

ANTIOCH CITY COUNCIL

Regular Meeting
7:00 P.M.

July 25, 2006
Council Chambers

6:15 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION.** Significant exposure to litigation, one case. This closed session is authorized by Government Code §54956.9(b)(1).
2. **CONFERENCE WITH LABOR NEGOTIATOR - Employee Organization: APOA (Antioch Police Officers Association) and WATER TREATMENT PLANT OPERATORS (WTPO)** This Closed Session is authorized by Government Code §54957.6

Mayor Freitas called the meeting to order at 7:00 P.M., and City Clerk Martin called the roll.

Present: Council Members Davis, Kalinowski, Conley, Simonsen and Mayor Freitas

Mayor Freitas reported the City Council had been in Closed Session; there was no reportable action.

Louie Rocha introduced himself as the new principal of Antioch High School and stated he was thrilled about the appointment and was looking forward to the challenges ahead.

PLEDGE OF ALLEGIANCE

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

PROCLAMATIONS

National Night Out, August 1, 2006

On motion by Councilmember Conley, seconded by Councilmember Davis the Council unanimously approved the proclamation.

Councilmember Kalinowski presented the proclamation proclaiming August 1, 2006 as *National Night Out* to Hans Ho and the members of the Crime Prevention Commission. Mr. Ho recognized those neighborhood watch block captains in attendance and encouraged all residents to participate in National Night Out events. Contact information was given for anyone wishing to receive additional information.

David Massey, Vice President of Antioch Chichibu Sister City organization, introduced Mr. Sakurai and delegates from Chichibu, Japan.

Mr. Sakurai expressed his appreciation to Antioch for honoring him by naming Sakurai Street after him. The visiting delegates from Chichibu, Japan introduced themselves.

Councilmember Davis announced the Sister City welcome celebration would be held on July 27, 2006 at 6:30 P.M. at the Lone Tree Golf and Event center. He thanked Mr. Sakurai and the delegation for coming.

Mayor Freitas thanked Mr. Sakurai.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Josie Monaghan and Susanne Nocco invited the public to attend a picnic, rally and a free screening of the film *"My Child – Mother of War"* at Waldie Plaza and the El Campanil Theater beginning at 11:00 A.M. on July 30, 2006. They urged the community to support those who serve in the military and their families. Contact information was given for anyone wishing to receive additional information or make a donation.

PUBLIC COMMENTS

Design Review Board Chairperson Sandra Golightly expressed her appreciation of Minutes Clerk Eiden on her dedication to her job as minutes clerk for the Design Review Board.

Walter Ruelig welcomed the delegates from Chichibu, Japan. He reported Proposition 81 - California Library Construction Bond did not pass and he would actively be searching for other sources of funding for the Antioch Library.

Lorin Waxman, representing Meals On Wheels, and Brenda Perry, representing Antioch Senior Center, recognized and thanked Antioch's Veterans of Foreign Wars Post 6435, who had donated to the Meals On Wheels program. Representatives from the Veterans of Foreign Wars stated they were very proud to accept the recognition.

Ken Lee discussed various developments near transit stations in Bay Area cities along with some Chinese history of the area. He reported there was stagnant water near city hall and suggested it be treated to prevent West Nile virus.

Louis Rocha announced the Antioch Sports Legends Program would recognize athletes from the community who had excelled and would raise monies to develop a museum room at the Antioch Historical Society. He presented the City Council with brochures and announced the following events: Antioch Waterpark Night, August 12, 2006 from 6:30 – 9:30 P.M., and a Golf Tournament on October 15, 2006.

Kathy Nunez and members of Cub Scout Pack 247 announced they were studying citizenship and government. They thanked the City for providing youth activities and stated they would like less graffiti and more swings for older children. They suggested a community-wide service day to beautify Antioch. They further expressed their concern regarding development displacing animals and traffic problems on Highway 4.

Devi Lanphere, representing the Antioch Chamber of Commerce, announced their partnership with the Environmental Health Group and reported there would be a brown bag workshop at the Chamber on August 22, 2006 from 11:30 to 1:00 P.M. She

announced the East County Economic Conference would be held on September 29, 2006 from 8:00 to 5:00 P.M. at the Lone Tree Golf Course Event Center. Contact information was given.

1. COUNCIL CONSENT CALENDAR

- A. APPROVAL OF COUNCIL MINUTES FOR JUNE 13, 2006 #301-02**
- B. APPROVAL OF COUNCIL WARRANTS #401-02**
- C. APPROVAL OF TREASURER'S REPORT FOR JUNE 2006 #401-02**
- D. REJECTION OF CLAIMS #704-07**
 - 1. Somersville LLC, #05/06-1653 (property damage)**
 - 2. Katie Stowe, #06/07-1651 (vehicle damage)**
 - 3. Veronica Garcia, #06/07-1656 (vehicle damage) (late claim)**
- E. LEGISLATION AND ADVOCACY #701-04**
- F. APPROVE AWARD OF PROPOSAL NO. 946-0315-06F FOR BANKING SERVICES #401-01**
- G. REGIONAL HOUSING NEEDS ALLOCATION SUB REGIONS #202-01**
- H. REAPPOINTMENT OF LIBRARY COMMISSIONER WALTER RUEHLIG #302-01**
- I. ALQUIST-PRIOLO EARTHQUAKE FAULT ZONES: SATISFACTION OF CONDITION OF APPROVAL 58 TO THE USE PERMIT FOR DVE DEER VALLEY, LLC FOR A 4.95 ACRE PARCEL LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF LONE TREE WAY AND DEER VALLEY ROAD #202-10**
- J. RESOLUTION NO. 2006/81 ADOPTING AN APPROPRIATIONS AND AMENDMENTS POLICY ESTABLISHING AUTHORIZATION LEVELS FOR DEPARTMENTAL AMENDMENTS (LINE ITEM TRANSFERS) #401-01**

On motion by Councilmember Kalinowski, seconded by Councilmember Conley, the Council unanimously approved the Council Consent Calendar with the exception of items F and G, which were removed for further discussion.

Item F – At the request of staff, this item was pulled and continued to August 8, 2006

Item G – Councilmember Conley voiced his concern regarding the inequality of the percentage of low and very low Association of Bay Area Governments (ABAG) housing assessments for Antioch. When compared to other cities in Contra Costa County, ABAG's housing assessment of Antioch has one of the highest percentages of low and very low income housing.

Following a motion by Councilmember Conley, seconded by Councilmember Kalinowski the City Council unanimously approved item G.

Mayor Freitas thanked Mr. Ruehlig for representing Antioch on the County Library Commission.

PUBLIC HEARINGS

2. RESOLUTION ORDERING IMPROVEMENTS AND LEVYING ANNUAL ASSESSMENTS FOR LANDSCAPE MAINTENANCE DISTRICTS FOR THE 2006/2007 FISCAL YEAR (PW 500) #806-03

Administrative Analyst Hoffmeister presented the staff report dated July 13, 2006 recommending the City Council adopt the resolution. He provided the City Council with boundary maps.

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

Councilmember Kalinowski requested staff schedule a study session regarding contracting the median and landscaping services within the City. The City Council concurred a study session regarding these issues would be scheduled for September or October, 2006.

RESOLUTION NO. 2006/82

On motion by Councilmember Conley, seconded by Councilmember Davis the City Council unanimously approved the resolution (Option1).

3. LA PALABRA DIOS IS APPEALING THE PLANNING COMMISSION'S DECISION TO DENY A USE PERMIT FOR RELIGIOUS ASSEMBLY LOCATED AT 611 WEST THIRD STREET. (APN: 066-062-015) UP-06-05 #202-10

Assistant Planner Gentry presented the staff report dated July 21, 2006 recommending the City Council uphold the Planning Commission's denial of a Use Permit.

Mayor Freitas opened the public hearing.

Mark Jordan, representing La Palabra de Dios, stated he felt the denial of this application was a violation of federal law and the Religious Land Use and Institutionalized Persons Act (RLUIPA). He urged the City Council not to accept the recommendation of staff and grant the applicant's use permit. He noted if the use permit were not granted, the applicant would close escrow on August 11, 2006 and press their rights, which could subject Antioch to tremendous damages in court.

In response to Councilmember Conley, Mr. Jordan clarified the applicant removed their contingencies after it was explained to them the use permit had been denied.

Devi Lanphere, President and CEO of the Antioch Chamber of Commerce, stated the Chamber was in support of the Planning Commission's decision and urged the City Council to deny the appeal. She stated the Chamber believed the federal law regarding the church location did not apply in this situation, due to the incompatible land use issues and suitable buildings available outside the commercial core of downtown. She stated it was their hope the individuals involved could help with an agreeable solution that would fit and benefit all parties involved.

Steve Wood, Attorney representing La Palabra de Dios and Pacific Justice Institute, felt this situation was in violation of federal constitutional and statutory law. He noted RLUIPA prevented the City from discriminating against a church because it was not a commercial enterprise and further noted the denial would create a substantial burden on the applicant.

In response to Councilmember Conley, Mr. Wood clarified the City could not deny this application due to the fact that it would be a violation of RLUIPA.

Councilmember Conley stated the applicant voluntarily waived their deposit after the Planning Commission denied the use permit, therefore he did not feel the loss of the deposit was a valid burden on the applicant.

Curtis Holzer, representing the Antioch Rivertown Business Association, stated this issue was not about prejudice or RLUIPA, it is about preserving 1/10 of 1% of the commercial core of downtown Antioch for the vision the City had been working toward for the Rivertown area. He requested the parties involved respect the City and find an alternative location and he urged the City Council to deny the use permit.

Roger Gaither, stated he was an Attorney engaged in RLUIPA litigation and discussed the cost and time involved in litigating this issue. He noted federal law prevails over local laws and further noted if litigated, all correspondence and use permits would be open to review. He stated the City had been inconsistent by previously allowing a church use in the Rivertown area. Furthermore, the law provides a fundamental right to exercise religion and denying the use permit would be a violation of RLUIPA.

Councilmember Conley stated the church Mr. Gaither referenced in the Rivertown area, rents a facility one afternoon a week.

Mr. Gaither clarified it was not the extent of use, it was whether or not they could use it; adding, in the case of RLUIPA, ownership of the property was not necessary for a violation.

Mayor Freitas read into the record a correspondence from Rochelle Leva requesting downtown be reserved for merchant services.

Alicia Guzman, church member, stated they had experienced two denials in the City of Pittsburg. She discussed their efforts to relocate to a facility capable of housing all of their programs. She urged the City Council to approve their use permit.

In response to Mayor Freitas, Ms. Guzman clarified they chose this site based on affordability and the facility's ability to accommodate their program needs.

Councilmember Kalinowski stated there was a new building available, the same size, with more parking available, for less money, in the middle of the churches service area, and questioned whether or not this location was considered.

Ms. Guzman stated they asked to see all buildings available for church use and were not shown the building in question.

Rueben Herrera stated the Church had decided to buy property 2-3 years ago and had since been denied in the city of Pittsburg. He noted when this building was on the Multiple Listing Service he had approached the city of Antioch and he was told the property could be used for a church. He noted 3-4 weeks after his paperwork was accepted by the City; the realtor informed him the City had set a moratorium.

Councilmember Kalinowski questioned whether or not the applicant would accept an offer from the city of Antioch to help find a location that was less expensive, with less infrastructure needed and fewer restrictions regarding hours of operation.

Mr. Herrera stated he felt it was too late to consider alternative locations due to the fact all contingencies had been removed, and at this point, the Church had spent \$4000 - 5000 for an architect. He then reiterated the Church felt this location was perfect for their needs, and had plans to renovate the building.

Councilmember Kalinowski then questioned why the Church had agreed to remove the contingency, as it would have allowed them to cancel their contract without losing money?

Mr. Herrera stated they had already spent thousands of dollars attempting to relocate to various locations. They want to relocate to the proposed property. In addition, he stated they were willing to work with the city of Antioch to renovate the building. He noted they had considered Antioch locations, but none had met their needs.

Councilmember Simonsen questioned why the applicant was not suing the city of Pittsburg for the denial of previous use permits.

Mr. Herrera stated, when denied in Pittsburg, the Church was unaware of the RLUIPA law, adding they did not *want* to sue the city of Antioch.

Bernie Cabrera, Tina Steele, Cheryl DeVera, Thomas West, Nichole Coggiola, Jennifer Gallego, Linda Lopez, Kay Porter, Amarosa Floral, and Don Bright provided written comment urging the City Council to support the Planning Commission denial of the Use Permit, noting they felt a church use was incompatible with the vision for a commercial core of the Rivertown district.

On rebuttal, Mr. Gaither reiterated Mr. Herrera had asked and received information from the City stating they could operate from the proposed location. He stated, if the

City were willing and to avoid litigation, he would advise the applicants to work with them to resolve the issues and find a suitable location.

Mayor Freitas suggested the City Council go back into Closed Session for discussion, due to the threat of litigation.

Councilmember Simonsen suggested City Manager Jakel make the conference room available to the applicant and their representatives to discuss the issues.

Mayor Freitas declared a recess at 9:09 P.M. and the City Council retired to resume Closed Session. The meeting reconvened at 9:49 P.M. with all Councilmembers present. He reported the City Council had been in Closed Session and there was no reportable action.

Mayor Freitas closed the public hearing and held this item over to August 8, 2006 to allow further discussion between the parties and possibly avoid litigation. The City of Antioch would be represented by City Manager Jakel and City Attorney Nerland.

PUBLIC COMMENTS

Emil Stein, Antioch resident expressed concern regarding the recent blackouts and a murder that occurred recently on Poppy Way. He felt having to wait until the end of the agenda to speak during Public Comments was a violation of his rights in the Brown Act, stating he had turned in his speaker card prior to the last speaker.

Councilmember Kalinowski requested an item be agendized regarding public comments, conduct from the audience and specific action Council would be allowed to take in the future. He stated he could work with the City Attorney regarding this issue.

Mayor Freitas clarified, he would call for public comment at the beginning of the meeting and those submitting cards would be allowed to speak, those turning in late speaker cards would be called at the end of the Council agenda.

STAFF COMMUNICATIONS

City manager Jakel announced the City Council would be holding meetings on August 8 and 22, 2006.

City Attorney Nerland announced Ethic's training would be held on September 19, 2006 from 6:30 – 8:30 in Council Chambers.

City Manager Jakel announced there would be a Study Session on October 17, 2006.

COUNCIL COMMUNICATIONS

Councilmember Davis requested staff identify and publicize locations equipped with generators that could be used for shelter during severe weather and power outages.

City Manager Jakel stated he would discuss this issue with staff.

The City Council requested a discussion regarding the Quality of Life Forum be agendized for the next City Council meeting.

Councilmember Conley expressed concern regarding the shoplifting policies of some retailers. He suggested the City work with stores in Deer Valley Plaza and the community to adopt and support a zero tolerance policy.

Councilmember Simonsen stated the community forum was very successful and agreed the City should develop a plan to shelter people in the event of severe weather and power outages.

Mayor Freitas stated he also felt the community forum was a great success adding the City had received outstanding feedback. He noted the City was committed to implementing many of the suggestions and commended everyone who participated. He reported contact information for the Contra Costa Housing Authority satellite office located in Antioch was available on the City of Antioch's webpage. He announced he had a successful trip to Washington D.C. and suggested he visit 1-2 times per year to apprise the various members of Congress of the needs in this community.

ADJOURNMENT

With no further business, Mayor Freitas adjourned the meeting at 9:57 P.M. to the next regular Council meeting on August 8, 2006.

Respectfully submitted:

L. JOLENE MARTIN, CMC, City Clerk