



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 23, 2008, 8:00 p.m.**

MEETING

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

ROLL CALL

Present: COUNCIL/RA MEMBERS Zermefio, Quirk, Halliday, May, Dowling,
Henson
MAYOR/Chair Sweeney
Absent: COUNCIL/RA MEMBER None

PROCLAMATION National Hispanic Heritage Month

Mayor Sweeney read the proclamation declaring September 15 to October 15, 2008 as National Hispanic Heritage Month. He noted that La Alianza de Hayward, since its formation in 1990, has been promoting Hispanic, Mexican, Mexican-American and Latino culture and education in Hayward. La Alianza de Hayward Vice President Tatiana Pene accepted the proclamation from Mayor Sweeney and Council Member Zermefio. She also recognized and appreciated Council Member Zermefio for his support and noted that he is a true role model for the community. Accompanying her was Mr. Garcia, who also commended Council Member Zermefio and appreciated him as he represents the Latino community.

PRESENTATION Industrial Energy Efficiency Program Participation 2008

PG&E presented the award to the City in recognition of the City's implementation of energy saving technology. Chris Urango of PG&E presented the Industrial Energy Efficiency award to the City of Hayward for recent system improvements installed at the wastewater treatment plant. Public Works Director Bauman accepted the award on behalf of the City.

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that at its closed session, the Council approved some changes to the City Manager's employment agreement that will be considered for action on October 7, 2008.

PUBLIC COMMENTS

Robert Goodwill, representing Hayward Community Action Housing Camp Network, stated that members of this group encourage housing and desire to participate in the update of the City's Housing Element.

DRAFT

Mayor Sweeney commented that there are a number of speakers requesting to speak regarding this very topic and informed the audience that the City has started the process and the first public meeting will be held towards the end of November. He invited all to submit contact information so that they can be informed of future meetings.

Rev. Jose Balonos, a minister for the homeless and low income residents in downtown Hayward, asked that his group be included in the housing element update.

Gloria Walker, a member of COR, spoke on its behalf, commented on the health of the community and asked to be included in the housing decisions that will occur. In addition, she noted past instances of landlord neglect to her unit that continues in other units as well.

Mayor Sweeney asked that she provide information regarding her unit and the complex where she resides so that staff can follow up on her issues.

Dr. Willis Anderson, Pastor, indicated that he works with the disenfranchised and those who need housing. He asked to be a part of the community meeting.

Linda Mandolini, Executive Director of Eden Housing, thanked Mayor Sweeney and the Council for allowing Eden Housing to celebrate its 40th Anniversary in the City Hall Rotunda. She continues to receive numerous compliments from her colleagues about the celebration. She, in particular, thanked three City employees: Liz Sanchez, for her amazing assistance, Chris Gillis, for the great banner, and Paul DiGrazia, for his efforts to make this a very special event.

John Super spoke in support of housing for low and moderate income and encouraged more. He made several recommendations for improvements such as the use of solar paneling. He also urged Council to consider eliminating vacant industrial warehouses located near homes.

Ernest Jaramillo, a Deacon at St. Joachim's Church and a leader of COR, spoke on the need for affordable housing for Hayward families and asked to be included in the discussion.

Sonia Pelayo, a resident of Thelma Street, using a translator, spoke on the need for improved housing for families and appreciated the Council for its work towards improving housing.

Beatriz Parra, a resident of the Longwood neighborhood, described her experience with renting and home ownership. She appreciated the Council for its continued work towards improving homes for families.

Doug Ligibel commended Mayor Sweeney, City Manager Jones and his wife, Dee Dee Ligibel, for their continued efforts and collaboration toward improvements to the downtown. He spoke on youth violence in Hayward and appreciated Police Chief Ace for the work of his department that made recent arrests. Mr. Ligibel also expressed concerns related to the BART station. He referred to potential security concerns once the cinema opens. Lastly, he announced the next Keep Hayward Clean and Green (KHCG) clean-up event that will occur this Saturday southward on Mission Boulevard.



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Mayor Sweeney asked that City Manager Jones set up a meeting with BART representatives. Council Member Henson indicated that he recently spoke with BART Director Franklin, related to the same topic as Mr. Ligibel's and was informed that BART representatives are working with City staff.

Council Member Quirk announced the upcoming fundraising event to be held in the City Hall Rotunda this Friday in favor of the Sun Gallery. He invited all to attend this special event.

CONSENT CALENDAR

Item 1 was held for one week.

1. Approval of Minutes of the City Council Meeting on July 22, 2008
At the request of Council Members Quirk and May, the minutes were continued.
2. Amendment to Voting Requirement to Joint Powers Agreement with Alameda County Waste Management Authority

Staff report submitted by Deputy Director of Public Works Ameri, dated September 23, 2008, was filed.

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

Resolution 08-134, "Resolution Authorizing the City Manager to Execute the Certificate Amending the Joint Powers Agreement with the Alameda County Waste Management Authority"

3. Resolution Adjusting the Employer Medical Contribution Rate for Employees and Certain Retirees of the Hayward Association of Management Employees, Hayward Fire Chiefs Association, Hayward Police Officers' Association, International Association of Firefighters, Police Management Unit, Unrepresented Management Unit and Elected Officials

Staff report submitted by Employee Benefits Administrator Iwata, dated September 23, 2008, was filed.

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

Resolution 08-135, "Resolution Adjusting Employer Contribution for Subject Members of the Hayward Association of Management Employees Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-136, "Resolution Adjusting Employer Contribution for Subject Members of the Hayward Fire Chief's Association Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-137, "Resolution Adjusting Employer Contribution for Subject Members of the Hayward Police Officers' Association Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-138, "Resolution Adjusting Employer Contribution for Subject Members of the International Association of Firefighters Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-139, "Resolution Adjusting Employer Contribution for Subject Members of the Police Management Unit Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-140, "Resolution Adjusting Employer Contribution for Subject Members of the Unrepresented Management Unit Covered Under the Public Employees' Medical and Hospital Care Act"

Resolution 08-141," Resolution Adjusting Employer Contribution for Subject Members of the Elected Official Covered Under the Public Employees' Medical and Hospital Care Act"

4. Authorization to Acquire 24311, 24321 and 24331 Mission Boulevard and 24491 Mission Boulevard

Staff report submitted by Redevelopment Director Bartlett, dated September 23, 2008, was filed.

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

RA Resolution 08-10, "Resolution Authorizing the Acquisition of 24311, 24321, 24331 and 24491 Mission Boulevard"

RA Resolution 08-11, "Resolution Amending Resolution RA 08-07, as Amended, the Redevelopment Budget Resolution for Fiscal Year 2009, Relating to an Appropriation of Funds from the Redevelopment Agency's Tax Increment Fund, Fund 451"



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5. Revisions to the Conflict of Interest Code

Staff report submitted by City Clerk Reyes, dated September 23, 2008, was filed.

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

Resolution 08-142, "Resolution Accepting the Additions and Revisions to the Conflict of Interest Code"

HEARINGS

6. Undergrounding District No. 28 for Watkins Street from D Street to Fletcher Lane: Adoption of a Resolution and Ordinance to Establish

Staff report submitted by Deputy Director of Public Works Fakhrai, dated September 23, 2008, was filed.

Director of Public Works Bauman made the report, noting that the beginning of the construction will begin on May 2010 and completed by 2011. He responded to Council questions related to Rule 28 funding, available funding and the lack of comments from property owners. It was suggested that affected property owners be re-notified of this project.

Mayor Sweeney opened the public hearing at 8:46 p.m.

Janet Pietro stated that she was speaking on behalf of her uncle, Louis Garcia, who resides at 22825 Watkins Street, the first property located on D Street. She stated that this project would be a financial hardship and a disruption to his routine. She described the topic of eminent domain and its impact on his property in the past and was concerned that the City could take his property in the future.

Director of Public Works Bauman reported that the Rt. 238 project, is not taking any property on Watkins Street and there are no plans for this property.

Mayor Sweeney asked staff to address this concern. Redevelopment Agency Director Bartlett reported and confirmed that there are no plans for taking this property using eminent domain.

Council Member Dowling indicated that this Council, as well as past Councils, have made a commitment that in the downtown it will not take property that is owner occupied.

Maria Rodriguez, residing at Watkins Street, asked for further clarification when an owner is not able to afford to pay for the conversion. In response, Director of Public Works Bauman indicated

DRAFT

that he has not experienced this situation, but it was his experience that property owners were given sufficient notice to plan for the conversion, which will be in March 2011. He would need to request separate action should that be necessary. In the past, staff has assisted in offering information on contractors to property owners. He also explained that this is the only portion of the area that is not underground in the downtown and would complete the downtown undergrounding of utilities.

Mayor Sweeney closed the public hearing at 8:55 p.m.

Council Members discussed if there were any current programs, such as loans that could be offered to property owners who may not have the monies to fund such projects. City Manager Jones indicated that should there be a need, this type of solution can be considered. It was noted that the time period for completion of this project is 2011 and there are opportunities for home owners to access equity loans through financial institutions. There is some time to plan and save for this improvement.

It was moved by Council Member Quirk, seconded by Council Member Zermefio, and unanimously carried to adopt the following resolution and direct staff to assist home owners, where there might be hardship with financial options that might be available:

Resolution 08-143, "Resolution Ordering Establishment of Underground District No. 28 for Watkins Street from Fletcher Lane to D Street"

Intro Ordinance 08-_, "An Ordinance Amending Article 4, Chapter 11 of the Hayward Municipal Code by Adding Section 11-4.28 Thereto Relating to Underground District No. 28"

7. Introduction of Ordinance Amending the City's Flood Plain Management Ordinance

Staff report submitted by Deputy Director of Public Works Fakhrai, dated September 23, 2008, was filed.

Director of Public Works Bauman made the staff report. He stated that this amendment is in compliance with FEMA requirements and responded to Council questions. He noted that in the future when there are only map changes, they will be confirmed by resolution.

With no requests to speak, Mayor Sweeney opened and closed the public hearing at 9:10 p.m.

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

Introduction of Ordinance 08-_, "Ordinance Amending Article 4, Chapter 9 of the Hayward Municipal Code Relating to Flood Plain Management"



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8. Graffiti Prevention and Abatement Report – Continued to October 7, 2008

Assistant to the City Manager Saad made the report providing information related to the ordinance to address the abatement of graffiti. The purpose for considering this ordinance is to address the three Council concerns that Council expressed during its review of the Stop Graffiti Reward Program. The three concerns included improving existing enforcement of graffiti removal on private property by considering more accountability on juvenile vandals and their parents; citing property owners who fail to remove graffiti and penalizing those who sell graffiti implements to minors. She cited the sources she researched including reviewing ordinances of other cities that have been in place for awhile.

Assistant to the City Manager Saad responded to Council questions that included the status of the utility art box project and whether the graffiti reward program is working. It was noted that that the “hotline” is being used. There was discussion to encourage more cooperation from businesses in this area and to institute preventative measures.

City Manager Jones stated that staff is working with utility companies to require any new boxes be treated with anti-graffiti measures as utility boxes tend to be magnets for graffiti. In response to charging for graffiti removal, he indicated that the goal is to remove the graffiti, as soon as possible, rather than endure a legal process for its abatement.

There was further discussion on the penalties charged by other jurisdictions that includes taking driving privileges from youth, the criminal implications due to gang activity as well as encouraging immediate abatement by property owners. Assistant to the City Manager Saad reported that there are penalties already implemented by state law that are used by other cities with graffiti ordinances.

Mayor Sweeney opened the public hearing at 9:45 p.m.

Carlo Vecchianell commented on what Lodi is doing to address graffiti. He urged the Council to take similar action.

Dan Henriques commented on unauthorized displays of graffiti.

Council Member Henson urged Assistant to the City Manager Saad to return to complete this project and thanked her for her good work.

This hearing was continued to October 7th. City Attorney Lawson reported that this ordinance will be re-noticed and re-published and confirmed that the hearing be continued to the date certain.

LEGISLATIVE BUSINESS & INFORMATIONAL ITEMS

9. Citation Homes Central – Cannery Place Inclusionary Housing Agreement Modification

Staff report submitted by Redevelopment Director Bartlett, dated September 23, 2008, was filed.

Redevelopment Director Bartlett made the report and responded to questions. Several of the terms of the amendment were discussed

Council appreciated those who spoke earlier as well as the COR members for their willingness to participate in the Housing Element update. It was noted that Eden Housing has a long waiting list.

City Manager Jones described some of the details of the community facilities district. He indicated that this amendment maintains a benefit to the community in addressing affordable housing.

Mayor Sweeney opened the public hearing at 10:20p.m.

Linda Mandolini spoke in support of affordable housing and noted that there are 400 individuals on the waiting list for senior housing at Eden Housing.

Charles McKeag felt that this is a beneficial approach for the developer, Eden Housing and the City.

Mayor Sweeney closed the public hearing at 10:24 p.m.

Council Member Quirk reported that he spoke with Mr. McKeag last week in this regard. He asked that City Manager Jones report what needs to be negotiated to complete this. He was willing to approve the action if parameters could be set so that staff doesn't need to return for approval and that the housing goals are achieved.

City Manager Jones suggested a language change to the resolution to be consistent with the current situation and asked for flexibility in two areas. He noted that there are two aspects still being negotiated, one is as Council Member Quirk alluded to and that is securing the payment and whether to use a letter of credit or other security instrument. The other aspect is the land contribution and its chain of title that staff needs to explore. The concept is still valid related to the land exchange, but there are staff considerations and more details that need to be finalized.

Council Member Quirk would want a report back to Council that satisfies the original intent. He moved the staff recommendation with the slight modification to the language in the resolution, seconded by Council Member Dowling, who spoke in support of the motion, as well as the work of Ms. Mandolini and the quality of units.

Council affirmed the overall relationship with the Redevelopment Agency, Eden Housing and Citation Homes and the award winning design of the Cannery Project. There was a request to report on the Housing Trust that will be established.



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Mayor Sweeney stated that he will be supporting the motion. He commented that he has indicated the design issue and requested that height and elevations for the Eden Housing project match the existing neighborhood elevations. He asked that staff and Mr. McKeag resolve the dust problem. He commended City Manager Jones for his efforts toward resolving the issues of community service in relation to new development. He noted missed opportunities such as this in 2005. He also asked that in the Gap Financing mechanism, the monies be secured.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and unanimously carried to adopt the following with a slight language modification to the resolution:

Resolution 08-144, "Resolution Authorizing the City Manger to Negotiate and Execute an Agreement to Amend the Inclusionary Housing Agreement Currently Recorded Against Title to the Cannery Development in the City of Hayward (Tract Nos. 7613, 7625, 7748, and 7749) (The "Property")"

10. Business License Appeal – Sharon Dwyer

Staff report submitted by Assistant City Manager David, dated September 23, 2008, was filed.

Assistant City Manager David made the report, noting that this is a modified hearing to address a current issue until there is opportunity to address the entire issue related to business license compliance by artists. She indicated that this issue is the result of staff diligently seeking business license ordinance compliance. Staff is not opposed to supporting the arts in Hayward. The question is how to handle artists and in particular, those who offer their works during the open studios events. Staff is interested in establishing a process that makes sense and is reasonable. She reiterated the recommendation to make and place on hold, not charge interest or penalty until this can be resolved. Staff is intending to return to Council with a solution that will only address artists who paint, sculpt and primarily display and participate in open studio events.

Council Member May verified the estimated charges to Ms. Dwyer and thought that the recommendation was satisfactory. She expressed her concerns on the current business license ordinance, noting that in reviewing the ordinance, perhaps she, as a real estate professional, may also owe business license fees, and agreed with her colleagues that this ordinance needs an update.

Assistant City Manager David explained that many of the business categories are obsolete, but to re-write and update this ordinance would involve a ballot proposition in accordance with Proposition 218 procedures. At some point this ordinance will need to be updated to reflect modern business with more realistic amounts that would be in consistent with neighboring jurisdictions.

Council Member Dowling pointed out a number of business categories that are now and have been obsolete. He appreciated that this will be updated. He was concerned that this action only

addresses one artist and wondered how many other artists did pay their fees and kept current. He felt that particular criteria, such as a dollar limits, could be used that would not impose on artists.

In response, Assistant City Manager David stated that the procedure is rather complex. It involves the definition of transactions, whether sales tax is paid, whether there are legal transactions as in real estate and pointed out that there are a number of different ways to identify a business subject to a business license. Land use implications also need to be considered to determine whether the business location is in compliance with zoning regulations.

There was discussion as to the actual fairness of the business license process, in particular when a business conducts transactions outside the jurisdiction and when the transactions occur in another jurisdiction. There was general consensus to accept the staff recommendation.

Mayor Sweeney opened the public hearing at 10:53 p.m.

Sharon Dwyer, a resident for 35 years, described her experience, opposed the retroactive fees and protested these fees based on gross receipts. She noted several inconsistencies in the current business license ordinance including that she does not have a business location, that she has no employees and felt she did not meet the definition of business as she does not make a living as an artist.

Steve Amaral stated that he also received a letter from the City's consultant, Muni Services. He reported to them that he has a re-sale number and does not sell in Hayward. He does have the open studio event once a year in his home. He purchased a license of \$25 a year. He does not pay on gross receipts. He felt that everyone should pay their fair share of taxes. He was disappointed and commented against the customer service as exhibited by Muni Services; even after he purchased his license.

Doris Rodriguez, retired Council Member, spoke on behalf of the arts in this community and appreciated those who spoke on arts behalf. She appreciated that this was being considered, appreciated staff and the recommendation to address this particular situation and staff's intention to re-address this in the future.

Mayor Sweeney closed the public hearing at 11:02 p.m.

Council Member Halliday appreciated the staff and those who provided a better understanding of the current situation. She made a motion to accept the staff recommendation, seconded by Council Member Quirk, to adjust the business license fees for Sharon Dwyer as well as all other artists doing business in Hayward.

She appreciated the contractor, which has performed good work, but was concerned that the types of letters to collect the fees were not the best customer service that reflects City staff.

Council Member Dowling stated that he could not support exempting just artists. He did agree with the open studio exemption, but others such as the sale of a painting, or a musician, who is paid to perform once in Hayward. He also commented on other home occupations that occur in this City that should be considered exempt as well. He was willing to exempt the past fees, but not the



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current business license.

Mayor Sweeney reiterated the staff recommendation. City Manager Jones clarified that this is one specific appeal and these particular fees charged are toward this specific artist. The broader and larger project is the business license update that staff recognizes is a complex effort.

Council Member Quirk stated that this motion is specific to the artist, Ms. Dwyer. He recognized that more needs to be done and encouraged staff to resolve this.

Council Member Halliday confirmed her original motion to accept the staff recommendation.

It was moved by Council Member Halliday, seconded by Council Member Quirk, and unanimously carried to suspend collection of delinquent business license taxes and fees for Sharon Dwyer and all other artists doing business in Hayward, pending upcoming recommendations from staff relating to the licensing of artists and the collection of related business taxes.

COUNCIL REPORTS

Council Member Zermefio recommended reading this week's issue of Time Magazine, pointing out an article related to community building. He also recommended reading the current Hispanic Magazine.

ADJOURNMENT

Mayor/RA Chair Sweeney adjourned the meeting at 11:13 p.m. in memory of Neighborhood Alert Block Captain Joanne Van Kamp, who assisted in the Pensacola Street neighborhood.

APPROVED:

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

ATTEST:

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

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