



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 12, 2004, 8:00 p.m.**

MEETING

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

ROLL CALL

Present: COUNCIL MEMBERS Jimenez, Quirk, Halliday, Ward, Dowling, Henson
MAYOR Cooper
Absent: COUNCIL MEMBERS None

PRESENTATION: Business Recognition Award

The City of Hayward presented the Business Recognition Award for October 2004 to Berkeley Farms. Berkeley Farms has been in Hayward since 1998 when they opened a state-of-the-art milk processing facility on Clawiter Road in Hayward. Berkeley Farms was founded in 1910 by John A. Sabatte, an immigrant from France.

The Hayward Production Plant consists of 220,000 square feet on 24.5 acres. This modern facility bottles milk and orange juice as well as distributing ice cream and cultures products such as yogurt, cottage cheese and butter. They employ over 500 at the Hayward facility. In addition, Berkeley Farms owns and maintains a modern fleet consisting of refrigerated tractor-trailer, bobtail and frozen ice cream trucks.

Berkeley Farms products have won many coveted awards such as Gold Medals at the L.A. County Fair and 2002, 2003 American Tasting Institute. Berkeley Farms is a major contributor to community sponsored fairs such as the Hayward Street Fair. They belong to the Hayward Chamber of Commerce. They also contribute to Muscular Dystrophy Association, Multiple Sclerosis Society, Easter Seals and many other charitable organizations. Mike Lasky, Vice President and General Manager, accepted the award and thanked Council for this honor and recognition.

PUBLIC COMMENTS

Mimi Bauer spoke on behalf of the Fairway Park Neighborhood Association. She commented on rumors that the shopping center was being sold, but reported that it was not. She asked that the Council reconsider placing the shopping center in the redevelopment zone. On another matter, she also stated that there are three homeowners, whose children drive motorized scooters that impact over 800 homes with noise. She asked for enforcement of these noise violations in her neighborhood.

Linda Bennett spoke on behalf of the National Women's Political Caucus, describing its purpose and stated that the Southern Alameda Chapter endorsed her candidacy in the past and the Board recently voted to support Mayor Cooper as well as see her complete her term of office.

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Robert Lopez spoke on the special meeting of the City Council held on October 2.

Jason Moreno spoke on a recent emergency incident and spoke on traffic signal control by public safety vehicles.

Harry Bruno spoke on the noticing of the October 2 special meeting, the discussion at that meeting as related by Mr. Lopez, and the associated police matter. He also spoke on his recall efforts.

Barbara Heringer-Swarr spoke on community based organization funding, its benefits and the reasons agencies provide such services. She felt that the cost for this recall election is insignificant.

Peter Hendley urged residents against signing the petition for recall and encouraged them to participate in the regular election process. As a member of the Human Services Commission for over six years, he has been involved in the awarding of \$350,000 in grants. He applauded the Council on this effort and spoke against spending \$120,000 for a special recall. He also spoke in favor of the Hayward Police Department.

Juanita Gutierrez spoke on behalf of the Mt. Eden neighborhood. She asked that Council relax the requirements for speed humps so that they could be installed at Cryer Street and Adrian Avenue and asked for striping on neighborhood crosswalks to protect kids. She noted the traffic impacts from the 11 new homes that are planned for her neighborhood.

Marlene Teel spoke on behalf of the Hayward Neighborhood Alert. She invited all to attend its meetings which are held the last Wednesday of each month at the Southland Mall Community Center at 7 p.m. She spoke in favor of Acting Police Chief Lowe and the activities of the dedicated and hard-working officers of this department.

Adrian Escoto spoke against the proposed name change of the Cal State Hayward campus.

Council Member Jimenez read a letter to the Editor in support of the Daily Review editorial, dated October 9th emphasizing that Cal State Hayward should not ignore its roots. He thanked the Editor for its efforts to maintain the current university name and made noteworthy the efforts of past distinguished citizens as Carlos Bee, Guy Warren and Judge J. Purchio, who helped establish this university.

Mayor Cooper read a statement regarding the investigative report of the Hayward Police Department. On behalf of the Council, she urged that citizens focus on Hayward's future and thanked the dedicated members of the Hayward Police Department. Lastly, she invited all to work for the betterment of this great city.

Council Member Henson stated he was not a part of the process relating to the letter read by the Mayor. He agreed with the statements in it related to the professionalism of the Hayward Police Department and the desire for the City to go forward, but emphasized that he was not a part of this process and asked that it be publicly noted.



