



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 29, 2008, 8:00 p.m.**

MEETING

Mayor/Chair Sweeney called the Special Meeting of the City Council/Redevelopment Agency to order at 8:00 p.m., followed by the Pledge of Allegiance led by Council/RAMember Henson.

ROLL CALL

Present: COUNCIL/RA MEMBERS Dowling, Halliday, Henson, Mays, Quirk, Zermefio, and MAYOR/Chair Sweeney

Absent: None

PRESENTATIONS:

Fire Department Badge Presentation:

Deputy Fire Chief Mark Bennett, Deputy Fire Chief Jon Moser,
Battalion Chief Armstrong and Battalion Chief Contreras

Mayor Sweeney presented badges to Deputy Fire Chief Mark Bennett, Deputy Fire Chief Jon Moser, and Battalion Chief Garrett Contreras.

Fire Chief Craig Bueno and Deputy Fire Chief Mark Bennett spoke highly of the four Senior Command Staff, noting each of them are licensed paramedics.

Recognition of Donation from Hayward Area Historical Society toward the
Historic Preservation Program

To assist the City of Hayward in the development of its Historic Preservation Program, the Hayward Area Historical Society (HAHS) has partnered with the City and provided a monetary gift of \$25,000.

Jackie Grissom, HAHS Board President stated that she was pleased that the historic property inventory project will occur, as she presented the \$25,000 check to Mayor Sweeney. She appreciated Senior Planner Patenaude for his assistance and the use of a consultant who will conduct the citywide survey. The survey will provide a listing of historic buildings. Mayor Sweeney thanked HAHS Board Members for their support and their financial gift.

Presentation of Retail Attraction Program/Small Business
Revolving Loan Fund Checks for Bijou Restaurant and Bar, on "B" Street

The City of Hayward was proud to present the Bijou Restaurant and Bar with a check for \$250,000 from the City's Retail Attraction Program and the Small Business Revolving Loan Program. The loan was presented to FAAT Group, Inc. Mr. Benjamin Young and Phillip Chan accepted the check on behalf of the FAAT Group. It was noted that the new Bijou Restaurant and Bar are a welcomed restaurant to the City of Hayward's Historic Downtown.

DRAFT

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson reported the previously held conference with staff involved the real property operators on Mission Boulevard and there were no reportable actions.

PUBLIC COMMENTS

Dan Henrique spoke on his concerns of trash and debris left from vendors of the Saturday Farmers Market.

Mayor Sweeney asked staff for a follow-up report on this concern.

Wynn Grich spoke on the impacts of ammonia in our water. She also spoke on the impacts of fluoride in our drinking water.

Juanita Gutierrez congratulated and welcomed the new Council Members and thanked staff for continuing to support the Mt. Eden neighborhood.

Doug Ligibel spoke on behalf of the Downtown Neighborhood Watch members expressing their concerns on the recent crime incidents at the downtown Bart Station. He further stated that he witnessed three youths burglarizing a vehicle in the Bart parking lot, explaining that when reporting the incident to Bart Police, they stated they could not make an arrest without witnessing the incident themselves, suggesting he make a citizen's arrest. He was concerned on this matter. Additionally, he said he received excellent service from the Hayward Police in response to the crime incidents reported at the Bart Station. He requested that Council Members contact Bart Police Chief Gary Gee, and ask for support in patrolling the areas where crimes have occurred.

Mayor Sweeney asked the City Manager to contact Bart Police for such support.

Council Member Halliday, asked staff to put this item on a future agenda for the Downtown Neighborhood Committee.

Rob Simpson commended staff for its support of the Climate Action Plan Event held on Saturday. He reported that the Environment Protection Agency (EPA) ruled in favor of his appeal against the Russell City Energy Center proposal. Mayor Sweeney indicated that the City Attorney staff is researching this EPA appeal as referenced by Mr. Simpson.

Ernest Pacheco asked the City to participate with a petition in hopes that the City will engage with the community in fighting the Russell City Energy Center proposal. He also thanked the City for supporting the Community Choice Aggregation program.

CONSENT CALENDAR

Consent Items 2 and 4 removed for a separate vote.

1. Adoption of Ordinance Amending Ordinance No. 89-057 C. S., as Amended, the Mobilehome Rent Stabilization Ordinance.

Staff report submitted by City Clerk Reyes, dated July 29, 2008, was filed.

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



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Ordinance 08-12, "An Ordinance Amending Ordinance No. 89-057 C.S., As Amended, the Mobilehome Space Rent Stabilization Ordinance"

2. Authorization to Enter into a Development Agreement with Chang Income Property Partnership, LP (Owner), Related to Expansion of Greenwood Park

Staff report submitted by Planning Manager Rizk, dated July 29, 2008, was filed.

Juanita Gutierrez commented that this proposed park expansion is a "dream come true" for the Mt. Eden community. She requested that Mayor Sweeney request that staff allow her and several members of her neighborhood to participate in the expansion discussions for Greenwood Park.

It was moved by Council Member Dowling, seconded by Council Member Zermeño, and unanimously carried, to adopt the following and direct staff to insure that Juanita Gutierrez and members of her neighborhood be provided opportunity to participate in the discussion of this expansion:

Resolution 08-122, "Resolution Authorizing CEQA Review and the Preparation of a Development Agreement to be Considered in Conjunction with the Land Use Application Related to the Expansion of Greenwood Park"

3. Authorization for the City Manager to Execute a Professional Services Agreement with Strutech in an Amount Not to Exceed \$35,000 to Conduct Building Permit/Development Process Audit

Staff report submitted by City Manager Jones, dated July 29, 2008, was filed.

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

Resolution 08-118, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement for Professional Services with Strutech to Evaluate and Make Recommendations Related to the Building Permit and Development Application Process"

4. Authorization for the City Manager/Executive Director to Execute a Professional Services Agreement with Bay Area Homebuyer Agency in an Amount not to Exceed \$75,000

Staff report submitted by Redevelopment Director Bartlett, dated July 29, 2008, was filed.

Council/RA Member Henson commented on the current housing market and foreclosure crisis and the impacts to the service parameters for City of Hayward and the Bay Area Homebuyer's Agency (BAHG). He requested that staff provide such service details.

Redevelopment Director Bartlett deferred the report to the agency consultant, Executive Director Roy Shriver of BAHG, who indicated that there would be a review of the program parameters as well as schedule a work session in the fall on foreclosure issues. Additionally, Mr. Shriver indicated that the Joint Powers of Authority can provide advice and review the current market. He indicated the program includes outreach for new homebuyers as well as information on the forthcoming federal legislation.

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

RA Resolution 08-08, "Resolution Authorizing the Executive Director to Negotiate and Execute an Agreement with Bay Area Homebuyer Agency to Provide Consulting Services Related to the Agency's Affordable Housing Programs"

5. Authorization for the City Manager to Execute a Professional Services Agreement for the Tank Remediation Study of Various Underground Storage Tank Removal Sites in Hayward and Appropriation of Additional Funds

Staff report submitted by Deputy Director of Public Works/Engineering Fakhrai, dated July 29, 2008 was filed.

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

Resolution 08-119, "Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with ERS Consultants for the Tank Remediation Study of Various Underground Storage Tank Removal Sites, Project No. 6977"

Resolution 08-120, "Resolution Amending Resolution 08-098, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2008-09, Relating to an Appropriation of Funds from the Capital Improvement Fund (Fund 410) for the Tank Remediation Study of Various Underground Storage Tank Removal Sites, Project No. 6977"

6. Underground District No. 28 - Watkins Street from Fletcher Lane to D Street: Resolution of Intention to Establish

Staff report submitted by Deputy Director of Public Works/Engineering Fakhrai, dated July 29, 2008, was filed.

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

Resolution 08-121, "Resolution of Intention to Establish Underground District No. 28 - Watkins Street from Fletcher Lane to D Street and Setting a Time and Place for the Public Hearing"

HEARINGS

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7. Introduction of Green Building Ordinance for Municipal Construction

Staff report submitted by Director of Community and Economic Development Daluddung, dated July 29, 2008, was filed.

Community and Economic Development (CED) Director Daluddung reported that this is a green building ordinance for municipal buildings. Staff will be returning in the fall with a similar ordinance with different requirements for private construction. She appreciated the hard work of staff and the Sustainability Committee on developing the Green Building Ordinance that will reduce the City's carbon footprint. CED Director Daluddung explained that staff is at the point of moving towards the adoption of the ordinance, and would continue to improve the products as they went along. Currently, the goal includes increasing water conservation and energy efficiency.

She shared their discussion with the Climate Action Plan Committee on energy efficiency strategies. This plan will assist in the implementation of cost effective retrofit projects involving the City, a financing mechanism for residents, and the identification of all non-energy uses such as exterior lights, and may include irrigations systems in the City.

Planning Manager Rizk referenced Leadership in Energy and Environmental (LEED) Silver Certification Municipal Green Building standards, the checklists used and elaborated on the key points of the proposed legislation.

Council Member Dowling identified other rating systems including recent state/county Green Point Rating System. He has learned that development communities found the LEED system cumbersome and expensive. He asked if staff has looked at other systems and why the recommendation is the LEED Silver Certification level. He suggested there be this type of discussion at the Local Agencies Committee level as two new schools are constructed.

Planning Manager Rizk responded with the following points: 1) Green Point is a residential standard; and 2) LEED is a national standard system, tested and consistent with other agencies and in accordance of the recommendations of stop waste.org.

Building Official Elliott explained the Green Building codes that were approved last week by the State. The Green Point 2010 designations are voluntary standards for primarily state-owned hospitals and schools buildings, but did not apply to the City.

Council Member Quirk agreed that special emphasis be on water and energy as well as discussed zero carbon footprint. He suggested the requirement of all 17 energy points as well as the five water points if feasible. He further stated that adding to the ordinance building carbon neutral objective by conserving a lot of energy, with additional energy generation such as solar rooftops to offset energy use. He asked staff for input and CED Director Daluddung stated that the City requires LEED Silver Certification and it has its own energy water standards for the major projects. She indicated that unless the City upgrades to the LEED gold or platinum standards, these changes are not a practical solution for major projects. She suggested an alternative mechanism to modify water energy checklists for minor projects.

Council Member Quirk explained his discussions with members of the building community. He stated that there were no foreseeable problems with local staff requiring LEED Certification but it is a lengthy and expensive process. Council Member Quirk stated that he was referring to municipal standards of between 33-38 points that involve both water and energy.

Council Member Halliday thanked staff and the Sustainability Committee for their work on this project, asking if minor projects would require LEED Silver Certification as well as include additional 20-point requirements. Planning Manager Rizk stated that it would be required.

Council Member Halliday asked for an explanation on commissioning. Planning Manager Rizk explained the registration of a project with the U.S. Green Building Council that includes engaging a consultant for certification. Council Member Halliday referenced cost analysis, asking why it was necessary for the consultant's proposed fee of \$40,000. Planning Manager Rizk stated the consultant would provide support with construction planning for the implementation of LEED certification.

Council Member Halliday asked if staff had any experience with LEED certification. Planning Manager Rizk stated that staff has some expertise with minor projects.

Council Member Henson thanked staff for their hard work, asking if the ordinance exempts historical structures. CED Director Daluddung stated that historical buildings are exempt. Council Member Henson asked what criteria determined historical buildings and whether there could be some compliance on a voluntary basis.

City Manager Jones confirmed that the City Council was the pointing authority for the City's designated list of historical structures and would have the authority to exempt buildings.

Council Member Henson commented that as the Stop Waste representative for the City, he desired to see photos of LEED municipal buildings from Hayward displayed at the Stop Waste headquarters, in particular the proposed new library or police department. He hoped to see that.

Council Member Zermefio thanked the staff for their work, asking if they are considering half points. Planning Manager Rizk stated that the LEED designations are on a single point based system.

Mayor Sweeney opened and closed the public hearing at 9:19 p.m.

Council Member Quirk noted the hard work completed thus far, but expressed concern that there still remained unanswered questions on water and energy use. He discussed the WZIP process for water that includes the installation of pipes to bring water from the Hetch Hetchy System. He presented the possibility that the City's water may be limited by the San Francisco Public Utility Commission (SFPUC) in particular, in the case of an earthquake. He suggested two additional objectives 1) scoring as many water and energy points as possible; 2) that all buildings be as carbon neutral as possible since staff has limited expertise on achieving LEED certification. He further stated making a motion to agree to staff recommendations with an addition that staff report to Council on the feasibility and cost specifics for attaining all energy and water points, as well as for a further report as to what it would take to be carbon neutral.

Mayor Sweeney restated the motion to introduce the ordinance and resolution with an amendment stating that all municipal projects achieve all potential water and energy points with a carbon neutral objective and secondly, that staff report back to Council with more specifics of how this could be established and how more specifically, this ordinance and resolutions could be amended.



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City Manager Jones agreed that as the projects come forward in design, the Council could direct staff to present how the requirements would be met. Council Member Henson, who seconded the motion, agreed that the requirements could be project specific. He also agreed with Council Member Quirk's concerns regarding the Hetch Hetchy project. Lastly, he would like to see standards ready for new municipal buildings. Mayor Sweeney also agreed that the motion makes it an objective.

Council Member Dowling commented on the 30% reduction that relates to water usage when efforts have already been taken to minimize the use of water in new development. He also commented on the increased costs for construction when LEED certification is required. He expressed concern on the increased costs for building municipal facilities when LEED certification is required.

Council Member Quirk appreciated Council Member Dowling's comments and noted that the objective is to have staff provide alternatives as well as consider each project individually.

It was moved by Council Member Quirk, seconded by Council Member Henson, and unanimously carried, with an amendment stating that all municipal projects achieve all potential water and energy points with a carbon neutral objective and secondly, that staff report back to Council with more specifics of how this could be established and how more specifically, this ordinance and resolution could be amended and adopt the following:

Resolution 08-123, "Resolution Finding that the Enaction of the Municipal Buildings Green Building Ordinance is Categorically Exempt from Environmental Review Under the California Environmental Quality Act"

Introduce Ordinance 08-_, "An Ordinance Adding Article 21 to Chapter 10 of the Hayward Municipal Code Establishing Green Building Requirements for Municipal Buildings"

8. New Master Fee Schedule and Adjust and Establish Fines and Penalties

Staff report submitted by Director of Finance Auker, dated July 29, 2008, was filed.

Director of Finance Auker presented the Master Fee report and responded to questions.

Council Member Dowling asked what the process is for removal of signs. Director of Finance Auker responded that the Community Preservation staff cites those who violate the code and there are penalties and fines. Once the owner is located, they are noticed of the violation and allowed time to comply before they are fined.

Mayor Sweeney suggested that additional time be given to staff in order to return in September with a resolution that includes fines, penalties and the notification process.

Council Member Dowling referenced the Public Works section of the master fee schedule, asking

why cart retrieval had a zero entry instead of the proposed \$30. Director of Finance Auker explained the fees charged when the carts go to storage.

Council Member Dowling indicated it was his understanding that such fees are prohibited, but that a fee could be charged for picking up or holding carts. He also added that it was in the ordinance but no fee had been established. He also noted that if the fee is approved, it would require noticing a significant number of people before October 1st.

Council Member Henson asked why full recovery of all charges for hazardous materials was not recommended at this time. Director of Finance Auker explained that the charges reflected 80% of recovery for fees. She reiterated that at the recent work session, some fees would be phased in at a step-up rate of 80% for FY 2008, 90% for FY 2009 and 100% for FY 2010 with a final review in the next budget year with the goal of 100% recovery.

Council Member Henson referenced the staff report related to Community Preservation's new inspection fee of \$171 for a no show. Director of Finance Auker explained that if an inspection is re-scheduled, staff can charge the penalty listed in the fee schedule but no actual fee is charged. In the case of a no show for a rescheduled appointment, there will be a charge. She indicated the costs are for the inspector's time of going to the location to a rescheduled appointment and if the violation is not corrected, then the \$171 fee is charged for a second or third visit.

Council Member Henson asked for an explanation on the prohibition of Card Club per table fees. Director of Finance Auker explained that \$1,500 per table is a tax, not a fee. She indicated it was something the Council could request staff to bring forward but as a tax, however, it would need to go to the voters.

Council Member Halliday had additional questions on the Card Club table fees, stating it was her understanding the City could continue charging the tax because it was a pre-Proposition 218 tax. She referenced the staff report that showed the \$1,500 as a fee and not a tax, whereas, the proposed recovery fee is \$40. Director of Finance Auker concurred.

Council Member Halliday asked for an explanation of \$1,300 fees for election publications in the City Clerk department. Director of Finance Auker explained that the \$1,300 includes actual printing costs plus an additional \$100 for the City Clerk's staff time.

Council Member Halliday asked why they were not charging 80% for the City's passport program. Director of Finance Auker explained the fees are set forth by state and federal law.

Council Member Quirk asked if the City was losing money on passports and was it a burden on the City Clerk's staff. Director of Finance Auker explained they were providing a service and it had increased revenues.

Council Member Quirk noted the revision referencing Hazmat Material, such as HMA48, with the actual cost of \$139 with the current fee of \$119 and now reduced to \$111 for those 3 items. He asked that the report be corrected. Director of Finance Auker concurred with his noted revisions.

Council Member Quirk referenced the Community Economic Development fees on construction types, stating it was difficult to understand if the fees were increasing or decreasing. Director of Finance Auker explained that under Fire Prevention, the fees were calculated by valuation based methodology and now will the fees will be calculated by the type and size of the building and the report provided some comparative data for full cost recovery. However, staff is recommending an



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80% recovery.

Council Member Quirk referenced the fees listed under the Library and Neighborhood Services on page 32, and the decision to change the re-inspection fees from \$75 to a proposed \$509 fee asking why we are keeping the fees constant rather than increasing the fees. Director of Finance Auker stated per discussions with Community Preservation's staff, the cost is calculated and determined when returning for a 3rd and 4th inspection, the fee incorporated higher management, driving the costs up. However, from the perspective of the violator, it was not advisable to increase the cost when a penalty is charged.

Council Member Quirk referenced the fees under the Animal Control section, asking why the fees were less than the costs and how the decision was made. Director of Finance Auker stated per discussion with Animal Control staff, it is preferable that these services be subsidized and remain low, so that animal owners can take advantage of the services offered.

Council Member Zermefio thanked staff for their input on the report.

Mayor Sweeney open and closed the public hearing at 9:49 p.m. with no requests to speak.

Council Member Henson moved the staff recommendation. Council Member Quirk restated for the motion, the Hazardous Material Office revision, noting fees for \$111 on items HM47, HM48, and HM49 will be changed to \$119.

Council Member Dowling thanked all the staff and Brian Foster of Maximus for their hard work on revising the fees. He commended Director of Finance Auker for responding accurately to every question that was asked. He made a friendly amendment that staff report on fines for illegally posting signs on properties.

Council Member Halliday asked if a friendly amendment was needed for the Card Club Table fee corrections and staff noted the correction.

It was moved by Council Member Henson, seconded by Council Member Zermefio, and unanimously carried, to adopt the following with friendly amendments:

Resolution 08-124, "Resolution Adopting Revised Master Fee Schedule Relating to Fees and Charges for Departments in the City of Hayward and Rescinding Resolution No. 08-099 and All Amendments Thereto"

LEGISLATIVE BUSINESS & INFORMATIONAL ITEMS

9. Adoption of an Ordinance Rezoning Certain Property in Connection with Zone Change Application No. PL-2003-0656, Relating to Property Located North of Garin Avenue, South of Woodland Avenue, East of Larrabee Street and West of Clearbrook Circle

DRAFT

Staff report submitted by City Clerk Reyes, dated July 29, 2008, was filed.

City Clerk Reyes made the report, noting that at the time of introduction, the vote was not unanimous and thus placed under Legislative Business.

Mayor Sweeney opened and closed the public hearing at 9:59 p.m.

It was moved by Council Member Henson, seconded by Council Member Zermefio, and carried by the following roll call vote:

Ordinance 08-13, "An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2003-0656 Relating to the Property Located North of Garin Avenue, South of Woodland Avenue, East of Larrabee Street and West of Clearbrook Circle"

AYES: Council Members Zermefio, Quirk, May, Dowling, Henson
NOES: Council Member Halliday
Mayor Sweeney
ABSENT: None
ABSTAINED: None

COUNCIL REPORTS

Council Member Quirk shared points from his recent tour of the Hetch Hetchy System learning why chloramines were added to our water. He explained that a study was done that added chorine and subsequently adding ammonia to make chloramines which posed hazards to people with respiratory problems. There are countries in Europe that do not have chlorine or chloramines in their water, using an extreme filtering process, where subsequently the water is treated with ozone and/or ultraviolet light as an additional purification. He learned that such a project on the Hetch Hetchy System could cost roughly \$2 billion to implement.

ADJOURNMENT

At 10:03 p.m., Mayor/Chair Sweeney adjourned the meeting at 10:03 p.m. and provided Council Member Zermefio the opportunity to adjourn the meeting in memory of George Pacheco's father, George Pacheco, a local activist.

APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:

Angelina Reyes, City Clerk, City of Hayward
Secretary, Redevelopment Agency