

**ANTIOCH CITY COUNCIL  
ANTIOCH DEVELOPMENT AGENCY  
ANTIOCH PUBLIC FINANCING AUTHORITY**

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

**March 22, 2011  
Council Chambers**

**6:00 P.M. - CLOSED SESSION**

- 1. CONFERENCE WITH LABOR NEGOTIATOR** — Employee organizations: Public Employees' Union Local No. 1, Operating Engineers Local Union No. 3, Antioch Police Officers' Association, Antioch Police Sworn Management Association, Management Group, Confidential Group, Treatment Plant Employees' Association. City designated representatives: Deborah McHenry, Human Resources Director and Glenn Berkheimer, IEDA. This Closed Session is authorized by California Government Code §54957.6.
- 2. CONFERENCE WITH LEGAL COUNSEL** — Pursuant to California Government Code section 54956.9 regarding the East Contra Costa Regional Fee and Financing Authority: (1) Anticipated Litigation pursuant to California Government Code section 54956.9(b)– Significant exposure to litigation – 1 case; and (2) Anticipated Litigation pursuant to California Government Code section 54956.9(c) – Initiation of litigation – 1 case.
- 3. CONFERENCE WITH LEGAL COUNSEL** — Pursuant to California Government Code section 54956.9 regarding Seeno Homes and Discovery Builders: Black Diamond Ranch: Markley Creek Culvert Crossing Project: (1) Anticipated Litigation pursuant to California Government Code section 54956.9(b)– Significant exposure to litigation – 1 case; and (2) Anticipated Litigation pursuant to California Government Code section 54956.9(c) – Initiation of litigation – 1 case.

Mayor Davis called the meeting to order at 7:07 PM, and City Clerk Martin called the City Council/Agency roll.

Present: Council Members Kalinowski, Harper, Rocha, Agopian and Mayor Davis

City Attorney Nerland reported the City Council had been in Closed Session and provided the following report: Item #1 - Direction was given to staff; Item #2 - No action was taken; Item #3 - Direction was given to staff/Councilmember Harper recused himself.

**PLEDGE OF ALLEGIANCE**

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

**PROCLAMATIONS**

Women's History Month, March 2011  
Parkinson Disease Awareness Month, April 2011  
REACH Project 41ST Year Anniversary, April 1, 2011

On motion by Councilmember Harper, seconded by Councilmember Rocha, the Council unanimously approved the proclamations.

Councilmember Rocha presented the proclamation proclaiming March 2011, as Women's History Month to representatives from the Contra Costa County Women's Commission who thanked the City Council for the proclamation and invited them to attend the *Girl on Girl Violence* educational seminar on May 21, 2011, from 8:30 A.M. – 1:00 P.M. at Diablo Valley College. A brochure of the history of the Women's Commission was distributed to the City Council.

Mayor Davis stated a representative to accept the Parkinson Disease Awareness Month proclamation was not in attendance this evening and requested Councilmember Harper present the proclamation to the organization.

Mayor Davis presented the proclamation proclaiming April 1, 2011, as REACH Project 41st Year Anniversary to Founder, Shirley Marchetti, and Executive Director Mickie Marchetti, who gave a brief history of the REACH project. They thanked the City Council for their support and noted they would be joining the efforts of the Police Activities League and Antioch Neighborhood Cleanup project.

## **PRESENTATION**

*Delta Science Center (DSC) Board of Directors*

This item was moved to the April 12, 2011, City Council meeting.

## **ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS**

Acting Chief of Police Cantando reported on March 16, 2011, a resident who witnessed an act of vandalism at the Dallas Ranch reported the incident to police, which resulted in the arrest of four suspects for felony vandalism. He thanked the anonymous resident. He reported the Police Activities League (PAL) event at Delta Bowl on March 18, 2011, was very successful, and recognized those who had participated; and thanked Delta Bowl for both their generosity and for partnering with PAL.

Angel and Argentina Luevano, representing Todos Unidos and C.H.I., endorsed Acting Chief Cantando for the Chief of Police position, reported on their participation in the Cosmic Bowl PAL event and thanked the Contra Costa County Coalition for Women for their hard work.

Councilmember Rocha announced there would be a Caesar Chavez Day event on March 27, 2011, at Antioch High School Beede Auditorium from 2:00 – 5:00 P.M.

## **PUBLIC COMMENTS**

Beverly Knight presented the City Council with photographs and questioned why they do not maintain Delta Fair Blvd. She stated she picked up eight bags of garbage, which she disposed of, at her own expense. At her request, Tri-Delta Transit had indicated trash receptacles would be installed in the area. She expressed concern that the City was not actively addressing those issues.

Mayor Davis thanked Ms. Night for cleaning up the litter at the bus stop.

Pastor Nicolas Alexander, representing *Do the Word Ministries*, invited the City Council to attend and speak at the Life Skills/Character Education Workshop on March 26, 2011, at Contra Loma Estates.

In response to Ms. Knight, Capital Improvement Director Harrington reported the City was currently under contract and within two weeks, would begin constructing the roadway improvements on Delta Fair Boulevard from Somersville Boulevard to Century Boulevard.

## **COUNCIL SUBCOMMITTEE REPORTS**

In response to Councilmember Agopian, City Manager Jakel stated Tri-Delta was not required to provide trash receptacles; however, they try to be responsive whenever possible.

Mayor Davis stated he would bring the issue of trash receptacles up at the Board of Directors meeting on March 23, 2011.

Councilmember Kalinowski stated there were access concerns and sidewalks that could not be blocked therefore staff had to make a determination if there was sufficient room for trash receptacles.

Councilmember Agopian reported he observed various duties and facilities related to the Public Works Department and he recognized and thanked the employees for their dedication in serving the community.

Councilmember Rocha reported on her attendance at the East County Alcohol Policy Coalition meeting and requested City Attorney Nerland research strengthening the City's Social Host Ordinance by considering an ordinance similar to Contra Costa County.

Councilmember Harper announced the CDBG meeting would be held on March 25, 2011, at the Senior Center from 10:00 – 11:45 A.M. and the Mello Roos meeting will be held on April 11, 2011. He reported on his attendance at the Antioch High School meeting and noted AHS will be seeking their accreditation for a few more years.

## MAYOR'S COMMENTS

Mayor Davis reported he and Administrative Analyst Nunnally visited Washington DC to lobby for funding on behalf of Highway 4 widening and to represent the Delta Diablo Sanitation District regarding needs within the recycled water project. He reported he had contact with Sister City Delegates in Chichibu, Japan who indicated they had significant damage in the recent earthquake; however, no injuries were reported. He urged residents to contribute to the American Red Cross, who would transfer funds to the Japanese relief organizations.

### 1. COUNCIL CONSENT CALENDAR

#### A. APPROVAL OF COUNCIL MINUTES FOR MARCH 8, 2011

#### B. APPROVAL OF COUNCIL WARRANTS

#### C. APPROVAL OF TREASURER'S REPORT FOR FEBRUARY 2011

#### D. ORDINANCE NO. 2046-C-S AMENDING §9-5.4012 OF THE ANTIOCH MUNICIPAL CODE REGARDING SUNSET OF THE RESIDENTIAL DEVELOPMENT ALLOCATION (RDA) PROGRAM (*Introduced 03/08/11*)

#### E. RESOLUTION NO. 2011/19 ACCEPTING WORK AND AUTHORIZING CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE PREWETT COMMUNITY PARK- EASTERN PARKING LOT RENOVATION (P.W. 567-C2)

#### F. TREE COMMITTEE COUNCIL APPOINTMENT

#### G. APPROVE AMENDMENTS TO THE FISCAL YEAR 2011 MARINA ENTERPRISE FUND AND ANTIOCH DEVELOPMENT AGENCY BUDGETS

#### H. CITY OF ANTIOCH – COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2010

#### I. RESOLUTION NO. 2011/20 ACCEPTING COMPLETED IMPROVEMENTS FOR NELSON RANCH, UNIT 2 (STANDARD PACIFIC HOUSING), TRACT NO. 8850 (PW 547-2)

#### J. RESOLUTION NO. 2011/21 ADOPTING THE GROWTH MANAGEMENT COMPLIANCE CHECKLIST FOR REPORTING CALENDAR YEARS 2008 AND 2009 FOR THE SALES TAX/TRANSPORTATION INITIATIVE (MEASURES "C" AND "J")

#### K. RESOLUTION NO. 2011/22 AMENDING THE MASTER FEE SCHEDULE TO INCREASE THE PREWETT WATER PARK ADMISSION FEES

**L. RESOLUTION NO. 2011/23 AUTHORIZING THE CITY MANAGER TO EXECUTE MEMORANDUM OF UNDERSTANDING FOR TRANSFER OF PROPERTY FOR FREEWAY WIDENING PURPOSES AND DOCUMENTS REQUIRED TO TRANSFER TITLE**

On motion by Councilmember Agopian, seconded by Councilmember Harper, the Council unanimously approved the Council Consent Calendar.

**2. AGENCY CONSENT CALENDAR**

**A. APPROVAL OF AGENCY WARRANTS**

**B. APPROVE AMENDMENTS TO THE FISCAL YEAR 2011 ANTIOCH DEVELOPMENT AGENCY BUDGETS**

**C. ANTIOCH DEVELOPMENT AGENCY – FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS’ REPORTS FOR THE YEAR ENDED JUNE 30, 2010**

On motion by Agency Member Rocha seconded by Agency Member Agopian, the Antioch Development Agency Members unanimously approved the Agency Consent Calendar.

**3. PUBLIC FINANCING AUTHORITY CONSENT**

**A. ANTIOCH PUBLIC FINANCING AUTHORITY – BASIC FINANCIAL STATEMENTS AND INDEPENDENT AUDITORS’ REPORT FOR THE YEAR ENDED JUNE 30, 2010**

On motion by Authority Member Agopian, seconded by Authority Member Kalinowski, the Public Financing Authority Members unanimously approved the Public Financing Authority Consent Calendar.

**COUNCIL/AGENCY PUBLIC HEARING**

**4. CONFIRMING THE CONVEYANCE OF ANTIOCH DEVELOPMENT AGENCY PROPERTY TO THE CITY OF ANTIOCH**

Brian Nunnally, Economic Development Administrative Analyst presented the staff report dated March 17, 2011, recommending the Agency: 1) adopt a resolution of the Antioch Development Agency confirming the authorization to convey certain real property from the Antioch Development Agency to the City of Antioch; and the Council, 1) adopt a resolution of the City Council confirming the approval and accepting the conveyance of certain real property from the Antioch Development Agency to the City of Antioch.

Mayor Davis opened and closed the public hearing with no speakers requesting to speak.

**RESOLUTION ADA-443**  
**RESOLUTION 2011/24**

On motion by Agency/Councilmember Kalinowski, seconded by Agency/Councilmember Harper the City Council and Agency unanimously: 1) adopted a resolution of the Antioch Development Agency confirming the authorization to convey certain real property from the Antioch Development Agency to the City of Antioch; and the Council, 1) adopted a resolution of the City Council confirming the approval and accepting the conveyance of certain real property from the Antioch Development Agency to the City of Antioch.

## **COUNCIL REGULAR AGENDA**

### **5. UPDATE ON ANTIOCH'S WATER RIGHTS AND ON-GOING DELTA ACTIVITIES**

Capital Improvements/Water Rights Director Harrington presented the staff report dated March 15, 2011, recommending the City Council receive and file the report.

Matt Emmerick gave a brief PowerPoint presentation of the Bay Delta Conservation Plan (BDCP), State Water Resources Control Boards' In-Delta Flow Criteria, Delta Stewardship Council and the Reenactment of Senate Bill 200.

In response to Council, Mr. Emmerick clarified the BDCP were looking at a reduced sized system and the goal was to insure if any system was constructed, proper mitigation was in place to increase outflow and to recognize a fresher Delta. Additionally, he noted, while the process would go on to consider a peripheral canal, funding issues would slow that process.

Councilmember Rocha thanked Director of Capital Improvements/Water Rights Harrington for the report.

Councilmember Agopian, for the record, stated he opposed the conveyance system.

Capital Improvements/Water Rights Director Harrington clarified, the City was looking to insure mitigation occurred in such a way the water rights, ability to take water at the current rate, and current water quality standards would be upheld.

Mr. Emmerick further stated the City's rights were superior in priority to the project's rights.

On motion by Councilmember Harper, seconded by Councilmember Rocha, the City Council unanimously received and filed the report.

**6. APPOINTMENT TO THE ANTIOCH POLICE CRIME PREVENTION COMMISSION – TWO (2) VACANCIES**

Mayor Davis thanked Ellen Hayes and Donna Wilson for their service on the Police Crime Prevention Commission. He thanked everyone who had applied and nominated Jose Queiroz to serve on the Police Crime Prevention Commission.

On motion by Councilmember Kalinowski, seconded by Councilmember Agopian, the City Council unanimously appointed Jose Queiroz to the Police Crime Prevention Commission.

Mayor Davis nominated Brian Elliott to serve on the Police Crime Prevention Commission.

On motion by Councilmember Kalinowski, seconded by Councilmember Harper, the City Council unanimously appointed Brian Elliott to serve on the Police Crime Prevention Commission.

Mayor Davis thanked all those who applied to serve on the Police Crime Prevention Commission.

**7. REPLACEMENT OF MOBILE DATA SYSTEM COMPUTERS IN POLICE PATROL CARS**

Interim Chief Cantando presented the staff report dated March 14, 2011, recommending the City Council motion to authorize the purchase of 30 Mobile Data System (MDS) computers for replacement in police patrol vehicles.

On motion by Councilmember Harper, seconded by Councilmember Kalinowski, the City Council unanimously authorized the purchase of 30 Mobile Data System (MDS) computers for replacement in police patrol vehicles.

Councilmember Harper recused himself from the dais, due to a potential personal conflict of interest regarding Item #8, and left the Council Chambers.

**COUNCIL/AGENCY REGULAR AGENDA**

**8. NOTICE OF DEFAULT AND BREACH: BLACK DIAMOND RANCH PROJECT UNDERTAKEN BY SECON FINANCIAL AND CONSTRUCTION CO., INC. / DISCOVERY BUILDERS/BLACK DIAMOND LAND INVESTORS LLC; CONSTRUCTION OF MARKLEY CREEK CULVERT CROSSING PROJECT**

City Attorney/General Counsel Nerland stated the City Council was in receipt of letters from James Colopy, Farella Braun+Martel, attorney representing Seeno Homes/Discovery Builders dated March 17 and March 22, 2011, stating they were received too late to be included in the agenda packet. She presented the staff report dated March 16, 2011, recommending the City Council/Agency: 1) authorize amending the CIP to include the Markley Creek Culvert Crossing

project and seeking competitive bids; 2) authorize paying California Department of Fish and Game the \$92,880 mitigation fee Discovery Builders was currently refusing to pay; and 3) amend the 2010-2011 Budget to include a transfer of \$1,000,000 from Antioch Development Agency Project Area #1, to the Capital Improvements Projects Fund, and as the alternative from the Gas Tax Fund if Agency funds were not available.

City Attorney Nerland provided background information in that the City sent a notice dated February 24, 2011 to Seeno Homes/Discovery Builders regarding the lack of progress on constructing the Markley Creek Culvert Crossing and subsequent Somersville Road Widening project, required by the conditions of approval for Discovery Builders' Black Diamond Ranch project. Such notice is the first step in a dispute resolution process as it sets forth formally the problems and the steps to be taken to cure the dispute. At the March 8<sup>th</sup> Council meeting, by letter and verbally, the lawyer for Seeno Homes/Discovery Builders indicated that his client no longer wanted to build the Culvert Crossing project but rather that the City was obligated to build it and then be reimbursed by Discovery Builders. Given this turn in events, the City Council listed those steps that Seeno Homes/Discovery Builders now needed to take to allow the City to construct the Culvert Crossing project such as transferring the permits in the name of Discovery Builders to the City, providing the plans for the Culvert Crossing project that Discovery Builders had drawn up and assigning ownership of them to the City so the City could construct the project.