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CONSENT

Consent Item 2 was removed for further discussion.

1. Approval of Minutes of the City Council Meeting of September 28, 2004

It was moved by Council Member Ward, seconded by Council Member Dowling, and carried unanimously, to approve the minutes of the City Council Meeting of September 28, 2004.

2. City Hall Parking Structure Modification, Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Bauman, dated October 12, 2004, was filed.

Council Member Halliday asked when the construction would start and for further information about the project. She also asked that careful consideration be made on the current art and murals on the walls of that structure.

City Manager Armas briefly stated that this consent item is to solicit bids for providing an additional parking level to the garage across the street from City Hall. This is a project that will compliment the cinema complex project on Foothill Boulevard. The contract awarding will take place in December with the actual work to start in 2005 with completion anticipated within six months. Relating to the arts, he noted that this was initially discussed with the artists and will be addressed.

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

Resolution 04-146, "Resolution Approving Plans and Specifications for the City Hall Parking Structure Modification Project, Project No. 5094 and Call for Bids"

3. Final Map Tract 7417 – Dave Atwal for Altima Construction, Ltd. (Subdividers) – Approval of Final Map, Authorize the City Manager to Execute a Subdivision Agreement – The Property is Located at 455 Laurel Avenue

Staff report submitted by Development Review Engineer Gaber, dated October 12, 2004, was filed.

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

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Resolution 04-144, "Resolution Approving Final Map for Tract 7417 and Authorizing the City Manager to Execute a Subdivision Agreement"

4. Resignation of Commissioners Coleman and Hazen from the Human Services Commission

Staff report submitted by City Clerk Reyes, dated October 12, 2004, was filed.

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

Resolution 04-145, "Resolution Accepting Written Resignation of Karis Coleman and Bill Hazen as Members of the Human Services Commission"

HEARINGS

5. Consideration of the Final Program Environmental Impact Report, Amendments to the Zoning Ordinance and Municipal Code, Associated Negative Declarations and Other Actions Associated with the Mt. Eden Annexation Study

Staff report submitted by Associate Planner Rizk, dated October 12, 2004.

Associate Planner Rizk described the five islands that are in the sphere of influence of the City and surrounded by incorporated Hayward. He described the various aspects of the study and the two phases of annexation. He also specified the proposed pre-zoning designations in relation to the decisions made by the Mt. Eden Neighborhood Plan Task Force. Staff is recommending changes to the provisions of the Light Manufacturing (LM) Zoning District. He noted the light industrial zone will serve as a buffer for the residential area from the heavier more impacting uses in the west. There are approximately ten businesses that have County approved use permits that will expire within the next two years and when that occurs, staff is recommending changes to the light manufacturing design standards to be more reflective of current industrial district in the Mt. Eden area. Storage related uses will be considered as conditional uses in this district.

Associate Planner Rizk noted that some properties have no water service; others have private wells or are served by the Mohrland Water Company. Many homes have private septic sewer service with a few connected to the City sewer system. Staff is recommending that Council relax the requirements in connecting to the sewer system. He noted that the City ordinance be revised so that annexed homeowners connect within ten years, provided annual verification of a functioning septic system.

Associate Planner Rizk referred to the documents in the packet for consideration related to the annexation of the Mt. Eden islands. He estimated that it will cost approximately \$9.5 million for infrastructure in the three study area islands. He informed the Council that the tax sharing agreements



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still need to be finalized and staff will return for action on them within two months. He also commented on the environmental documents that contain significant mitigations.

Council Member Dowling thanked staff and the community as well as Alameda County Supervisor Steele for their input toward this effort. He asked for further discussion on the Saklan Road parcels.

Associate Planner Rizk responded that the storage related facilities on Saklan Road will be considered as conditional uses to allow the City discretion to insure that visual and other impacts are addressed. Staff recommends that the situation will be addressed once the use permits expire. The Mt. Eden Neighborhood Plan intended this to be light industrial and agreed with residential zoning on the west side of Sacklan Road.

Discussion ensued regarding properties that front Saklan Road and that the zoning term, light manufacturing could include such businesses as electronic technology assembly and perhaps some research and development recognizing that some parcels have been under the County for so long.

In response to whether property taking will occur, Deputy Director of Public Works Bauman reported that a fair amount of work has been done. There will be some marginal improvements, right of way improvements, but no property is being taken. Proposed changes include increased left turn changes.

