

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**WAL-MART SUPERCENTER BALLOT INITIATIVE UPDATE**

**Summary Statement:**

On January 5, 2011 the Planning Commission reviewed and unanimously approved associated entitlements and certified the Environmental Impact Report for the construction of a 246,034 square foot retail center, which includes a Wal-Mart Supercenter store. The project site is generally located at the southeast corner of Dale Evans Parkway and Thunderbird Road. On January 11, 2011 an appeal was filed by Briggs Law Firm on behalf of CREED 21. The project applicants withdrew the project on January 25, 2011, therefore, an appeal hearing before the Town Council was never scheduled. Also on January 25, 2011, the applicant submitted a ballot initiative to the Town Clerk. Wal-Mart represented that the project described in the proposed initiative is the same project that was approved by the Planning Commission in the form of 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.

On February 22, 2011, Mayor Pro Tem Stanton and Council Member Roelle requested that staff agendize the status of the Wal-Mart Supercenter ballot initiative. They requested that staff and the Town Attorney address concerns that the initiative may not reflect the exact language of the Planning Commission approved project. Staff and the Town Attorney are reviewing the documents and will be able to provide a summary of their review at the March 22<sup>nd</sup> Town Council meeting.

Wal-Mart representatives were invited to attend the meeting of the 22<sup>nd</sup>, but are unable to attend due to scheduling conflicts. A letter addressing this issue was sent to the Town Manager from the attorney representing Wal-Mart, which is attached to this report. As described in this letter the Town Council has the authority under Election Code Section 9212, to request that staff conduct a formal study of the proposed initiative. If the initiative petition signatures qualify for the ballot, the Town Clerk will certify the initiative and schedule it for the Town Council review and consideration. Any formal discussion prior to certification may be premature.

**Recommended Action:**

Receive and file.

**Proposed by:** Economic and Community Development      **Item Number** \_\_\_\_\_

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

Town Council Meeting: March 22, 2011

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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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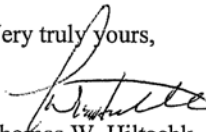
VIA E-MAIL AND U.S. MAIL

Letter to Frank W. Robinson  
Town Manager  
Apple Valley, California  
March 11, 2011  
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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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