



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, October 21, 2008, 8:00 p.m.**

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**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 Halliday.

**ROLL CALL**

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

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Lawson announced that at its closed session, the Council discussed litigations related to two cases: Joja/Ali v. City of Hayward and McGee v. City of Hayward. Mr. Lawson also stated that there was discussion about real property transactions related to Caltrans property and the Route 238 Corridor. He stated that Council did not take reportable actions.

**PUBLIC COMMENTS**

Mr. John Churchill, Plum Tree Street resident, was cited for no parallel parking infractions. Mr. Churchill did not agree that enforcement by the police was equitable for all the cul-de-sac residences in the area. His request to have his cul-de-sac configured for angle parking was denied and he was told to park on the driveway or in the garage - a suggestion that did not seem a solution for Mr. Churchill. City Manager Jones was amenable to Mayor Sweeney's request to have City staff meet with the neighbors and review the situation.

Mr. Antonio Landaverde, Plum Tree Street resident, echoed Mr. Churchill's concern about inequitable police enforcement.

Mr. Walli Mohammed, Plum Tree Street resident, expressed disappointment for the parking designation on Plum Tree Street.

Mr. Croft Jervis, Prospect Street resident, expressed concern for the death near the Hayward BART station and potential for increase in crime that the new Cinema Place represents to downtown. Mr. Jervis requested more police presence in the downtown to mitigate his concern. He also made reference to his e-mail to City staff regarding safety concern for parents and children crossing the Union Pacific Railroad tracks on their way to the Burbank Elementary School. Mayor Sweeney suggested that City staff join efforts with the Hayward Unified School District staff in informing parents of safety practices. City Manager Jones noted that efforts to inhibit potential for crime have been undertaken, e.g., enhanced lighting on B Street, additional bicycle police presence related to the Cinema Place opening and evaluation for permanent police presence. He also stated that Police staff was working with Cinemark regarding security plans for the business operation.

**DRAFT**

## CONSENT CALENDAR

Consent Item Nos. 1, 2, and 3 were removed for further discussion.

1. Approval of Minutes of the Special Joint City Council/Redevelopment Agency Meeting on July 29, 2008

At the request of Council/RA Member Quirk, the minutes were held for one week.

2. Approval of Minutes of the Special Joint City Council/Redevelopment Agency/Housing Authority Meeting on September 16, 2008

It was moved by Council/RA/HA Member Quirk, seconded by Council/RA/HA Member Zermeño, and unanimously carried, to approve the minutes of the Special Joint City Council/Redevelopment Agency/Housing Authority Meeting of September 16, 2008, with a revision by Council/RA/HA Member Quirk.

3. Approval of Minutes of the City Council Meeting on October 7, 2008

It was moved by Council Member Quirk, seconded by Council Member Zermeño, and unanimously carried, to approve the minutes of the City Council Meeting of October 7, 2008, with a revision by Council Member Quirk.

4. Utility Service Agreement (USA 08-01) – Timothy W. Roberts and Vella K. Black-Roberts (Applicants/Owners) – Authorize the City Manager to Execute a Utility Service Agreement for Water Service at 25655 Clover Road in the Castle Home Area of Fairview Area in Unincorporated Alameda County

Staff report submitted by Development Review Specialist Sokoya, dated October 21, 2008, was filed.

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

Resolution 08-152, "Resolution Authorizing the City Manager to Apply to LAFCO for Approval of Utility Service Agreement (USA 08-01) to Provide Water Service at 25655 Clover Road in the Castle Home Area of Fairview in an Unincorporated Area of Alameda County and Further Authorizing the City Manager to Execute Such Agreement"

5. Utility Service Agreement (USA 08-02) – Scott W. Robinson (Applicant/Owner) – Authorize the City Manager to Execute a Utility Service Agreement for Water Service at 26177 Clover Road in the Castle Home Area of Fairview Area in Unincorporated Alameda County

Staff report submitted by Development Review Specialist Sokoya, dated October 21, 2008, was filed.



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

Resolution 08-153, "Resolution Authorizing the City Manager to Apply to LAFCO for Approval of Utility Service Agreement (USA 08-02) to Provide Water Service at 26177 Clover Road in the Castle Home Area in an Unincorporated Area of Alameda County and Further Authorizing the City Manager to Execute Such Agreement"

6. Resignations of Carolyn Grieco-Williams from the Human Services Commission, Bryant Johnson from the Hayward Youth Commission, and Roberto Banke from the Keep Hayward Clean and Green Task Force

Staff report submitted by City Clerk Reyes, dated October 21, 2008, was filed.

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

Resolution 08-154, "Resolution Accepting Written Resignation of Carolyn Grieco-Williams from the Human Services Commission, Bryant Johnson from the Hayward Youth Commission and Robert Banke from the Keep Hayward Clean and Green Task Force"

7. Agreement with Peckham and McKenney for Human Resources Director Recruitment

Staff report submitted by Interim Human Resources Director Bell, dated October 21, 2008, was filed.

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

Resolution 08-155, "Resolution Authorizing the City Manager to Negotiate and Execute and Agreement for Professional Services with Peckham & McKenney to Recruit for the Position of Human Resources Director, and Appropriate Funds"

## HEARINGS

### 8. Introduction of an Ordinance to Amend Chapter 10 of the Hayward Municipal Code by Adding Article 22, a Green Building Ordinance for Private Development

Staff report submitted by Director of Department of Development Services Rizk, dated October 21, 2008, was filed.

Director of Department of Development Services Rizk gave a synopsis of the report and introduced Acting Building Official Martinez and Plan Checker Osborne to address any technical questions.

Council Member Quirk referenced an e-mail submitted by Mr. Zaballos noting that GreenPoint Rating fees were higher than those stated in the report. Director of Department of Development Services Rizk stated that the amounts quoted in the report came from Build It Green and Stopwaste.org staff. Mr. Rizk added that Mr. Zaballos's concern seemed to be related to GreenPoint Rating for residential remodels and additions, which were only encouraged per the proposed ordinance. In response to Mr. Quirk's inquiry related to what would be required in obtaining 15% below Title 24 requirements for lighting reduction, Mr. Osborne noted that there were fixtures available to reduce the overall wattage demand. In response to the increase cost for lighting wattage per square foot, Mr. Osborne indicated that it was not expected to be significant. Mr. Quirk also inquired about the cost for reduction of indoor water use by 20% for a typical building. Acting Building Official Martinez indicated that going from a 1.6 Gallons per Flush (GPF) water closet toilet to a 1.0 GPF, there was an increase in cost of \$150, and from a 1.6 GPF urinal to a waterless urinal, an increase in cost of \$1,100. It was determined that there was not a large amount of money. Mr. Quirk requested that staff find the cost associated with the lighting reduction of a building similar to City Hall using genetic builder equipment. Mr. Quirk also mentioned that Mr. Miller, Stonebrae Country Club President, expressed concern that the proposed ordinance might generate contractual problems with builders. Mr. Rizk indicated that language could be added to amend or exclude pending projects subject to development agreements.

Council Member Zermefio noted that the information on page two of the report related to green building was helpful. Mr. Zermefio referenced page seven of the report regarding Leadership in Energy and Environmental Design (LEED) measures and its degree of difficulty in verifying the process, and inquired what happens when the measures are not able to be verified correctly. Director of Department of Development Services Rizk indicated this was a reason why staff moved away from using the LEED checklist items.

Council Member Halliday indicated that she also spoke to Mr. Miller and she asked staff to clarify if the ordinance would include projects that have been approved by the City yet building permits have not been pulled. Director of Department of Development Services Rizk indicated that per the proposed ordinance, green building requirements would apply to any building permit application submitted after July 1, 2009. Ms. Halliday noted that Council would need to review the language for already approved projects. In response to Ms. Halliday's inquiry for the estimated fees associated with Build It Green for larger projects, Mr. Rizk indicated that fees associated with the application and certificate are not as significant as the fees involving in hiring a GreenPoint Rater and incorporating building materials. He also clarified that the \$10 fee for each additional



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certificate was for each additional home in a project. In response to Ms. Halliday's inquiry for the reasoning for an independent third party rater hired by the developer, Mr. Rizk indicated that it was because of staff resources, established green building system, and objectivity factors.

Council Member Dowling, in reference to lighting requirements, inquired about the effect that the reduction requirements would have on the ability to work in an office setting. Plan Checker Osborne noted that California's Title 24 system accounts for flexibility, e.g., photovoltaic system. Director of Department of Development Services Rizk added that new technology for lighting was improving at requiring less energy for the same output. In reference to auto dealers and their requirements, Mr. Osborne responded that the Energy Commission made an exception for auto dealerships.

Council Member Henson referenced Section 10-22.130 (b)-Standards for Compliance for New Single Family Dwellings, noting that during Sustainability Committee discussions he understood that the ordinance would apply to only new projects. It was stated that the ordinance would need to be revised to clarify Council's position. Mr. Henson also added that with Governor Schwarzenegger's veto of Assembly Bill 2939 (Hancock), which would have authorized cities to adopt green building standards that exceed those adopted by the State, municipalities would need to provide findings for ordinances. Director of Development Services Department Rizk indicated that findings related to location, climate, and specific conditions that justify exceeding Title 24 requirements, would need approval by the Energy Commission and the State Building Standards Commission. He also stated that the ordinance would require an annual update and review. It was stated that some of the cost associated with new green building requirements would be reduced as cities comply with State requirements.

Council Member Quirk inquired why there was only a 15% reduction in lighting from Title 24 for commercial projects. Plan Checker Osborne indicated that lighting is the primary energy user for commercial building.

Mayor Sweeney opened the public hearing at 9:07 p.m.

Mr. Jim Wieder, Hayward Chamber of Commerce President, noted that he was in receipt of e-mails that did not favor the ordinance as written. Mr. Wieder concurred with Council Member Henson that previous discussions related to green building requirements only considered projects approved after July 1, 2009. He added that it was reasonable to provide a cost benefit analysis for the development community. He urged Council to be mindful of the current economic crisis. He recommended that the ordinance be continued for at least a week in order to include further discussion and he favored revisiting the topic next year.

Mr. Paul Campos, Senior Vice President and General Counsel for the Home Builders Association of Northern California, noted that the association became the first in the country to endorse an independent third party Green Building Program and also partnered with Build It Green in promoting its ordinance. He commended staff's recommendation to move from LEED to

GreenPoint Rated, but he was concerned with the ordinance as drafted. He urged Council to amend the ordinance, in order to provide for a grandfather date, stating that any project that has submitted a complete application before the July 1, 2009, be exempt from the ordinance. He added that as green building progresses, long term development agreements and vesting tentative maps might not be exempt from State law requirements. He expressed interest for working with City staff regarding local stimulus measures for housing. Finally, he urged staff to ensure that water reduction for commercial buildings complies with local Code requirements.

Mr. Steve Miller, Stonebrae Country Club President, commended the City for putting together the green movement effort. Mr. Miller indicated that proposed Green Building requirements would impose a great impact on approved projects such as Stonebrae, which was approved after nine years of extensive review. He requested that Council delay its decision and reconsider appropriate language to amend the proposed ordinance. Finally, he submitted a letter for the record.

Mayor Sweeney closed the public hearing at 9:24 p.m.

Council Member Quirk made a motion to direct staff to bring back appropriate language for projects that should be grandfathered and look at the financial aspects of the builders; and to bring back an estimate of the increase in cost for commercial building regulations, e.g., City Hall.

Council Member Zermefio seconded the motion.

Council Member Dowling thanked all those involved in contributing to the progress of the proposed ordinance. Mr. Dowling indicated that improvements could have an initial cost, but over time would constitute savings for water and energy. He added that it would not make sense to impose new requirements on developments such as Stonebrae, Olson's Garden Walk, La Vista Quarry, and Citation Homes. He suggested that developments that have already been approved be encouraged and not required to follow a GreenPoint Rated Checklist. He supported the motion.

Council Member Henson also supported the motion. Mr. Henson suggested that a list of development projects that fit into the category described by Mr. Dowling be created and that the language in the ordinance be specific as what it would entail. He added that the GreenPoint Rating System process was ready to advance as well as commercial LEED certified buildings. Finally, he was optimistic that the cost associated with the GreenPoint Rating System would be reduced. He was in support of the motion as stated.

Council Member Zermefio echoed the comments made by Council members and added that building homes would benefit the economy. He concurred with the motion.

Council Member May reminded Council Members that this hearing was a result of work sessions in which she supported encouraging rather than requiring green buildings. Ms. May noted that homebuyers are most concerned with costs as opposed to GreenPoint Rating. She concurred with Council Member Henson favoring a listing of pending developments and noted that Hayward has had a reputation for being unfriendly towards developers.

Council Member Halliday supported the motion and commended the building community input, but she was disappointed for lack of constituency input. She expressed importance for creating a



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balance among the interested parties. She concurred with Council Member Dowling that builders be encouraged to consider green building and favored noting the economic unfeasibility for builders to meet the requirements. Finally, she thanked the development community and its willingness to see Hayward move towards green building.

Mayor Sweeney reminded members of Council that the July 1, 2009 date was selected to give people notice of when the green requirements would be in place. Mr. Sweeney encouraged Council to be ready to make decisions and determine the projects that should be exempt from green building requirements. He indicated that Hayward residents demand green friendly projects. He supported the motion and urged Council Members of the importance to provide leadership.

In response to Council Member Henson, City Manager Jones anticipated that the item would come back before Council on November 25, 2008.

Discussion ensued and it was determined that City staff would bring back the list of projects and would make a reasonable recommendation.

It was moved by Council Member Quirk, seconded by Council Member Zermefio, and unanimously carried to direct City staff to bring back appropriate language for projects that should be grandfathered and look at the financial aspects of the builders; and to bring back an estimate of the increase in cost for commercial building requirements, e.g., City Hall.

9. Introduction of an Ordinance Implementing the Provisions of the Digital Infrastructure and Video Competition Act (DIVCA) of 2006

Staff report submitted by Assistant City Manager David,  
dated October 21, 2008, was filed.

Assistant City Manager David gave a synopsis of the report.

Council Member Henson expressed his dissatisfaction for the Digital Infrastructure and Video Competition Act (DIVCA) since it went into effect. In response to Mr. Henson's request for a comparison of the five percent of the state franchise holder's gross revenue plus one percent Public Education and Government (PEG) fee and the City's ability to individually negotiate, Assistant City Manager David indicated that the five percent is comparable to what was negotiated in the local franchise agreement and the one percent PEG was a continuation of what was negotiated. Ms. David further stated that the difference would constitute a charge for previous free service drops for municipal buildings, except for libraries and schools. Furthermore, auditing was identified to continue to be an issue. In reference to Section 11-1.500 of the Ordinance regarding Permits and Construction, Mr. Henson inquired if the State could control the ability of companies to come into a community. Ms. David indicated that companies would still be subject to the City's regulations related to the public rights-of-way and permits required, but the City would not have the same authority to deny a permit application, assuming they meet the requirements.

**DRAFT**

In response to Council Member Dowling's inquiry about the number of AT&T "U-verse" permits in process, Director of Department of Development Services Rizk estimated a number of less than ten. Director of Public Works Bauman added that AT&T indicated that they would stop pulling additional permits. In reference to the number of boxes in Hayward, Ms. David indicated that initially they were planning for more than 300, but there were less than 50.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 9:57 p.m.

Council Member Halliday inquired about the City's ability to broadcast the Council meetings. Ms. David indicated that the City's three channels would be sustained on Comcast per the State Franchise Agreement contingent of eight hours of continuous programming per channel. Ms. Halliday requested that an additional work session be scheduled to allow for further discussion about access to local government or utilization of alternative options such as via the internet. Finally, Ms. Halliday made a motion to introduce the ordinance per the staff recommendation with a request to have a work session discussion about the concern raised.

Council Member Dowling seconded the motion.

In response to Council Member Zermefio's inquiry for an AT&T store in Hayward, Assistant City Manager David stated that the provision for Cable services and retail outlet are two separate operations. Mr. Zermefio also asked that the Matt Jimenez Community Center be considered for a free service drop. Ms. David indicated that the center might already be a free drop, but also noted that under the new regulation, a charge would be assessed for a drop service. In reference to broadcasting over the internet, Ms. David indicated that it would be addressed at a work session.

Council Member Henson indicated that the proposal would bring the City into compliance with California Assembly Bill 2987 (Nunez), to which he strongly opposed. Mr. Henson was disappointed that this represented encroachment by the State into the City's territory and added that he could have felt differently if the revenue was incremented to the five percent. Lastly, he registered his complaint for the record.

It was moved by Council Member Halliday, seconded by Council Member Dowling, and carried with Council Member Henson voting no, to adopt the following:

Introduction Ordinance 08-\_, "An Ordinance that Implements the Provisions of the Digital Infrastructure and Video Competition Act (DIVCA) of 2006, Codified in California Public Utilities Code Section 5800, Et Seq., which the City is Required to Administer and Enforce Throughout the City"



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10. Proposed Changes to the City Master Fee Schedule Related to Building Fees for Mechanical, Electrical and Plumbing Permits

Staff report submitted by Interim Director of Finance Bell, dated October 21, 2008, was filed.

Interim Director of Finance Bell gave a synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:06 p.m.

Council Member Quirk inquired about the fees for the solar photovoltaic system. Director of Department of Development Services Rizk indicated that the specific solar photovoltaic fee was not carried over to the new schedule.

Council Member Quirk made a motion per the staff recommendation with an amendment that current solar heating and solar hot water fees remain, and that the solar photovoltaic permit fee be reduced to the previous fee, in order to encourage solar technology.

Council Member Zermefio seconded the motion. Council Member Henson supported the motion.

It was moved by Council Member Quirk, seconded by Council Member Zermefio, and unanimously carried to adopt the following with an amendment that current solar heating and solar hot water fees remain, and that the solar photovoltaic permit fee be reduced to the previous fee, in order to encourage solar technology.

Resolution 08-156, "Resolution Adopting a Revision to the Master Fee Schedule Relating to Building Fees and Charges for Mechanical, Electrical and Plumbing Permits in the City of Hayward"

**LEGISLATIVE BUSINESS & INFORMATIONAL ITEMS**

11. Consideration of Opposition to State Proposition 7 (Solar and Clean Energy Act)

Staff report submitted by Director of Development Services Department Rizk, dated October 21, 2008, was filed.

Director of Development Services Department Rizk gave a brief synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:11 p.m.

**DRAFT**

Council Member Quirk made a motion to move the item per the staff recommendation.

Council Members Dowling and Halliday seconded the motion.

Council Member Quirk indicated that State Proposition 7 was not well written and was an example of a measure that should not be on the ballot.

Council Member Dowling noted that a proposition that needs more than six pages should not be on the ballot. He expressed satisfaction to vote against it.

Council Member May noted that there were measures such as Measure I, the Hayward School Bond, that were directly related to Hayward, that should have been considered instead of State propositions. Ms. May maintained her stand on State propositions and abstained from voting. She emphasized that Council needed to focus on Hayward issues.

It was moved by Council Member Quirk, seconded by Council Member, and carried with Council Member May abstaining, to adopt the following:

Resolution 08-157, "Resolution in Opposition to Proposition  
7 on the November 4, 2008, Ballot"

12. Consideration of Opposition to State Proposition 10 (California Alternative Fuel Vehicles and Renewable Energy Initiative)

Staff report submitted by Director of Development Services  
Department Rizk, dated October 21, 2008, was filed.

Director of Development Services Department Rizk gave a brief synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:17 p.m.

Council Member Quirk moved the item per the staff recommendation.

Council Member Dowling seconded the motion.

Council Member Quirk noted that the proposed proposition directly affects Hayward as this would cost California taxpayers several hundred million dollars a year.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and carried with Council Member May abstaining, to adopt the following:

Resolution 08-158, "Resolution in Opposition to Proposition  
10 on the November 4, 2008, Ballot"



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13. Consideration of Proposition WW: Regional Open Space, Wildlife, Shoreline, and Parks Bond Extension

Staff report submitted by City Manager Jones, dated October 21, 2008, was filed.

City Manager Jones gave a brief synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:19 p.m.

Council Member Henson noted that Measure WW represented a direct benefit to Hayward Area Parks and Recreation District (HARD) and to the Shoreline-Marina Area. Thus, Mr. Henson made a motion per the staff recommendation.

Council Member Halliday seconded the motion, indicating that the proposition would directly impact Hayward since it would give money to HARD and East Bay Regional Park District for improvements in Hayward. Lastly, she added that it would not raise taxes as this would be a continuation of Measure AA.

Mayor Sweeney noted that 6.8 million dollars had been set aside for Hayward parks.

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried with Council Member May abstaining, to adopt the following:

Resolution 08-159, "Resolution in Support of Measure WW  
on the November 4, 2008, Ballot"

**COUNCIL REPORTS**

Council Member Zermefio encouraged everyone to visit the Sun Gallery, Hayward Area Forum of Arts.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 10:22 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

**ATTEST:**

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Miriam Lens, Deputy City Clerk, City of Hayward

**DRAFT**