



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 26, 2008, 8:00 p.m.

MEETING

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

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney announced that a closed session was held and that there were no reports or announcements.

PUBLIC COMMENTS

Wynn Grcich, a resident of Union City, spoke against power plants and their emissions, such as ammonia, which will impact the health of residents. She urged Council's representative to BAWSCA, Council Member Quirk, to urge that board to take measures against such emissions. She also commented on an article written by Russell Blaylock related to health issues from water contaminated with metals.

Prior to consideration of the Consent Calendar, Council Member Quirk asked that Item 5 be discussed prior to Item 4, a Public Hearing.

CONSENT CALENDAR

Consent Item #2 was removed for further discussion.

1. Approval of Minutes of the City Council Meeting of February 19, 2008
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 February 19, 2008.
2. Authorize the City Manager to Enter into a Contract with the Bay Area Air Quality Management District and to Issue a Request for Proposals and Negotiate and Execute a Contract with a Consultant for the Preparation of a Climate Action Plan

Staff report submitted by Senior Planner Pearson, dated February 26, 2008, was filed.

DRAFT

Council Member Dowling asked about the data related to emissions, noting that automobiles cause about 40% of emissions. He asked for additional information on the inventory and was told he would be provided a summary. Senior Planner Pearson indicated that staff gathered the green house gas inventory information from websites of other cities. An emissions inventory was conducted in 2006 that calculated the community-wide emissions for 2005. He indicated that ICLEI-Local Governments for Sustainability assisted in providing complex computer models based on vehicle mileage as well as energy data provided by PG&E to complete the reports.

Council Member Henson indicated that Stopwaste is partnering with consultants to gather even more in-depth information as there is a new focus on climate action. Mayor Sweeney agreed that this information is important and the methodologies are consistently re-defined to provide a clearer picture of where the City stands in comparison to other communities.

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

Resolution 08-025, "Resolution Authorizing the City Manager to Issue a Request for Proposals and Negotiate and Execute a Contract for Preparation of a Climate Action Plan"

Resolution 08-026, "Resolution Authorizing the City Manager to Enter a Contract with Bay Area Air Quality Management District for Receipt of \$40,000 in Grant Funds for the Purpose of Climate Planning"

Resolution 08-027, "Resolution Amending Resolution 07-079, the Budget Resolution for Fiscal Year 2007-08, Relating to an Appropriation of Funds from Measure D Funds (Fund 215) for the Preparation of a Climate Action Plan"

3. Gas Tax Measure B Pavement Rehabilitation 2007-08: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Fakhrai, dated February 26, 2008, was filed.

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

Resolution 08-024, "Resolution Approving Plans and Specifications for the Gas Tax and Measure B Pavement Rehabilitation 2007-08 Project, Project Nos. 5135 and 5165, and Call for Bids"



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HEARINGS

4. Zone Change Application No. PL-2005-0536 and Use Permit Application No. PL-2007 – 0558 – Russ Pitto for Simeon Commercial Properties (Applicant)/Sim Vest Real Estate I, LLC (Owner) – A Request to Modify a Planned Development District to Allow Neighborhood-Serving Retail Center on a 1.5-Acre Parcel at Mt. Eden Business Park – Project Located at 26251 Industrial Boulevard Adjacent to and North of Highway 92

Staff report submitted by Associate Planner Camire, dated February 26, 2008, was filed.

Planning Manager Rizk made the report, noting that the action includes modifying the existing planned development district and allowing a conditional use permit associated with the sale of beer and wine. He reported that the Planning Commission vote was four to three. He related the past proposed uses and attempts to develop and reported that the developer anticipates a drive-through Starbucks and a 7-Eleven convenience store and perhaps a Jama Juice or Subway fast food. He depicted the proposed elevations. The major issue for this development is the proposed sale of beer and wine. Planning Manager Rizk also provided data related to the number of alcohol outlets per resident in that area. He outlined the findings for the conditional use permit for alcohol sales as it would not impair the character and integrity of the zoning district and surrounding area. It would not be detrimental to the public health, safety or general welfare and is in harmony with applicable City policies.

Planning Manager Rizk highlighted several of the conditions of approval that were discussed at the Planning Commission hearing and listed as Conditions of Approval #27 through #34 as recommended by the Hayward Police Department. One of them requires that no more than 5 percent of the floor area be used to display products containing alcohol and that there will be no display of alcohol beverage ads, nor can there be individual bottles or cans sold. The alcohol beverages must be kept separate from non-alcoholic beverages. Security must be required from 6 p.m. to 6 a.m. Planning Manager Rizk commented that Exhibit M includes the correspondence in support and Exhibit P as the opposition, which includes COMMPRE, the Fairfield Inn hotel manager and three property owners within the area. The staff recommendation includes the approval of the revised negative declaration and the conditional use permit.

Council Member Henson asked if there were other potential tenants that were considered. He noted that one of the conditions of approval is to utilize the existing business park security. Council Member Henson stressed the importance of constant surveillance at the convenience store and that this would not be acceptable for approval. The most critical issue for him was the sale of alcohol. He asked how much of the sales were for alcohol at a typical 7-Eleven convenience store and was informed that it is typically 15 percent of sales. He was not satisfied with the conditions of approval that restricts individual sales of alcoholic beverages as compared to multi-packed products. He expressed his concern on the site that is very isolated and could create a problem where there is currently none, such as the potential for robberies.

Police Chief Lowe explained that the reason for the multi-packing is that a customer could not easily open and begin drinking as they would having an individual bottle or can and standing in front of the store. One of his concerns was the isolation of the proposed 7-Eleven convenience store location and the State Rte. 92, San Mateo bridge ramp is so near that there is potential for robberies. Police Chief Lowe also reported that the Waterford Apartment complex has a high demand for police service and this convenience store location could attract loitering from that complex.

Council Member Dowling commented on the developer's efforts to attract businesses to this location. He referred to the comment about this site being isolated when it is next to Highway 92 and the amount of daily commuters along Highway 92. He would be asking the owner what efforts were made to attract sit-down restaurants. He commented on the success of the sit down restaurants at Southland Mall. He thought the Starbucks would be popular, but was not sure the convenience store would as it seems to bring problems to the area.

Council Member Halliday asked about the hours of operation and asked why the necessity for an all night operation. In response, Police Chief Lowe reported that there are problems, such as thefts, even when the liquor is locked after 2 a.m. She also commented on the pedestrian walking path and felt that walking in front of a loading dock would not provide a pleasant walking experience for one walking to the hotel.

Council Member Ward commented on Exhibit C that was dated two years ago and asked if the applicant had done any additional contacts since then. He asked that the developer provide additional information related to the restaurant use. He emphasized that generally 7-Eleven convenience stores seem to have debris in front of the market and cause unsightly front areas. He emphasized that the area around the convenience store must be kept very clean, in particular for the adjacent hotel clientele. He urged better enforcement and more than the standard conditions as designated in Conditions of Approval #14 and #19.

Mayor Sweeney asked for clarification on whether the owner of the hotel could support the 7-Eleven use at this site even if it does not sell alcohol. It was confirmed that the owner of the hotel was concerned about the 24 hour operation. Police Chief Lowe agreed that even with the removal of alcohol sales, the 24 hour operation is another concern for police service during the early morning hours.

Mayor Sweeney opened the public hearing at 8:56 p.m.

Russ Pitto, representing Simeon Commercial Properties of San Francisco, reported on the experience of his firm in attracting businesses to this area. He commented on its history and noted specific developments in this area. He reported on the development that includes seven tenants with over 400 employees. He noted the hotel that was developed after that project was complete. This project is a small parcel that remains to be developed. He noted the various uses available, discussed the situation and stated that he thought that it was Simeon Properties' obligation to find a sit-down restaurant. Mr. Pitto pointed out that he has used at least four brokerage firms to market this land. This is not an area where sit-down restaurants can survive and did not have success in attracting such franchises. He indicated that the market is to have a small retail center to service the neighborhood. He stated that his firm did not receive any objections from commercial or industrial



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neighbors except for one. He commented on the hotel response and noted that initially the owner only objected to the alcohol sales, but has since opposed the convenience store. He affirmed his due diligence in satisfying the Council's request to market this property.

Council Member Ward thanked him for his efforts in attracting sit-down restaurants. Council Member Henson thanked Mr. Pitto for his excellent efforts to attract bio-tech firms, but expressed his disappointment that there was no success in attracting a sit-down restaurant, citing the new Rigatoni's in front of La Quinta Hotel. Council Member Dowling was concerned about the location of 7-Eleven, the 24 hour operation and would likely oppose this. He asked Mr. Pitto whether the denial of the 7-Eleven would impact the project. Council Member Halliday commented on the daytime population and asked why a convenience store would need to be open all night.

Tina Essewian of Terranomics Retail Services, responded to Council questions related to attracting retail to this site. She has worked for the past two years on marketing a sit-down restaurant. She explained that this industrial area does not invite night activities or critical mass, such as a movie theater, that could attract customers to enjoy a sit-down dinner. She commented on tenant mix in retail areas and noted that there is a daytime need in this area for convenience store needs. In regards to commuters on State Rte. 92, she indicated that it is not a positive for new restaurants, citing economic times that impacts potential customers of sit-down restaurants. She commented on the uses list.

Andrey Vinogradoky, representing 7-Eleven, showed photos of the proposed 7-Eleven with its attractive amenities, and responded to questions. He spoke on the improvements of the building and other amenities. In regards to the hours of operation, he indicated that his business would provide products that neighboring residents, students, commuters and local workers might need at the start of the day.

Council Member Henson spoke strongly against the use of security from the business park. He preferred dedicated security. He asked about the location of alcohol that will be located farthest from the front door.

Jeff Hetherington, head of loss prevention for 7-Eleven, responded to questions related to security guard use. He explained the use of interactive monitoring that could be used at this location, the responsibility of the retailer in taking proactive steps to avoid issues. He also stated that alcohol beverages sales amount to about 15% of the total sales for 7-Eleven.

Dilip Dahya, Fairfield Inn owner, stated that his concerns include loitering, drug dealing and other illegal activities that tend to occur around a convenience store, and he was in opposition. He commented that the hotel has more specific needs available at his hotel. He commented on the makeshift tents by the homeless on CalTrans property. He described the service of the business park security guards and has noted them sleeping during their shift.

Hassan Fallah, Fairfield Inn manager, reported that it has been a rough road to attract travelers to stay in Hayward. He calculated that the hotel has paid over \$25,000 in TOT taxes. He reported that his customers, as well as neighboring businesses, have had cars vandalized in their parking lots. He noted that public restrooms are not available and the hotel would be impacted by this. He commented on the increased crimes caused by homeless people, drug problems, and vandalism. Lastly, he noted that the hotel's occupancy rate is at 76%.

Alfredo Coria, representing COMMPRE, spoke in opposition to the 7-Eleven development.

Leticia Vazques, using a Spanish translator, stated that she resides near a 7-Eleven on Jackson and reported its impacts to her family and neighborhood.

Doug Ligibel spoke strongly in opposition to allowing another convenience store in Hayward that could drain police services as others in the City.

Jeff Hetherington summarized the 7-Eleven proposal and noted its viability and responded to Council questions. He indicated that each store is franchised. He noted that there are higher standards reported, and that there are four stores in San Francisco that do not sell beer and alcohol.

Council Member Rodriguez commented that the 7-Eleven in her neighborhood does a disservice and does not benefit the reputation of the corporation.

Ed Bogue commented that the 7-Eleven issues in his neighborhood are alcohol caused problems for the Eden area. He showed photos of new 7-Eleven in other cities including the one on Shoreline Parkway. He urged that the standards of this 7-Eleven be raised.

Mayor Sweeney closed the public hearing at 10:10 p.m.

Council Member Halliday moved, seconded by Council Member Rodriguez, to deny this proposal. She surmised that that the 7-Eleven convenience store is not right for our City. She did not want to see an all night retail that could impact police services. She stated that there are a number of schools and colleges nearby and the sale of beer and alcohol would make it more convenient for students to obtain.

There was Council discussion as to the 56 appropriate uses as proposed on Exhibit D. The primary concerns with this project were the sale of alcohol, the 24-hour operation and the location, which was adjacent to the freeway. There was general consensus to not allow the sale of alcohol. There was also consensus to remove palm reader as an appropriate use. Council discussed the importance of providing direction to the developer by providing a list of acceptable uses and specifically excludes the all night convenience store use as well as any uses that allow the sale of alcohol. There was also a recommendation that the denial could be without prejudice.

Mayor Sweeney stated that he would be supporting the motion and if another project returns, it can.

Council Member Halliday reiterated her motion to deny this project based on the discussion.



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Council Member Ward directed a question to the applicant to respond to the Council's desire to not allow liquor sales or all-night convenience stores. Mr. Russ Pitto indicated that Starbucks could be lost if the project continues to be delayed. There are some approved uses and he would like to see the project get started. Council Members Ward and Quirk commented that they did not wish to lose the entire project.

City Manager Jones clarified that if Council desires and for this planned development, it could specify in Section 1 of the draft ordinance to exclude 24 hour operations and alcohol sales as elements of that list. He further suggested that if Council desired it could take action on only that section of the ordinance and the conditional use permit could be rescinded as it is only required when an intended use is for the sale of alcohol.

Council Member Henson reiterated his comments stating that Council has authority to move forward on other parts of this project and the alcohol sales will be deleted as well the 24 hour operation. He asked if other uses could be added.

City Manager Jones responded that any uses on the list could be allowed with the restrictions applied. For example, a convenience store could be allowed with those restrictions. He affirmed that other uses as the palm reader use could be removed from this list if Council desired.

Council Member Halliday then withdrew her motion and Council Member Rodriguez withdrew her second to this motion.

Instead, Council Member Halliday moved to adopt the resolution approving the revised negative declaration, the Planned Development District modification, a neighborhood retail center that includes a drive thru coffee shop and other uses specified in the proposed additional uses as listed on Exhibit D, Page D-3 with the exception of the palm reader use. She also stated that this motion would deny the conditional use permit and specifically allow a project that is included in this list. With further discussion, there was consensus to include in this motion to permit the business hours of operation from 5 a.m. to 10 p.m., with no alcohol sales. Council Member Rodriguez seconded this motion.

Mayor Sweeney stated that he would be opposing the motion as the motion includes the convenience store use. As previously related to Council by Police Chief Lowe, the owners of the Fairfield Inn, COMMPRE representatives as well as community members, convenience stores have impacted nearby businesses and neighborhoods increasing the need for police service.

Council Member Henson asked the maker of the motion to amend her motion to include an additional requirement for security with the convenience store use. After some discussion, City Manager Jones clarified that the list provided includes uses that are allowed uses without the condition to require security. The use of security is a condition of approval required when there is a conditional use permit that requests the sale of alcohol.

In anticipation of a potential problem with the motion, Council Member Rodriguez rescinded her second to Council Member Halliday's motion.

Council Member Quirk would second the motion, but would not second the motion that would include the security requirement, which he saw could be problematic and impact the development.

Discussion ensued. Council Member Halliday summarized that this has been an extensive discussion, very difficult and concluded that the Council was not together, nor clear on what is to be decided. She stated that she was inclined to withdraw this motion and allow another Council Member the opportunity to submit a motion. She further stated that she was willing to move her first motion to deny the request and require the developer to return to Council for another review. She apologized to the developer as this has taken eleven years to finally come before Council, but pointed out that bringing another alcohol serving establishment is a serious mistake for this City and this is not an appropriate location.

Council Member Halliday then withdrew her motion and moved to deny the request to modify the planned development district and further that the developers bring back a proposal that does not include a 24-hour operation or alcohol beverage sales. Council Rodriguez seconded her motion.

It was moved by Council Member Halliday, seconded by Council Member Rodriguez, and failed by the following vote:

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

Discussion continued. Council Member Dowling moved, seconded by Council Member Ward, to deny the conditional use permit and allow the uses as listed on Exhibit D, Page D-3 and allows the business hours of operation from 5 a.m. to 10 p.m. with no alcohol sales permitted.

Mayor Sweeney confirmed that this motion includes the convenience store use. Council Member Henson stated that he would be supporting the motion as there is a need for food availability in that area. He still had a concern with the security issue and in light of comments from the hotel owners, urged the developer to examine its current security company for possible replacement.

It was moved by Council Member Dowling, seconded by Council Member Ward, and carried by the following roll call vote to introduce an ordinance entitled:

Introduce Ordinance 08-_, "An Ordinance Amending the Zoning Ordinance, Chapter 10, Article 1 of the Hayward Municipal Code, by Modifying a Planned Development District to Allow Additional Uses, Pursuant to Zone Change Application No. PL-2005-0536 "



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

5. Resolutions in Support of High Speed Internet Access and Utility Worker Qualifications in Residential and Public Right-of-Way

Staff report submitted by City Manager Jones, dated February 26, 2008, was filed.

City Manager Jones presented the report and described the proposed draft resolutions that support internet access for youth. The infrastructure for this must be built with the public's safety in the municipal right-of-way as well as in the private residence.

Council Member Quirk reported that, in the interest of full disclosure, he is a member of CWA United, Local 9119, a telecommunications union.

Council Member Henson stated that the language is well stated in the resolutions, especially the resolution in support of "No Child Left Offline." He urged that technologies "catch up" with European and Asian technologies. He thanked Council Member Quirk and members of the CWA United local in bringing this forward.

Mayor Sweeney opened the public hearing at 8:13 p.m.

Keith Gibbs, an executive member of CWA United 412, spoke in support of the Speed Matters No Child Left Offline resolution and the resolutions of public safety and the municipal right of way and public safety and utility work for new technologies in residential areas. He urged improved background checks for those who work in such technologies for the public's safety. In response to Council Member Quirk's question, he reported that there are about eleven other jurisdictions who have passed these resolutions of support.

Dan Henriques expressed his concern that youths are being exposed to inappropriate internet sites.

Mayor Sweeney closed the public hearing at 8:20 p.m.

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

Resolution 08-028, "Resolution on Speed Matters, No Child Left Offline"

Resolution 08-029, "Resolution on Public Safety and the Municipal Right of Way"

Resolution 08-030, "Resolution on Public Safety and Utility Work in Residential Settings"

COUNCIL REPORTS

There were no Council Reports.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:45 p.m. in memory of Kenji Fuji, a long time Hayward resident, a grower of carnations. He owned and operated the Plant Outlet that was an institution of Hayward. Mr. Fuji was involved with the Japanese American community in the Hayward area. He was a lively gentleman and will be missed. Condolences to his family, Walter and Victor and their families would be sent as well as the planting of a memorial tree.

APPROVED:

Michael Sweeney, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward