



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 20, 2007, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Sweeney at 8:03 p.m., followed by the Pledge of Allegiance led by Council Member Henson.

ROLL CALL

Present: COUNCIL MEMBERS Rodriquez, Quirk, Halliday, Ward, Dowling,
Henson
MAYOR Sweeney
Absent: COUNCIL MEMBERS None

PUBLIC COMMENTS

Rudy Grasseschi spoke against the Hayward Downtown Loop project. He expressed his concern that the proposal for the loop has already been determined. He spoke against one-way streets in the downtown and that as a business owner felt that this would ruin the downtown businesses. He also asked about the bicycle lane signs in the downtown.

Mayor Sweeney responded that the reason for last week's work session was that staff needed direction on several changes to the preferred alternative. He noted that the environmental process and reviews continue. City Manager Armas reported that the environmental documents will be released at the end of April.

Crystal Suzanne Mitchell, a resident of D Street, spoke against expanding D Street, a recent incident she experienced, and the traffic issues she faces as a student bicyclist. She spoke on her interest on the historical value of the downtown.

CONSENT

1. Approval of Minutes of the City Council Meeting of February 13, 2007

It was moved by Council Member Henson, seconded by Council Member Ward, and unanimously carried, to approve the minutes of the City Council Meeting of February 13, 2007

2. Resignation of Khalid Akil White from the Human Services Commission

Staff report submitted by City Clerk Reyes, dated February 20, 2007, was filed.

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

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Resolution 07-016, "Resolution Accepting the Resignation of Khalid Akil White from the Human Services Commission"

3. Gas Tax and Measure B Pavement Rehabilitation 2006-07: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Fakhrai, dated February 20, 2007, was filed.

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

Resolution 07-017, "Resolution Approving Plans and Specifications for the Gas Tax and Measure B Pavement Rehabilitation 2006-07 Project, Project Nos. 5130 and 5160"

4. Fire Station No. 2 Workshop Conversion and Fire Station No. 6 Women's Bathroom Addition: Approval of Addendum, Award of Contract, and Appropriation of Additional Funds

Staff report submitted by Deputy Director of Public Works Fakhrai, dated February 20, 2007, was filed.

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

Resolution 07-018, "Resolution Approving Addendum No. 1 and Awarding the Contract to Gilbert-Morad Engineering & Construction, Inc., for the Fire Station No. 2 Workshop Conversion and Fire Station No. 6 Women's Bathroom Addition Projects, Project Nos. 6945 and 6946"

Resolution 07-019, "Resolution Authorizing an Increase in the Professional Services Agreement with Famous Designs Architects, Inc., for the Fire Station No. 2 Workshop Conversion and Fire Station No. 6 Women's Bathroom Addition Projects, Project Nos. 6945 and 6946"

Resolution 07-020, "Resolution Amending Resolution 06-081, As Amended, the Capital Improvement Budget Resolution for Fiscal Year 2006-07, Relating to an Appropriation of Funds for the Fire Station No. 2 Workshop Conversion and Fire Station No. 6 Women's Bathroom Addition Projects, Project Nos. 6945 and 6946"



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HEARINGS

5. Text Amendment No. PL-2006-0544 – Initiated by the Planning Director – Proposal to Amend the City of Hayward Subdivision Ordinance, Sections 10-3.350 through 10-3.395, Condominium Community Apartment, and Stock Cooperative Subdivisions – Governing Conversion of Residential Rental Complexes to Ownership Housing (*continued from 1/23/07*)

Staff report submitted by Planning Manager Rizk, dated February 20, 2007, was filed.

City Manager Armas noted that this is the continuance of a January public hearing. Planning Manager Rizk highlighted the four provisions as instructed by the Council at that meeting: 1) a provision that allows an exception to the parking requirements for conversions of three and four unit complexes; 2) a clarification of the energy conservation standard for furnaces/heaters in converted units; 3) a provision that the converted units to be owner-occupied; and, 4) add the extended lease option and relocation and moving assistance for elderly and disabled occupants upon vacancy of their units.

Building Official Elliot responded to Council Member Dowling's questions related to energy star ratings for heaters. She indicated that electric heaters do not have energy star ratings and commented on forced air heaters. She noted that this provision in the ordinance is an effort to allow some reasonable energy efficiency compliance.

Council Member Henson asked staff to speak to the owner occupied requirement related to the Davis Stirling Act. City Attorney O'Toole spoke on the direction of the court that does not allow for an undue burden on the owner. He commented on a recent case and noted that the home owners association must determine the "reasonableness of a hardship" by an owner to rent. There was additional discussion related to this and it was questioned whether other jurisdictions have similar home ownership requirements.

Council Member Halliday commented on the correspondence that was received, in particular from Chris Zaballos, related to the tenant assistance package. She expressed that the tenant assistance program in the ordinance is quite generous. She reiterated the Council's purpose to encourage home ownership, but asked for staff input regarding any alternatives.

There was continued discussion. Council Member Ward agreed with working on improving the language in the ordinance that addresses relocation. He referred to correspondence from Killian Byrne of Vasona Management, who opposed the language where a tenant is entitled to moving expenses prior to the approval of the tentative map. After discussion, there was consensus to refine the language so that the relocation fees would be paid at time of the final map approval.

Mayor Sweeney stressed the importance of an energy efficient community. He suggested that there be standards that are applicable for wall heaters or perhaps replacing them with energy efficient ones.

Mayor Sweeney opened the public hearing at 8: 48 p.m.

Dwight Roberts of BSR Realty, Inc., commented from a letter he had submitted earlier, noting the areas of the ordinance with which he was in agreement. He suggested that the ordinance exclude less than five units; require a one year warranty on existing hot water heaters and furnaces as there are no current efficiency standards, and parking exceptions in apartment conversions where there is an impact to open space or additional parking area available.

Paul Russo expressed his concern and spoke against the language for extending the leases for the elderly and disabled and stated that the ordinance seems to punish excellent landlords who desire to convert. He urged a five-year limit. He also asked for a clarification on the definition of disability. Mr. Russo agreed with the staff recommendation that the map be approved prior to tenant assistance.

Augusto Cano, the developer of the Rex Road project, asked that the ordinance be retroactive to apply to his project, which is pending, in particular in relation to the parking requirements. He asked for a clarification on the number of units that this ordinance would apply.

City Manager Armas responded that staff had recommended that the ordinance apply to all units including 3 or 4 in size. He noted that the Council agreed that there be some flexibility on parking at least one per each unit. In regards to Mr. Cano's request that the ordinance be retroactive, City Manager Armas noted that there are other issues that need to be addressed by the Planning Commission.

Mike Godfrey, Fremont Realtor, spoke against the tenant assistance program, stating that it was onerous and suggested a combined effort to include the City.

Timothy May, Rental Housing Association, was pleased to note that the City Council is ready to respond to developer needs with this open dialogue and commended staff and Council. He thanked Council Member Halliday for her willingness to revisit the relocation assistance package.

David Stark, representing Bay East Association of REALTORS, commented that condominium conversions will provide opportunity for home ownership. He was pleased with the flexibility of the Council in its efforts for balancing the needs of the elderly and disabled and the financial impacts on developers. He asked that the ordinance exempt three and four unit conversions. He urged that there be a case-by-case basis and urged the use of social services and providers to assist the disabled and elderly. He responded to Council questions related to limiting the lease to five years with \$2,000 for moving assistance, whether there is an interest to convert condominiums, and the Association's opinion on the owner occupied provision. He called attention to the ordinance that places the burden on the homeowners' association to require owner occupancy.

There was further discussion to limit the time to five years and receiving moving assistance during that time. When Council Member Rodriquez asked Mr. Stark to provide information on how many units are expected to be converted, he stated that the percentage could be closer to one percent of the current rental housing stock. Council Member Rodriquez strongly disagreed with



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labeling seniors and resented being placed in a particular category. She spoke strongly against grouping the elderly and the disabled as needing assistance, noting that many seniors and disabled residents are self-supporting and self-sufficient. She agreed with the five year limit for relocation.

Council Member Henson confirmed that there are resources to assist in the relocation program, but he preferred that the resources be provided to the tenants as part of the process. Council Member Dowling agreed with the idea in providing resources to tenants at conversion.

Chris Zaballos, representing Zaballos and Sons, Inc., reported that there are approximately 21,000 rental units in Hayward and commented that the average length of tenancy in his units is 24 months. He talked briefly on the original ordinance which he felt was onerous. He was satisfied with the outcome of the numerous sessions he was involved with to draft the proposed revisions, commenting that the revised ordinance provides protection for the elderly and disabled insures the necessary building upgrades and energy standards are met, insures fairness to existing tenants and encourages current renters to purchase the units. This ordinance is the needed incentive to convert and create entry-level housing to an expensive market. He spoke on energy efficiency conversion and the expense of replacing heaters. Mr. Zaballos agreed that the relocation assistance provides some fairness to that issue. He appreciated the work done on this ordinance, the comments by Council Member Rodriquez, and thanked the Council for their efforts.

Mayor Sweeney closed the public hearing at 9:31 p.m.

City Manager Armas stated that the original ordinance required life-long leases. He indicated that staff could not recommend a tenant assistance plan due to its ambiguity. He thanked Chris Zaballos for his participation in amending the current ordinance which required much give and take. He provided language for Council that was later included in the motion. City Manager Armas stated that staff will return to Council with language for consideration to incorporate the standards as published by the City. He assured Council that staff will work with the development community regarding the proposal for standards related to wall furnaces.

Council Member Quirk offered to make the motion, noting that it is not the intention of the Council to require the use of natural gas for heaters. He was pleased with the efforts of those who provided input and also pleased with the final outcome. He reiterated what the Council consensus was and which will be included in the ordinance as the inflation factor for the \$1,000 base, the sales price could be used in the reduction to the payment assistance, added language to clarify the inspection report, the parking exception be allowed for three or four units, and the added language that addresses energy and owner occupancy. Lastly, Council Member Quirk suggested that his motion would include language that the elderly and disabled stay five years, but be entitled to the relocation assistance package during that time. At his request City Manager Armas referred him to the definition in the ordinance as defined by the legal department, noting that this is the common definition.

Council Member Quirk moved, seconded by Council Member Rodriquez, to introduce the draft ordinance with a modification that the elderly and the disabled tenants be eligible for leases of up

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to five years and that during that time be entitled to the relocation assistance program. He also asked that the motion include City Manager Armas' two recommendations that: 1) on Page 16 with respect to 5 (aa) insert the word "gas" in front of "furnace." And add: "And that at the time of conversion all electric furnaces/heating units shall meet energy efficiency standards as published by the City of Hayward for electric furnaces in conjunction with the adoption of the electrical code." Staff will return to Council with language for consideration to incorporate the standards as published by the City; and 2) on Page 12 of the draft ordinance delete section (d) 2, under the requirements for the tentative map application, but maintain it in the section related to the final map requirements.

There was discussion on the owner occupancy requirement and what constitutes hardships should an owner find it necessary to rent the unit. After discussion, City Attorney O'Toole advised that perhaps the Council could consider that the owner occupancy provision be applicable for five years after purchase or sale or re-sale and during that time the particular hardship by the owner be considered. Council Member Henson moved to include the language as recommended by City Attorney O'Toole. Council Member Ward reported that this amendment responds to the issue as well as maximizes the ownership goals. It provides a sense of fairness and maintains some rights of the developer. Council Member Dowling confirmed that every purchaser would be subject to the five-year limit. He preferred the earlier suggestion, but this would be a compromise.

Mayor Sweeney spoke against this motion, stressing the home ownership goal of the City. He felt that the revised ordinance already addresses this and allows for hardships.

It was moved by Council Member Henson, seconded by Council Member Ward, and failed by the following roll call vote to include in the owner occupancy provision of the draft ordinance that it be applicable for five years after the purchase, sale or re-sale of a unit and that during that time the particular hardship by the owner be considered:

AYES: Council Members Ward, Dowling, Henson
NOES: Council Members Rodriguez, Quirk, Halliday
MAYOR Sweeney
ABSENT: None
ABSTAINED: None

Council Member Henson spoke strongly on his past experience in reaching home ownership goals. He feared that the home ownership provision could discourage conversions.

Council Member Dowling placed a motion to be considered by Council that addresses the senior and disabled issue. He desired to revise the provision related to the elderly and disabled to lease for up to five years with a \$2,000 assistance replacing the three months rent provision, and the \$2,500 assistance as provided in the draft ordinance. Both Council Members Halliday and Quirk commented against this motion.

Council Member Halliday hoped that the developer could use goodwill to direct tenants to City services. She commented that in regards to owner occupancy, grieved owners can use the court system. She agreed in maintaining home ownership, but noted there may be recourse. She would be in favor of the original motion.



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Mayor Sweeney commented that there needs to be better protections for seniors and the disabled.

It was moved by Council Member Dowling, seconded by Council Member Henson, and failed by the following roll call vote to amend the provision regarding the elderly and the disabled to allow a lease up to five years with a \$2,000 for moving assistance:

AYES: Council Members Ward, Dowling,
NOES: Council Members Rodriquez, Quirk, Halliday,
Henson
MAYOR Sweeney
ABSENT: None
ABSTAINED: None

City Manager Armas confirmed that the language for tenants on Page 10 would be revised to add a period after “five years” and delete the remainder of that sentence.

It was moved by Council Member Quirk, seconded by Council Member Rodriquez, and unanimously carried to adopt the following resolution and introduce the following ordinance, with a modification for the elderly and the disabled tenants to be eligible for leases up to five years and that during that time are entitled to the relocation assistance program. This motion includes City Manager Armas’ two recommendations that: 1) on Page 16 with respect to 5 (aa) insert the word “gas” in front of “furnace.” And that at the time of conversion all electric furnaces/heating units shall meet energy efficiency standards as published by the City of Hayward for electric furnaces in conjunction with the adoption of the electrical code. Staff will return to Council with language for consideration to incorporate the standards as published by the City; and 2) on Page 12 of the draft ordinance delete section (d) 2, related to the tentative map application, but maintain it in the section related to the final map requirements:

Resolution 07-021, “Resolution Approving the Negative Declaration and Text Change Application No. PL-2006-0544, Amending Sections 10-3.350 through 10-3.395 of the Subdivision Ordinance Governing Conversion of Residential Rental Complexes to Ownership Housing”

Intro Ordinance 07-_, “Ordinance Amending Sections 10-3.350 through 10-3.395 of the Hayward Municipal Code “Condominium Community Apartment, and Stock Cooperative Subdivisions” Governing Conversion of Residential Rental Complexes to Ownership Housing”

LEGISLATIVE BUSINESS

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6. Adopt Ordinance Amending the Municipal Code Section Related to Animal Control Regulations

Staff report submitted by City Clerk Reyes, dated February 20, 2007, was filed.

With no requests to speak, Mayor Sweeney opened and closed the public hearing at 9:58 p.m.

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

Adopt Ordinance 07-02, "An Ordinance Amending Certain Sections of Chapter 4, Article 4 of the Hayward Municipal Code and Inserting New Sections 4-4.49 and 4-4.56 Relating to Animal Control Regulations"

AYES: Council Members Rodriquez, Halliday,
Ward, Henson
MAYOR Sweeney
NOES: Council Members Quirk, Dowling
ABSENT: None
ABSTAINED: None

COUNCIL REPORTS

Council Member Halliday reported on a recent conference, "Everyone Home," she attended related to the county wide plan to eliminate homelessness within 10 years. She commented that there are five cities that have already adopted this ordinance besides Hayward including Oakland, Berkeley, San Leandro and Fremont. The forum provided substantial information on this topic and she suggested a future work session to discuss this matter be scheduled.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:02 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward