



**MINUTES OF SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF THE
CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 14, 2002, 8:00 p.m.

MEETING

The Special Joint City Council/Redevelopment Agency Meeting was called to order by Mayor/RA Chair Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council/RA Member Dowling.

ROLL CALL

Present: COUNCIL/RA MEMBERS Jimenez, Hilson,
Rodriguez, Ward, Dowling, Henson
MAYOR/CHAIR Cooper
Absent: None

PRESENTATION: Pride in Hayward Award

The winners of the Pride in Hayward Award for May 2002 are all residents of the Santa Clara Neighborhood. They include: Rakesh and Rajini Prasad, Terril and Ruby McChesney, Margaret Stump, Raymond and Terry Olsen, and John and Carmelita Cahill.

PUBLIC COMMENTS

John Kyle commented on the future of the Route 238 By-pass.

Jason Moreno took the opportunity to respond to Council action on recent public comments. He maintained that the public comments were for informing the public.

Barbara Swarr commented on City budget reserves and Redevelopment Agency funds and deficits. She asked why new developments in the downtown were subsidized by the City.

Mayor Cooper suggested Mrs. Swarr discuss her issues with the Redevelopment Agency.

CONSENT

1. Approval of Minutes of the Special Joint City Council/Redevelopment Agency Meeting of May 7, 2002

It was moved by Council/RA Member Henson, seconded by Council/RA Member Hilson, and unanimously carried to approve the minutes of the Special Joint City Council/Redevelopment Agency Meeting of May 7, 2002.

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2. Downtown Sidewalk and Streetscape Improvements - Phase I: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Bauman, dated May 14, 2002, was filed.

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-059, "Resolution Approving Plans and Specifications for the Downtown Sidewalk and Streetscape Improvements-Phase I Project, Project 6915, and Call for Bids"

3. Arterial Pavement Rehabilitation Phase III: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Bauman, dated May 14, 2002, was filed.

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Resolution 02-060, "Resolution Approving Plans and Specifications for the Arterial Pavement Rehabilitation - Phase III, Project No. 5151, and Call for Bids"

4. An Ordinance Amending Section 2-1.10 (c) of the Hayward Municipal Code Relating to CPI Adjustment for Council Members

Staff report submitted by City Clerk Reyes, dated May 14, 2002, was filed.

It was moved by Council Member Henson, seconded by Council Member Hilson, and unanimously carried to adopt the following:

Ordinance 02-05, "An Ordinance of the City Council of the City of Hayward Amending Section 2-1.10 (c) of the Hayward Municipal Code Relating to Compensation for Members of the City Council"

HEARINGS

5. Approval of Community Development Block Grant Funding for Fiscal Year 2002-03

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Staff report submitted by Neighborhood and Economic Development Manager Bauman, dated May 14, 2002, was filed.

Neighborhood and Economic Development Manager Bauman made the staff report, noting the process taken to determine the recommendations by staff and the application review committee as designated by the Citizens Advisory Committee (CAC). At the April 24th meeting of the CAC, final recommendations were completed with two recommendations that were different from the staff recommendations. CAC recommended that the SAVE Wings Program receive \$200,000. Staff recommended no funding. Staff recommended the Small Business Revolving Loan Fund receive \$400,000. The CAC recommended \$200,000. She then responded to questions from Council.

Council Member Ward asked that a representative from SAVE Wings and a representative of CAC explain their funding choices and what resources SAVE/WINGS has previously received from the City of Hayward.

Rodney Clark, Director for the rehabilitation project, commented that the City of Hayward provided funds of \$200,000 that is still available from previous years. The County will match these funds.

Tracy Fraas, representing the CAC, discussed their reasons for this recommendation. She noted that this funding from City of Hayward, as well as the County, would enable the SAVE/WINGS project to complete their project. She noted that there are few transitional housing units in the area for battered women, with none in Hayward.

Neighborhood and Economic Development Bauman commented that the Small Business Revolving Loan Fund is a good project, since Hayward spends less than the average in this area. She noted that the building being refurbished for SAVE/WINGS would total over \$1 million. She commented that the scope of work is presently funded for a definitive number of repairs.

Mayor Cooper opened the public hearing at 8:33 p.m.

Rodney Clark commented on the structure for the SAVE/WINGS project. He pointed out that relocation costs will double and are significant if the rehabilitation occurs first and then the retrofit at a future date would require another relocation of the tenants. This will be a burden on both the project and the families.

Brenda Farrell-Thomas, Director of Clinical Services at SAVE/WINGS, spoke in favor of the funding for the SAVE/WINGS project, and noted that it is an important project to those in need.

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Kate Hart, Senior Case Manager, urged the Council to provide the funding as recommended by the CAC. She noted that some lay-offs of staff were due to the lack of funding, as services could not be provided. Completing the earthquake retrofit is the key to the continued use of this transitional housing project for victims of domestic violence.

Council Member Ward said he is proud to be able to support this program. He then asked Mr. Clark if there is a phasing plan for this project should the funds not be provided by the City of Hayward. Mr. Clark responded that this was a difficult question to answer. There is some construction that can be done but most would be affected by the earthquake retrofit. He explained that with retrofitting first, it would be difficult to separate parts from all of the whole.

Sandy Frost, representing the Hayward Community Gardens, thanked the Council for its continued support.

Mayor Cooper closed the public hearing at 8:44 p.m.

Council Member Hilson moved, with Council Member Henson seconding the motion, the staff recommendation. He said he has a problem with retrofitting a building when staff identifies it as not different from other facilities in Hayward.

Council Member Dowling moved a substitute motion, seconded by Council Member Rodriguez, to give \$100,000 towards the Wings project, and \$100,000 for the Business Project for a total to the Business Project of \$300,000. He commented that this is all very important.

Council Member Ward commented that his understanding was that this was an all or nothing request. He asked whether this compromise would work. He suggested that it would make more sense to try to find a phasing plan that allows the retrofit to occur. He noted that he would not be in favor of the substitute motion.

Council Member Rodriguez asked Neighborhood and Economic Development Bauman if other social service program buildings in the City of Hayward were retrofitted. She was told that the rehab in that area has been done like using band-aids. It was not until mold was discovered in the lower units that the need to retrofit was determined. She said whatever decision the Council makes, staff will do their best to carry out these wishes. She noted the various needs for this project.

City Manager Armas commented that making the building habitable would be a priority; seismically retrofitting would not be a priority.

Council Member Rodriguez commented that there would still be no guarantee that the building would be complete even with the retrofit.

Mayor Cooper commented that the mold is her greatest concern, in particular, that it harms children. She said she would prefer to improve habitability not the seismic work. Giving the



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\$200,000 to Wings would help to leverage the funds from the County.

Council Member Jimenez asked for a total of what is being allocated to Wings.

Neighborhood and Economic Development Bauman indicated that SAVE has a commitment of \$300,000 in a grant from the State of California, \$93,000 from the City of Fremont, another \$20,000 from the City of San Leandro and \$269,000 from the City of Hayward. It is the policy of Alameda County to put in as much as the host City.

Council Member Dowling indicated that he was willing to accept the Mayor's sums in place of the numbers he provided earlier, but she indicated that she would agree with Mr. Dowling's original substitute motion.

Mayor Cooper clarified her position that since residents from other cities use the facility, they might support the project with more funding, and that she thought the retrofit was not as important as a general over-haul to the building.

Council Member Ward noted that the Council has a long history of funding social service programs in the City. He commented that, based on the Mr. Clark's comments, this motion would not provide the necessary funding needed for the project. This motion is simply another part of a band-aid for the project.

It was moved by Council Member Dowling, seconded by Council Member Rodriguez, and failed by the following roll call vote to designate funding by giving an additional \$100,000 to Wings, and \$300,000 to the Small Business Fund:

AYES: Council Members Dowling, Rodriguez
MAYOR Cooper
NOES: Council Member Jimenez, Hilson, Ward, Henson

It was moved by Council Member Hilson, seconded by Council Member Henson, and unanimously carried to adopt the following resolution as recommended by staff:

Resolution 02-061, "Resolution Authorizing an Application for Federal Assistance Under the Community Development Block Grant Program for Fiscal Year 2002-2003 (Twenty-Eighth Year)"

6. Use Permit No. 2001-0366 - Jack-in-the-Box (Mahesh Gogri - Franchise Operator/Applicant) Toro Development Company (Owner) - Request to Amend Use Permit 84-164 to Expand the Hours of Drive-Through to 24-Hours/Daily - The Property is Located at 31005 Mission Boulevard in the Fairway Park Shopping Center

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Staff report submitted by Consulting Project Planner Weisbrod, dated May 14, 2002, was filed.

Planning Manager Anderly made the staff report and reported that no complaints of noise have been reported in the past year. She commented that staff was not aware that the business was operating 24 hours a day until a specific complaint about the hours of operation was filed with the City. The owner maintains that being open 24-hours would be a service to the traveling public. She commented that this owner has willingly posted signs asking customers to be considerate to its neighbors. Staff is objecting to the 24-hour operation based on consistency with the Zoning Ordinance which calls out typical hours of operation for fast food restaurants and also to preserve as much peace and tranquility in the neighborhood as possible for the current residents as well as future residents.

Council Member Henson asked whether the service station at that shopping center had 24-hour operation. It was noted that it is a 24-hour operation. Staff noted that no reports have been made, however, it abuts the gymnasium of a church rather than a home. Planning Manager Anderly said this did not imply any problems with the business.

Council Member Jimenez asked about other cities that allow 24-hour service. There were no specific citations, although nearby cities do allow these hours of operation. Planning Manager Anderly commented that Hayward has a long commercial strip with housing backing up to it. There is little isolation of many of the fast-food restaurants.

Council Member Dowling noted that a resident asked that, if the 24-hour is allowed, perhaps the restaurant would clear the par course and asked staff if that could be a requirement. Staff noted that there needs to be a relationship in order to require litter clean up. She commented that currently litter must be cleaned-up within 300 feet. Although, she stated, Council could impose that type of requirement.

Council Member Ward asked how an association could be made. It was noted that there needed to be a nexus by opening up the Conditions. If this was determined, a Condition of Approval could be added.

City Manager Armas commented that there would have to be a relationship between the two.

Mayor Cooper opened the public hearing at 9:18 p.m.

Mahesh Gogri, owner and franchise owner, urged the Council to approve his request to operate 24-hour. He commented that by staying open, the neighbors feel more secure and safer. He offered a petition from the neighbors encouraging the longer hours of operation. He noted that he is an individual owner and has suffered losses from having to close. He presented a report on his past earnings and included a petition of approval from surrounding neighbors, residents and



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customers of Jack in the Box. He said this is a service to the community.

Council Member Dowling asked for a comment on the neighbor requesting a clean up of the par course. Mr. Gogri said he would be happy to agree to this condition.

Jason Moreno commented that the Jack-in-the-Box on Tennyson Road was in violation of the ordinance. He then asked how often the City surveys fast food restaurants for compliance with their set of conditions of approval.

Planning Manager Anderly commented that the community preservation staff is enforcing the 24-hour rule at the Tennyson Road location. She noted that there is not the availability of staff to do a survey of the whole City.

In response to Council Member Henson's questions, Yvonne Critzer noted that the shopping center has standard parking area lights as well as other lighting as needed. She commented that having a tenant open might discourage illegal activities.

Shaba Gogri said she has worked at this location since 1995. She noted that many of their customers at night were from various areas. She commented that many of the calls that were made to the Police Department were after they were forced to close down the 24-hour operation. Angry customers retaliated and vandalized the property. She noted that they are audited by the company based on their cleanup program as part of the audit.

Mayor Cooper closed the public hearing at 9:33 p.m.

Council Member Dowling moved, seconded by Council Member Jimenez, to allow the business hours be changed with the added condition that the owner and the employees will maintain, on a daily basis, the par course.

Council Member Henson asked whether Council was creating a precedent or would each fast food approval be looked at on a case-by-case basis. He was told this would not set a precedent and each application would be looked at individually.

Council Member Ward asked the City Attorney whether the Condition would be applicable to another owner since the City may not prove a nexus for the Condition. He was told the Condition would remain in place, particularly if new owners took advantage of the longer hours of operation. Since the owner has voluntarily agreed to the Condition, it is enforceable.

City Manager Armas suggested the limits be defined. It was determined that the boundaries are Blanche Street to the south and Fairway Street to the north. The owner agreed to this condition and commented that he understood the boundaries.

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Mayor Cooper stated that this was an outrageous condition since no one else is expected to do this. She commented that the City is not expected to do everything. She noted that other fast food restaurants might also have a drop-off in business because of the economy. She said there is no reason to make this a 24-hour business.

Council Member Hilson commented that last time he was in opposition to extending the hours, mostly due to the impact on the neighborhood. He said anyplace there is a 24-hour operation there is activity and noise and opportunity for things to happen. He said he would not support this motion.

Council Member Dowling commented that individually looking at each fast-food operation. This owner has overcome much opposition since a year ago. He was intrigued by the idea of trying to solve a problem of cleaning up the par course. He noted that community volunteers have been cleaning up the course as well as City staff. If this business owner is willing to extend himself, what he is saying is that he's had a 33 percent drop off in business because the hours were limited. With the extended hours, he is willing to give back to the community and clean up the par course. He said it was a good trade-off.

Council Member Henson said he was supportive of the motion since this has proven to be a good operation. He agreed that the condition is outrageous. He cautioned the owner to keep on eye on the parking area to prevent too much noise and any illegal activities.

Council Member Jimenez asked whether there were any negative responses from residents within the 300-foot radius. He was told there were none.

Council Member Rodriquez said she appreciated the owner's willingness to clean the area. She expressed concern regarding the 24-hour operation and its impact to the neighborhood. She added that she would not be able to support the motion.

It was moved by Council Member Dowling, seconded by Council Member Jimenez, and unanimously carried to adopt the following resolution, and add a condition that the operator maintain the par course that extends from Blanche Street to Fairway Street by the following roll call vote:

Resolution 02-062, "Resolution Allowing Use Permit Application No. 2001-0366, Concerning a Request for 24-Hour Operation of the Drive-Through Window at Jack-in-the-Box Located at 31005 Mission Boulevard"

AYES: Council Members Jimenez, Ward, Dowling,
Henson

NOES: Council Members Hilson, Rodriquez
Mayor Cooper



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ABSENT: None
ABSTAINED: None

COUNCIL REPORTS

There were no requests to speak.

ADJOURNMENT

Mayor Cooper adjourned at 9:46 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:

Angelina Reyes, City Clerk, City of Hayward
Secretary, Redevelopment Agency

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