



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 14, 2004, 8:00 p.m.**

MEETING

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

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Halliday, Ward, Dowling, Henson
MAYOR Cooper
Absent: COUNCIL MEMBER Quirk

Mayor Cooper reported that Council Member Quirk was present for the Closed Session, but would not be present for the evening meeting.

PRESENTATION: Business Recognition Award

The City of Hayward presented the Business Recognition Award for September 2004 to Costco Business Center located at 22330 Hathaway Avenue. Hayward Costco opened as a Business Center in 1997 and is also open to the general public. They currently employ 239 people, 55% full-time and 45% part-time, many of whom live in Hayward. The Hayward Costco Business Center is the top performer of the 5 Costco Business Centers. Additionally, Costco Wholesale Industries, a division of the company, operates manufacturing businesses, including special food packaging, optical laboratories, meat processing, and jewelry distribution. These businesses provide members with high quality products at lower prices. Hayward Costco sales have increased 5 times since opening in 1997. They average 1,000 shoppers per day. The Business Recognition Award for September 2004 to Costco Business Center for the outstanding contributions Costco has made by contributing to the economic well-being of the Hayward community and providing affordable, quality products to Hayward businesses and residents. Gene Laughery, Costco Hayward Warehouse Manager, accepted the award on behalf of Costco, and he thanked the Council for this honor and recognition.

PUBLIC COMMENTS

Linda Bennett submitted a statement and informed the Council that a subdivision is being developed on Crow Creek that may impact the watershed that directly affects the flow of the San Lorenzo Creek through Hayward. As a member of the Friends of the San Lorenzo Creek, she reported that the EIR mitigation measures are not effective and asked that the City consider it. She pointed out that in 1998 there was some flooding on City streets due to the Five Canyons development.

Council Member Halliday and Mayor Cooper asked staff to see if Council needs to provide input. City Manager Armas responded that staff will take a look at it and see if it directly impacts the City.

Council Member Jimenez thought that Army Corps of Engineers had jurisdiction over the creek, but Ms. Bennett noted that this subdivision is requesting a variance on the required setbacks from the Board of Supervisors and the Alameda County Flood Control.

Former Council Member Doris Rodriguez read from an editorial that was in an August issue of the San Francisco Chronicle regarding the recall of Supervisor Sophia Maxwell. She agreed with what the article stated that recalls should be used when there is serious misconduct. However when there is artificial rationale, it is a waste of time, money and energy and impacts the solving of real problems of this City. She also commented on Sheriff Plummer's comments and spoke in opposition to his demanding the removal of the Council and the City Manager. Lastly, she commended the Hayward Police Department.

Ben Bruno commented on last week's Council meeting, stating that it was the best meeting that he has attended. His view was that, in general, after the public comments, the Council meetings are pretty boring and bland. He also commented on the Brown Act and using etiquette. He objected to the behavior of certain council members while he is speaking. Lastly, he appreciated Council Member Henson for asking to review the investigative documents related to the Police Department.

Barbara Sacks reported on her recent vacation and the substantial miles she drove across the United States. She observed that many shopping centers are poorly conceived with little or no landscaping in contrast to how Hayward regulates its development.

Jason Moreno commented about last week's Council meeting and his experience with the time limits set for public comments.

Barbara Heringer-Swarr commented on a video series that is being presented at Chabot College. She described several films that will be shown and indicated that she maintains a mailing list for those interested.

Harry Bruno, chairman of the recall, commented on the current recall, the Police Department investigation and reiterated comments made by a previous speaker related to Council etiquette.

Jim Forsyth spoke in opposition to the recall of Mayor Cooper. He stated that recalls were designed to recall an elected official only when there is a malfeasance in office, such as an illegal or dishonest act.

Linda Pratt, Director of COMMPRE, suggested that the Council include public members in addition to the Planning staff to review and make recommendations relative to the City's policy on ABC licenses.

James Jardine showed copies of official notices of public hearings related to the benefit districts on Picea Court.

Dennis Houghtelling urged the Council to review the police investigative report in detail and consider questions that he read. He submitted a list of those questions for the Council to consider during its review.

Stephanie Roberson reported that the restaurant "Chunky Cheese" serves alcohol.



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Jim Drake spoke in favor of COMMPRE's efforts against alcohol outlets. He spoke against the service of alcohol in fast food shops.

CONSENT

Consent Items 1 and 2 were removed for further discussion.

1. Approval of Minutes of the City Council Meeting of September 7, 2004

Barbara Heringer-Swarr asked that the Public Comment made by Dennis Houghtelling be more specific and asked that her comments be revised.

Council Member Dowling noted that on page 6, the owner of Country Liquors spoke in opposition, not in favor of the Crossroads Market.

The minutes were continued to the next agenda.

2. Final Map Tract 7040 – Frederico Campos, O'Neil Commons Development, LLC – Approval of Final Map, Authorize the City Manager to Execute a Subdivision Agreement – Property Located at 24709 O'Neil Avenue

Staff report submitted by Development Review Engineer Gaber, dated September 14, 2004, was filed.

Suzanne Cox commented on the current conditions on her street, including traffic and parking, stating that O'Neil Street is too small to accommodate any new development. She stated that her neighborhood is being rundown with over-development. She also stated that due to over parking, the street becomes too narrow for emergency vehicles to pass, and children tend to play in the street as there is no play area.

Council Member Henson asked if the issues raised by Ms. Cox had been addressed by staff and expressed an interest in continuing this item so they could.

Staff noted that this item was approved over three years ago and this is a final step of that development process with no further action needed. It was also noted that there is ample opportunity for public input on applications during the planning and council review process that requires public hearings.

Council Member Halliday suggested that this street and other small lot developments be included in the annual tour that the Council and Planning Commission conduct annually, noting that it is essential to review what has been approved in retrospect, which helps make better decisions on future development.

Council Member Ward acknowledged Ms. Cox for her strong advocacy towards improving her neighborhood and commended her on her home. He noted that this development was approved three

years ago, with no further recourse. However, he agreed with Council Member Halliday that the City continually review its planning decisions so that it can learn from it.

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

Resolution 04-135, "Resolution Approving Final Map for Tract 7040 and Authorizing the City Manager to Execute a Subdivision Agreement"

HEARINGS

3. Use Permit Application No. PL-2004-0010 – Alex Aguilar (Applicant)/Jim Morris (Owner) - Appeal of Planning Commission's Approval of a Request to Operate a Nightclub in Conjunction with a Restaurant in the CC-C (Central City-Commercial) Zoning District – The Property is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek

Staff report submitted by Associate Planner Pearson, dated September 14, 2004, was filed.

Planning Manager Anderly made the report, pointing out that the property for the Kumbala Restaurant and Bakery is in a central city commercial district that allows entertainment venues. It is located along the San Lorenzo Creek on the north side with parking behind the building and to the south. She depicted the site plan, the conceptual floor plan and reported that the planning and police departments have worked to develop the conditions of approval as submitted. The applicant has agreed to pick up litter on the San Lorenzo Creek area. The hours of operation require closing by 2 a.m. and no alcohol services after 1 a.m. Security guards will be required for this facility. No outside promoters associated with this business will be allowed. The applicant has requested to play background music, which the Council will need to consider, which would be separate from live nightclub music. She visited the applicant's Fremont nightclub and spoke with the Fremont Chief of Police, who informed her that the applicant is responding to conditions set and supported his efforts. She indicated that the Council will need to approve a finding for public convenience as there is an over-concentration of ABC licenses issued in this census tract. She noted that this is in the downtown area, where it is expected to have restaurants that serve alcohol.

Council discussion ensued. There was concern about the use of qualified security guards, the Police Chief's discretion on the number as well as parking. There were comments on the window size along the creek, which would be 10 by 4 feet high, to take in the ambience of the creek. There were also concerns related to the logistics when customers with minors are present during the hours when the restaurant transitions to a nightclub and how that would be enforced. Staff noted that the Police Department will be monitoring the premises and that the operator will need to be diligent when the restaurant transitions to the nightclub. Parking will improve as there are proposed plans for expansion, including the area behind Buffalo Bill's.

Council Member Dowling asked for an explanation of Conditions No. 8D and 9, which seemed to be in conflict, one in regards to exiting and entering and the other having to do with lines of patrons entering. City Manager Armas responded the lining of patrons for entering would apply to those entering the



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nightclub to alleviate noise issues after the restaurant closes.

Council Member Dowling noting the number of conditions of approval, suggested a periodic review at least for the first year. This is a new concept for Hayward where nightclubs will be open on Fridays and weekends, when staff is not present to monitor.

City Manager Armas commented that the establishment will be monitored by the Police Department and the City is willing to work with the operator to prevent problems. He suggested Council add a provision to review the application in a year if it so desired.

Council Member Henson asked about the 8 a.m. opening and asked whether this was sufficient for operating the bakery part of this application. He also asked about the concept of background music and its difference from the nightclub activity. In response, Planning Manager Anderly depicted the conceptual interior plan for the restaurant.

In response to Council Member Halliday's concern related to not permitting an entrance from the back of the restaurant, Planning Manager Anderly indicated that the intent is for buildings to be attractive as well as provide the shortest route from the parking area.

Council Member Ward suggested that the condition of approval related to clean up of the San Lorenzo Creek be revised.

Mayor Cooper opened the public hearing at 9:42 p.m.

Elisa Marquez submitted a card, but did not speak.

The following individuals spoke in support of the applicant, citing the revitalization of the downtown, additional tax dollars, and a safe, vibrant entertainment venue operated by a family-owned business:

Ector Ortega
Samuel Fuenzalida
Sergio Saenz
Delmar Holguin
Joel Pena
Ande Pena

Tony Marjarrez stated that he will be providing the nightclub security as he currently works at Mangoes in Fremont. In response to Council concerns, he commented that the guards used will be trained and that on occasion off-duty police officers could be used. He addressed the security concerns related to parking, and loitering in the Creek area as well as access to the nightclub. Technology will be provided to monitor and used for surveillance. The access door in back will be locked when the restaurant transitions to a nightclub. He described a number of methods used to address typical intoxication issues.

The following spoke in support of Kumbala's and stated that they are regular customers of the Fremont nightclub, Mangoes, operated by the applicant, Mr. Aguilar:

Gloria Robinson
Esmeralda Rodriguez
Despina Scalise
Yolanda Rodriquez

Jason Moreno suggested that staff monitor noise that may impact the animals in the nearby pet shop. It was his opinion that having only one entrance at the front of the building on Foothill Boulevard could increase gang activity.

Mr. Aguilar, applicant, stated that he has worked on this project for over a year. His operation will need over fifty employees and some of his family members will also work there. He stated that he met with COMMPRE to try and resolve issues, noting that safety and security will be a priority and that state of the art surveillance cameras will be utilized. He commented on his operation in Fremont and has made arrangements to alleviate the problems that have occurred there. He noted that neighboring businesses anticipate his business opening. There are plans to improve the Creek with additional lighting and removing trees and providing a walking path. He discussed the hours of operation and a portion of some of his business plan. He asked that dancing be re-considered. He asked that the 1:00 a.m. be extended at 1:30 a.m. He felt that this will be a disadvantage from other restaurants.

In response to Council Member Henson's questions about the police calls in the City of Fremont and the bakery function of Kumbala, Mr. Aguilar reported that the bakery part of the project is a friendly market effort, and would provide fresh bakery products for his restaurant use, but not for volume production. He reported that there will be Monday night footballs events and the music will vary as a way of attracting beyond the Hispanic culture.

In response to Council Member Dowling's questions, Mr. Aguilar reported that the bar tenders will be provided training to prevent sales to minors and will also rely on technology such as, "ID verifier," a device that connects to a modem to verify individual identifications. The applicant will be utilizing a professional security service that will provide security guard certification including fingerprinting and background checks. Lastly, Council Member Dowling suggested wrist bands be used for nightclub entrance to exclude minors already in the restaurant.

In response to Council Member Halliday's question related to the nightclub access, Mr. Aguilar described how additional doors will be installed to alleviate entrance issues.

Police Chief Lowe reported that there were 23 reported calls for service at the Mangoes in Fremont since January that involved auto thefts, drunkenness and loitering. The support letter from the Fremont Police Department was written last year prior to the 2004 issues. He reiterated issues that are addressed in the various conditions of approval.

The following individuals spoke in opposition to operating the restaurant and bakery as this could increase the chances of underage drinking, increase the use of false identification and the concern of homeless in the creek, sufficient security guards and dim parking lots.



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John Mallory
Liz Morales of COMMPRE
Destiny Vargas and Isabel (no last name) of Eden Youth Advisory Council
Rochelle Collins of Project Eden
David Cota of COMMPRE
Meagan Hobbs of COMMPRE

Mayor Cooper closed the public hearing at 10:54 p.m.

Council Member Ward was in agreement with the clean-up of the creek, but felt that staff modify it some. He felt that Police Chief Lowe had made a compelling point in respect to the 1 a.m. closure and in the future Mr. Aguilar could return and modify the use permit. This location is in dire need of some help and activity. He stressed the importance of adhering to the condition of approvals.

Council Member Henson felt that there should be a larger discussion on our restaurants and the relationship of alcohol. He agreed with his colleagues that this area has been dormant for some time. He stated that the owner has a tremendous responsibility to uphold the conditions of approval and urged that the lighting be reviewed to create a safer environment.

Council Member Dowling expressed his interest in having a safe entertainment venue in the downtown. He emphasized that there are 61 Conditions of Approval and he strongly urged Mr. Aguilar to abide by them. He thought that the background music could be allowed and asked the maker of motion to make that a part of the motion as well as require a sixth month review. Both the maker and the second agreed to add these to the motion.

Council Member Halliday stated that she would not be voting in favor of this project. She felt that the applicant was trying to do too much. She was concerned with having minors in the evening after the restaurant closes and felt that pool tables and video games are too enticing on youth. She agreed with COMMPRE's concerns and issues. Lastly, she reported that she met with Mr. Aguilar prior to this meeting.

It was moved by Council Member Jimenez, seconded by Council Member Ward, and carried, with Council Member Quirk to adopt the following with two additional modifications: 1) that background music be allowed to be played when the nightclub is not in operation; 2) that there be a sixth month review:

Resolution 04-136, "Resolution Denying the Appeal of Upholding the Planning Commission's Approval for Use Permit PL-2004-0010"

AYES: Council Members Jimenez, Quirk, Ward,
Dowling, Henson

MAYOR Cooper
NOES: Council Member Halliday
ABSENT: Council Member Quirk
ABSTAINED: None

There was a five minute recess at 11:05 p.m.

4. Amendment of Benefit District 400-92, Tract 4007 to Oakes Drive Sanitary Sewer Benefit District, to Annex Two Parcels into the District - Schumate (Applicants) and Utility Service Agreement 03-06 – Schumate (Applicants/Owners) – Authorize the City Manager to Execute Utility Service Agreements for Sanitary Sewer Service for Properties Located on Picea Court

Staff report submitted by Development Review Engineer Gaber, dated September 14, 2004, was filed.

Development Review Engineer Gaber made the staff presentation and responded to questions.

Mayor Cooper opened the public hearing at 11:13 p.m.

James Jardine stated that he was speaking on behalf of the Board and it does not support this action. He submitted a statement that enumerated the issues of the Homeowners Association.

Melba Bertush, Secretary of Castle Homeowners, stated that the Shumates should be allowed the service, but conditions of approval need to be in place to insure future compliance. She urged corrections such as replacing the retaining wall that consists of over 500 tires.

Ken Everett reported that there are tire walls in other locations in Hayward. He felt that the current issues are personality conflicts. He stated that he was a general contractor, and that leach fields are not adequate; he urged approval of the service agreement. He spoke in support of the Shumate family.

Mrs. Shumate noted that some of the issues have been addressed. She stated that she has been waiting for over nine months and this is not a small expense on her part and the county health department confirms her need.

Council Member Jimenez suggested connection through the Oro Loma District.

Council Member Henson clarified that this is a connection that requires a utility service agreement that anyone could contract for and includes the LAFCO process.

Mayor Cooper closed the public hearing at 11:34 p.m.

It was moved by Council Member Ward, seconded by Council Member Dowling, and carried with Council Member Quirk absent, to adopt the following:

Resolution 04-137, “Resolution Amending Benefit District 400-92, Oakes Drive Sanitary Sewer Benefit District, to Annex Two Parcels into the District, Execute Utility Service Agreement 03-06 and a Public



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Street Improvement Agreement”

COUNCIL REPORTS

There were no Council reports.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 11:35 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward