



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 28, 2010, 7:00 p.m.**

MEETING

The meeting of the City Council was called to order by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Halliday.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,
Henson
MAYOR Sweeney
Absent: COUNCIL MEMBER None

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson indicated that after the posting of the agenda, the City Attorney's office received information about pending litigation. There was a motion by Council Member Zermeño seconded by Council Member Henson and unanimously approved to add to the closed session an item related to the pending litigation regarding City of Hayward v. California State East Bay Trustee. Mr. Lawson also reported that Council met with Legal Counsel pursuant to Government Code 54956.9, regarding Anticipated Case (One Case). Mr. Lawson noted that Council Member Halliday moved, seconded by Council Member Henson, and unanimously approved, to settle the claim related to the case of Mr. Gonzales.

PUBLIC COMMENTS

Ms. Elizabeth Gonzales, Scripps Street resident, spoke about the proposed gang injunction. She works for CORE, which is an organization that works with youth-related agencies. Although she supports the injunction, she was concerned that the injunction might worsen gang violence by causing gang members to retaliate against it. She believed that any action regarding an injunction against gang violence should also involve the community, work with the local police department and other surrounding law enforcement agencies, and include a cease-fire.

Mr. Sergio Saenz, Flossmoor Street resident, agreed with a gang injunction, but did not support it as a stand-alone tool. Mr. Saenz stated that an injunction should be combined with other tools and services that would prevent individuals from getting involved with gangs. He asked what Council's vision was regarding the injunction and whether the goal was to go after the hardest offenders or to eradicate all gangs.

Mr. Jesse Garrett, Community Prevention of Alcohol Related Problems (COMMPRE) Prevention Specialist, opposed the revisions to the outdoor smoking ordinance. Mr. Garrett stated that although the minimum distance requirements might have been met by Bijou Restaurant, there is a sporting

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goods store whose main entrance is directly adjacent to the smoking area and may be impacted by the smoke. He suggested that Council revisit the 2008 Ordinance and examine the language and the original intent of the ordinance. He referenced a letter submitted to Council by Jesus Armas, who represents Bijou Restaurant.

Mr. Phillip Chan, partner/owner of Bijou Restaurant and Bar on B Street, thanked Council and agreed with having an ordinance that would permit customers to smoke outdoors in a designated section. He stated that his employees would not be required to serve patrons in the smoking section. He also expressed that the smoking ordinance would contribute to the local viability of businesses because of the possibility of attracting more people and turning the downtown area into more of a destination.

Mr. John Johnson, Hill Avenue resident and Director of a non-profit organization called Empowerment Through Training and Education, mentioned that there is lack of outlets for kids such as skate parks or youth centers. Mr. Johnson explained that he conducts outreach work by providing information to the community regarding domestic violence and referrals.

Ms. Senda Rios, Montgomery Street resident and Tennyson High School Counselor, provided input about the injunction and stated that the injunction alone does not address the problem and, instead, a multi-faceted approach should be sought.

Mr. Doug Ligibel, Grand Terrace resident, thanked Mayor Sweeney, Council Members Zermeño and Halliday for participating at the Clean-Up event on Saturday. Mr. Ligibel provided the Mayor with a report related to reducing violence in Hayward. He also stated that he is in favor of the injunction. He cited the Oakland Police Department's community-based violence prevention program for which they received funding and stated the need for programs such as this in Hayward. Mr. Ligibel noted that he submitted a public records request to the City regarding Measure A, its generated revenue, and the percentage designated to the Hayward Police Department.

Council Member Halliday referred to a recent Hayward Unified School District (HUSD) Board meeting held in the Council Chambers, noting that the behavior during the meeting was not acceptable. Ms. Halliday suggested that staff prepare a resolution regarding the proper use of the Council Chambers and the expected conduct during such meetings. She suggested that if the behavior as previously exhibited at the meetings does not improve, the City should consider whether or not HUSD board members should use the Chambers in the future.

Mayor Sweeney noted that the new Assistant City Manager, Kelly Morariu, was in attendance at the meeting.

WORK SESSION (60-Minute Limit)

1. Update on the Development of the Gang Investigation Unit and Gang Injunction Program

Police Chief Ace introduced the report and then introduced Police Inspector John Lage who gave a presentation on the Development of Gang Investigation Unit and Gang Injunction Program.



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Council Member Peixoto indicated that one of the common misunderstandings of the gang injunction is that some members of the public view the injunction as giving the police department the authority to be indiscriminate when making arrests, and also opens the doors for racial profiling. Mr. Peixoto asked Inspector Lage to elaborate on what mechanisms the police department has in place to ensure that when an arrest is made, it is indeed a gang member and not just an individual who might resemble a gang member. Inspector Lage responded that the Police Department is working in conjunction with the City Attorney's Office to develop an injunction which would contain very specific language.

Council Member Peixoto asked if a gang injunction program would expedite the prosecution of gang members. Inspector Lage stated that the District Attorney deals with criminal prosecutions and usually gang injunctions are treated as civil matters.

Council Member Peixoto made reference to the City of Oakland's Injunction Program containing an opt-out component, which would allow gang members who ceased to engage in gang activity the ability to come off the gang injunction. In response to Mr. Peixoto's question whether there were similar plans for Hayward, Inspector Lage confirmed that Hayward's gang injunction would also contain an opt-out clause. In response to Council Member Peixoto's inquiry related to probable alternatives in addition to the gang injunction, Mr. Lage mentioned prevention and intervention efforts. Mr. Peixoto affirmed that he was supportive of the curfews that would be set by the gang injunction.

Council Member Henson stated that as the person who asked the Council to bring forward and consider this gang injunction, he was pleased with the Police Department's work. Mr. Henson requested that Inspector Lage review the process of what occurs after someone has been identified as a gang member and the court has approved an injunction. Mr. Lage explained the process and indicated that there is a review process in place to ensure that individuals are properly identified as enjoined members instead of relying on one person's opinion.

Council Member Henson mentioned that gang injunctions are one tool in addressing the issues of gang violence. Mr. Henson conceded that there are issues surrounding the injunction, namely that the public and the school system need to be engaged. He added that activity alternatives for young people need to be in place and parents need to be involved as well. He shared a UC Irvine publication, which demonstrated the effectiveness of injunctions when they are used jointly with community tools.

Council Member Salinas thanked Inspector Lage for the presentation and noted that he attended a workshop at the League of California Cities Conference, where a case study was used as an example of a gang injunction success story. He stated that one of the positive qualities of the program was that the community came together and affirmed the need to deal with gangs and that the consequences for those who got caught up in gang activities were clearly defined. Mr. Salinas said that operating such a program in Hayward is feasible because of Hayward's resources; a university,

a community college, a good Police department, and existing services for youth, teens, young adults. Council Member Salinas described a curfew sweeps program, operated by the City of San Diego, where kids who got caught violating the curfew were taken to a center for intervention, where they would find City Council Members, clergymen, police officers, educators, and social workers. Mr. Salinas spoke about the short-term and long-term gains of gang injunctions and indicated that the short-term goals were much more visible as success stories whereas the long-term goals appeared to be a problem.

Council Member Halliday thanked Police staff for the work done on the gang injunction project. Ms. Halliday expressed support for the injunction and she acknowledged that clearly there are examples of it having worked in other cities. She pointed out the need to address the root causes of the gang issue. Ms. Halliday said that the youth need to make better choices and to do so they need to have better choices available to them and this is something that the community should provide. Ms. Halliday referenced the case study from the League of California Cities workshop to illustrate how the community there tackled dealing with the problems they faced on Saturday nights. She alluded to the idea of getting families involved and using certain family members who the kids would listen to such as grandmothers. She mentioned that guns are another contributing factor to gang violence. Ms. Halliday suggested that more work needs to be done in the future to prevent guns from getting in the hands of the youth.

Council Member Zermeño recommended expanding the community prevention aspect of the program and offered the ‘anti-bullying’ program and ‘turning little devils into little angels’ program as suggestions. Mr. Zermeño indicated that of the 20,000 kids that are in Hayward, about 10% are the troublemakers. He cautioned that while we invest money, energy, and place an emphasis on the 2,000 kids that are the troublemakers, the City should not overlook the 90% of kids that are doing well. He wanted to ensure that they are also taken care of as well. He commended Mr. Lage on his presentation.

Council Member Quirk agreed with Council Member Salinas’ thoughts and thanked all of the speakers.

Mayor Sweeney thanked Police Chief Ace, Inspector Lage, the Police Department, the representative from the District Attorney’s office for being present, and the community for their involvement. He recognized that the gang issue is a serious challenge and referred back to the statistic indicating that one-half of the homicides in Hayward are gang related. Mr. Sweeney stated that it has been brought up during neighborhood partnership meetings that there is an atmosphere of intimidation in the schools and on the streets. He also pointed out that there is an increasing trend of violence by gangs towards the public and that the City should move forward with this gang injunction to address this issue. Mayor Sweeney noted that the City needs to stop making excuses for bad behavior as displayed by young people and that it is important to raise the expectations of young people and of parents. Mayor Sweeney congratulated everyone for their effort with the program and he looked forward to this item coming back to Council soon for action.



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2. Revisions to the Smoking Pollution Control Ordinance

Staff report submitted by Director of Development Services Rizk and Chief of Police Ace, dated September 28, 2010, was filed.

Development Services Director Rizk provided a synopsis of the report and also referenced an email submitted by Mr. Jesús Armas, representing Phillip Chan and Benjamin Young, which proposed that instead of having special event type of permits, there be special provisions added to the ordinance that would allow regular smoking in designated areas under certain conditions. Mr. Rizk also acknowledged input by Lt. Reid Lindblom and Economic Development Manager, Sean Brooks who were also present at the meeting.

City Manager Fran stated that in line with City policy, staff has worked hard to support the local business and has also worked diligently to get a non-smoking ordinance in place. Ms. David indicated that the reports attempts to a strike a balance between these two different objectives and noted that staff was asking for direction from Council.

Mr. Sweeney stated that the original enactment of the ordinance was due to problems which the City had faced in the past with bars on B Street. He mentioned that people would get drunk, lie on the sidewalk, and would be a nuisance to the public, which drove people away from downtown and discouraged people from coming to the downtown area. He expressed concern that making any changes to the current ordinance would be a step backwards. In response to Mayor Sweeney's question as to whether other businesses were seeking modifications to the current smoking ordinance, staff responded that aside from Bijou and one or two downtown bar operators, and a local golf course, no other businesses expressed interest in seeking an amendment to the current ordinance.

Council Member Quirk supported staff's recommendation of setting a fixed number of special events permits that a business could obtain in a calendar year per the smoking ordinance. He stated that staff should speak with the interested businesses to get their feedback and see if 12 is an adequate limitation on the number of special events permits. Mr. Quirk agreed with Mr. Armas' suggestion that designated areas should be fully secured, that access to this area should be from within the establishment, and that access from the public entryway should be prohibited. Mr. Quirk emphasized his support for disallowing serving people from going into the designated smoking area and additionally stated that nobody should be involuntarily exposed to secondhand smoke. Mr. Quirk recommended that a test be performed in the designated area to measure the flow of the smoke and use this to determine if the smoke impacts the public outside of the designated area. He stated that at this time he is not supportive of or against the proposed ordinance and that he would like to see this item again in the future, given that the criteria that he mentioned is met.

Council Member Halliday stated that the City has greatly invested the downtown businesses start up and has also worked hard to keep these businesses in place. Ms. Halliday also mentioned that the

downtown area is still challenged with empty storefronts and lack of sufficient business. Ms. Halliday expressed her support for the existing smoking ordinance since it has cleaned up downtown, and agreed with staff's proposal of deleting the section of the ordinance staff recommended as it is unclear and needs to be replaced with modified language. Council Member Halliday mentioned that there are other business areas where an outdoor designated smoking area could be set up on the premises and she thinks this needs to be further defined in the ordinance. She commented that in these tough economic times the City should exercise more flexibility with businesses because by permitting certain establishments that have the room to set up a secured smoking area, this might lead to a boost in their business. Council Member Halliday was supportive of the changes to the ordinance and noted that the criteria how this could work needs to be further developed and established.

Council Member Zermeño pointed out that the language regarding the smoking ordinance did not specify if the smoke was from marijuana, cigars, or cigarettes and that this ambiguity makes it seem as though the ordinance would permit any kind of smoke. He praised the current ordinance; however, he wants to ensure that businesses continue to operate positively. He approved the ordinance as long as the restaurants provide an outside area where servers are not permitted to go to serve meals. Mr. Zermeño agreed with Mr. Quirk's previous statement about adding to the ordinance language pertaining to access to the designated smoking area.

Council Member Salinas commented that after reading the report, it appeared too bureaucratic to smoke a cigarette in a public area. However, he agreed that smoking is known to be harmful. In response to Mr. Salinas' question, Director of Development Services Rizk stated that this space could be designated as a smoking section and that the criteria described in Mr. Armas' email would be applicable. Mr. Rizk stated that the issue of keeping the doors closed at all times needs to be further analyzed. Mr. Salinas' views were in line with Mr. Armas' recommendation, indicating that he supports keeping the existing ordinance, but adding language to it that would specifically define the smoking sections.

Council Member Henson concurred with Mayor Sweeney in terms of the City working hard to clean-up the downtown area; transforming it into a place where people and kids could walk around and not have to inhale secondary smoke. Mr. Henson stated that Council is faced with an issue where it has to strike a balance between maintaining a safe and healthy atmosphere in the downtown area while preserving the current businesses and also allowing for their enhancement and expansion. Mr. Henson cited the example of smoking sections in airports as a good example of how the smoke is contained in one area and how it does not harm non-smokers. He suggested that downtown businesses interested in having a designated smoking area could invest in a filtration system. Mr. Henson stated that this would be a one-time expense for the business and that it would be an excellent way for business owners to address the issues that their clientele is faced with.

Mayor Sweeney commented that the amendment for the 20 foot tall walls surrounding the designated smoking section suggested by staff makes containing the smoke within the area much more simple and at the same time, it does not lessen the protection for the public. Mr. Sweeney stated that the protection sought through the ordinance, prohibiting smoking in public places, is a good public policy. He described that in the past there was a bar in downtown where people would go drink and smoke, and eventually, this drove other business out of business due to all of the



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problems this created. He also pointed out that with the creation of the designated smoking section, there is the concern that one could not open doors leading to this area. Mayor Sweeney stated that there does not seem to be consensus among Council regarding the ordinance as there is concern about change.

CONSENT

Item six was removed for further discussion and item seven was held over.

3. Approval of Minutes of the City Council Meeting on September 14, 2010

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried unanimously, to approve the minutes of the City Council Meeting of September 14, 2010, with revisions.

4. Resolution of Local Support for the Sustainable Communities Planning Grant and Incentives Program Application for Development of a Downtown Specific Plan and Form-Based Code

Staff report submitted by Senior Planner Buizer, dated September 28, 2010, was filed.

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

Resolution 10-149, "Resolution in Support of the Application for Grant Funds for the Sustainable Communities Planning Grant and Incentives Program Under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84)"

5. Authorization for the City Manager to Execute One Master Lease with Three Lease Purchase Agreements and Promissory Note for the Purchase of Motor Vehicles, and Necessary Funding Transfers

Staff report submitted by Director of Finance Auker and Director of Maintenance Services McGrath, dated September 28, 2010, was filed.

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

Resolution 10-150, “Resolution Authorizing Execution of Master Lease, Three Lease Purchase Agreements, Promissory Note, any other Documents Necessary to Procure Financing for New City Vehicles, and Funding Transfers”

6. Resolution in Support of Proposition 22, the Local Taxpayer Protection Act of 2010, an Initiative that Proposes to Amend the State Constitution to Protect Local Revenues

Staff report submitted by City Manager David, dated September 28, 2010, was filed.

Council Member Halliday wanted to point out that the League of California Cities, in conjunction with other organizations, authored Proposition 22, which intends to protect local revenues from being taken by the State. Through this action, Ms. Halliday urged voter support for the Proposition, which is on the November ballot.

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

Resolution 10-151, “Resolution in Support of Proposition 22, the Local Taxpayer Protection Act of 2010, an Initiative that Proposes to Amend the State Constitution to Protect Local Revenues”

7. Creation of Council Appointed Officers Committee

Staff report submitted by City Manager David, dated September 28, 2010, was filed.

Mayor Sweeney held this item for revision.

PUBLIC HEARING

8. Inclusionary Housing Interim Relief Ordinance and In-Lieu Fee Resolution (*Continued from September 14, 2010*)

Staff report submitted by Redevelopment Director Bartlett, dated September 28, 2010, was filed.

City Manager David presented the staff report and referred to a summary of the proposal on page two related to the provisions of the draft Inclusionary Housing Interim Relief Ordinance. Ms. David noted that there seemed to be agreement among Council and the developers on the fee “by right,” the deferred payment option, and the rate of the fee. There was also consensus in applying these fees to single-family developments. However, she stated that there seems to be some conflict with the housing policies that Council has adopted in the past and the proposal by the current inclusionary housing ordinance. She suggested that Council discuss in a future meeting the type of housing mix it wants to promote in the city and also what types of housing it would like to see in



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the City in the short-term and long-term. Ms. David recommended that the Council divide this item by moving forward with the proposed ordinance for the single-family detached homes or townhouses, with the fee “by right,” deferred payment option, and the rate of fee and ask Council to direct staff to revisit in a future meeting the Inclusionary Housing Ordinance and engage in a broader discussion about the future of housing in Hayward.

Mayor Sweeney concurred with City Manager David about the consensus among the Council with the first three items. However, he noted that Council was not pleased with the choices it was presented regarding how to deal with the fees. Mr. Sweeney indicated that the original draft of the ordinance seemed to encourage certain types of housing over other types, particularly rental housing at the expense of ownership housing. He stated that more discussion should take place in determining what kind of housing Council wants to encourage in Hayward and what types of housing is less of a priority for the community.

Council Member Quirk asked City Manager David for clarification on the matter of there being a fee structure of \$3.50 per square foot for single-family homes and no fee for attached housing units such as apartments, condominiums, and townhomes and whether this would be decided during tonight’s meeting. City Manager David responded that her proposal consisted of not taking a decision on the market rate housing and the condominiums due to the disagreement among Council on this issue. However, if Council was prepared to take an action then they could go ahead and proceed or this issue can be discussed at a later time, she said.

Council Member Quirk recalled that at a previous Council meeting it was decided by a 5-2 vote that there would be no fees on apartments, condominiums, and townhouses because these types of housing were already not economically viable, and by adding a fee, this may prevent the construction of these developments. He added that Council would be supportive of building new and high quality apartments, in particular, in the South Hayward BART area. He concurred with Mayor Sweeney that it would be worthwhile to engage in discussion about what direction the City wants to head with housing in the long-term. Mr. Quirk noted that having a designated fee for the extremely low-income housing could be addressed later. He was supportive of trustworthy agencies such as the Eden Housing, which run the extremely low-income housing programs, but was opposed to vouchers being given out to extremely low-income households where individuals end up utilizing the vouchers towards housing units comparable to slums. Mr. Quirk added that apartment buildings can be great places to live.

Council Member Halliday expressed some concern stating that undergoing this process is like gutting the City’s Inclusionary Housing Ordinance. However, she conceded that this attempt is well-placed in helping the development community during this economic hardship by encouraging the type of development desired in the City. Ms. Halliday also brought forth the issue of Proposition 26 and what changes this might lead to in the standards for enacting taxes and fees if this proposition were to pass in the upcoming November election. She asked if Council makes a decision to eliminate fees now, would the City be able to apply these fees in the future or will the

new parameters set by the possible passage of Proposition 26 hinder this, especially since Council is considering an interim step to reassess the state of the economy in two years. Ms. Halliday addressed this question to City Attorney Lawson who said that he would investigate this matter and then get back to Council.

Council Member Zermeño agreed with City Manager David's suggestion. He stated that by passing the three items for which there is consensus among Council, this would still be a developer-friendly decision.

Council Member Henson stated that although he prefers not taking any decision impacting the ordinance at this time, if that is Council's decision to split the ordinance, he would support it. He expressed that any action taken should not deviate from actions of the past and that Council should strive to make consistent policy decisions.

Council Member Peixoto asked City Manager David to articulate more specifically if the proposed ordinance would create a change in policy. City Manager David responded by stating that in the past, Council had discussions about fostering housing and placing an emphasis on home ownership. She stated that although, as Mr. Quirk stated, there is a need for more market rate rental housing, by placing a fee on the detached single-family homes and relieving the market rate rental housing of the fee, that would create an inconsistency in policy.

Council Member Zermeño confirmed that the current rate of homeownership in the City is 53%, and contrasted this with the City's goal for homeownership, which is 75%. He pointed out that the City is 20 percentile points below its goal.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:53 p.m.

It was moved by Council Member Quirk, seconded by Council Member Halliday, and carried unanimously, to direct staff to bring back a report after review of any legal or financial impacts the passage of Proposition 26 may have on the ability of the City to impose fees in the future; provided there are no concerns regarding the passage of Proposition 26, continue consideration of the short-term amendments to the Inclusionary Housing Ordinance; and provide Council with analysis of options to encourage an appropriate, long-term housing mix in the City.

LEGISLATIVE BUSINESS

9. Adoption of an Ordinance Authorizing Execution of Amendment to Mount Eden Business and Sports Park Community Development Agreement (*Introduced on 9/21/10*)

Staff report submitted by City Clerk Lens, dated September 28, 2010, was filed.

There being no public speakers, Mayor Sweeney opened and closed the public hearing at 8:57 p.m.



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

Ordinance 10-11, “An Ordinance Authorizing Execution of Amendment to Mount Eden Business and Sports Park Community Development Agreement”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño reported on an upcoming spaghetti feed sponsored by the Mt. Eden Band.

Council Member Salinas reported that he attended the Walpert Center reception. Mr. Salinas noted that the Center is in need of new furniture.

Council Member Halliday noted that Council will be honoring the bright star volunteers in the community at the St. Rose Hospital Tent on Tuesday, October 5, 2010. She provided her office number (510.583.4358) for any questions.

Mayor Sweeney reported on his attendance at the Women’s Professional Soccer Tournament at the Cal State University East Bay Stadium in Hayward on Sunday, September 26th where FC Gold Pride claimed a championship over the Philadelphia Independence. Mr. Sweeney congratulated the FC Gold Pride and asked staff to acknowledge their performance at an upcoming meeting.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 9:02 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward

ATTEST:

Miriam Lens, City Clerk, City of Hayward