REPORTS

None.

ADJOURNMENT

Chairman Baatrup adjourned the Planning Commission at 9:08 p.m.

Respectfully Submitted,
Cheryl Hammers