



STAFF REPORT TO THE ANTIOCH PLANNING COMMISSION

DATE: Regular Meeting of September 18, 2024

SUBMITTED BY: Kevin Scudero, Acting Community Development Director

SUBJECT: **Tobacco and Paraphernalia Retailers Zoning Text Amendments (LA2024-0001)**

STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution recommending the City Council adopt text amendments to Section 9-5.3843 of Article 38 (Land Use Regulations) of Chapter 5 (Zoning) of Title 9 (Planning and Zoning) of the Antioch Municipal Code Relating to Tobacco and Paraphernalia Retailers (LA2024-0001).

DISCUSSION

On August 8, 2017 the Antioch City Council adopted Ordinance 2125-C-S defining and establishing zoning regulations for Tobacco and Paraphernalia Retailers. The ordinance included a provision that tobacco or drug paraphernalia retailers that were legally established prior to the adoption of the ordinance could not be sold or transferred after January 1, 2023. At its March 28, 2023 regular meeting, the City Council considered comments from the public, including owners of local retail stores, concerning the feasibility and impact of certain restrictions on the sale of tobacco products as well as the restrictions on the sale or transfer of tobacco businesses. The City Council provided direction to staff to bring back an ordinance amendment removing the provision that legally established tobacco and drug paraphernalia retailers could not be sold or transferred after January 1, 2023.

The attached draft ordinance rescinds the Transfer Restrictions, thereby allowing tobacco retailers and drug paraphernalia retailers to sell or otherwise transfer these businesses, subject to all other applicable laws, and also makes certain additional clarifying changes to Antioch Municipal Code Section 9-5.3843. As part of this process, staff sent notices to all tobacco retailers in the City of Antioch notifying them of the public hearing.

ENVIRONMENTAL REVIEW

The proposed Zoning Text Amendments are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), the “Common Sense” Exemption. This exemption can be used when it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment. The ordinance merely amends the Antioch Municipal Code requirements restricting the sale of tobacco or drug paraphernalia retailers. The Amendments are also exempt under CEQA Guidelines section 15064(e), which exempts purely economic regulations.

ATTACHMENTS

- A. Resolution recommending the City Council adopt Zoning Text Amendments
Exhibit A: Draft Ordinance
- B. Current Ordinance
- C. March 28, 2023 City Council Meeting Minutes

ATTACHMENT "A"

PLANNING COMMISSION RESOLUTION # 2024-**

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH RECOMMENDING THAT THE CITY COUNCIL ADOPT TEXT AMENDMENTS TO SECTION 9-5.3843 OF ARTICLE 38 (LAND USE REGULATIONS) OF CHAPTER 5 (ZONING) OF TITLE 9 (PLANNING AND ZONING) OF THE ANTIOCH MUNICIPAL CODE RELATING TO TOBACCO AND PARAPHERNALIA RETAILERS (LA2024-0001)

WHEREAS, as a duly incorporated municipality under the laws of the State of California, the City of Antioch (the "City") is empowered to protect, via its police powers, the public health, morals, and welfare; and

WHEREAS, pursuant to its police powers, the City has adopted an ordinance on August 8, 2017 imposing restrictions on certain retail activities related to tobacco and drug paraphernalia retailers ("Tobacco and Paraphernalia Retailer Restrictions Ordinance");

WHEREAS, the Tobacco and Paraphernalia Restrictions Ordinance is codified in Antioch Municipal Code Section 9-5.3843; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance prohibits, following the effective date of said ordinance, the creation or operation of a tobacco retail business or drug paraphernalia retailer business; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance permits the continued operation of tobacco retailers and drug paraphernalia retailers lawfully established and operating prior to the effective date of said ordinance as non-conforming uses; and

WHEREAS, among other things, the Tobacco and Paraphernalia Retailer Restrictions Ordinance currently prohibits tobacco retailers and paraphernalia retailers operating as nonconforming uses from selling or otherwise transferring their retail business ("Transfer Restrictions"); and

WHEREAS, at its meeting of March 28, 2023, the City Council considered public comments from tobacco retailers and paraphernalia retailers regarding the impact of the Transfer Restrictions on such retailers, and directed staff to prepare an ordinance rescinding the Transfer Restrictions; and

WHEREAS, this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, and under CEQA Guidelines section 15064(e), which exempts purely economic regulations;

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WHEREAS, a public hearing notice was published in the East County Times and posted in three public places pursuant to California Government Code Section 65090 on September 6, 2024, for the public hearing held on September 18, 2024; and

WHEREAS, the Planning Commission held a public hearing and considered all public comments received, the presentation by City staff, the staff report, and all other pertinent documents regarding the proposed request.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby makes the following finding pursuant to Section 9-5.2802(B) "Findings Required" of the Antioch Municipal Code:

Amendments to any other provisions of this chapter may be made whenever the public necessity, convenience, and general welfare require such by using the procedures set forth in this article.

The ordinance is necessary to further the public necessity, convenience, and general welfare of the City of Antioch by allowing existing legally established businesses to sell or transfer their business for continued operation in the City of Antioch.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Antioch hereby **RECOMMENDS** that the City Council adopt text amendments to Section 9-5.3843 of Article 38 (Land Use Regulations) of Chapter 5 (Zoning) of Title 9 (Planning and Zoning) of the Antioch Municipal Code Relating to Tobacco and Paraphernalia Retailers attached hereto as Exhibit A, to rescind the Transfer Restrictions and make certain additional clarifying changes

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* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 18th day of September 2024.

AYES:

NOES:

ABSTAIN:

ABSENT:

Kevin Scudero
Secretary to the Planning Commission

EXHIBIT A
DRAFT ORDINANCE
(SEPARATE PAGE)

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH, CALIFORNIA, AMENDING SECTION 9-5.3843 OF ARTICLE 38 (LAND USE REGULATIONS) OF CHAPTER 5 (ZONING) OF TITLE 9 (PLANNING AND ZONING) OF THE ANTIOCH MUNICIPAL CODE RELATING TO TOBACCO AND PARAPHERNALIA RETAILERS

WHEREAS, as a duly incorporated municipality under the laws of the State of California, the City of Antioch (the “City”) is empowered to protect, via its police powers, the public health, morals, and welfare; and

WHEREAS, pursuant to its police powers, the City has adopted an ordinance on March 8, 2022 imposing restrictions on certain retail activities related to tobacco and drug paraphernalia retailers (“Tobacco and Paraphernalia Retailer Restrictions Ordinance”);

WHEREAS, the Tobacco and Paraphernalia Restrictions Ordinance is codified in Antioch Municipal Code Section 9-5.3843; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance prohibits, following the effective date of said ordinance, the creation or operation of a tobacco retail business or drug paraphernalia retailer business; and

WHEREAS, the Tobacco and Paraphernalia Retailer Restrictions Ordinance permits the continued operation of tobacco retailers and drug paraphernalia retailers lawfully established and operating prior to the effective date of said ordinance as non-conforming uses; and

WHEREAS, among other things, the Tobacco and Paraphernalia Retailer Restrictions Ordinance currently prohibits tobacco retailers and paraphernalia retailers operating as nonconforming uses from selling or otherwise transferring their retail business (“Transfer Restrictions”); and

WHEREAS, at its meeting of March 28, 2023, the City Council considered public comments from tobacco retailers and paraphernalia retailers regarding the impact of the Transfer Restrictions on such retailers, and directed staff to prepare an ordinance rescinding the Transfer Restrictions; and

WHEREAS, at its meeting of September 18, 2024 the Planning Commission of the City adopted a resolution recommending that the City Council adopt this Ordinance rescinding the Transfer Restrictions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ANTIOCH DOES ORDAIN AS FOLLOWS:

Section 1. INCORPORATION OF RECITALS. The foregoing recitals are true, correct, and incorporated by reference as if set forth in full herein.

Section 2. PURPOSE. The purpose of this Ordinance is to rescind the Transfer Restrictions, thereby allowing tobacco retailers and drug paraphernalia retailers to sell or otherwise transfer these businesses, subject to all other applicable laws, and to make certain additional clarifying changes to Antioch Municipal Code Section 9-5.3843.

Section 3. REPEAL AND REPLACEMENT. Title 9, Chapter 5, Article 38, Section 9-5.3843 is hereby repealed in its entirety and replaced with the following:

§ 9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS.

(A) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DRUG PARAPHERNALIA. Drug paraphernalia shall have that definition set forth in Cal. Health and Safety Code § 11364.5, as it may be amended.

DRUG PARAPHERNALIA RETAILER. Any establishment that sells drug paraphernalia as defined herein.

PERSON. Any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

~~— **SOLD OR TRANSFERRED.** Any assignment, delegation, designation, sale, or transfer of real property or interests in real property, including but not limited to:~~

~~— (a) A change to the name of the operator on the city business license;~~

~~— (b) A change in the leaseholder of the commercial space;~~

~~— (c) A change to the name listed on any other official government document related to the business.~~

TOBACCO PRODUCT.

(a) 1. A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

2. Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

(b) **TOBACCO PRODUCT** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOBACCO RETAILER. Any establishment that sells tobacco products as defined herein.

(B) *Tobacco retailers prohibited.* It is unlawful for any person to cause or permit the creation of, or operation of, a tobacco retailer. The operation of a tobacco retailer shall constitute a public nuisance subject to abatement under this code.

(C) *Drug paraphernalia retailers prohibited.* It is unlawful for any person to cause or permit the creation of, or operation of, a drug paraphernalia retailer business. The operation of a drug paraphernalia retail business shall constitute a public nuisance subject to abatement under this code.

(D) *Nonconforming uses.*

(1) Tobacco retailers or drug paraphernalia retailers lawfully established and operating prior to the effective date of ~~this Ordinance 2125 C-S~~ section may continue to operate as nonconforming uses.

~~—(2) Those tobacco retailers having 20% or more of their floor area devoted to the sale or display of tobacco products or drug paraphernalia retailers are subject to the following additional provisions:~~

~~—(a) The tobacco retailer or drug paraphernalia retailer may be sold and transferred at any point prior to January 1, 2023.~~

~~—(b) From January 1, 2023 onward, the tobacco retailer or drug paraphernalia retailer may not be sold or transferred.~~

(23) All nonconforming tobacco retailers and drug paraphernalia retailers shall comply with state regulations regarding the sale of tobacco products and drug paraphernalia, as these laws may be amended from time to time.

(E) *Exceptions.*

(1) The prohibition described in division (CB) above shall not apply to the following:

(a) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist, or veterinarian as permitted by law.

(b) Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia to his or her patients as permitted by law.

(c) Any manufacturer, wholesaler, or retailer licensed by the Board of Pharmacy to sell or transfer drug paraphernalia as permitted by law.

(2) The prohibitions described in division (B) and (C) above shall not apply to the following:

~~(a)~~ Any tobacco retailer or drug paraphernalia retailer operating with a valid use permit issued by the city prior to the effective date of Ordinance 2125-C-S. Consistent with Ordinance 2125-C-S, such tobacco retailer or drug paraphernalia retailer shall continue to be a nonconforming use and subject to all provisions of this section and the Municipal Code.

(32) The following business types shall be permitted to sell tobacco products subject to approval of a use permit in zoning districts where such business types are allowed under the Zoning Code:

(a) Convenience stores when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

1. The sale of drug paraphernalia is prohibited.

(b) Retail businesses larger than 5,000 square feet with less than 5% of their sales area devoted to tobacco products.

~~(e)~~ Notwithstanding (a) or (b) above, a new use permit shall not be issued for a business that is located within 1,000 feet of any school, public park, playground, recreational center, or child care center.

Section 4. CEQA COMPLIANCE. The City Council finds that the adoption and implementation of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment, and under CEQA Guidelines section 15064(e), which exempts purely economic regulations.

Section 5. SEVERABILITY. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unreasonable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 6. PUBLICATION; EFFECTIVE DATE. This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

I HEREBY CERTIFY that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the _____, and passed and adopted at a regular meeting thereof, held on the _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

LAMAR A. HERNANDEZ-THORPE
MAYOR OF THE CITY OF ANTIOCH

ATTEST:

ELIZABETH HOUSEHOLDER
CITY CLERK OF THE CITY OF ANTIOCH

ATTACHMENT "B"

ORDINANCE NO. 2125-C-S

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH DEFINING AND ESTABLISHING ZONING REGULATIONS FOR TOBACCO AND PARAPHERNALIA RETAILERS

SECTION 1. Findings. The Antioch City Council hereby finds, determines and declares as follows:

A. The City of Antioch holds the right to make and enforce all laws and regulations not in conflict with general laws, and the City holds all rights and powers established by state law.

B. On April 22, 2014, the City Council adopted Ordinance No. 2086-C-S extending a moratorium on Tobacco and Paraphernalia Retailers pursuant to findings regarding a current and immediate threat to the public health, safety and welfare from the effects and impacts of Tobacco and Paraphernalia Retailers, including but not limited to incidents involving burglary and attempted burglary, armed robbery, fights and disturbances including those involving juveniles, petty theft, assault, threats, loitering, panhandling, harassment, stolen vehicles, and passing counterfeit bills. The findings in Ordinance No. 2086-C-S are incorporated into this ordinance.

C. The Planning Commission conducted a duly noticed public hearing on May 17, 2017 at which time a resolution was approved to initiate and recommend to the City Council that this ordinance be adopted. The City Council held duly noticed public hearings on June 27, 2017 and July 25, 2017 at which time all interested persons were allowed to address the Council regarding adoption of this ordinance.

D. The City Council finds that the public necessity, convenience, and general welfare require a prohibition on the establishment and operation of any new tobacco and/or paraphernalia retailers, and require regulations providing that established tobacco and/or paraphernalia retailers may continue as legal nonconforming uses, and that legal nonconforming tobacco and/or paraphernalia retailers may not sell or transfer the business after January 1, 2023. These amendments are not detrimental to properties within Antioch because potential financial impacts to existing tobacco and paraphernalia retailers would be nominal due to the minimal initial investment required to establish a tobacco or paraphernalia retailer, and because existing businesses may continue to operate indefinitely. Tobacco and paraphernalia retailers typically operate within existing retail spaces and do not require special equipment, plumbing or electrical upgrades, or other substantial start-up costs. In 2016, all eleven of the existing tobacco and/or paraphernalia retailers in the City reported to the Finance Department average gross receipts of \$189,170. Over a period of five years, a typical tobacco and/or paraphernalia retailer would generate \$945,000 in gross receipts. As such, a typical retailer would realize profits even if the retailer only operated as a tobacco and/or paraphernalia retailer for five years. The City Council finds that the prohibition on transfer or sale of retailers will eventually reduce the number of tobacco and paraphernalia retailers in Antioch thereby serving significant public health and welfare

benefits while ensuring no detrimental impacts to established retailers who may continue operating indefinitely. The amendments allow established retailers the opportunity to generate profits for as long as they continue to operate.

E. The City Council finds that the Municipal Code amendments are in conformance with the Antioch General Plan.

SECTION 2. Title 5, Chapter 16 is hereby repealed.

SECTION 3. Title 6, Chapter 8, Section 6-8.14 is hereby repealed.

SECTION 4. Section 9-5.203 is hereby amended to repeal the definitions of *TOBACCO AND PARAPHERNALIA RETAILER*.

SECTION 5. Title 9, Chapter 5, Section 9-5.203, definition of *TOBACCO PRODUCT* is hereby repealed and replaced with the following language:

TOBACCO PRODUCT

(A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(B) Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

(C) Any component, part, or accessory of a tobacco product, whether or not sold separately. *TOBACCO PRODUCT* does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

SECTION 6. Title 9, Chapter 5, Article 38, Section 9-5.3843 is hereby repealed in its entirety and replaced with the following language, with no other amendments to this Section:

9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS

(A) DEFINITIONS

DRUG PARAPHERNALIA. Drug paraphernalia shall have that definition set forth in California Health and Safety Code section 11364.5, as it may be amended.

DRUG PARAPHERNALIA RETAILER. Any establishment that sells drug paraphernalia as defined herein.

PERSON. Any natural person, partnership, cooperative association, corporation,

personal representative, receiver, trustee, assignee, or any other legal entity.

SOLD OR TRANSFERRED. Any assignment, delegation, designation, sale, or transfer of real property or interests in real property, including but not limited to (1) A change to the name of the operator on the City of Antioch business license; (2) A change in the leaseholder of the commercial space; (3) A change to the name listed on any other official government document related to the business.

TOBACCO PRODUCT.

(A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(B) Any device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, vaporizer pen, or hookah.

(C) Any component, part, or accessory of a tobacco product, whether or not sold separately. TOBACCO PRODUCT does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOBACCO RETAILER. Any establishment that sells tobacco products as defined herein.

(B) TOBACCO RETAILERS PROHIBITED.

It is unlawful for any person to cause or permit the creation of, or operation of, a tobacco retailer. The operation of a tobacco retailer shall constitute a public nuisance subject to abatement under this Code.

(C) DRUG PARAPHERNALIA RETAILERS PROHIBITED.

It is unlawful for any person to cause or permit the creation of, or operation of, a drug paraphernalia retailer business. The operation of a drug paraphernalia retail business shall constitute a public nuisance subject to abatement under this Code.

(D) NONCONFORMING USES.

(1) Tobacco retailers or drug paraphernalia retailers lawfully established and operating prior to the effective date of this ordinance may continue to operate as nonconforming uses.

(2) Those tobacco retailers having twenty percent or more of their floor area devoted to the sale or display of tobacco products or drug paraphernalia retailers are subject to the following additional provisions:

(a) The tobacco retailer or drug paraphernalia retailer may be sold and transferred at any point prior to January 1, 2023.

(b) From January 1, 2023 onward, the tobacco retailer or drug paraphernalia retailer may not be sold or transferred.

(3) All nonconforming tobacco retailers and drug paraphernalia retailers shall comply with State regulations regarding the sale of tobacco products and drug paraphernalia, as these laws may be amended from time to time.

(E) EXCEPTIONS.

(1) The prohibition described in 9-5.3843 subdivision (B) shall not apply to the following:

(a) Any pharmacist or other authorized person who sells or furnishes drug paraphernalia upon the prescription of a physician, dentist, podiatrist, or veterinarian as permitted by law.

(b) Any physician, dentist, podiatrist, or veterinarian who furnishes or prescribes drug paraphernalia to his or her patients as permitted by law.

(c) Any manufacturer, wholesaler, or retailer licensed by the Board of Pharmacy to sell or transfer drug paraphernalia.

(d) Any tobacco retailer or drug paraphernalia retailer operating with a valid Use Permit issued by the City.

(2) The following business types shall be permitted to sell tobacco products subject to approval of a Use Permit in zoning districts where such business types are allowed under the Zoning Code:

(a) Convenience stores when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

(i) The sale of drug paraphernalia is prohibited.

(b) Retail businesses larger than 5,000 square feet with less than 5% of their sales area devoted to tobacco products.

(c) A Use Permit shall not be issued for a business that is located within 500 feet of any school, public park, playground, recreational center, or child care center.

SECTION 7. CEQA.

This Ordinance will not have a significant effect on the environment pursuant to CEQA Guidelines sections 15060(c)(2) and 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance will result in a physical change in the environment or a significant effect on the environment. The Ordinance will not expand the range of uses permitting in the Zoning Code nor will it increase the development intensity of uses authorized in the Zoning Code.

SECTION 8. Publication; Effective Date.

This Ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

SECTION 9. Severability.

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

* * * * *

I **HEREBY CERTIFY** that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Antioch held on the 25th day of July 2017, and passed and adopted at a regular meeting thereof, held on the 8th day of August 2017, by the following vote:

AYES: Council Members Wilson, Tiscareno, Ogorchock and Mayor Wright

NOES: None

ABSENT: Council Member Thorpe



Sean Wright, Mayor, City of Antioch

ATTEST:



Arne Simonsen, City Clerk of the City of Antioch

ATTACHMENT "C"

CITY COUNCIL MEETING INCLUDING THE ANTIOCH CITY COUNCIL ACTING AS HOUSING SUCCESSOR TO THE ANTIOCH DEVELOPMENT AGENCY

Special/Regular Meeting
5:00 P.M.

March 28, 2023
Council Chambers

4:15 P.M. - CLOSED SESSION

Mayor Thorpe called the Closed Session to order at 4:15 P.M. and Acting City Clerk Rosales called the roll.

Present: Council/Agency Members District 2 Barbanica, District 3 Ogorchock, District 4 Wilson, Mayor Pro Tem (District 1) Torres-Walker and Mayor Thorpe

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – pursuant to Government Code section 54956.9: Lim v. City of Antioch, United States District Court, Case No. CV-22-04067-LB.
2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – pursuant to Government Code section 54956.9: Frank Sterling v. City of Antioch, et al., United States District Court, Northern District of California, Case No. 3:22-cv-07558-TSH.

PUBLIC COMMENTS – None

ADJOURNED TO CLOSED SESSION

Mayor Thorpe adjourned to Closed Session at 4:16 P.M.

5:00 P.M. SPECIAL MEETING/STUDY SESSION

Mayor Thorpe called the Special Meeting/Study Session to order at 5:15 P.M. and Acting City Clerk Rosales called the roll.

Present: Council/Agency Members District 2 Barbanica, District 3 Ogorchock, District 4 Wilson, Mayor Pro Tem (District 1) Torres-Walker and Mayor Thorpe

PLEDGE OF ALLEGIANCE

Mayor Thorpe led the Pledge of Allegiance.

SM-1. FISCAL YEAR 2023-25 BUDGET DEVELOPMENT

Mayor Thorpe explained that this meeting was to review baseline and budget projections. He noted Council would then determine their priorities.

Finance Director Merchant presented the staff report dated March 28, 2023, recommending the City Council provide feedback and direction regarding the budget development information provided for the Fiscal Year 2023-25 Budget.

PUBLIC COMMENT – None

Finance Director Merchant explained the Budget Stabilization Fund was for years when needed to balance the budget and Council could set a goal for the utilization of those funds.

Mayor Thorpe requested a discussion for utilization of the Budget Stabilization Fund be brought back to the next Council meeting.

Councilmember Torres-Walker thanked Finance Director Merchant for the presentation and comprehensive report.

In response to Councilmember Torres-Walker, Finance Director Merchant explained vacancy savings for the Antioch Police Department rolled back into General Fund reserves; however, all other department vacancy savings went into One Time Revenues.

In response to Councilmember Barbanica, Finance Director Merchant provided the figures for the Budget Stabilization Fund and current reserves.

MOTION TO ADJOURN SPECIAL MEETING/STUDY SESSION

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica the City Council unanimously adjourned the Special Meeting/Study Session at 5:42 P.M.

7:00 P.M. REGULAR MEETING

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

Present: Council/Agency Members District 2 Barbanica, District 3 Ogorchock, District 4 Wilson, Mayor Pro Tem (District 1) Torres-Walker and Mayor Thorpe

PLEDGE OF ALLEGIANCE

Mayor Thorpe led the Pledge of Allegiance.

CITY ATTORNEY TO REPORT OUT ON CLOSED SESSION

City Attorney Smith reported the City Council had been in Closed Session and gave the following report: **#1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**, City Council approved a settlement in the amount of \$90,000, by a 5-0 vote; and, **#2 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**, no reportable action.

1. PROCLAMATION

Prescription Drug Abuse Awareness Month, March 2023

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica, the City Council unanimously approved the Proclamation.

A representative from BAART and MEDS Coalition accepted the *Prescription Drug Abuse Awareness Month* proclamation and thanked the City Council for the recognition.

2. ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

Recreation Supervisor Wright announced the following civic and community event.

- Egg-Stravaganza & Rec Expo – April 8, 2023

PUBLIC COMMENTS

Andrew Becker requested the City provide stronger support, services, and resources for the community.

Ralph Hernandez, Antioch resident, clarified that comments he had made at a previous Council meeting were not racial and encouraged anyone questioning his comments ask for clarification. He spoke in support of the Antioch Police Department.

Gary Welch requested the City provide traffic control measures along West 10th Street. He asked his District Councilmember to reach out to him regarding this request.

Leslie May spoke to previous public comment, Robert's Rules of Order, and the Brown Act. She urged Council to form a committee to discuss reparations. She wished her daughter a Happy Birthday.

Frank Sterling requested the Council consider bringing back the zoom option for Council meetings. He referenced an article in a local newspaper regarding the Antioch Police Department and the release of information under SB1421.

Stacey Wright, Antioch resident, requested traffic control measures along Canada Valley Road.

Kathryn Wade requested the Antioch Police Department release reports and dispatch calls involving her son.

Patricia Granados, Antioch resident, requested the City levy fines against a resident for attempting to remove a tree without a tree removal permit. She suggested the City conduct an investigation of the AUSD.

CITY COUNCIL COMMITTEE REPORTS/COMMUNICATIONS

Councilmember Wilson reported on her attendance at Delta Diablo and Tri Delta Transit meetings.

Councilmember Torres-Walker announced meetings for the CDBG Standing Committee, Cannabis Standing Committee and Human Rights and Racial Equity Committee would be scheduled soon. She reported on her attendance at a meeting with staff regarding violence prevention efforts. She announced she would also be meeting with staff to discuss “L” Street improvements and other traffic concerns in District 1. She discussed her ongoing efforts to advocate for street improvements in District 1.

MAYOR’S COMMENTS

Mayor Thorpe reported on his attendance at Tri Delta and CCTA meetings. He reported there had been a soft launch of some programs including the Community Crisis Response Team. He announced the City would be receiving the Certificate of Occupancy for the Executive Inn project very soon. He discussed the decommissioning of the Antioch Amtrak station in favor of the Oakley Station and expressed concern that information was withheld from elected officials in Antioch as well as other local dignitaries regarding that action. In response to public comment, he stated the City could look at Canada Valley Road for traffic calming measures and clarified that the Council did not oversee AUSD. Additionally, he commented that City Attorney Smith would be looking into claims made in a local newspaper. He discussed his father’s illness and noted that he would be starting the process of changing his name to include his father’s last name. He added that due to his father’s illness he may be absent from future meetings, and he asked the public to respect his privacy.

- 3. CONSENT CALENDAR for City/City Council Members acting as Housing Successor to the Antioch Development Agency**
 - A. APPROVAL OF COUNCIL MEETING MINUTES FOR FEBRUARY 14, 2023**
 - B. APPROVAL OF COUNCIL SPECIAL MEETING MINUTES FOR FEBRUARY 23, 2023**
 - C. APPROVAL OF COUNCIL MEETING MINUTES FOR FEBRUARY 28, 2023**
 - D. APPROVAL OF COUNCIL MEETING MINUTES FOR MARCH 14, 2023**
 - E. APPROVAL OF COUNCIL SPECIAL MEETING/CLOSED SESSION MINUTES FOR MARCH 17, 2023**
 - F. APPROVAL OF COUNCIL WARRANTS**
 - G. 2022 ANNUAL HOUSING ELEMENT PROGRESS REPORT, HOUSING SUCCESSOR ANNUAL REPORT AND PROGRESS REPORT FOR THE GENERAL PLAN**

- H. **RESOLUTION NO. 2023/45 MEMORANDUM OF UNDERSTANDING WITH THE ANTIOCH HISTORICAL SOCIETY FOR CHARITABLE BINGO OPERATIONS AT THE ANTIOCH SENIOR CENTER**
- I. **RESOLUTION NO. 2023/46 AWARD OF AN AGREEMENT FOR PRINT AND MAIL SERVICES FOR UTILITY BILLING RFP 946-0203-23G**
- J. **RESOLUTION NO. 2023/47 ACCEPTING COMPLETED IMPROVEMENTS AND THE RELEASE OF BONDS FOR AMCAL FAMILY/SENIOR APARTMENTS (P.W. 371-RA-57)**
- K. **RESOLUTION NO. 2023/48 FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT WITH KLEINFELDER, INC. FOR SERVICES RELATED TO THE WATER MAIN REPLACEMENT AT VARIOUS LOCATIONS PROJECT (P.W. 503-19)**
- L. **RESOLUTION NO. 2023/49 INITIATE PREPARATION OF THE STREET LIGHTING AND LANDSCAPE MAINTENANCE DISTRICT CITY ENGINEER'S REPORT FOR FISCAL YEAR 2023/24**
- M. **RESOLUTION NO. 2023/50 ESTABLISHING THE RATE PER EQUIVALENT RUNOFF UNIT FOR FISCAL YEAR 2023/24 AND REQUESTING THE CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT TO ADOPT AN ANNUAL PARCEL ASSESSMENT FOR DRAINAGE MAINTENANCE AND THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PROGRAM**

On motion by Councilmember Ogorchock, seconded by Councilmember Torres-Walker, the City Council unanimously approved the Council Consent Calendar.

COUNCIL REGULAR AGENDA

- 4. **SALES TAX CITIZENS' OVERSIGHT COMMITTEE APPOINTMENTS FOR THE VACANCIES EXPIRING MARCH 2026**

City Clerk Householder announced that Mayor Thorpe nominated Seanzell Lewis as a member of the Sales Tax Citizens' Oversight Committee for a vacancy expiring March 2026.

City Clerk Householder read Seanzell Lewis's biography.

RESOLUTION NO. 2023/51

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica, the City Council unanimously appointed Seanzell Lewis by resolution as a member of the Sales Tax Citizens' Oversight Committee for a vacancy expiring March 2026.

Seanzell Lewis thanked the City Council for the opportunity to serve.

City Clerk Householder administered the Oath of Office to Mr. Lewis.

Mayor Thorpe called on Andrew Becker to make his public comment on Consent Calendar Item 3-G.

3. CONSENT CALENDAR for City/City Council Members acting as Housing Successor to the Antioch Development Agency – Continued

ITEM G - Andrew Becker expressed concern that he had submitted a speaker card for this item, and he was not allowed to speak prior to Council taking action. He also expressed concern that the timeline had changed within the progress report.

4. SALES TAX CITIZENS' OVERSIGHT COMMITTEE APPOINTMENTS FOR THE VACANCIES EXPIRING MARCH 2026 – Continued

City Clerk Householder announced that Mayor Thorpe nominated Erika Raulston as a member of the Sales Tax Citizens' Oversight Committee for a vacancy expiring March 2026.

City Clerk Householder read Erika Raulston's biography.

[RESOLUTION NO. 2023/51]

On motion by Councilmember Ogorchock, seconded by Councilmember Barbanica, the City Council unanimously appointed Erika Raulston by resolution as a member of the Sales Tax Citizens' Oversight Committee for a vacancy expiring March 2026.

City Clerk Householder administered the Oath of Office to Erika Raulston.

5. TOBACCO ORDINANCE DISCUSSION

Acting City Manager Ebbs presented the staff report dated March 28, 2023, recommending the City Council receive and file this report and offer any questions or direction to staff.

Ralph Hernandez, Antioch resident, spoke in support of allowing tobacco retailers to transfer their investments and requested Council remove restrictions on products these businesses were allowed to sell.

Amaya Wooding, LGBTQ Minus Tobacco, Jimmy Ancira, Contra Costa Tobacco Prevention Coalition and LGBTQ Minus Tobacco, Brian Davis LGBTQ Minus Tobacco and Contra Costa County Tobacco Prevention Coalition and Isabelle Kirske, Contra Costa County Tobacco Prevention Project, spoke in support of Antioch's current policies related to the sale of tobacco products.

Gurtej Singh, Tobacco Retail Business Owner, Kathryn Wade, Ralph Hernandez on behalf of Baldev Singh, Vipin Khanna, Jasbir Sooch, Nisha Toor, Shlok Soosh, Kaya Toor and Monica

Castaneda discussed the negative effect the tobacco ordinance had on tobacco retailers and spoke in support of removing restrictions on products these businesses were allowed to sell.

Mayor Thorpe read written comment submitted by the following individuals in support of removing restrictions on products tobacco retailers were allowed to sell: Jaspreet and Ajit Sooch, Antioch residents.

Sam Sohota discussed the negative effect the tobacco ordinance had on tobacco retailers and spoke in support of removing restrictions on products these businesses were allowed to sell. He also asked for the removal of the restriction preventing tobacco retailers from transferring or selling their businesses.

Leslie May encouraged tobacco retailers to expand their businesses to sell other products.

Public comment submitted in writing was entered into the record from the following individual: Amaya Wooding, Project Coordinator, LGBTQ Minus Tobacco.

Councilmember Ogorchock gave a history of the tobacco ordinance and explained that after YTAPP reached out to discuss other restrictions, Council made changes without the retailers informing the City on the negative impacts those changes would have on their businesses. She noted tobacco retailers were now asking for reconsideration of the ordinance as it related to the local restrictions and allowing them to transfer their businesses.

Mayor Thorpe and Councilmember Wilson stated their position on the ordinance remained the same and they did not support any revisions at this time.

Councilmembers Barbanica, Torres-Walker and Ogorchock felt the ordinance was overly restrictive and placed an undue burden on tobacco retailers and their families. They felt the City should follow state law making restrictions equal to all other jurisdictions within the State.

Following discussion, Council consensus supported rescinding local restrictions #4-6. They also supported allowing people owning a qualifying Tobacco Retailer to sell or transfer the business to another party.

Mayor Thorpe stated he would work with staff to bring this item back to Council. He reminded retailers to continue to follow the ordinance as it remained in effect.

6. RENTAL INSPECTION PROGRAM INFORMATION

Acting City Manager Ebbs presented the staff report dated March 28, 2023, recommending the City Council receive and file this report and offer any questions or direction to staff.

Leslie May and Devin Williams spoke in support of reestablishing the Rental Inspection Program. Mr. Williams expressed concern that inspections could be used to intimidate tenants and questioned who would monitor the required improvements.

Councilmember Torres-Walker spoke in support of amending the Municipal Code and directing the focus on multifamily rental units and corporate landlords.

Councilmember Wilson agreed with Councilmember Torres-Walker and discussed the importance of having a fair program that would not be used to retaliate against tenants.

Acting City Manager Ebbs stated there would be scheduled annual inspections relieving the tenant from having to file a complaint risking retaliation. He noted the intent of the inspection was not to intimidate or harass the tenant and was only to assess the physical condition of the property. He further noted if there were violations of the housing or building code, it was the obligation of the property owner to correct. He commented that the program would create incentive to maintain properties. He stated he would be happy to bring something back to Council reflecting their direction.

Mayor Thorpe reported tenant complaints he received were regarding large complexes in Antioch.

Councilmember Ogorchock explained when an individual rented a home, an inspection of property was completed, and a form was signed by the owner, renter and agent. She suggested if this item came back, those forms be utilized to certify the condition of properties. She requested staff look at local jurisdictions to determine how they were addressing this issue. She suggested four Code Enforcement Officers be HUD certified, to serve as the inspection team under the Public Safety and Community Resources Department.

Acting City Manager Ebbs stated the inspection team could be fluid with specialized certification. He stated he felt this team would be better housed in Code Enforcement because they already had experience.

Councilmember Barbanica cautioned that if a house was documented in good condition when the tenant moved in, and Code Enforcement found substantial damage, it could spark evictions. He stated he supported a Rental Inspection Program.

Councilmember Torres-Walker stated renters should be educated on how to document the condition of the property prior to signing a lease. She commented that if a property was documented in good condition and an annual rental inspection found the property damaged, she would support an eviction.

Councilmember Barbanica clarified that as a society, blame was typically placed on the landlord and there were some tenant responsibilities. He noted the reality was that there was going to be accountability on both sides.

Following discussion, the City Council unanimously supported the following:

- Reinstating the rental inspection program
- The current Code Enforcement structure would run the program

- Code Enforcement Officers would be required to have HUD certification
- The focus was on Multifamily (Councilmember Barbanica abstained from the discussion on this item due to conflict of interest)

In response to Councilmember Torres-Walker, Acting City Manager Ebbs stated he could provide Council with data regarding how many owners/corporations owned more than five single family residences.

Councilmember Barbanica requested staff investigate whether there were landlords not pulling business licenses.

7. DEPARTMENT OF PUBLIC SAFETY AND COMMUNITY RESOURCES (P.W. 289-15)

Acting Director of Public Works/City Engineer Buenting and Bruce Playle, Indigo / Hammond & Playle Architects, LLP, presented the staff report dated March 28, 2023, recommending the City Council provide direction for the design approval and funding of the Department of Public Safety and Community Resources.

Julianne Davis, Gary Welsh and Leslie May expressed concern regarding parking and traffic in the area of the proposed project and requested the City address traffic calming measures prior to adding more traffic to the area.

Councilmember Torres-Walker and Wilson stated this place of service was needed and it would uplift the community. They noted the intent was to address traffic safety prior to it being opened to the public. They urged Council to support the request.

In response to Councilmember Torres-Walker, Director of Public Safety and Community Resources Johnson stated staff hoped to seek funding from other sources and they were confident that they would find some funding.

Councilmember Barbanica stated he wanted to discuss the City's budget prior to committing funding for this project.

Councilmember Ogorchock spoke in support of the building design. She stated she wanted the Council to consider the budget and funding needed for "L" Street improvements, prior to moving forward with this project.

In response to Councilmember Torres-Walker, Acting Director of Public Works/City Engineer Buenting stated staff was looking for feedback regarding the project design. He noted construction was unfunded and moving forward they needed some commitment to the funds. He further noted he understood the hesitancy at a time when Council was considering the budget. He reported preliminary traffic calming plans had been drawn up and they were looking for a grant for the improvements, and they were also waiting to consult with the Antioch Police Department to make sure they were in agreement.

Mayor Thorpe added that as soon as those items were completed, Acting Director of Public Works/City Engineer would provide Council with an update on traffic calming measures.

Acting City Manager Ebbs stated if Council supported the project design, he would request they allow staff to explore financing options.

City Attorney Smith added that this item was not prepared for a full commitment of funds.

Mayor Thorpe commented that there may be an opportunity to work with the County regarding incorporating a new library facility into this building. He cautioned that historically cost projections increased and the City needed to budget accordingly. He spoke in support of the project, noting that this area of the City had historically been under resourced.

Councilmembers Barbanica and Ogorchock stated they could not support the project until a funding source was identified. Councilmember Ogorchock suggested that the library site on 18th Street may be a viable location for the Public Safety and Community Resources department.

Following discussion, Council consensus supported the Department of Public Safety and Community Resources project.

8. ECONOMIC DEVELOPMENT COMMISSION REVIEW OF PAST PURPOSE AND FUTURE VALUE

Director of Economic Development Reed presented the staff report dated March 28, 2023, recommending the City Council discuss the future relevance of the Economic Development Commission.

Lemuel del Castillo, Tim McCall and Kelly Kalfsbeek, Economic Development Commissioners, spoke to the value of their work on the Economic Development Commission (EDC) and requested Council support continuing with the EDC.

Ralph Hernandez expressed concern about the number of businesses that had closed in Antioch and the value of getting assistance from the EDC to retain and attract business.

Public comment submitted in writing was entered into the record from the following individual: Tim McCall.

Councilmember Torres-Walker stated she supported reinstating the EDC with strategic planning and in partnership with the Chamber of Commerce.

Director of Economic Development Reed commented that the EDC was underutilized; however, there had been distractions when it came to presenting to Council. He noted former members discussed the EDC becoming a committee not subject to the Brown Act and there may be value in making the EDC an advisory committee to give them freedom for site visits. He noted the

Chamber CEO had expressed interest in being appointed to the Commission. He spoke in support of reforming the EDC as an advisory committee.

Councilmember Wilson suggested looking at Economic Development regionally.

City Attorney Smith explained that if the EDC became a committee in the policy advisory process, they were still required to follow the Brown Act.

Mayor Thorpe suggested reducing the membership of the Committee/Commission to five and developing a workgroup to determine the role of the EDC moving forward.

Councilmembers Torres-Walker and Wilson offered to work with current EDC members and the Chamber of Commerce to define the role of the Commission/Committee.

Following discussion, Council consensus directed staff to bring back the formation of an Economic Development Ad Hoc Committee to determine the role of the EDC.

Director of Economic Development Reed responded that he would work with City Attorney Smith on the formation of an Ad Hoc Committee.

PUBLIC COMMENT – None

STAFF COMMUNICATIONS

Acting City Manager Ebbs thanked Council for allowing him to serve as Acting City Manager.

Mayor Thorpe thanked Acting City Manager Ebbs for serving as Acting City Manager.

COUNCIL COMMUNICATIONS AND FUTURE AGENDA ITEMS

Councilmember Ogorchock requested staff investigate the lack of parking spaces at the marina as well as the flooding issues. She also requested restrictions on donation flyers be revisited since she had witnessed them showing up in neighborhoods.

Councilmember Wilson requested staff revisit the restriction on donation bins since she had witnessed them returning.

Councilmember Torres-Walker thanked the public for their attendance and comments this evening. She requested Council reconsider allowing Zoom meetings for the public.

Councilmember Barbanica requested an update of his request for the City to consider a sole source provider that had offered to tow abandoned motorhomes and pick up debris from roadways, free of charge.

ADJOURNMENT

On motion by Councilmember Ogorchock, seconded by Councilmember Wilson the City Council unanimously adjourned the meeting at 10:55 P.M.

Respectfully submitted:

Kitty Eiden

KITTY EIDEN, Minutes Clerk