



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, March 3, 2009, 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 Henson.

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that Council met regarding four items: Conference with Legal Counsel regarding Averiett v. City of Hayward; Conference with Labor Negotiators concerning bargaining units; City Attorney's Performance Evaluation; and City Clerk Public Employment. He added that there was no reportable action.

PUBLIC COMMENTS

Ms. Amy Nelson Smith, Creole Place resident and member of Sun Gallery, talked about the gallery current and upcoming shows: 20th Annual Children's Book Illustrator Exhibits; Wild, Wild West, Collages; photography, and others. She expressed appreciation for the City's support of the program.

Mr. Doug Ligibel, Grand Terrace resident, thanked Council Members Halliday and Zermefio for their participation on Saturday's clean-up event and commended Mayor Sweeney for attending ninety percent of the events. He extended his gratitude on behalf of the Keep Hayward Clean and Green Task Force members.

Mr. David Pena, Sonoma Avenue resident and Farmers' Insurance agent, spoke about the importance of earthquake insurance and the resident's awareness should an earthquake occur. He suggested that a public forum be arranged with the California Earthquake Authority to address earthquake preparedness and an annual earthquake drill.

Mr. Jim Drake, Franklin Avenue resident, followed up on his concern expressed at a previous meeting regarding gas prices. He spoke favorably of the current gas prices.

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CONSENT CALENDAR

1. Approval of Minutes of the City Council Meeting on February 17, 2009

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried unanimously, to approve the minutes of the City Council Meeting of February 17, 2009.

2. West Tennyson Sewer Improvements – Cascade Diverter: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Ameri, dated March 3, 2009, was filed.

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

Resolution 09-014, “Resolution Approving Plans and Specifications for the West Tennyson Sewer Improvement – Cascade Diverter Project, Project No. 7525, and Call for Bids”

3. Resignations of Pravin Balam, Marilyn Gise, and Glen Hubahib from the Keep Hayward Clean and Green Task Force

Staff report submitted by Deputy City Clerk Lens, dated March 3, 2009, was filed.

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

Resolution 09-015, “Resolution Accepting the Written Resignations of Pravin Balam, Marilyn Gise, and Glen Hubahib from the Keep Hayward Clean and Green Task Force”

4. Midyear Budget Adjustments

Staff report submitted by Director of Finance Auker, dated March 3, 2009, was filed.

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

Resolution 09-016, “Resolution Amending Resolution 08-097, As Amended, the Budget Resolution for the City of Hayward Operating Budget for Fiscal Year 2009, Relating to an Appropriation of Funds”



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RA Resolution 09-07, "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 Fund 451, for ERAF IV"

Resolution 09-017, "Resolution Authorizing the Transfer of Land from the General Fund to the Water System Capital Improvement Fund and the Appropriation and Transfer of Funds from the Water System Capital Improvement Fund to the General Fund"

LEGISLATIVE BUSINESS

5. Utility Users Tax (UUT) Measure
 - a. Resolution to Declare Fiscal Emergency
 - b. Resolution to Place a Ballot Measure on Special Election and Related Actions

Staff report submitted by City Manager Jones, dated March 3, 2009, was filed.

City Manager Jones gave a synopsis of the report and responded to questions.

In response to Council Member Henson's inquiry regarding the Statewide Election on May 19, 2009, and anticipated State revenue measures and tax shifts from local government, such as the State's Education Revenue Augmentation Fund (ERAF), City Manager Jones noted that expected measures on the May 19, 2009 election had non financial elements. However, Mr. Jones added that the State controls most local revenues and that since 1992 the City has lost 78 million dollars to ERAF.

In reference to Council Member Halliday's inquiry regarding section eight of the draft Resolution, "Subdivision (a) of Elections Code, section 9285 shall not apply to the election herein called and there shall be no rebuttal arguments allowed," City Attorney Lawson noted that the recommendation would limit the primary arguments to two, one in favor and one against the measure, and no additional rebuttal arguments to the primary arguments. Ms. Halliday also inquired clarification about the ordinance definitions: "service address", "billing address" and the meaning of "gas." Assistant City Manager David noted that the billing address would apply to cell phones or wireless use. In reference to gas, Ms. David noted that gas is used in the context of a utility user tax and thus it would not apply to gas for automobiles usage.

Council Member Quirk noted the 8.5 million dollars deficit for the current fiscal year and the predicted 15 million dollar deficit for next fiscal year. Mr. Quirk also made reference to a letter received from Kaiser Permanente and inquired what could be done for large energy users and in particular nonprofits, so they do not have an increase in their costs. City Manager Jones noted that the City could partnership with larger users to help them meet conservation goals, which would

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result on mitigating the impact of the proposed tax. Mr. Quirk also made reference to the Zaballos' Corporation and how they plan to institute VoIP (voice over internet protocol) to mitigate telephone costs. He added that large users could use technology and Community Development Block Grant Funds to help mitigate increase in costs.

In response to Council Member Zermefio's inquiry related to the decision for consolidating with the May 19, 2009 Statewide Election as opposed to the June 2009 Election, City Manager Jones noted that it represented less cost to the City and less confusion for voters in terms of process with two elections close in date. In reference to Mr. Zermefio's question about non-profit organizations' tax exemption, Mr. Jones noted that it was difficult to qualify exemptions and that the exemption for low-income was measured consistently with that of water, sewer, and garbage services.

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

The following speakers spoke in support of the measure and commended staff for the report, noting the following concerns: keeping 60 Police officers, preserving 3 Fire stations, placing public safety as a priority in difficult economic times, wanting to live in a City that is financially viable and safe, disagreeing with consideration for large users, asking Council for an unanimous vote, respecting the 10-year sunset, acknowledging that the proposed 5.5% tax was reasonable and the revenue would remain local, and recognizing that cutting back in expenditures were already done.

Mr. Charles Plummer, Lancaster Road resident and former Alameda County Sheriff and Hayward Police Chief.

Mr. Paul Russo, San Luis Obispo Street resident and Hayward business owner.

Mr. Paul Martin, Hayward business owner.

Mr. Indy Nelson, Westbourne Court resident.

Ms. Lisa Brunner, Highland Boulevard resident. She also submitted a letter for the record.

Mr. Rodney Loché, Regal Avenue resident.

Mr. Lee Williamson, Delgado Road resident. He also offered his help in educating the Mobile Home community.

Mr. Marvin Peixoto, Halifax Place resident and Planning Commissioner.

Ms. Linda Bristow, Call Avenue resident.

Mr. Doug Ligibel, Grand Terrace resident and community activist.

Ms. Betty Deforest, Westwood Street resident.

Mr. James Farley, E Street resident.

Mr. Al Mendall, Brookside Lane resident.

Mr. Rob Simpson, Grand View Avenue resident, committee member, and broker.

Ms. Monica M. Schultz, Merritt Lane resident.

Mr. Carl Costa, Optimist Street resident.

Mr. Andy Wilson, Greenbrier Lane resident.

Ms. Theresa Reed, Ricardo Avenue resident and Congregations Organizing for Renewal (COR) representative, supported the measure and submitted information for the record regarding available grants.

Mr. Jim Wieder, business owner and Chamber of Commerce CEO, noted that the Chamber of Commerce and its 750 members support the measure, but asked for consideration to reduce the sunset to seven years, consider 1% cap to high end users, and that 5% of the funds collected be



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redistributed and formulated into a business recovery plan.

Mr. Ray Mazar, Hayward business owner, noted that utility bills are enormous and the proposed tax would add pressure to the business. He was not against the proposal, but felt that there should be a cap of 1.0% or 1.5%. He expressed that it should added to the ballot.

Ms. Dee Dee Ligibel, Grand Terrace resident and community volunteer, supported the measure. She was also concerned for Hayward business owners and asked that a cap be placed for high end users.

Ms. Audrey LePell, Ocie Way resident, supported the measure and asked that the City support the Sun Gallery, should the measure receive voter approval. She supported having a campaign that would represent the current need.

Mr. Jim Drake, Franklin Avenue resident, favored calling the measure a surcharge. He expressed concern about the survey/consultant cost, and the retirement pay based on overtime for Police and Fire.

Linda Bennet, Sixth Street resident, business owner, and Library Commission Chair. She expressed support for the proposal, but indicated that the measure was missing an oversight committee.

Mr. Charles McKeag, Vice President of Citation Homes and Chair of the Downtown Committee of the Hayward Chamber of Commerce, suggested that specific language be incorporated into the ordinance to ensure that Council allocation priorities be consistent with the voters' intent and thus allow voters to control any changes to the allocation priority.

Mr. Jesus Armas, Hayward resident, noted the importance that a coordinated and well managed effort at garnering voter approval is going to have and offered his assistance. He suggested that given the importance of the Library to education, the proposed ballot question in Attachment II of the report should be amended to include the word "library" in front of the word "job/economic development service," and that the word "shall the City of Hayward" be changed to "shall the City" in order to stay within the 75-word limit. He also suggested that a specific section in the budget should address tax revenue, and also that a particular section of budget hearings be devoted to a Utility Users Tax report in order to project transparency and accountability.

Ms. Mary Ann Faue, Westview Way resident, stated that she was aware of the current economic crisis, but she also noted that the proposed 5.5% tax would mean an additional \$160 a year from her pocket. Ms. Faue added that \$0.45 out of every dollar that she earns goes towards some form of government agency. She expressed concern about the cost of the election should the ballot measure fail. She asked Council how she could help stop the State from taking money from Hayward residents. Mayor Sweeney responded that she could talk to the Governor.

Mr. Steve Murtaugh, Oakes Drive resident, encouraged people to come and hear the staff reports and see all the improvements that have been done in downtown Hayward.

Mr. Bob Preston, Thunderbird Place resident and business owner, noted that the proposal was going to be a burden to his business and therefore requested that if the measure had to be carried on, that the sunset be minimized, or the start date delayed for a couple of years, or to place a cap for high users.

Mayor Sweeney closed the public hearing at 10:06 p.m.

City Manager Jones clarified that the services that Fire and Police provide are on demand and they provide reports on usage of overtime. He also indicated that overtime is not calculated on retirement pay for any City employee. In reference to Mr. McKeag's comment regarding audit or a process to create accountability for the expected revenue, Mr. Jones indicated that Council approves the City budget, and from that perspective, Council is the oversight committee. He added that 80% of the revenue derived from the measure would go towards public safety, unless Council decided otherwise.

Council Member Quirk acknowledged City employees for helping solve the current budget. Mr. Quirk noted that the ten-year sunset was mandated. He also indicated that Ms. Faue was the only person that spoke against the proposed measure, and in reference to her concern of the cost that a defeated measure would represent for the budget, he was optimistic that a campaign would overcome such concern. He added that the mobile home park community would need to know and understand that the proposed measure has an exemption for low-income folks as defined by the Federal government. He did not agree with the 1% cap on commercial users suggested by the Chamber of Commerce because that would diminish the projected revenue by 4 million dollars. He agreed with Mr. Armas about an oversight committee and to inform the public through the budget process about the expenditure of revenue generated from the Utility Users Tax. He did not favor amending the recommended ballot question wording, as proposed by Mr. Armas. He noted that the Library and Police are already providing less service with less resource, and he made reference to a report provided by Police Chief Ace, which stated that the department did not have the resources to adequately investigate property crimes due to the lack of personnel. Lastly, Mr. Quirk made a motion per staff recommendation with an additional recommendation to direct staff to bring back a report addressing how to help large utility users, including St. Rose and Kaiser Hospitals. This would include working with the City, PG&E, and Stop.waste.org, to reduce their consumption and thus their utility bills.

Mayor Sweeney reiterated the motion and he suggested as part of the annual budget process, that there be a report to the community and to Council about revenue expenditures derived from the proposed Utility Users Tax. Council Member Quirk concurred with the suggestion as part of the motion.

Council Member Dowling seconded the motion on the floor.

In response to Council Member Zermefio's inquiry related to the tax administrator serving as the oversight committee, City Manager Jones noted that the tax administrator is the focal point for the process and he referred to page 24, Sec. 8-18.240 of the proposed ordinance for language regarding



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an independent audit. Mr. Zermefio indicated that when educating the public, that “natural gas” should be used when referring to “gas.” It was not anticipated that Council could make changes to the determined sunset, given the current budget. He supported the motion on the floor. He did not think there was support for placing a cap on large users and also mentioned that he would be paying twice, as a homeowner and a business owner. Lastly, he commended Sara Lamnin’s efforts with the proposed measure.

Council Member Dowling indicated support for the motion and noted that in talking to a large family, he felt that people would be more supportive knowing that the proposal was an equitable tax. He suggested that staff follow-up on the suggestions presented and to direct resources into energy creation. He favored considering options to help non-profit organizations reduce costs, e.g., solar energy. In reference to the gas provision, he added that it would be prudent to clarify that it is “not for automobiles” to mitigate confusion. He agreed with the suggestion offered by Mr. Armas regarding a revision to the ballot question language and offered an amendment to the motion to revise the question language by taking out either “Hayward” or “city” in the first or last line and adding “library” to the language.

Discussion ensued and Council Member Dowling withdrew the amendment to the motion.

Council Member Halliday noted that there was a lot of input and she mentioned that Council was committed to listening to the community. She noted that she was also a retiree and was concerned about the tax, but she felt that we had to take care of the community and keep it clean and safe. She mentioned that this would not only mean loss of employees but loss of volunteers. She mentioned that the ten-year sunset was related to the ten-year plan. She also felt that the oversight committee was comprised by Council Members. She supported making a report every year about how the monies derived are spent. She supported the motion with hope.

Council Member Henson noted that as a team the City is going to survive the economic crisis. He made reference to the reserve funds created in the early and mid 90’s that are now being eroded and that the utility tax, although unpleasant, was fair and across the board. He said that maintaining public safety was important because without it community confidence drops and that could impact schools. He assured audience members that at least 80% of the tax revenue would be spent on maintaining services as reported and that includes disaster preparedness. He supported the motion and urged businesses to become partners with Stopwaste.org and move toward sustainable energy uses to offset costs. He noted that Council is accountable for the annual report and he suggested that the UUT expenditure report be presented as a separate binder in order to have more transparency. He pointed out that Council is simply putting the measure on the ballot and that the voters will decide if it passes.

There was consensus to have a separate segregated UUT expenditure report as part of the annual budget.

Council Member May noted that she sent out thousands of emails to keep in touch with constituents since she was elected and from the feedback she has received the main concern has been maintenance of Police and Fire services. From a marketing perspective, she suggested changing the measure language to have “maintaining neighborhood police patrols” first followed by “firefighter” and then the remainder of the list of services as shown.

Discussion ensued regarding changing the language. Council Member Quirk did not agree with making any changes to the language as it was determined by the consultant who wrote it based on the polls. Also, he pointed out, the number of words in the measure could not exceed 75.

Council Member Halliday agreed with Council Member Quirk and noted that a campaign to support the measure will be created and, at that time, some of these suggestions could be incorporated in the argument.

Council Member Henson noted that although the word “library” is not included in the statement, there is a strong commitment to the Library.

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

Resolution 09-018, “Resolution Declaring a Fiscal Emergency for the City of Hayward”

Resolution 09-019, “Resolution Calling for a Special Municipal Election in the City of Hayward for the Purpose of Submitting to the Voters a Measure Relating to the Enactment of a Utility Users Tax; Setting Forth the Statement of the Measure to be Voted Upon; Fixing the Date and Manner of Holding the Election; Providing for Notice of Election; and Requesting the Board of Supervisors of Alameda County to Provide for the Consolidation of the Special Municipal Election with the State of California Special Election to be Held on May 19, 2009, and to Provide Election Services”

Intro Ordinance 09_, “An Initial Ordinance to the Voters of the City of Hayward Adopting a Five and One-Half Percent (5.5%) Utility Users Tax on Utility Services (Electricity, Gas, Telecommunications, and Video) and Adding Article 18 to Chapter 8 of the Hayward Municipal Code”

COUNCIL REPORTS

There were no Council reports.

ADJOURNMENT

Mayor/Chair Sweeney adjourned the meeting at 10:48 p.m.



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APPROVED:

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

ATTEST:

Miriam Lens, Deputy City Clerk, City of Hayward
Secretary, Redevelopment Agency