

DATE: October 19, 2010

TO: Mayor and City Council

FROM: Director of Development Services
Chief of Police

SUBJECT: Revisions to Smoking Pollution Control Ordinance

RECOMMENDATION

That the City Council reads this staff report and introduces the attached ordinance (Attachment I) that would entail removing Section 5-6.05 from the City's Smoking Pollution Control Ordinance, in an effort to reduce confusion over the Ordinance provisions and assist the Hayward Police Department with enforcement of the Ordinance.

BACKGROUND

The City Council adopted a new Smoking Pollution Control Ordinance¹ (Ordinance) on May 27, 2008. The premise for such action related to the desire of the Council to protect the health and well-being of the general public by reducing health impacts associated with second-hand smoke, especially on children. The staff report associated with that action provides additional background information and may be found at the City's web site².

In summary, the Ordinance:

1. Established a reasonable smoking distance of at least twenty feet outside any enclosed public place where smoking is prohibited, including public sidewalks and streets, as well as private residences used as child care or health care facilities;
2. Prohibited smoking in all facilities, areas, and vehicles owned, leased, operated or controlled by the City of Hayward or the Hayward Redevelopment Agency;
3. Prohibited smoking in public places and certain other areas whether enclosed or unenclosed, including privately-owned parking lots open to the public, public transit boarding and waiting areas, elevators and restrooms, service lines, retail stores, sites of public events, enclosed common areas of hotels and motels and 35% of rented rooms, enclosed and unenclosed areas of restaurants, dining areas and bars, any facility used

¹ Ordinance 08-11, regulations available at: <http://www.hayward-ca.gov/municipal/HMCWEB/SmokingPollutionControl.pdf>

² <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2008/rp052008-11.pdf>.

primarily for exhibits and performances, every room, chamber, and meeting place used for public assembly, and all sports arenas and recreational park and playground areas.

Based on concerns from a few restaurant operators and others indicating the Ordinance negatively impacts their businesses, particularly during the past two years during the economic recession, staff brought a work session item to Council for discussion on September 28, 2010³. Staff had suggestion in the work session staff report that clarifying revisions be made to the Ordinance that would assist Police Department officers in enforcing the Ordinance. In response to concerns that the Ordinance may be negatively impacting downtown restaurants, staff had also suggested that smoking be allowed via a permit up to twelve times per year in unclosed areas at restaurants and bars, subject to certain criteria. Council members had varying reactions to the identified policy issues and staff's recommendation, as reflected in the attached meeting minutes (Attachment II). Most Council members seemed to support retaining the basic purposes of the Ordinance to reduce impacts associated with second-hand smoke, and some Council members expressed a desire to assist some of the local merchants by relaxing the Ordinance provisions.

DISCUSSION

Policy Decisions

There are two competing and conflicting viewpoints in regards to potential Ordinance changes that would relax provisions:

1. *In Opposition to Changes*: Hayward's ban on smoking in the Downtown has had an extremely beneficial effect on B Street and other areas in terms of improved cleanliness and mitigating the negative effects of secondhand smoke. The City took a bold and courageous step in enacting the Ordinance. Any amendments such as those being proposed by a few Downtown restaurateurs will weaken the Ordinance and perhaps start continued erosion such that the City will lose what it has gained. This would undermine one of the main purposes of the Ordinance in minimizing exposure to the impacts of smoke, since some of the second-hand smoke from such areas would most likely impact folks along public sidewalks, parking lots, etc. Also, opinions have been expressed that such businesses should offer other amenities to attract customers, including quality menu items at affordable prices, an overall pleasant dining experience with high quality service, etc.

The City cannot amend an ordinance to satisfy one business. Therefore, anything done here in response to the request will have to apply to other similarly situated businesses if they are able to meet the conditions. Again, the No Smoking Ordinance will be weakened and perhaps lost.

2. *In Support of Changes*: Enforcement of the Ordinance in the Downtown makes it a less desirable location for those patrons given citations for smoking on their way to or from restaurants. In addition, restaurant patrons have expressed concern over their safety if they

³ <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp092810-02.pdf>

were to smoke in less visible areas around the Downtown. Restaurant patrons have suggested that cities such as Oakland that do not have smoking ordinances are more inviting environments for dining and entertainment.

According to some restaurant operators in the Downtown, patrons desiring to smoke have been known to leave restaurants to smoke in their car and/or parking lots. Operators indicate that patrons who leave dining establishments don't always return, which represents a potential loss of business. In addition, there is also a concern that some patrons go to their cars to smoke and, while there, may consume additional alcohol, making it more difficult for bartending staff to monitor alcohol consumption and not "over serve" to a specific customer.

These competing viewpoints are often expressed by the same person, indicating that there is no easy answer to maintaining the ban on smoking and retaining the Ordinance purposes, while simultaneously doing what the City can to support its businesses, particularly in the Downtown.

Recommended Amendment to the Ordinance

Because sufficient evidence has not been presented to support the position that the City's Ordinance has negatively impacted sales in restaurants and bars (versus the impacts of the depressed economy), because the majority of the City Council did not clearly indicate support at the September 28 work session to amend the Ordinance to allow for greater opportunities to smoke, and because of the nearly impossible challenge in eliminating or minimizing second-hand smoke impacts, staff is recommending that the Ordinance be amended only to clarify existing regulations, as described below. This minor clarifying change would not change the current Ordinance restrictions that prevent any business from allowing smoking anywhere on the premises that is accessed by the public.

The Police Department staff, responsible for enforcing the Ordinance, is asking for an immediate change to the Ordinance and is recommending deletion of the following section of the Ordinance, which is reflected in Attachment I:

5-6.05 REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

- a. Smoking shall occur at a reasonable distance of at least 20 feet outside any enclosed area where smoking is prohibited to ensure that smoke does not enter the area through entrances, windows, ventilation systems, or any other means to ensure that those indoors and those entering or leaving the building are not involuntarily exposed to secondhand tobacco smoke.*
- b. The prohibition in subsection a. shall not apply to areas of private property that are not part of public place, playground, recreational area, or service area.*

Police Department staff indicates that this section is difficult to regulate and causes a lot of misunderstanding by the public. The confusion occurs because there are many places where smoking would be allowed twenty feet away from an area except that the Ordinance defines even private parking lots as public areas; and because most businesses are within twenty feet of public property such as sidewalks where smoking is clearly prohibited by the Ordinance.

One common example of the public's misunderstanding of the Ordinance involves privately-owned parking lots that are made available by businesses for their customers. Since the public can use the parking lot, it is a "public place" within the meaning of the Ordinance, and smoking is not permitted anywhere in the lot. However, based on input from the public, many members of the public assume that they can smoke in a customer parking lot, provided they do so at a distance of at least twenty feet from all doors and windows.

Deletion of this section of the Ordinance would not expand in any appreciable way the areas in the City where smoking is already prohibited; nor would it be more restrictive. It does relieve some ambiguity and lessens the opportunity for misinterpretation.

Alternative Amendments to the Ordinance

Because there was not clear consensus from City Council at the September 28 work session, and some Council members expressed a desire to assist businesses during these difficult economic times, staff has prepared an alternative approach for Council's consideration. Such option would allow for limited expanded opportunities for smoking during the next two years through the end of calendar year 2012. At that time, when most predictions indicate the economy should be stronger, the Ordinance could be amended to allow for such additional smoking opportunities to be permanent, extended, amended, or eliminated.

If Council is considering the option of further amending the Ordinance, to try to minimize impacts of second-hand smoke, to ensure full disclosure and noticing, and to be fair to all such businesses (versus just Downtown merchants), staff is recommending that such opportunities be limited to restaurants and bars throughout the City and that certain criteria be met, as outlined below.

- 1) *A smoking permit from the Police Department be required (along with an administration fee set by resolution to process such permits), which would expire on December 31, 2012;*
- 2) *The designated smoking area shall be unenclosed and fully secured and properly identified as an area where smoking is permitted;*
- 3) *Access to the designated area shall be from within the establishment and access from a sidewalk or public right of way shall be prohibited;*
- 4) *Doors leading into or out of the designated smoking area shall be closed at all times (except for ingress to or egress from the designated area). To preclude smoke from entering into the establishment from the designated smoking area when the door opens and closes for ingress/egress, some form of ventilation system, including fans or venting, must be utilized;*
- 5) *Neither food nor beverages shall be served in the secured area, nor shall any wait staff be required, as part of their employment, to service the proposed smoking area during the hours it is open to patrons;*
- 6) *The Hayward Police Chief (or his/her designee) shall approve the area as meeting all requirements before smoking is allowed.*
- 7) *Residential and commercial neighbors immediately adjacent to the proposed outdoor smoking area are notified and agree in writing to the proposed area and hours of operation;*

- 8) *No consistent complaints of second-hand smoke are filed with the City by pedestrians on any sidewalk, parking lot, or other public area immediately adjacent to the proposed smoking area, from wait staff, or from restaurant/bar patrons;*
- 9) *The Hayward Police Chief (or his/her designee) reserves the right to revoke the permit, at any time, if he/she believes the Smoking Pollution Control Ordinance is being negatively impacted or in other ways rendered ineffective or significantly weakened as to its original intent, or if complaints become numerous and/or cannot be addressed by the owner/operator.*

ECONOMIC IMPACT

Staff has not done a full impact analysis. However, as an example, since the passage of the Ordinance, *Bijou Restaurant* has indicated its sales have dropped from \$6,000 per night to \$3,000 to \$4,000 per night. They attribute this reduction in revenues in part to the passage of the Ordinance, for the reasons described above. Since passage of the Ordinance, *Bijou* no longer promotes its Cigar Socials, where patrons sampled cigars and paired cigars with signature alcohol. According to *Bijou's* operators, the cancellation of its Cigar Socials represents a loss of revenues from \$2,500 to \$3,000 per event.

FISCAL IMPACT

No direct substantial impacts to the General Fund exist, though some minimal impacts related to loss of sales tax revenue due to clients choosing not to frequent businesses may be occurring.

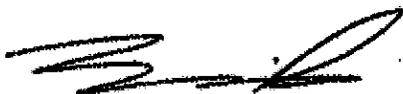
SCHEDULE

If Council agrees with staff's recommendation and introduces the attached ordinance (Attachment I), the ordinance will be presented to Council on October 26 for adoption, and elimination of Section 5-6.05 of the Smoking Pollution Control Ordinance would be effective 30 days afterwards.

If Council selects the alternative approach outlined by staff, staff will return to Council in the near future with an ordinance for consideration, along with resolutions related to establishing a Smoking Permit processing/administration fee and determination regarding consistency with the California Environmental Quality Act associated with such action.

Prepared by: David Rizk, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Draft Ordinance
Attachment II: September 28, 2010 City Council Meeting Minutes

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 5, ARTICLE 6 OF THE HAYWARD MUNICIPAL CODE TO DELETE SECTION 5-6.05 REGARDING THE USE OF TOBACCO PRODUCTS IN OR AROUND PUBLIC PLACES IN THE CITY OF HAYWARD

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 5-6.05 of Chapter 5, Article 6 of the Hayward Municipal Code is hereby deleted.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of _____, 2010, by Council Member

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____, 2010, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTACHMENT I

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



ATTACHMENT II

**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 Zermefio, 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 Zermefio 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 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 Zermefio 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 Zermefio 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. Zermefio 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.



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 Zermefio 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. Zermefio 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: