



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, June 30, 2009, 8:00 p.m.

MEETING

The Meeting of the City Council was called to order by Mayor Sweeney at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member May.

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

There was none.

PUBLIC COMMENTS

Ms. Susan Gonzales, E Street resident, spoke about her concern for the quality of air and the extra toxins that will be produced by the proposed Russell City Energy Center power slated to be built.

Mr. Frank Goulart, with business at Main Street, thanked Council Member Henson for his continued participation at the Zucchini Festival. Mr. Goulart showed a schedule of the Zucchini Festival noting that the festival brings all cultures together. Mr. Goulart offered to bring his band, Fab Fever Band, to a public comment section of a Council meeting in July to get everyone ready for the Zucchini Festival on August 15 and 16, 2009.

Ms. Barbara Fields, Madeiros Street resident, expressed concern that Police are not responding to calls and instead Hayward residents are being asked to file their reports online. Ms. Fields disagreed with that approach. Mayor Sweeney requested that City Manager Jones ask the Police Department to follow-up with Ms. Fields.

Ms. Audrey LePell, Ocie Way resident, spoke in favor of the Zucchini Festival noting it is an asset to the City and commended the City's continued support of the festival.

BOARDS AND COMMISSIONS

1. Appointment and Reappointment to the Boards, Commissions, Committee and Task Force and Administer Oath of Office

Staff report submitted by City Clerk Lens, dated June 23, 2009, was filed.

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

Resolution 09-096, "Resolution Confirming the Appointment and Reappointment of Members to Various Boards, Commissions, Committee and Task Force"

City Clerk Lens administered the oath of office to the new appointees to the various Boards, Commissions, Committee and Task Force.

CONSENT CALENDAR

1. Approval of Minutes of the Special City Council/Redevelopment Agency Meeting on June 16, 2009

It was moved by Council/RA Member Henson, seconded by Council/RA Member Dowling, and carried unanimously, to approve the minutes of the Special City Council/Redevelopment Agency Meeting of June 16, 2009.

2. Approval of Minutes of the City Council Meeting on June 23, 2009

It was moved by Council Member Henson, seconded by Council Member Dowling, and carried unanimously, to approve the minutes of the City Council Meeting of June 23, 2009.

3. Addition of Wine and Liquor Containers to California's Bottle Bill

Staff report submitted by Deputy Director of Public Works Ameri, dated June 30, 2009, was filed.

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

Resolution 09-097, "Resolution Urging the California State Legislature to Introduce and Support Legislation to Include Wine and Liquor Containers in the State's Beverage Container Recycling and Litter Reduction Act (AB 2020)"

4. Candlewood Place and I-880 Crossing Sewer Main Improvement: Award of Contract

Staff report submitted by Deputy Director of Public Works Ameri, dated June 30, 2009, was filed.

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

Resolution 09-098, "Resolution Awarding Contract to KJ Woods Construction, Inc., for the Candlewood Place and I-880 Crossing Sewer Main Improvement Project, Project No. 7548"



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5. Authorization for City Manager to Execute a Professional Services Agreement with Andrew Knight for a New Mural for the City Gateways Project at Foothill Boulevard and Maple Court

Staff report submitted by Neighborhood Partnership Manager Sorensen, dated June 30, 2009, was filed.

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

Resolution 09-099, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Andrew Knight for a New Mural for the City Gateways Project at Foothill Boulevard and Maple Court"

6. Resolution to Support Legal Action by the League of California Cities to Challenge Diversion of Local Gas Taxes to the State's General Fund

Staff report submitted by City Attorney Lawson, dated June 30, 2009, was filed.

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

Resolution 09-100, "Resolution Authorizing the City Attorney to Cooperate With the League of California Cities, Other Cities and Counties in the Litigation Challenging the Constitutionality of Any Seizure by State Government of the City's Street Maintenance Funds"

PUBLIC HEARING

7. General Plan Amendment Application No. PL-2009-0276 and Zone Change Application No. PL-2009-0277 – Route 238 Bypass Land Use Study – City of Hayward/Caltrans

Staff report submitted by Senior Planner Buizer, dated June 30, 2009, was filed.

Senior Planner Buizer presented a synopsis of the report.

Mayor Sweeney left the Council Chambers due to a conflict of interest with his employment at Spectrum Community Services and the North side area of Clusters 1 through 6 (Clusters 1 and 2 (*properties between the I-580 on-and off-ramps and Ash Street*), Clusters 3 and 4 (*properties*

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between Ash Street and Grove Way), Cluster 5 (properties between Grove Way and the water tank), and Cluster 6, 7 and 8 (properties in the Upper B Street Neighborhood.)

Mayor Pro Tempore Dowling took the gavel and preceded the meeting.

Senior Planner Buizer covered Clusters 1 through 6 and clarified questions, including an area of undesignated land that it is not part of the study, but part of the Alameda County unincorporated area.

With no additional questions, Mayor Sweeney came back to the Council Chambers and Senior Planner Buizer continued her report.

Council Member Zermefio inquired about the possible plans for a turn-about in Clusters 7 and 8 (*properties in the Upper B Street Neighborhood*), in the area of the proposed extension of 4th Street. Senior Planner Buizer stated that it is still an option staff will be considering with the extension of 4th Street between D and E Streets. In response to Mr. Zermefio's inquiry about Clusters 13 and 14 (*properties between Carlos Bee Blvd. and Central Blvd*), the area of Santa Clara and Jackson Streets, Ms. Buizer noted it is not a part of the study. In response to Mr. Zermefio question about how long until the Hayward Foothill Trails will be in use, Ms. Buizer stated the Trails is to be thought of as a long term project and will depend on the rate of development of properties.

Council Member Dowling thanked Senior Planner Buizer and staff for the report. Mr. Dowling was excited about the new park and the 4th Street extension and urged staff to work closely with the County in regards to East Avenue and E Street where there is an odd intersection. He also expressed concern about the speed issue on East Avenue. Mr. Dowling noted that staff was not receptive of the Preservation Park idea and inquired for staff's reluctance. Ms. Buizer stated that the Preservation Park idea was more about timing. Ms. Buizer noted that once the Historic Preservation Program is established, then there will be a policy in place that will address the historic homes in case they have to be moved. Director of Development Services Department Rizk stated the Historic Preservation Program is scheduled to begin in the fall.

Council Member Halliday complimented staff for coming up with a way to accommodate the two competing uses for the Quarry property. Ms. Halliday favored having the LEED Silver Certification applied to all three sections. Ms. Halliday inquired about a road extension between the Bunkerhill neighborhood and Carlos Bee Way. Senior Planner Buizer stated staff still envisions some type of extension for the primary reason that Bunkerhill has only one point of ingress and egress and to meet current safety standards there needs to be a secondary access through the neighborhood to a major road. Discussion ensued about the ability to generate funds for the improvements needed. Ms. Buizer also spoke to the fact that there are several large properties that are not connected to the City sewer lines. Ms. Buizer explained that if a developer were to purchase the property and extend sewer lines to the area, this might generate more development. Ms. Buizer explained that this in turn could generate funds through City services. Ms. Buizer stated that through property development and/or redevelopment, this would allow better access to build the continuous trail. Ms. Halliday inquired about the Hayward Foothill Trail and the Design Overlay and the flexibility of the trail route if the landowner wants to develop his property. Ms. Buizer confirmed there is flexibility built into the development standards.



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Council Member Henson asked if the Design Overlay was necessary for the trail. Senior Planner Buizer stated that through public meetings with both the Council and the Planning Commission, there was strong desire to see a continuous trail and a designation would provide concrete notice to future developers of the City's goal. Director of Development Services Department Rizk added the Design Overlay District is part of the Zoning Ordinance and if it is adopted it gives more formality and provides enhanced notification to future owners and provides a foundation for staff and Council requiring it in the future. Mr. Henson raised the question of whether the City has lost some retail business as a result of the zoning changes. Ms. Buizer confirmed that there is some loss of retail business throughout the City, but majority of changes is in the northern portion of the study area. Mr. Henson inquired about the Quarry Village area, the Sustainable Mixed Use plan, and the School District. Ms. Buizer explained the Sustainable Mixed Use plan does accommodate schools.

Council Member Quirk commended staff for a clear and direct report and expressed concern about the proposed road in the Quarry area by Carlos Bee Boulevard leading to Highland Boulevard that might end up being used as a major road for people going to the college. Senior Planner Buizer replied there is concern with any type of development in the Quarry and that due to the size of the site, some type of access has to be provided. Mr. Quirk expressed concern for the Highland Boulevard residents and the increase in traffic since the area is supposed to be zoned as a low traffic, parking and car use area. Director of Development Services Department Rizk stated there will have be a final design done related to vehicular access and emergency access that will address public safety, evacuation and fighting a fire. In response to Mr. Quirk's inquiry about protecting the San Lorenzo Creek as properties develop on the large lot south of A Street, Ms. Buizer explained the City currently has creek setback regulations that are in place for all creeks. Mr. Quirk expressed concern that the City work closely with the County in the areas where County designations and City designations abut.

Council Member Halliday and Director of Development Services Department Rizk discussed the Sustainable Mixed Use proposed amendment and the LEED Silver Certification.

Mayor Sweeney asked about the mitigation measures in regards to public services and stated that Council worked hard to establish the concept of the Community Facilities District (CFD). Mr. Sweeney inquired as to why the language reads "may" and not "will" establish a Community Facilities District. Senior Planner Buizer explained the language is to leave the option open in case there is a better alternative method that would achieve the same results and meet the mitigation measure. Mr. Sweeney expressed concern that it is important to be clear that the mitigation measure is a goal that must be achieved. Director of Development Services Department Rizk further explained that it is a challenge when taking into consideration the physical configuration of these disjointed parcels in the study area and the difficulties of establishing CFD's where the contributing homeowners receive the benefit.

Mayor Sweeney reiterated Council Member Dowling's concern in regards to the area of East Avenue and E Street and asked if language can be included to help make the egress and ingress more safe and reasonable. Discussion ensued, which concluded with Mr. Rizk stating that a

development proposal can be approved or denied based on safe egress and ingress road proposals. Mayor Sweeney also reiterated Council Member Quirk's remarks about taking a look at the City's Ordinance related to the creek and the challenges that they present.

Mayor Sweeney opened the public hearing at 9:17 p.m.

Ms. Audrey LePell, Ocie Way resident and President of Citizens for Alternative Transportation Solutions (CATS), gave a brief history of the 238 Bypass Route. Ms. LePell spoke in favor of keeping A Street a two-way street with added safety modifications and presented a petition to Council.

Ms. Barbara Fields, Manera Street resident, thanked Senior Planner Buizer for all her work and encouraged everyone to approve the Land Use Study. Ms. Fields suggested it would be prudent to charge a special assessment for the area where there is still a lot of wells and septic tanks. Ms. Fields asked if there was a possibility of merging continuous parcels of properties that have less than 20,000 square feet. Ms. Fields inquired if Caltrans will be allowed to sell these properties. Director of Development Services Department Rizk explained that the law allows development of the lot even if it is less than the minimum size provided there is a legal lot size for recording. Mr. Rizk stated there are still issues and standards that need to be met and the suggestion to create an assessment district may make sense for the utility improvements proposed in that area.

Ms. Linda Bennett, 6th Street resident, spoke in regards to the Mission-Garin Area where there is a special Design Overlay District that is a 100-foot setback from the creeks. Ms. Bennett spoke about the need to have a protective creek zoning ordinance. Ms. Bennett's main concern is that many of the properties that could be sold are large enough to have a planned development and that could negatively affect the creeks. Ms. Bennett noted that the upper B Street area is in favor of a Preservation District to protect the creeks.

Mr. Frank Goulart, with business address on Main Street, spoke in favor of the trail and spoke at length about connecting the existing Bay Trail with the new trail. Mr. Goulart praised Senior Planner Buizer for the work she has put into this plan. Mr. Goulart spoke favorably about having a Preservation Park designation in Cluster 7 and 8, the property surrounded by A Street, B Street, Chestnut Street and 4th Street. He added that this would help the City to save money later on.

Ms. Gail Lundholm, Marcum Court resident and representative of the Hayward Area Planning Association, stated the Association is in favor of the General Plan Amendment, zoning changes and praised the City for considering the Sustainable Mixed Use and the Design Overlay District. She commended the leadership of the Mayor and Council and staff's work and the receptiveness to citizen input.

Ms. Christine Tsai, Mohr Drive resident, expressed support for the Sustainable Mixed Use designation and passionately favored green building. Ms. Tsai works part-time for the Hayward Area Planning Association on the development of the proposed Quarry Village projects. She also expressed that car-free developments are the future of residential development.

Mayor Sweeney closed the public hearing at 9:35 p.m.



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Mayor Sweeney noted that Council should make a motion on the north side separately.

Council Member Quirk moved the staff recommendation for the North side. Council Member Halliday seconded the motion.

It was moved by Council Member Quirk, seconded by Council Member Halliday, and carried with Mayor Sweeney abstaining, to approve the staff recommendation on the north side of the project and offered two recommendations: that City staff work with the County to make their land and zoning designations compatible with the City's, particularly in the areas with steep slopes such as south of Grove Way; and that staff reexamine the City's policies on creeks prior to sale of the property.

Council Member Halliday made a motion to adopt the resolution certifying the Final Environmental Impact Report (FEIR) and associated Mitigation Monitoring and Reporting Program and approving the remaining section of the General Plan Amendments and Route 238 Bypass Land Use Study; and introduce the ordinances related to Zone Change and Zoning Text Amendments with a modification to Exhibit A, Sustainable Mixed Use District (Sec. 10-1.750) so that "Must be LEED Silver certified and include an adjacent community park" under Sec. 10-1.770 Conditionally Permitted Uses a) Administrative Uses, apply to all other uses (a) cultural, (b) educational and (c) recreational facilities.

Council Member Halliday commended the process and complimented staff's receptiveness to Council and citizen input provided at the community meetings. She appreciated the incorporation of changes made to keep any future development more appropriate to the very steep contours of this area and more consistent with the existing development. Ms. Halliday said the new trail is going to be wonderful and was glad that appropriate designations for Quarry Village were included. Ms. Halliday was in favor of the car-free proposal and glad Council encouraged the idea.

Council Member Dowling inquired if the E Street properties were vacant. Senior Planner Buizer noted some of the properties have some development on them. In regards to the four parcels in that location, it was noted that how the properties are grouped and sold will determine how they will ultimately be developed. Council Member Dowling asked that language be included to indicate that the two properties on E Street be combined. Mr. Dowling expressed concern that Caltrans will sell the triangular property separately and ultimately that will cause development problems. Mr. Dowling asked that staff work with Caltrans on this issue. Mr. Dowling added that exploration of the Preservation Park idea be included.

Council Member Henson concurred with Council Member Dowling regarding the triangular parcel in the event that someone purchases the property and attempts to develop it. Mr. Henson strongly agreed with the Preservation Park concept and noted its appropriateness with all of the historic houses that are in Hayward. Mr. Henson commented that the development of the Carlos Bee area is a unique opportunity that will help define the City.

It was moved by Council Member Halliday, seconded by Council Member Dowling, and carried unanimously, to adopt the resolution certifying the Final Environmental Impact Report (FEIR) and associated Mitigation Monitoring and Reporting Program and approving the remaining section of the General Plan Amendments and Route 238 Bypass Land Use Study; and introduce the ordinances related to Zone Change and Zoning Text Amendments with a modification to Exhibit A, Sustainable Mixed Use District (Sec. 10-1.750) so that “Must be LEED Silver certified and include an adjacent community park” under Sec. 10-1.770 Conditionally Permitted Uses a) Administrative Uses, apply to all other uses (a) cultural, (b) educational and (c) recreational facilities. Also, that staff work with Caltrans to group the properties along E Street prior to selling; and that the idea of “Preservation Park” be explored as part of the inventory in the B Street area.

Resolution 09-101, “Resolution Certifying the Final Environmental Impact Report, Approving the Mitigation Monitoring and Reporting Program and Approving the Route 238 Bypass Land Use Study, the Staff-Recommended Land Use Alternative and Related General Plan Amendments, Zoning Reclassifications and Zoning Text Amendments”

Intro Ord 09-_, “An Ordinance Amending Article 1 of Chapter 10 of The Hayward Municipal Code and Creating the Sustainable Mixed Use Zoning District (SMU), and the Special Design Overlay District (SD-7) for the Hayward Foothills Trail”

Intro Ord 09-_, “An Ordinance Reclassifying Certain Properties Located in the Route 238 Bypass Land Use Study Area Pursuant to Zone Change Application PL-2009-0277”

8. Adoption of a Resolution of Necessity to Initiate Eminent Domain Proceedings to Acquire Real Property – a Portion of APN 445-0200-013, owned by Pacific Gas and Electric Company

Staff report submitted by Deputy Director of Public Works Fakhrai, dated June 30, 2009, was filed.

Public Works Director Bauman gave a synopsis of the report.

In response to Council Member Henson’s inquiry about which phase of the project the eminent domain was deemed necessary, Public Works Director Bauman responded it was specifically for the improvements at the intersection of Carlos Bee and Mission Boulevards. Mr. Bauman confirmed this would include improved access to California State University East Bay.

There being no public speakers, Mayor Sweeney opened and closed the hearing at 9:54 p.m.

Council Member Henson clarified he did not support the loop section of the Route 238 Project, but favored the acquisition to provide better access to California State University East Bay.

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



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Resolution 09-102, "Resolution of Necessity Declaring A Public Need for and Authorizing the Acquisition and Immediate Possession by Eminent Domain Proceedings or Otherwise of Real Property for the Route 238 Corridor Improvement Project on Mission Boulevard, South of Carlos Bee Boulevard (A Portion of APN 445-0200-013) Owned by Pacific Gas and Electric Company"

9. Adoption of a Resolution of Necessity to Initiate Eminent Domain Proceedings to Acquire Real Property – APN 428-0066-078 through 081, owned by the Svend Hansen Trust

Staff report submitted by Deputy Director of Public Works Fakhrai, dated June 30, 2009, was filed.

Director of Public Works Bauman gave a synopsis of the report.

In response to Council Member Henson's inquiry about the possibility of arriving at an agreement between the two appraisals, Public Works Director Bauman replied in the affirmative and noted the City is in the process of continuing discussions. In response to relocation assistance and the location of billboards, Mr. Bauman noted that the City is negotiating directly with the tenants and that the billboards would be removed completely.

In reference to Council Member Quirk's inquiry about what happens if this goes to court and how the judge determines the value of the property, Director of Public Works Bauman explained the appraisers have to demonstrate how the value of the property was determined taking into account different factors. Mr. Quirk inquired about the effect on the project if the property is not acquired. Mr. Bauman replied it would be a significant detriment to the overall value of the project, particularly in the area of the visual improvements and entry features, and a detriment related to the improvement of Mission Boulevard so that the intersection of Mission Boulevard.

Mayor Sweeney opened the public hearing at 10:05 p.m.

Mr. Lin Ortega, spoke on behalf of Mr. Eric Nguyen, owner of Discount Home Furniture located at 22850 Mission Boulevard. Mr. Ortega stated that Mr. Nguyen has owned his business since 1994 and considers his Hayward store to be in one of the best locations in Hayward. Mr. Nguyen urged Council to think of the impact of the project to his future.

Mr. Lance Ratto and Mr. Craig Nolton, representatives for the Svend Hansen and Trust, noted that the attorney for the property owner was not able to attend the meeting. Mr. Ratto reported that the owner does not object that the property is necessary for the 238 Corridor Improvement Project, but he does object to the compensation offer. He added that the property owner is amenable to further discussions. Mr. Ratto stated that the Trust objects to the Resolution of Necessity on the grounds that the appraisal statement included in the offer to purchase does not comply with Government

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Code Section 7267.2. He noted that the statement is inadequate and does not accurately or fairly reflect the appropriate valuation of the property in a manner consistent with the uniform standards of professional appraisal practice.

Mayor Sweeney closed the hearing at 10:09 p.m.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and approved with Council Member May voting no, to adopt the following:

Resolution 09-103, "Resolution of Necessity Declaring A Public Need For And Authorizing the Acquisition and Immediate Possession by Eminent Domain Proceedings Or Otherwise of Real Property for the Route 238 Corridor Improvement Project at Mission Boulevard and Foothill Boulevard (APN 428-0066-078 Through 081) Owned by the Svend Hansen Trust"

LEGISLATIVE ITEMS

10. Election of Mayor Pro Tempore

Staff report submitted by City Clerk Lens, dated June 30, 2009, was filed.

City Clerk Lens noted it was time for Council to elect the Mayor Pro Tempore.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and carried unanimously, to nominate Council Member Olden Henson as the next Mayor Pro Tempore:

Resolution 09-104, "Resolution Authorizing the Election of Mayor Pro Tempore of the City of Hayward for 2009-2010"

COUNCIL REPORTS

There were none.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:13 p.m., in memory of Allen Strutz, 85-year resident of Hayward and Chairman of the Alameda County Veteran's Day Parade and Memorial Day services for approximately 53 years. Mr. Strutz was instrumental in overseeing the restoration of the Veteran's plots at the Lone Tree Cemetery. His service is scheduled for July 2, 2009 at the Lone Tree Cemetery Amphitheater. Mayor Sweeney later requested that a tree be planted in his memory.

APPROVED:

Michael Sweeney, Mayor, City of Hayward



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ATTEST:

Miriam Lens, City Clerk, City of Hayward

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