



**MINUTES OF MEETING OF THE CITY
COUNCIL OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 2, 2003, 8:00 p.m.

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Mayor Cooper.

ROLL CALL

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

PRESENTATION: Business Recognition Award

The December 2003 Business Recognition Award was presented to Hayward Ford, located at 25501 Mission Boulevard, which was founded in November 1991. Hayward Ford is a privately held Corporation, and Mr. Robert Knezevich is President of the company. Hayward Ford retails new and used motor vehicles, specializing in Ford cars, trucks and sport utility vehicles. Their low overhead enables them to offer customers the best possible pricing from a huge inventory. Customer satisfaction has created tremendous repeat and referral business. Hayward Ford sells an average of approximately 400 cars every month, about 5,000 cars every year, which is a substantial financial contribution to Hayward. In addition, Hayward Ford has 137 employees, many of whom are Hayward residents. In addition to their industry leadership, Hayward Ford contributes to the Hayward community through their membership in the Hayward Chamber of Commerce along with donations to churches, Hayward schools and local charities. Mr. Milo Roque, General Sales Manager, accepted the award on behalf of Hayward Ford and thanked Council for this recognition.

PUBLIC COMMENTS

Tom Lemos, who owns a business and lives in Hayward, thanked the Council for the downtown wireless project. He stated that he has successfully utilized it and has used his laptop at the Public Library. He commended the City for staying "on top" of technology.

Diane Ferchel stated that she has attended meetings of the working group of the Rt. 238 project. She was disappointed that there has not been much support for pedestrians and bicyclists that utilize Mission Boulevard and expressed safety concerns. She noted that current public transit conditions are impaired as well.

Barbara Heringer-Swarr commented on the recent newspaper article on the City's budget.

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CONSENT

Items 4 and 5 were removed for separate action.

1. Approval of Minutes of the City Council Meeting of November 25, 2003

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to approve the minutes of the City Council Meeting of November 25, 2003.

2. Approval of Equipment Lease Financing

Staff report submitted by Acting Finance Director Lewis, dated December 2, 2003, was filed.

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

Resolution 03-152, "Resolution Authorizing Execution of Equipment Lease/Purchase Agreement and Other Documents Necessary to Procure Equipment Lease Financing From La Salle National Leasing Corporation"

3. Adoption of a Resolution Accepting the Report and Adopting Findings Related to Fees Collected for Development Projects Subject to the Mitigation Fee Act

Staff report submitted by Acting Finance Director Lewis, dated December 2, 2003, was filed.

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

Resolution 03-153, "Resolution Accepting the Report and Adopting Findings Related to Fees Collected for the Development Projects Subject to the Requirements of the Mitigation Fee Act"

4. Revision of the Fine and Bail Schedule for Parking Violations

Staff report submitted by Administrative Analyst Davis, dated December 2, 2003, was filed.

Council Member Hilson commented that most of the fines for commercial vehicles have risen slightly or not at all while those for the general public have risen significantly. He noted specific examples in the report. He asked for an explanation.

City Manager Armas stated that staff compared and evaluated the fees with what other comparable jurisdictions have in effect. He said other communities might not be adjusting those



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fees either.

Council Member Hilson commented that it seems that some violations are being treated differently than others. He then asked about the change in fees for large truck over-parking. He added that there seemed to be unfairness built into the structure.

Acting Chief of Police Dwyer explained the process used to determine the proposed fees, noting that jurisdictions with similar code sections were compared and where Hayward's current fee differed. Where there is no increase either our City was higher or the other cities did not have comparable code violations. He strongly urged that Council review the fees more frequently. He is proposing bringing back the fee structure every few years.

Council Member Dowling thanked the Chief and Department for doing the survey. He asked about enforcement of illegal parking in disabled parking spaces.

Acting Chief of Police Dwyer commented that the Department does enforce this violation through citing vehicles parked with no visible placard, and two, those people whose placards were misplaced. He noted that the new \$25 processing fee for those providing proof of valid disabled parking, is time-consuming and costly to the City of Hayward.

Council Member Henson asked about the differences between the California Vehicle Code and the Hayward Municipal Traffic Code.

Acting Chief of Police Dwyer explained that the State has set maximum fees above which the local traffic codes cannot go. He noted that they did find a few fines, which had to be lowered in order to meet the State maximum. He added that the local court jurisdiction must approve the fees and bail schedule.

Council Member Rodriguez asked about 'improper' parking fees that seemed rather high.

Acting Chief of Police Dwyer commented that they are more defined in the California Vehicle Code.

Council Member Ward asked about enforcement at restricted areas. He asked when the comparable cities raised their fees and asked when this Council should consider increasing fees again.

City Manager Armas noted that staff presented a proposal to Council a number of months ago to increase enforcement on some areas that were posted. He commented on their success in these areas to the extent that various businesses have signs on their doors alerting customers not to park on the street during those hours. Staff added that many of the jurisdictions raised fees within the past year and a half.

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Council Member Hilson moved the item, seconded by Council Member Henson, with the following increases from \$56 to \$84, sections 6.32; 6.33; 6.37 and 6.38, which he felt would be reasonable and fair to the community.

Although he seconded the motion, Council Member Henson noted that he was not sure of a specific amount. He asked Council Member Hilson to explain the reason for the increases.

Council Member Hilson stated that he felt they were fair. He compared these fees to others and felt these were disproportionately low. This is an effort to insure a fair and safe community.

City Manager Armas suggested excluding those from changes tonight. He suggested allowing staff to confirm whether there are limitations based on the Vehicle Code and to defer action on those items at a future date.

Council Member Hilson agreed to amend his motion to exclude those sections. As the seconder, Council Member Henson agreed.

Council Member Ward asked why only those four sections.

Council Member Hilson was discussing only those specific to commercial vehicles.

It was moved by Council Member Hilson, seconded by Council Member Henson, and unanimously carried to exclude Sections 6.32, 6.33, 6.37 and 6.38 at this time and adopt the following:

Resolution 03-154, "Resolution Approving Revisions to the Fine and Bail Schedule for Parking Violations"

Council Member Ward then asked the reporter from the Daily Review to assist the City of Hayward in providing further information to residents regarding the increases in fines.

5. Authorization to Accept Homeland Security Grant and Appropriate Related Funds

Staff report submitted by Administrative Analyst Davis, dated December 2, 2003, was filed.

Council Member Henson commended Interim Chief Dwyer and the Police Department for securing these funds. He noted the difficulty in obtaining this funding and highlighted how the funding will be used. He suggested further pursuit in funding citizen corps efforts in preparedness.

In response to a question from Council Member Rodriguez, City Manager Armas explained that the funding would be used through the Community Policing Office of the Department of Justice so that it could be used for either Homeland Security or Community Policing efforts.



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

Resolution 03-155, "Resolution Authorizing the City Manager to Accept the U.S.D.O.J.C.O.P.S. Homeland Security Overtime Program Award and Amending Resolution 03-091, as Amended, the Budget Resolution for Fiscal Year 2003-04, Relating to a Supplemental Appropriation of Funds for the Homeland Security Overtime Program"

LEGISLATIVE BUSINESS

6. Reconsideration of Decision Regarding Medical Marijuana Dispensaries

Staff report submitted by City Manager Armas, dated December 2, 2003, was filed.

City Manager Armas noted that the Council voted to reconsider its decision regarding the number of dispensaries. In the interim, staff visited those that were previously discussed. He reiterated the recommendation of the task force to keep two facilities. He made a recommendation based on the discussions with the operators and the public testimonies. The recommendation was to keep the two facilities, the Local Patients' Cooperative and the Hayward Patient Group (Hayward Hempery), for a three-year period with certain ground rules. The Hayward Patient Resource Center (HPRC), operated by Jane Weirick, will be granted a one year period with the proviso that if either one of the two facilities closes prior to December 2004, HPRC can continue to operate through that extended period. He reported that he had spoken with the Hayward Patients Resource Center operator, Ms. Jane Weirick, and that she would prefer a longer period but that this compromise is acceptable.

Council Member Ward commented on the phrase 'grandfather.' He indicated that he thought legally that implies something has been in operation for a period of time. By 'grandfathering' a newer more recent establishment, it seems to be in conflict with that statement. He then commented on a memo presented to Council which was requesting another newer facility to be included into the 'grandfathering.' He then asked how they were defining the term.

City Manager Armas indicated that the recommendation is to provide an opportunity for those facilities established and being considered at the time the Task Force was meeting. When considering a new operation or one established at any time, but not included in the discussions, the position of the City of Hayward is to see that these other establishments cease operating and steps would be pursued to insure that.

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Council Member Ward reported that he looked at another facility and was told by the operator that it has been in existence longer than any of the ones to be grandfathered. Which raised a question in his mind that if all the facilities mentioned have been operating for the same amount of time, what is the difference.

Mayor Cooper opened the public hearing at 8:52 p.m. and asked that those who had spoken previously keep their remarks short since the Council has considered this issue for the past three weeks as well as at a recent work session. She cautioned against the manipulation of elderly and very ill patients.

Curtis Hepner, a cannabis patient, asked the Council to continue with three centers.

Janeen Dunbar spoke in favor of the Hayward Patients Resource Center. She discussed the responsibility of being a caregiver.

Paul Baerwald stated that he has worked at all three of the clubs and spoke in their support.

Rick Trullinger spoke as a resident and business owner, he praised the compassion and understanding of this Council. He spoke in favor of maintaining all three facilities in the spirit of Proposition 215. In response to a question from Council Member Ward, he was not against additional facilities. He said that the fourth dispensary is talking about moving into the County.

Dennis Roberts stated that he is an attorney experienced in establishments of this nature. He commented on the legal concept of 'grandfathering' of establishments. Businesses operating prior to any legislation operate under no guidelines. If guidelines and regulations are then established, you need to recognize that prior to the law, that is the point at which you say, everybody who is operating here, up until the legislation, is, by definition, 'grandfathered in.' He suggested changes to the zoning regulations which cluster the businesses in one area or spread them out within yards of each other. He suggested that having arbitrary or capricious reasons for grandfathering could invite lawsuits. He added that he was troubled at what might develop from this Council's action.

Alberto Lens, having spoken at a prior public hearing, indicated that he is a cancer survivor and that it is better to have such dispensaries than for one to seek marijuana in the streets. He commented on the number of people who would be enabled by these services.

Mayor Cooper closed the public hearing at 9:08 p.m.

Council Member Dowling moved the staff recommendation. He commented on the concept of "grandfathering," and understood that the Task Force looked at these three existing facilities. The three suggested in the recommendation are those previously considered with the newest having been established in a new location with the same patient base, the same employees, and the same equipment. He suggested it might be time to vote and move on.

City Attorney O'Toole explained that the use of the term "grandfather" was from a choice of



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words for lack of a better definition or term. Currently the City's zoning does not allow this type of use in this zone. What the Council is directing staff to do is to not take action against the three existing facilities for a certain period of time. The basis and rationale for this action is the conflict that exists between the State and Federal law.

Council Member Henson asked that staff clarify its recommendation.

City Manager Armas explained that the recommendation was slightly different from that of the Task Force. He summarized the differences noting that the Task Force was in favor of recommending that two facilities, the Hayward Patient Group and the Local Patient Cooperative, not be pursued for closure action. What is different is that the third facility, the Hayward Patients Resource Group, which was to move to the County and did not, is still in Hayward on Foothill Boulevard. The recommendation is that the three-year period be applied to the first two, and a one-year period be applied to the latter, unless one of the other facilities should cease operation, at which point this dispensary could be allowed to continue in that time frame.

Council Member Hilson stated that it needs to be clear that any other facility that operates continue to operate under the guidelines as pointed out by the City Attorney. Any other condition would constitute a closure. He urged that all parties be required to sign an agreement to this end.

Council Member Jimenez asked about the fourth facility and clarification for the motion.

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried by the following roll call vote to approve the number of medical marijuana dispensaries in the City of Hayward as recommended by staff. The recommendation is to keep the two facilities, the Local Patients' Cooperative and the Hayward Patient Group (Hayward Hempery) for a three-year period with certain ground rules. The Hayward Patient Resource Center (HPRC), operated by Jane Weirick, will be granted a one year period with the proviso that if either one of the other two facilities closes prior to December 2004, that HPRC can continue to operate through the remaining period.

AYES: Council Members Jimenez, Hilson, Rodriquez,
Dowling, Henson
MAYOR Cooper
NOES: Council Member: None
ABSENT: Council Member: None
ABSTAIN: Council Member Ward

7. Introduction of Ordinance to Adopt Revised Sanitary Sewer System Code

Staff report submitted by Deputy Director of Public Works Ameri,
dated December 2, 2003, was filed.

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Deputy Director of Public Works Ameri made the staff report and responded to Council questions.

Mayor Cooper opened and closed the public hearing at 9:22 p.m.

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

Ordinance 03-__, “An Ordinance Amending Chapter 11, Article 3 of the Hayward Municipal Code by Adopting a Revised Sanitary Sewer System Code”

8. Hayward Traffic Code Change

Staff report submitted by Traffic Bureau Sergeant Akacsos, dated December 2, 2003, was filed.

Traffic Bureau Sergeant Akacsos made the staff report, noting that this would provide authority to the Police Department to enforce white lane parking specifically in front of the elementary, junior high and high school zones. Currently, the Police Department can only enforce the white zones between the hours of 9 a.m. and 6 p.m. This has been a problem since the safety of school children is in jeopardy as delivery of school children starts at 7:30 a.m. in the morning.

Council Member Rodriguez expressed concern that she would like to see that school personnel monitor the delivery of children. It would be advantageous to have a stipulation that someone from the school be present to assure that the children actually arrive safely inside the school front door. She said she might ask the school board to consider requiring this and making it a priority.

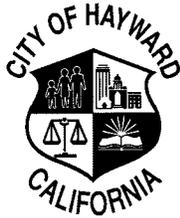
Council Member Henson asked about the restriction being changed from 9 a.m. to any time that is deemed necessary from Monday through Friday. He discussed configurations in front of the schools and was assured that the enforcement would take place on public streets in front of schools.

Council Member Dowling asked whether staff had discussed this change with the school district. It was noted that the district requested firmer enforcement. The Police Department and the school district will make notification to parents after the holidays.

Council Member Hilson asked for clarification on the hours and suggested that it might be clarified further to state “24-hours a day.”

Chief Dwyer responded that this ordinance already exists. The language relating specifically to schools was included in the change.

Council Member Jimenez asked what the fine is for such a violation. It was noted that the fine is



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included in the newly revised fee schedule and is \$35.

Mayor Cooper opened the public hearing at 9:34 p.m.

Al Reynolds commented on his experience on Thayer Street and urged parents to take precautions when dropping off their children.

Mayor Cooper closed the public hearing at 9:35 p.m.

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

Ordinance 03-__, "An Ordinance Amending the Hayward Traffic Code (Ordinance No. 100 C.S., as Amended) by Approving a Change to Section 6.01.3 Relating the White Zone"

9. Introduction of an Ordinance Making Revisions to the Municipal Code Regarding Public Works Contracts (*continue to 12/16/03*)

Staff report submitted by Deputy Director of Public Works/Utilities Ameri, dated December 2, 2003, was filed.

With no requests to speak, Mayor Cooper opened and closed the public hearing at 9:38 p.m. and asked for a motion to continue this item to December 16.

It was moved by Council Member Jimenez, seconded by Council Member Henson, and unanimously carried to continue the item until December 16, 2003.

COUNCIL REPORTS

There were no Council Reports.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 9:39 p.m. with Council Member Jimenez requesting that the meeting be adjourned in memory of Attorney Myron Johnson, a former City employee.

Mayor Cooper announced that the next regular meeting will be on December 16.

APPROVED:

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Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward