



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, May 27, 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 Rodriguez.

ROLL CALL

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

PRESENTATION Commendation to the CSUEB Women's Water Polo Team

Mayor Sweeney proudly issued the commendation to the women's polo team of the Hayward campus of California State University, East Bay, (CSUEB) for having won its first ever national championship, the Collegiate III National Water Polo Tournament, on May 4, 2008 at Connecticut College. CSUEB President Qayoumi introduced Team Coach DeRossi-Cooper and Team Captain, Niki Synder, who introduced each of the team players.

CLOSED SESSION ANNOUNCEMENT

At its Closed Session, Mayor Sweeney indicated that there were no announcements related to the discussion of potential litigation and provided direction to staff.

PUBLIC COMMENTS

Dan Henriques commented on the poor maintenance of Lucky Store's trash containers, which are always full. He also suggested additional charges by Lucky Store's to offset such costs.

Mayor Sweeney asked that staff contact Lucky Stores regarding regular maintenance of its trash containers.

John Moran spoke on properties that he purchased on Highland Boulevard. He reported his negative equity on those properties due to the current economic situation. He commented that City staff is requiring that he install underground utilities and expressed that his frontage is over 400 feet which could cost him over \$100,000.

Mayor Sweeney asked that staff provide a report on his issues. Council Member Henson asked that staff include in that report the reasons for the requirement or the option for undergrounding the utilities.

DRAFT

Francisco Abrantes, residing on Alice Street for 22 years, spoke against any fees related to utilities that were recently considered illegal.

Wynn Greich spoke against the construction of power plants in the City of Hayward.

Rob Simpson thanked Council Members Rodriguez and Ward for their civic services throughout the years.

Janice Louie stated that she works at the Alameda County Health office and spoke in favor of a tobacco free community. She offered assistance to help with signage by providing 250 decals in English and Spanish so that businesses could post them on their windows.

CONSENT CALENDAR

Consent Calendar Items # 3 and #6 were removed for separate discussion and vote.

1. Approval of Minutes of the City Council Meeting of May 20, 2008

It was moved by Council Member Dowling, seconded by Council Member Ward, and unanimously carried, to approve the minutes of the City Council Meeting of May 20, 2008.

2. FY 09 Annual Hayward Paratransit Program Plan

Staff report submitted by Neighborhood and Economic Development Manager Korth, dated May 27, 2008, was filed.

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

Resolution 08-074, "Resolution Authorizing the City Manager to Submit an Annual Paratransit Plan and Negotiate and Execute All Documents Related to and in Support of Paratransit Activities"

3. Downtown Business Improvement Area Annual Report and Proposed Budget for FY09

Staff report submitted by Redevelopment Director Bartlett, dated May 27, 2008, was filed.

Director of Community and Economic Development Daluddung responded to questions related to the events that are scheduled as well as promoting them, including the idea of a reader board to also serve events at Centennial Hall. Ms. Daluddung responded that staff is reviewing a location for a reader board that could provide opportunity to eliminate a number of billboards in the City.

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



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Resolution 08-077, "Resolution Accepting Annual Report and Declaring Intention to Levy Annual Charges for the Downtown Hayward Business Improvement Area for the Fiscal Year 09 and Providing for Notice of Hearing Thereon"

4. Sidewalk Rehabilitation and Wheelchair Ramps FY 2008: Award of Contract

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 27, 2008, was filed.

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

Resolution 08-075, "Resolution Increasing the Administrative Change Order Amount and Awarding Contract to Rosas Brothers Construction for the Sidewalk Rehabilitation and Wheelchair Ramps FY 2008 Project, Project Nos. 5190 and 5136"

5. Emergency Water System Intertie Project: Authorization for the City Manager to Execute Amendment to Professional Services Agreement with Carollo Engineers

Staff report submitted by Deputy Director of Public Works Ameri, dated May 27, 2008, was filed.

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

Resolution 08-076, "Resolution Authorizing the City Manager to Execute an Amendment to the Agreement with Carollo Engineers for the Emergency Water System Intertie Project"

6. Consider a Position on Alameda County's Measure F: Utility Users Tax

Staff report submitted by Assistant City Manager Jones, dated May 27, 2008, was filed.

Council Member Dowling recommended that this resolution in support of Measure F. This measure raises and extends the existing tax and will provide \$9M for Alameda County services to all unincorporated areas. Council Member Henson ascertained that Hayward City residents will not be paying this tax and that the taxes will be paid by residents of the unincorporated areas.

DRAFT

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

Resolution 08-078, "Resolution in Support of the Passage of Measure F on the June 3, 2008, Primary Ballot Relating to the Utility Users Tax"

HEARINGS

7. Hearing on Report and Assessment for Residential Rental Inspection Fees Past Due

Staff report submitted by Senior Housing Inspector Bragg, dated May 27, 2008, was filed.

Director of Community and Economic Development Daluddung briefly commented that this is a lien hearing to be confirmed by the Council and if Council desires, may consider adjustments after the hearing. She introduced Senior Housing Inspector Bragg, who made the report of inspections, noting that three invoices were recently paid, thus leaving 27 outstanding invoices that will become liens on those properties. Senior Housing Inspector Bragg confirmed that Lien #18 Property Owner, Prasad, Lien #23, Property Owner Salwan, and Lien #24, Property Owner Samaroo, should be removed from the lien list.

Council Member Henson asked about the violations that incurred these liens. Senior Housing Inspector Bragg noted that this includes apartment complexes such as Lien #15, Property Owner Maharaj, that is substantially high.

Council Member Halliday asked about the process when a lien is placed. It was noted that the lien is placed on the current property tax bill, so that the City receives the amount as soon as the tax bill is paid.

Council Member Ward commented on two invoices that total more than several thousand dollars. There was discussion on how the residences are selected and the notification process. Staff uses a number of methods to notify property owners including fax, emails, first class mail as well as certified letters. On occasion, property managers may withhold the repairs after inspection, which increases the fines charged.

Council Member Ward commented on Lien #14, Property Owner Khalik, a residence on Cook Place that totaled over \$3,000. Senior Housing Inspector Bragg noted that this property had illegal construction done and the owner continues to work on bringing it to compliance.

Mayor Sweeney opened the public hearing at 8:41 p.m.

Carmina Basto, 953 Sueirro Street, spoke on Lien #2, with a total of \$2,837.80, stating that she is the owner. She clarified that her property is not rental property, but her property is as a six-bed board and care facility for the elderly. She stated that she had complied with City regulations as well as with the Department of Social Services. She showed documents that substantiated her



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board and care facility. She also stated that she was confused about the letters that she received from the rental program staff.

Senior Housing Inspector Bragg responded that this case started in July 2006 and Ms. Basto was not residing at this address, thus it was not an owner occupied home to qualify for the exemption. In regards to the permit, Ms. Basto is correct that certain improvements were made, but after the City's final inspection, an additional bedroom, plumbing, and patio were installed with no permits, thus the fees on this invoice. He confirmed that there is no exemption for a board and care facility. Convalescent homes are exempt, but this is not defined as one as she does not dispense medicine.

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

It was moved by Council Member Dowling, seconded by Council Member Henson, and unanimously carried to adopt this resolution with the following adjustments that delete: Lien #18 Property Owner, Prasad, Lien #23, Property Owner Salwan, and Lien #24, Property Owner Samaroo, from the list of liens:

Resolution 08-079, "Resolution Confirming the Report and Assessment of Overdue Residential Rental Inspection Fees for Calendar Year 2007"

8. Hearing on Report and Assessment for Weed Abatement Fees Past Due

Staff report submitted by Senior Community Preservation Inspector Brown, dated May 27, 2008, was filed.

Director of Community and Economic Development Daluddung stated that the purpose of this hearing is for the Council to receive comments from the property owners and consider adjusting any invoices. The purpose of the Weed Abatement Program is to reduce fire hazards within the City. She introduced Senior Community Preservation Inspector Brown, who described the process of the weed abatement program and indicated that there are only seven properties on this annual list. Lien #4, Property Owner Chetan, was paid, and will be eliminated from the lien list. In response to Council Member Henson's question, she provided the timeframe for abatement and notification.

Mayor Sweeney opened the public hearing at 8:51 p.m.

Wassim Azizi, a resident of Tracy, explained his situation with his property at 27794 Mission Boulevard, Lien #2. He described his issues related to notification. As soon as he heard from the City, he cleared his property. He described his efforts to clear the property even with the weather changes. He also commented that his cell phone number and Tracy address was provided to staff when he was pursuing the opening of another business.

DRAFT

Kevin McCavin supported Mr. Azizi's statements and reported that he continues to assist in maintaining that property.

Nancy Vergos also spoke on behalf of Mr. Azizi.

Mayor Sweeney closed the public hearing at 8:58 p.m.

Council Member Dowling asked Mr. Azizi about a previously approved project on this property. Mr. Azizi indicated that he desired to operate Payless Auto Glass, but didn't have the financial means nor could he support the required curb and gutter improvements required of the City. At that time, he received information of the revised Redevelopment Plan and his zoning was changed.

Council Member Dowling recommended that Redevelopment staff discuss what options are available for his property.

Senior Community Preservation Inspector Brown showed photos of the property in question, noting a tree that was impeding the street stop sign, the overgrown vegetation and weed growth. She reported that staff receives address notification from the Alameda County Tax Assessor; thus notices are sent to the address provided. In this case, the address provided was to a former business address on Mission Boulevard.

There was further discussion on notification and staff efforts to locate a property owner. Council Member Ward commented that this was a unique situation. Staff reported that it does its best to try to locate a property owner, even searching on the internet. Council Member Henson asked about previous citations on this property.

Mr. Azizi stated that this was his first citation and staff was not able to substantiate any previous violations. Ms. Brown reported that she advised Mr. Azizi about his obligation to notify the Tax Assessor and recently checked, but it had not been updated.

Council Member Quirk stated that it is the property owner's responsibility to notify the Tax Assessor of address changes. He felt that Mr. Azizi was at fault in the notification process, not staff.

Council Member Ward thanked staff for its hard work to have only seven on this lien list. He felt that there was an honest mistake in the notification process and it seemed reasonable to make an adjustment. Council Member Ward then moved, seconded by Council Member Dowling, to approve the lien list and based on the City letters sent to the wrong address, and that Mr. Azizi did take action to clear his property. He confirmed that the opportunity to develop on that site is still a possibility for Mr. Azizi.

Council Member Halliday asked Mr. Azizi several questions to clarify the situation. It was confirmed that the charges are for failed inspections and the work was completed by Mr. Azizi.

Council Member Dowling commented that Mr. Azizi has someone to look after his property. This is not a typical weed violation but at a recent clean-up, he noticed that there was some trash on that



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site. He appreciated the trees on that property. Clean-up once every three weeks may not be enough, but encouraged Mr. Azizi to continue his efforts.

Council Member Henson appreciated that Mr. Azizi stepped forward to correct the violations once he received notice as this is one of the City's main thoroughfares. He reluctantly agreed to the adjustment, but would have preferred one-third adjustment of the fees as staff did spend considerable time.

It was moved by Council Member Ward, seconded by Council Member Dowling, and unanimously carried to adopt this resolution with the following adjustments that deletes Lien #4, Property Owner Chetan and Lien #2, for Mr. Azizi be adjusted to half the total charges of \$600.85:

Resolution 08-080, "Resolution Confirming the Report of the Enforcement Officer for Weed, Rubbish, and Litter Abatement from Certain Properties in the City of Hayward in Connection with the Weed Abatement Program for 2007"

9. Hearing on Report and Assessment for Community Preservation Fees Past Due

Staff report submitted by Senior Community Preservation Inspector Brown, dated May 27, 2008, was filed.

Director of Community and Economic Development Daluddung spoke briefly and allowed Senior Community Preservation Inspector Brown to make the report. The following violations have been corrected and invoices have been paid and will be removed from the lien list: Lien #4, Property Owner Uliana, Lien #8, Property Owner Hernandez, Lien #13, Property Owner Mejia, Lien #15, Property Owner Prasad, Lien #18, Property Owner Tafuna, Lien #23, Property Owner Mejia, and Lien #26, Property Owner Sanders.

There were no requests to speak. Mayor Sweeney opened and closed the public hearing at 9:21 p.m.

It was moved by Council Member Ward, seconded by Council Member Henson, and unanimously carried to make the following adjustments that delete Lien #4, Property Owner Uliana, Lien #8, Property Owner Hernandez, Lien #13, Property Owner Mejia, Lien #15, Property Owner Prasad, Lien #18, Property Owner Tafuna, Lien #23, Property Owner Mejia, and Lien #26, Property Owner Sanders and adopt:

Resolution 08-081, "Resolution Confirming the Report of the Enforcement Officer for Public Nuisance and Abatement from Certain Properties in the City of Hayward in Connection with the Community Preservation Program for 2007"

LEGISLATIVE BUSINESS & INFORMATIONAL ITEMS

10. Adoption of an Ordinance Amending Chapter 5, Article 6 of the Hayward Municipal Code, Prohibiting the Use of Tobacco Products in or Around Public Places in the City of Hayward

Staff report submitted by City Clerk Reyes, dated May 27, 2008, was filed.

City Clerk Reyes made the report, noting that this is the second reading of this ordinance and because the vote at its introduction was 5 to 2, it is listed under Legislative Business.

Mayor Sweeney opened the public hearing at 9:28 p.m.

Edward Bogue asked whether this ordinance will apply in public places such as a parking lot. He commented on a recent situation where an employee was taking a break in a parking lot. He also asked about the responsibility of business owners and those "in control of private properties." He also asked about downtown street parties.

Ralph Morales, representing American Lung Association, commended Mayor Sweeney and the City Council for this ordinance. He spoke in support of the ordinance and offered resources for signs that businesses could use to make the public aware.

Dan Henriques spoke in favor of the ordinance.

Mayor Sweeney referred to comments previously made by Janice Louie, who offered similar resources.

Mayor Sweeney closed the public hearing at 9:30 p.m.

City Manager Jones responded to Mr. Bogue's question about who is in "control" for enforcing the ordinance. He stated that this is typical of a business similar to restaurants responsible for those who smoke and is responsible to enforce that regulation if a customer is deemed negligent. He stated that as this ordinance is implemented, there may need to be some future adjustments. He noted that the smoking will be prohibited on the public right-of-ways and that privately owned parking lots are not specifically addressed thus, not governed.

Council Member Dowling further asked Mr. Bogue about his concerns related to Section 5-6.02, the definition of a public place.

City Manager Jones stated that this ordinance addresses smoking in public venues. This is not a ban on smoking, but one on second hand smoke. The distinction is the 20 foot requirement, which is the limited safe distance for second-hand smoke.

Council Member Henson stated that he supports this, but desired to respond to Mr. Bogue's question as to what constitutes a private space. He confirmed that smoking is allowed on private property, including parking lots as long as they are 20 feet away doorways, entryways and windows.



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Council Member Halliday commented that a store could be a public venue, but asked why the parking lot would be closed to smoking. She was supportive of the spirit of the ordinance.

Council Member Quirk confirmed that smoking can occur in a private vehicle.

Mayor Sweeney moved the adoption of this ordinance, which was seconded by Council Member Quirk.

Council Member Ward stated that this ordinance will take some time for its implementation. The City has to be reasonable in terms of enforcement and that it doesn't overstep boundaries on this issue.

Council Member Henson stated that this could alter and improve behavior in the downtown. He reported that in other jurisdictions where such an ordinance was approved, the majority of businesses found a slight increase in their businesses. He stated that the State has stricter regulatory policies.

Council Member Rodriquez spoke on the principle of banning. She recognized that this is similar to drinking and driving and emphasized that tobacco is bad for your health. Under such circumstances, she would be voting for it.

Mayor Sweeney declared this a clean air ordinance that will eliminate smoking in the downtown, which hurts businesses. He thanked City Manager Jones and staff for bringing it forward. He also directed staff to insure that the public is made aware of this new regulation.

It was moved by Mayor Sweeney, seconded by Council Member Quirk, and carried to adopt this ordinance by the following roll call vote:

Adoption Ordinance 08-11, "An Ordinance Amending Chapter 5, Article 6 of the Hayward Municipal Code, Prohibiting the Use of Tobacco Products in or Around Public Places in the City of Hayward"

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

COUNCIL REPORTS

There were no Council Reports.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 9:54 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward