

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

WALMART SUPER CENTER BALLOT INITIATIVE

Summary Statement:

On January 5, 2011 the Planning Commission reviewed and unanimously approved associated entitlements, and certified the Environmental Impact Report, for development of a 246,034 square foot retail center, the commercial anchor of which is a proposed Walmart Super Center store. The project site is generally located at the northeast corner of Dale Evans Parkway and Bass Hill Road. On January 11, 2011, an appeal of the Planning Commission's decision was filed by Briggs Law Firm on behalf of CREED 21. The appeal was general and unspecific in nature but, nevertheless, requested that the Town Council overturn the Planning Commission's decision and deny the project. Although the Planning Commission had unanimously approved the project's entitlements, including certifying the environmental impact report, the project applicant, on January 25, 2011, elected to formally withdraw from the Town its applications to develop the Super Center project. Also on January 25, 2011, Walmart representatives submitted to the Town Clerk of the Town of Apple Valley a ballot initiative on its behalf.

The action taken to withdraw its application made moot the Town Council's responsibility to hear the appeal lodged by Briggs Law Firm and generated public comments and public records requests from citizens opposed to the Walmart Super Center. It is fair to say that the primary theme of those opposing the Walmart Super Center project centers on their contention that the Walmart-sponsored ballot initiative process is an "end run" around the Town Development Code, General Plan and past practices relating to the manner in which the Town reviews and approves development projects. In submitting the ballot initiative to the Town Clerk, Walmart represented that the project described in the proposed initiative is the same project that was approved by the Planning Commission, but for the initiative's characterization of the project as a specific plan. Signatures were collected by the applicant and submitted to the County Registrar of Voters on March 7, 2011. The County Registrar has until April 18, 2011 to verify the signatures.

(continued)

Recommended Action:

That the Town Council receive and file this staff report regarding the Walmart ballot initiative process.

Proposed by: Economic and Community Development **Item Number** _____

Town Manager Approval: _____ **Budgeted Item** Yes No N/A

As a result of the claims made by opponents of the Walmart Super Center project, and in an effort to provide clarity to the community regarding whether or not the ballot initiative complies with the Town General Plan and Development Code, at the February 22, 2011 Town Council meeting, Mayor Pro-Tem Stanton and Council Member Roelle requested that staff place this matter on a future Town Council agenda. Specifically, Ms. Stanton and Mr. Roelle requested that staff and the Town Attorney address concerns that the initiative may not reflect the exact language of the project approved by the Planning Commission. A side-by-side review of the project material placed before the Planning Commission for approval and the language of the Walmart ballot initiative has been conducted by staff. Based upon this review, staff has determined that the Walmart ballot initiative is in full compliance with the General Plan, Development Code, the entitlements approved by the Planning Commission and the project Environmental Impact Report. Council will hear from the Town Attorney regarding his findings concerning this particular issue at its March 22nd meeting.

Although Walmart representatives were invited to attend the March 22nd Town Council meeting, they are unable to do so because of scheduling conflicts. A letter addressing this issue was sent to the Town Manager from the attorney representing Wal-Mart. Said letter is attached to this report. As described in the attached letter, the Town Council has the authority under Election Code Section 9212 to request staff to conduct a formal study of the proposed initiative. Because its initiative has yet to qualify for the ballot, the fact that its lead staff person on this matter will be unavailable for the Council's March 22nd meeting and because of its concern that the discussion of this matter on March 22nd could negatively impact the Town's compliance with Election Code Section 9212, Walmart has requested that this discussion be postponed until its initiative qualifies for the ballot. In response to the letter from Walmart's attorney, the Town Attorney has indicated the Town Council can, if it desires, conduct its discussion as originally contemplated (by the Council). The Town Attorney, of course, will provide effective guidance to the Town Council to ensure the Town's compliance with Election Code Section 9212.

Based upon the foregoing, staff recommends adoption of the Form Motion.

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March 11, 2011

VIA E-MAIL AND U.S. MAIL

Frank W. Robinson
Town Manager
Apple Valley, California
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Robinson:

This firm represents Walmart Stores, Inc. and the proponent of the initiative petition that was recently circulated among the voters and submitted to the town clerk on March 7, 2011. I am informed that the town council is considering a public discussion about the initiative and has asked representatives of Walmart to attend the council meeting scheduled for March 22, 2011. The Walmart representative most knowledgeable about the initiative and the petitioning process is Aaron Rios. Unfortunately, Mr. Rios is going to be on vacation that day and is unavailable. Thus we would ask that you postpone the public hearing to a later date.

Notwithstanding Mr. Rios' unavailability, I believe such a hearing or discussion is premature in that the initiative petition has not yet been certified by the town clerk as having qualified for the ballot. We have every confidence that the initiative will in fact qualify; however, the Elections Code provides specific procedures for the processing of an initiative once it has been filed with the town clerk.

The council is fully entitled to ask the city staff to conduct a study of a proposed initiative. That study must be formally requested pursuant to Elections Code section 9212. The "report" can be conducted anytime during the petition process (though most cities conduct such a study after it has been determined that the initiative has qualified for the ballot), including now. However, it is not clear that the proposed public discussion is such a "report." Consequently, if you are to proceed informally as it appears the council prefers, the public discussion might be

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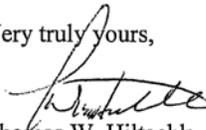
VIA E-MAIL AND U.S. MAIL

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Town Manager
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deemed the "report" provided for by the Elections Code, thereby preventing the council from obtaining further, and more specific, information as contemplated by the statute.

Walmart is more than willing to discuss the contents of the initiative with any member of the council or town staff, including at a public meeting of the council. We simply wanted to alert you to the consequence of going forward now and in this manner as it relates to the council's powers under the Elections Code.

Very truly yours,



Thomas W. Hiltachk

TWH:ak

cc: John E. Brown, Town Attorney
La Vonda Pearson, Town Clerk

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