



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, November 3, 2009, 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 Dowling.

**ROLL CALL**

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

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Lawson reported that Council met with Legal Counsel pursuant to Government Code 54956.9 (c) and pursuant to Government Code 54956.9 regarding Rental Housing Owners, etc, v. City of Hayward, Alameda County Superior Court No. HG09433908. Mayor Sweeney reported that Council met regarding the Public Employee Performance Evaluation for City Manager. There was no reportable action.

**PRESENTATIONS**

**Business Recognition Award – Azuma Foods International, Inc.**

The Business Recognition Award for November 2009 was presented to Azuma Foods International, Inc. The corporate headquarters is in Hayward where they manufacture processed Japanese seafood. Azuma Foods International, Inc., was established in Oakland in 1990 and moved to Hayward in 1999. It was co-founded by three people and currently has 75 employees. Azuma Foods International, Inc., has made contributions to the community by: locating and expanding their headquarters in Hayward; providing job opportunities to local residents; being an industry leader; and contributing to the overall economic well-being of the Hayward community. Mr. Takahiro Tamura, President and CEO, accepted the award and thanked Council for such an honor. On behalf of the employees of Azuma Foods International, Inc., Mr. Terry Macklin, Administration Supervisor of Azuma Foods thanked Council and staff for selecting Azuma Foods to receive the Business Recognition Award.

**PUBLIC COMMENTS**

Ms. Wynn Grcich, Industrial Parkway resident, spoke about an item heard by Council at a previous meeting regarding the purchase of Fire apparatus and disagreed with borrowing funds from the Water Pollution Fund. Ms. Grcich spoke about the ingestion studies done by the EPA Newspaper. She also talked about the correlation of chlorine to breast cancer and chloramines to renal failure.

**DRAFT**

Mr. Jorge Luna, Mi Cosina Restaurant owner on Jackson Street, spoke about the present cost of the Fire Department Inspection Fee and the fact that the inspector did not take long inspecting the establishment and that he received a notice indicating that that the fees will be raised next year. Mr. Luna noted that the fees are too difficult to bear in this economy. Mayor Sweeney asked staff to spend some time with Mr. Luna regarding his concern.

Ms. Juanita Gutierrez, Occidental Road resident, requested a left turn signal at the intersection of Middle Lane and Hesperian Boulevard for the people coming out of Middle Lane and also for the people coming out of Southland Shopping Center on Southland Drive. Ms. Gutierrez stated that at present, there is only one light and the intersection causes traffic congestion. Alternatively, she asked that the City consider a signal delay, similar to what was done years ago at the intersection of Depot Road and Hesperian Boulevard. Mayor Sweeney asked City Manager Jones to please look into this matter.

Mr. Doug Ligibel, Grand Terrace resident and community activist, thanked Lt. Keener and Council for preparing and approving the Ordinance related to spectators at illegal street races. Mr. Ligibel spoke about vandalism and graffiti in downtown, foreclosed properties, and understaffed Police including the ratio of sworn officers to citizens. He also noted the importance of Council Member May's participation with the low-cost housing and Federal Housing Authority. Mayor Sweeney asked City Manager Jones to convene a meeting with Council Member May, City Manager, and himself to talk about how the Housing Authority can help the City deal more proactively with some of the issues that Mr. Ligibel raised.

Ms. Shiyama Clunie, Executive Director of Public Affairs with AT&T, thanked City staff and Council for their assistance on the recent Project Lightspeed, which included the installation of more fiber optic lines for faster high-speed Internet access, next-generation voice services and competitive choice to cable TV. Ms. Clunie named specific City staff for their assistance over the years. Ms. Clunie noted that 65% of the distribution areas are now completed and almost all of Hayward residents have access to these services. Ms. Clunie presented the Mayor and Council with an award and LightSpeed Medallion Plaque.

Council Member Zermefio asked if and when an AT&T wireless store will be brought to Hayward. Ms. Clunie responded that AT&T leadership is aware that the City wants the store and she will keep the City informed.

Council Member Dowling thanked Ms. Clunie for the update on the progress of Project Lightspeed. Mr. Dowling mentioned the art on utility boxes and asked if AT&T has looked into the possibility of replicating the art project on Lightspeed boxes. Ms. Clunie responded that the company has held meetings about an art project on the utility boxes and decided for now to hold off participating on the project.

Council Member Henson thanked Ms. Clunie for the award and inquired if there was a specific area in Hayward that did not have completed permits. Ms. Clunie did not have the information, but indicated that AT&T started the upgrade in high density areas first.

Council Member Quirk invited the attendees to attend a Hayward-Ghazni Afghanistan Sister City event on Tuesday, November 10<sup>th</sup>, at 6:00 PM at the City Hall Rotunda.



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**CONSENT**

Consent item one was removed for further discussion.

1. Approval of Minutes of the City Council Meeting on October 20, 2009

It was moved by Council Member Halliday, seconded by Council Member Dowling, and carried unanimously, to approve the minutes of the City Council Meeting on October 20, 2009 with a revision requested by Council Member Halliday.

2. Recovery Zone Bonds

Staff report submitted by Economic Development Manager Brooks, dated November 3, 2009, was filed.

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

Resolution 09-160, "Resolution of the City Council of the City of Hayward Designating the City of Hayward a Recovery Zone for the Purposes of Sections 1400U-1, 1400U-2, and 1400U-3 of the Internal Revenue Code of 1986, As Amended"

**PUBLIC HEARING**

3. Mt. Eden Annexation Phase II

There was a motion by Council Member Henson, seconded by Council Member Dowling, to move Public Hearing Item No. 3 to follow the Legislative Business section. The motion on the floor was voted on and approved with Council Member Quirk voting No and Mayor Sweeney Abstaining.

4. Ordinance Amending Article 22 of Chapter 10 of the Hayward Municipal Code Relating to Hayward's Green Building Ordinance for Private Development

Staff report submitted by Development Services Director Rizk, dated November 3, 2009, was filed.

Development Services Director Rizk gave a synopsis of the report.

Council Member Henson thanked Director of Development Services Department Rizk for bringing the item back to staff and asked Mr. Risk to briefly highlight the Energy Cost-Effectiveness Study.

**DRAFT**

Council Member Zermeño inquired if any input had been received from the developers' group. Mr. Rizk responded that he had a brief conversation with Mr. Steve Miller from Stonebrae but nothing of substance was discussed.

There being no comments, Mayor Sweeney opened and closed the public hearing at 8:37 p.m.

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

Resolution 09-161, "Resolution Finding That the Enaction of the Private Development Green Building Ordinance is Categorically Exempt from Environmental Review under the California Environmental Quality Act"

Intro Ordinance 09-\_, "An Ordinance Amending Article 22 of Chapter 10 of the Hayward Municipal Code Establishing Green Building Requirements for Private Development"

5. Authorization for the City Manager to Negotiate and Execute a Contract to Construct a 1000 Kilowatt Solar Energy System at the Water Pollution Control Facility and to Submit an Application for Financing; and Approval of the Associated Mitigated Negative Declaration for the Project

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

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

Council Member Henson, along with members of the Sustainability Committee, said he was pleased with the proposed resolution. In response to Mr. Henson's inquiry if the City qualified for Stimulus monies for this project, Director of Public Works Bauman explained that the primary Stimulus monies available for solar projects is in the form of loans and the money that the California Energy Commission is providing is from stimulus funds. Mr. Henson was supportive of the project and asked for a timeline. Mr. Bauman stated that staff expects to have the contract signed by November 13<sup>th</sup>, begin the construction in April 2010, and complete of construction in July 2010.

Council Member Halliday echoed the comments of Council Member Henson regarding the efficiency in providing the funding and timing of the project. Ms. Halliday referenced the Environmental Initial Study/Draft Mitigated Negative Declaration, page 8, Figure 4 (Example of a Single Axis Photovoltaic System), and inquired whether or not the system is high enough off the ground in case of flooding. Public Works Director Bauman responded that the building that will be housing the power unit will be above the present flood zone. Mr. Bauman stated that staff will make sure that the design will be such that the system is safe. Ms. Halliday asked if East Bay Regional Park District and/or Hayward Area Shoreline Planning Agency (HASPA) were notified of this project and invited to make comments about its appearance. Mr. Bauman responded that the Hayward Area Recreation and Park District abuts this property and was given a notice of the



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environmental document and the document was posted. Mr. Bauman noted that at this time no comments have been received. Ms. Halliday noted that she would have liked HASPA to see the project for comment. Ms. Halliday noted that the project is not going to have much impact since it is not high nor very different than other structures that are there already.

There being no comments, Mayor Sweeney opened and closed the public hearing at 8:52 p.m.

Mayor Sweeney made a motion per staff recommendation. Council Member Halliday seconded the motion.

Council Member Dowling stated that in addition to the decreased greenhouse gas emissions and energy saving benefits, he was pleased that after 15 years, the Sewer Fund is paying for electricity. Public Works Director Bauman noted that the City is trying to do its very best to save money for rate payers.

Council Member Henson expressed support for the project and noted that the anaerobic digesters also create energy by turning methane into useable energy. He added that the City has been doing some of these things for a while and this will only enhance the City's ability to generate useable energy.

It was moved by Mayor Sweeney, seconded by Council Member Halliday, and carried unanimously, to adopt the following:

Resolution 09-162, "Resolution Authorizing the City Manager to Negotiate and Execute a Contract with REC Solar for a 1000 Kilowatt Photovoltaic Solar Energy System at the Water Pollution Control Facility, Project No. 7512"

Resolution 09-163, "Resolution Authorizing the City Manager to Submit an Application for a Low Interest Loan from the California Energy Commission for a 500 Kilowatt Photovoltaic Solar Energy System Project, Project No. 7512 at the Water Pollution Control Facility"

Resolution 09-164, "Resolution Approving the Initial Study and Draft Mitigated Negative Declaration for the 1000 Kilowatt Photovoltaic Solar Energy System Project, Project No. 7512 at the Water Pollution Control Facility"

## **LEGISLATIVE BUSINESS**

6. Approval of Fees to be Charged for Costs Incurred for Administering the "Fines-Free" Library Loan Program

**DRAFT**

Staff report submitted by Acting Library Director Reinhart, dated November 3, 2009, was filed.

Acting Library Director Reinhart gave a synopsis of the report.

Council Member Dowling expressed support for the innovative program. Mr. Dowling asked, provided the program is successful, if the Library has thought about replicating the Netflix model where users could line up a list of books and the Library would send it to them. Acting Library Director Reinhart responded that it would be the next logical step, but noted that a lot of libraries get hung up on the difficulty and costs involved of mailing out material. He added that consumers with the Netflix mindset are people who want to be able to borrow materials for as long as they wish and not be penalized for missing their due dates. Mr. Dowling inquired if staff has looked into an amnesty program for people with fines. Mr. Reinhart responded that the City has not offered an amnesty program for quite some time and suggested an alternative method such as the "Food for Fines Amnesty" program, which would be a way for people to lower their fines by making food donations. Mr. Dowling stated that if Council approves this concept, he urged Mr. Reinhart to try and get the information out to the local media. Mr. Reinhart was amenable and noted that the Hayward Library is the only library in the State that is presently considering this model.

Council Member Quirk concurred with Council Member Dowling's comments that the proposal is a great innovation and commended the commercial model for the Library. In response to Mr. Quirk's inquiry, Mr. Reinhart noted that according to records that go back 6 or 7 years, 20% of users, or approximately 20,000 people, owe \$20 or more on their cards and they are not allowed further check outs. Mr. Quirk suggested that anyone who is willing to sign up for this program be given amnesty on their fines, as this would target people that are more likely to use the Library. Mr. Quirk asked that alternative options be provided for those unwilling to sign up for this program, e.g., lowering the fees or perhaps making borrowing items simpler.

Council Member Henson was pleased with the program. Mr. Reinhart confirmed Mr. Henson's inquiry that if a person brings back a book within the due date, they are not assessed a fine. In response to Mr. Henson's inquiry if there is an allowance for families who cannot afford to sign up for the program, Mr. Reinhart explained that using the traditional plan, patrons can check out an item and renew it twice before the item is required to be returned to the Library, for a total check out period of nine consecutive weeks. Mr. Reinhart explained the fines-free plan is for people who want to keep items for a longer period of time.

Council Member Zermefio was pleased with the plan and thanked Acting Library Director Reinhart. Mr. Zermefio urged Mr. Reinhart to consider an amnesty program. Mr. Zermefio inquired how the new program could be made available to non-credit card holders. Mr. Reinhart stated that most e-commerce service providers and certainly the one that the City would select will offer both credit and debit card payment and also e-check payment.

Mayor Sweeney opened the public hearing at 9:11 p.m.

Ms. Linda Bennett, Hayward resident, spoke on behalf of the Library Commission, noting the Commission supports the proposal and Acting Library Director Reinhart's idea. Ms. Bennett asked



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why the expected revenue generated from this program is currently stated go to the General Fund and not to the Library. She asked Council to take this under consideration. Ms. Bennett stated that committee members unanimously supported the proposed fees for individual subscriptions. Mayor Sweeney asked staff why the generated revenue does not go back into the Library as opposed to the General Fund. Assistant City Manager David responded that staff could look into it as the program is being set up.

Ms. Monica Schultz, Merritt Lane resident and member of the Library Commission, expressed support for the idea.

Mr. Robert Mappes, Castro Valley resident, commented that Netflix has hundreds of copies of a movie versus the Library which may have only one or two copies of a book. Mr. Mappes was concerned that when an item is out for an extended length of time, other patrons may not have access to that book.

Mayor Sweeney closed the public hearing at 9:14 p.m.

Council Member Quirk addressed Mr. Mappes' concern, and Acting Library Director Reinhart concurred indicating that if a book is out for an extended period of time, then additional copies will be purchased by the Library. Mr. Quirk suggested that some of the monies should go into the book budget for the purchase of additional copies. Mr. Quirk made a motion per the staff recommendation and added that staff look into allocating the monies for Library purposes, particularly the book budget, which is underfunded.

Council Member Zermefio seconded the item.

It was moved by Council Member Quirk, seconded by Council Member Zermefio, and carried unanimously, to adopt the following and add that staff look into allocating the generated monies for Library purposes:

Resolution 09-165, "Resolution Amending the Master Fee Schedule for Fiscal Year 2010, Relating to the Library and Neighborhood Services Department, Establishing "Fines-Free" Library Loan Program Membership Fees"

## **PUBLIC HEARING**

Mayor Sweeney noted that John Dutra, a board member at his employment, Spectrum Community Services, owns a property in the proposed area and therefore abstained from participating on Public Hearing Item No. 3 and left the dais. Mayor Pro-Tempore Henson presided the meeting.

3. Mt. Eden Annexation Phase II – Adoption of a Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program; Authorization of an Application to the Local

**DRAFT**

Agency Formation Commission (LAFCo); Approval of the Plan for Providing Municipal Services; Authorization of Execution of a Property Tax Exchange Agreement with Alameda County; Approval of Pre-Zoning Designations; Approval of a Municipal Code Amendment Related to Sewer Connections; and Approval of Summary Vacations of Ramona Drive and Eden Avenue Rights-of-Way. The annexation area is located between West Street and Depot Road, generally along Mohr Drive in the Mt. Eden Neighborhood

Staff report submitted by Senior Planner Pearson, dated November 3, 2009, was filed.

Senior Planner Pearson gave a synopsis of the report. Mr. Pearson acknowledged that Mr. Armas, representing the owners of two parcels on Depot Road, was in attendance. He added that a letter dated September 10, 2009, addressed to the Planning Commission from Al and Connie Jordan was provided prior to the meeting for the record. Mr. Pearson also indicated that a letter was received on Monday, November 2, 2009, from Mr. Anthony Varni, representing the Mohr/Fry Estate, which is on file in the Office of the City Clerk. Mr. Pearson added the following recommendation: to direct staff to erect signs throughout the Mt. Eden neighborhood identifying it as such, and to direct staff to return to the Council after two years from the effective date of the annexation with a development plan and associated rezoning and General Plan amendment applications from property owners for a neighborhood-serving commercial center involving the Jordan properties and the other Depot Road properties to the west between the Jordans' properties and Industrial Boulevard.

In response to Council Member Quirk's inquiry about the cost of the proposed area signs, Senior Planner Pearson responded that the cost has yet to be determined and indicated that there may be some room in the construction budget for public improvements. Mr. Quirk asked to be shown the location of the vacation of Eden Avenue and Mr. Pearson indicated a portion of Eden Avenue at Occidental and Ramona Drives that would remain open as a driveway but not as a public street. Mr. Quirk's concern was to maintain the ability to break up that block when it is developed. Mr. Pearson responded that staff looked at the existing improvements including structures on the properties along this portion of Eden Avenue, including the Horizon Services property and others, and staff saw that to expand this section of road to meet City standards would require significant right-of-way takes. Public Works Director Bauman noted that the vacation of Eden Avenue was an item of discussion from years ago and explained that at that time the City committed to not break through Eden Avenue. Mr. Quirk spoke about the suggestion by residents to consider the zoning designation RSV4 at some later time and asked if there would be any concerns about adding RSV4 to a future motion. Mr. Pearson responded that a zone change would be subject to both traffic and environmental analysis. Mr. Quirk noted that he had conversations with Mr. Armas in regards to the six-acre site and expressed concern about delaying the annexation, zoning the area commercial, and how to prevent the Jordans from developing the two-acres separately. In regards to the proper maintenance of Ramona Drive, Mr. Bauman indicated that the City would improve the street and put in a sewer system and residents would be responsible for maintaining it.

Council Member Dowling thanked staff, county staff, residents and property owners of that area, indicating that he was pleased that staff has been able to move this project forward. Mr. Dowling was concerned about the Jordans' property and asked Mr. Pearson why it takes six months to process a zone change. Senior Planner Pearson responded that the zone change would require looking at the development potential for the area and that triggers the need to revise the initial study



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and fiscal impact analysis. Mr. Pearson said that based on staff's experience with making changes, going back and forth with consultants, that the timeline to be able to bring everything back and present it to Council would take about six months. Mr. Dowling said staff should consider the \$75,000 deficit to the City when there is a proposal on the table that could bring some good retail to this area. Mr. Dowling noted that the proposed area has changed since the Plan was developed about 18 years ago, e.g., Life Chiropractic and Heald College are there now along with residential housing. Mr. Dowling indicated the Economic Development Committee has heard from industrial business owners that there are no services in that area and very few restaurants and convenience stores and therefore think that Council should consider the zone change. As the City's Commercial Center Committee Chair, he noted that the Committee has brought in a lot of former/older shopping center owners and, like the Jordans, they do not have resources to move proposals, such as this, forward without the City's help. Mr. Dowling stated that this could possibly be a good retail project and would help the area as well.

Council Member Zermefio was pleased with the Plan and thanked Senior Planner Pearson for all of his work. Mr. Zermefio asked if the fence on Ramona Drive that keeps people from going from Eden to Occidental Roads would be left intact. Public Director Bauman responded that staff will look into the matter. Discussion ensued regarding the process of the annexation. Director of Development Services Department Rizk explained the process and the State requirement of rezoning. Mr. Zermefio asked that once the Resolutions are approved if there would be a two-year waiting period to make any changes to the zoning. Mr. Rizk confirmed that Council will not be able to take action to change the zoning or General Plan until two years after the effective date of the annexation.

Public Works Director Bauman gave an update in response to Council Member Halliday's inquiry about the problems associated with the annexation being delayed. Mr. Bauman stated that he has been in contact with the County Public Works Director who said that the funds are available as long as the project is done in this fiscal year. Ms. Halliday stated that between the schools that are there now and the people who live and work in that area retail opportunities would be welcomed. Director of Development Services Department Rizk explained some of the risks involved if the project gets delayed, e.g., increased construction costs, availability of funding, and the probability that the City would have to go to the County to ask for a second extension on the agreement. Ms. Halliday expressed frustration with the options provided.

Mayor Pro-Tempore Henson concurred with Council Member Halliday's comments. Mr. Henson stated that six months seems too long and remembered that in South Hayward there was a large development built called Twin Bridges and with few services in that area has lead to frustrated residents. Mr. Henson asked who will pay for the street improvements. Public Works Director Bauman explained that all streets will be brought up to City standards, with the costs absorbed by the City's Capital Improvement Budget of \$1.9 million, funds the City has available from Proposition 42, and the County's contribution. Mr. Bauman explained that the money is being 'fronted' to pay for the street improvements and eventually the money will come back to the City from tax increment revenue. Mr. Bauman confirmed for Mr. Henson the source funds and amount

coming from the County; \$1.2 million from the gas tax and \$700,000 from the County General Fund.

Mayor pro Tempore Henson opened the public hearing at 9:53 p.m.

Ms. Cecelia Storr, representing Anthony Varni, the lawyer for the Mohr/Fry Estate, noted that a family member was in attendance. Ms. Storr thanked Council for considering the items raised in Mr. Varni's letter and urged them to vote for the recommendations in the letter. Ms. Storr noted the Mohr/Fry family was content to maintain an agricultural pre-zoning designation for two years and expects to come up with a development plan for the future. Ms. Storr spoke about the utilities connection and stated that the Mohr/Fry property is self supporting, as it has its own leech field and sewer system, but the family is willing to connect to the City sewer system as part of the development plan within the ten years allowed.

Council Member Halliday asked Ms. Storr for the family's ultimate goal for the Estate since it is a historical resource for the Hayward Community. Ms. Storr stated that the family is committed to preserving the house and the historic buildings, but at present there are no specific plans in terms of making the Estate self-supporting. Ms. Storr noted that just the maintenance of the nine acres is enormously expensive.

Council Member Zermefio suggested collaboration between the family and Chabot College to turn the Estate into a museum. Ms. Storr suggested a letter could be written to the family, as she was not sure the family is ready to turn the Estate over to Chabot College.

Mr. Richard Gutierrez, Mohr Drive resident, addressed two issues: the ten year limit for having a septic tank on site, and the mandatory \$300 inspection every year. Mr. Gutierrez suggested that the inspection fee be waived and have a document, which each homeowner would sign, stating that the septic tank is working and is sufficient. Mr. Gutierrez mentioned the homeowner already have the habit of "being green" and the task of taking care of the soil will continue. Mr. Gutierrez said a local liquor store is an eye-sore in the community bringing in homeless people, loitering, a bad element from the Section 8 Housing on West Port, drug activity, and increased vehicle activity. Mr. Gutierrez asked the Council to look at retracting that liquor license.

Mayor Pro-Tempore Henson asked staff if Mr. Gutierrez's request to waive the ten-year sewer hook-up deadline could be considered. Public Works Director Bauman stated that the ordinance has been revised to include self-verification by competent residents. Mr. Bauman also added that staff is in the process of sending out letters that will include a form that residents can fill out requesting an inspection or, if residents are qualified, self certifying that the septic tank is operating properly.

Ms. Juanita Gutierrez, Occidental Road resident and former Mt. Eden Task Force Chair, asked if a City grant was available to help people with failing sewer systems with the costs involved in connecting to the City's sewer system. Ms. Gutierrez stated that a sewer connection costs approximately \$6,000. Ms. Gutierrez stated that at the last Planning Commission meeting, a City engineer said that there will be consideration for those people who cannot afford these costs. Public Works Director Bauman responded that an extended payment plan is the consideration, which is already available and stated that there are no longer grant monies available. Mayor Pro-Tempore



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Henson asked staff to clarify through written process for Ms. Gutierrez the types of consideration that would be available for persons who need help with hook-up costs.

Mr. Bob Williams, Depot Road resident, expressed the same concern as Ms. Gutierrez. Mr. Williams stated he does not have the funds to pay for the sewer connection. Mr. Williams also said that at the Planning Commission meeting there were residents who were not given enough time to speak. Mr. Williams stated that if a commercial development is planned for the area it would be better to have a food market rather than another liquor store.

Mr. Jesús Armas, representing homeowners at 2661, 2627 Depot Road, noted it is appropriate for Council to find a plan approved twenty years ago is no longer applicable in today's environment. Mr. Armas spoke about the City's goal of a walkable community and indicated that commercial neighborhoods are effective in advancing that objective. Mr. Armas stated that the Jordans have indicated to Council that by pursuing a retail center there may be an opportunity to avoid a deficit situation with this annexation, and instead create sufficient sales tax revenue to yield a positive outcome for the City. Mr. Armas noted that pre-zoning was initiated by the City and not by the property owner. Mr. Armas said that County staff has been very helpful and concerns about proceeding could be mitigated during discussion between the City and County. In regards to timing, Mr. Armas commented that it does seem excessive for a zone change to take six months, and if the City is eager to proceed in a different direction it can be done in a much shorter period of time. Mr. Armas stated that the Jordans live in the area and they would agree to any provision that would prohibit the sale of alcohol, and would be amenable to a conditional use permit.

Council Member Dowling asked staff to address Mr. Armas' suggestion for the contracts to move forward with the City and County working cooperatively. Public Works Director Bauman stated that this would require action by both the City and County to amend the contracts relative to the financing arrangements. Mr. Bauman noted that from staff's experience, a process takes time. Mr. Dowling said that Mr. Armas has indicated that the Jordans have a financial issue in terms of processing a zone change and asked Mr. Bauman about the costs for a zone change. Senior Planner Pearson replied that a General Plan amendment and Zone Change application would cost approximately \$15,000. Mr. Pearson also received an estimate from the City's consultant for the cost of revising the environmental study and the fiscal impact analysis and related documents of roughly \$9,000. Mr. Dowling suggested that if the fee is an issue, it should be waived so the Jordans and the other property owners can start working toward a plan. Mr. Dowling stated he sees waiving the fee as helping to move this process forward in terms of economic development and eventually bring the City more revenue.

In response to Council Member Halliday's inquiry about the two-year timeline, Mr. Armas indicated that the date the two-year timeline starts approximately 30 days after LAFCo takes action in January or two years from February 2010. Ms. Halliday inquired about the status of the Jordans plans to proceed with the development and how a two-year delay in getting any kind of zone change would affect them. Mr. Armas stated the Jordans have researched how to proceed with a pre-zoning of light manufacturing and single family because there is no assurance of support for

moving forward in a different direction that would justify the cost and investment to develop new plans. He suggested that Council consider establishing a foundation, working with neighbors, and setting the groundwork so when the economy improves, the development can proceed. Ms. Halliday stated that she understood that the Jordans wanted to develop their land along with a neighboring property outside of the annexation area, which is zoned industrial. Mr. Armas clarified that the Jordans are not involved with the properties to the west, as that land is under separate ownership. Mr. Armas also noted that those properties are not constrained by a two-year time frame as they are already in the City.

Mayor-Pro Tempore Henson closed the public hearing at 10:20 p.m.

Council Member Quirk addressed Mr. Gutierrez' concern regarding the liquor store stating the license is controlled by the State. He suggested that if Mr. Gutierrez witnesses any illegal activities, he should report them so the City can work with Alcoholic Beverage Control (ABC) to close that liquor store down. Mr. Quirk addressed the comment about paying for the sewer system connection. Mr. Quirk stated that since the City is going to do the street improvements and property values should go up, then homeowners could possibly take out a second mortgage. Mr. Quirk restated that the City will extend the payments over time. Mr. Quirk agreed with Council about the six-acre development, but was concerned that a possible delay could cause the loss of \$700,000 County monies for this project. Mr. Quirk is in agreement with Council Member Halliday about not having more discretion about this project. In regards to Council Member Dowling's comments, he asked staff about waiving the \$15,000 fee for the General Plan amendment and zone change for the Jordan property. City Manager Jones stated that it will have an impact on the General Fund, as these fees are collected to offset costs in development services; however, since these are the last islands within the City for annexation and present some unique circumstances, he did not think it would set a precedent.

Council Member Quirk made a motion per staff recommendation with the following amendments: to direct staff to return to the Council after two years from the effective date of the annexation with a development plan and associated rezoning and General Plan amendment applications from property owners for a neighborhood-serving commercial center involving the Jordan properties and the other Depot Road properties to the west between the Jordans' properties and Industrial Boulevard, including the agricultural zoning and the zoning of the Jordans' two-acres; to convey to staff that it is the Council's strong sense that the six-acre commercial development is worth pursuing and asked that staff work with property owners; that the \$15,000 zone change application and general plan amendment fee for the Jordans' two-acre property be waived; and to direct staff to erect signs throughout the Mt. Eden neighborhood identifying it as such.

Council Member Dowling seconded the motion and added that staff erect signs throughout the Mt. Eden neighborhood.

Council Member Zermeño noted that initially he was in favor of developing the six-acres at one time, but he was convinced the motion makes sense and therefore supported the motion on the floor.

Council Member Halliday appreciated Council Member Quirk's motion to try to resolve the issues before Council, and hesitantly supported the motion. Ms. Halliday added that even though waiving



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, November 3, 2009, 8:00 p.m.**

the fee represents a loss to the City, it made sense. Ms. Halliday mentioned she would have preferred to take longer at considering the proposed properties and she agreed that the Mt. Eden name needs to be preserved and that the signs should reflect that Mt. Eden is part of the City of Hayward.

Mayor Pro-Tempore Henson said he strongly supports the commercial development and asked for a commitment from staff to work with the County and see if a process can be streamlined. Mr. Henson stated that he was in favor of having a combination of housing and services. He also favored a walkable community where people can interact with each other. Mr. Henson supported the motion.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and carried with Mayor Sweeney Absent, to adopt the following including amendments: to direct staff to return to the Council after two years from the effective date of the annexation with a development plan and associated rezoning and General Plan amendment applications from property owners for a neighborhood-serving commercial center involving the Jordan properties and the other Depot Road properties to the west between the Jordans' properties and Industrial Boulevard, including the agricultural zoning and the zoning of the Jordans' two-acres; to convey to staff that it is the Council's strong sense that the six-acre commercial development is worth pursuing and asked that staff work with property owners; that the \$15,000 zone change application and general plan amendment fee for the Jordans' two-acre property be waived; and to direct staff to erect signs throughout the Mt. Eden neighborhood identifying it as such.

Resolution 09-166, "Resolution of the City Council of the City of Hayward Making Application to Alameda County Local Agency Formation Commission Requesting Initiation of Proceedings for a Change of Organization Pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 – Mt. Eden Annexation Phase II"

Resolution 09-167, "Resolution Adopting Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, Approving Pre-Zoning and Approving Amendment to Article 3 of Chapter 11 of the Hayward Municipal Code Relating to the Mt. Eden Annexation Phase II Project"

Resolution 09-168, "Resolution Approving Plan for Providing Municipal Services in Relation to Mt. Eden Annexation Phase II Application"

Resolution 09-169, "Resolution Summarily Vacating Ramona Drive and a Portion of Eden Avenue, Reserving an Easement for Utility Purposes While Requiring Public Access Over Said Vacated Streets in Association with the Mt. Eden Annexation Phase II Project"

Resolution 09-170, "Resolution Authorizing the City Manager to Negotiate and Execute a Property Tax Exchange Agreement with Alameda County for the Mt. Eden Annexation Phase II Project"

Intro Ordinance 09-\_, "An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Pre-Zoning Certain Territory Located in the Mt. Eden Annexation Phase II Study Area"

Intro Ordinance 09-\_, "An Ordinance Amending Section 11-3.201 of Chapter 11, Article 3 of the Hayward Municipal Code, Establishing an Exception to the Requirement to Connect to the Public Sewer System for Certain Properties in the Mt. Eden Phase II Annexation Area"

### **COUNCIL REPORTS**

Mayor Pro Tempore Henson reported that he attended the October 31<sup>st</sup> grand opening of the new Castro Valley Library.

### **ADJOURNMENT**

Mayor Pro Tempore Henson adjourned the meeting at 10:35 p.m., in memory of Captain Wayne Piersol, resident of Hayward and Fire Captain at Station 6. Mr. Piersol was born on April 14, 1920, and passed away on October 21, 2009. He was named "Firefighter of the Year" in 1980. His funeral service is scheduled for Saturday, November 7, 2009. Mr. Henson expressed condolences to the family and suggested that staff consider planting a tree on the grounds of, or near, Fire Station 6.

### **APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

### **ATTEST:**

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Miriam Lens, City Clerk, City of Hayward