The City Attorney also reported that City staff met with representatives of Seeno/Discovery Builders on March 21, 2011, to discuss the issues and although the meeting seemed to have the possibility of an amicable resolution of the matter, Mr. Colopy's letter dated today alleging the City Council was meeting in secret and violating the Brown Act was so absurd that one must question his motives. Nonetheless, the actions before the City Council this evening were of a budgetary nature to allow the City to construct the culvert crossing project if that was the ultimate resolution of the matter at the end of the cure period and dispute resolution process. If there was a different resolution of the matter, then a subsequent amendment to the budget and capital improvement program could be brought forward for Council consideration at that time. No contract for the construction of the culvert crossing project was before the Council at this time.

Public comments were then taken.

James Colopy, counsel representing Discovery Builders, stated that Discovery Builders was upset and felt they had been attacked. He further stated their business reputation had been injured by statements made by the City Council and staff by implying they were not abiding by their "contractual entities." He stated they had explained their position in detail in the letters which had been presented to the City Council. He further stated should the Council continue on their current course, it would be a breach of their agreement with Discovery Builders and they would pursue legal action to protect their rights. He further noted they were very disturbed to receive the final resolution from the City Council, as it was not the resolution adopted on March 8, which was a clear violation of the California Brown Act, which only allowed public decisions to be made in public and not be changed in private. He indicated that attached to his letter to the City there was a redline



comparing the draft resolution presented to the City Council and the final resolution adopted by the City Council.

There were no further public comments.

At the request of the Mayor regarding Mr. Colopy's Brown Act allegations, City Attorney Nerland responded it was common practice for staff to prepare a draft resolution for the Council's consideration that was sent with the agenda packet, with the City Council deciding on the final resolution at the Council meeting as changes could be made prior to adoption. She reported the agenda packet went out on Thursday. The situation changed between the agenda packet being finalized on Thursday and the Council meeting the following Tuesday in that Mr. Colopy came forward with new information that his client now wanted the City to build the culvert and that Discovery Builders would pay those costs. In such situations, draft resolutions were revised to reflect the verbiage as it was ultimately adopted by the City Council. She concluded that it was spurious for Mr. Colopy to suggest that the City Council could not change draft resolutions presented by staff.

Councilmember Agopian asked questions about the recommended actions to which City Attorney Nerland responded. Councilmember Agopian clarified the Council had discussed the issue in open session, had done nothing in secret and he felt it was repugnant to accuse the Council of acting in secret. He expressed concern regarding the reputation of the City of Antioch and its citizens, who by inference were entering into the contract. He noted he felt it was prudent to ask for the contract to be adhered to and he still believed an agreement that would be equitable was possible, if all parties were willing to talk.

Councilmember Kalinowski asked when the 60<sup>th</sup> day for the cure period was. City Attorney Nerland responded that there was a question regarding the length of the cure period, but assuming the longer 60-day period that the last day would be April 25<sup>th</sup> and that the only Council meeting before then was on April 12<sup>th</sup>.

On motion by Councilmember Agopian, seconded by Councilmember Kalinowski, the City Council members present: 1) authorized amending the CIP to include the Markley Creek Culvert Crossing project and seeking competitive bids; 2) authorized paying California Department of Fish and Game the \$92,880 mitigation fee that Discovery Builders was now refusing to pay, and; 3) amended the 2010-2011 Budget to include a transfer of \$1,000,000 from Antioch Development Agency Project Area #1 to the Capital Improvements Projects Fund and in the alternative from the Gas Tax Fund if Agency funds are not available. The motion carried by the following vote:

Ayes: Kalinowski, Rocha, Agopian, Davis,

Councilmember Harper returned to Council Chambers.

## **PUBLIC COMMENTS**

Willie Mims, Black Political Association, spoke in support of appointing Acting Police Chief Cantando as the new Chief of Police.

**STAFF COMMUNICATIONS**

City Manager Jakel announced LAFCO was meeting on March 23, 2011, at 1:30 P.M. in Martinez. The next City Council meetings would be held on April 12 and 26, 2011.

**COUNCIL COMMUNICATIONS - None**

With no further business, Mayor Davis adjourned the meeting at 8:38 P.M. to the next regular Council meeting on April 12, 2011.

Respectfully Submitted:

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L. JOLENE MARTIN, CMC  
City Clerk