Council Member Dowling asked about funding for the second phase and the timing of Phase 1.

City Manager Armas indicated that funding for the improvements will come from the tax increments. The City is also discussing with the County to allow improvements as the improvements costs will be substantial. Phase 1 improvements will be completed all at the same time.

Council Member Jimenez thanked staff for this outstanding job and for coordinating with the Alameda County Staff. He commented on the correspondence from Walt Danielson, Exhibit K of the report.

In response to Council Member Halliday's questions, Deputy Director of Public Works Baumann the overall improvements that includes curbs, gutters and sidewalks can be financed by the tax increment funding and advanced by the developer. It was noted that the area is already in the County's Redevelopment area.

There was discussion with regard to the revision of the sewer service connection regulations and whether this annexation will demand more resources from the police department. City Manager Armas stated that information has been reviewed and residents can obtain sewer service if needed within the ten years.

Council Member Ward thanked Supervisor Gail Steele in her efforts to make this happen. It is incumbent to stay in touch with the City and the County.

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Mayor Cooper opened the public hearing at 9:41 p.m.

Ms. Lovell expressed her concerns related to the proposed annexation. She was not sure why the City could not continue to utilize the Mohrland Water System. She expressed concern on the large parcels on Saklan and what will happen to the feral animals, such wildlife as skunks and rodents as development occurs. She recalled when Shapell homes were developed, and how properties in her neighborhood were overburdened with rodents.

City Manager Armas reported that the Mohrland Water System has some serious limitations. It is sufficient for current residential and private use, but is not sufficient for fire protection. The City will allow a dual system as development occurs. Intensification of property developments demands improved and capable utilities.

Council Member Dowling asked whether the city or state would allow new development with a water well, nor septic system. It was noted that there are State restrictions.

Jim Lovell stated that he lives on the northwest corner of Mohr Drive and West Street and has utilized the Mohrland Water System for over 23 years. He expressed his concerns on the EIR, in particular when the result is “no impact.” He recalled the traffic impacts on Depot Road when the Waterford Apartments were constructed. He expressed concern that some of the new larger homes to be constructed could have up to five automobiles that could impact the neighborhood streets. He spoke on the infrastructure of the Mohrland Water System and indicated that the idea of a dual system could be an enormous financial impact to the system. If this happens, the system could be financially incapable of continuing its operation and result in no water supply in the southern end. He asked that documentation be provided to confirm verbal discussions. He noted that the Board of Mohrland Water System is made of volunteers. Lastly, he reported that he has a deed of property from Hermann Mohr in 1928 and was incorporated in 1932.

Juanita Gutierrez, as the former Chairperson of the Mt. Eden Task Force, spoke on the needs of the community and suggested the City offer more amenities, in particular streets.

Richard Brenkwitz expressed his concern related to eminent domain. He suggested a written document guaranteeing that this would not occur.

City Manager Armas emphasized the City is not the Redevelopment Agency. The County established it. He responded to Mr. Brenkwitz that State law has changed dramatically since Russell City. There are more prescribed rules. The City has the authority if it is providing a public service.

Peter Mitchell requested that when the property is annexed that business permits be grandfathered into the City.

Mitchell Medeiros stated that in his opinion, the City broke neighborhood apart and divided it to islands. He noted the traffic congestion that occurs when nearby schools dismiss classes.



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Allen Bertillion commented on the report and complimented the staff, City Manager Armas, and Supervisor Steele for conducting the meetings. He also spoke on the landlocked industrial area and the traffic impact. He was concerned with the impact on the schools. He realized that there will be financial impacts on families in the area that will need to connect to the water and sewer. He reported how this would impact those with fixed incomes. He commented on the sewer inspection costs that could impact families. Lastly, he noted that the revenue source for the Mohrland Water System that will reduce as homes connect to the City, that could result in financial duress.

Don Sheppard agreed with the previous speaker. He spoke in favor of relaxing the ordinance to accommodate the annexed property owners, but felt that ten years was not enough.

Jon Eash is a business owner on Depot Road and spoke in favor of annexation.

Mimi Bauer commented on the proposed buffer between the light manufacturing and the heavy industrial in reference to the La Vista quarry.

City Manager Armas noted that the Mt. Eden Task Force had discussed this and this was intended.

Barbara Heringer-Swarr commented on the status of eminent domain in the redevelopment agency. She also commented on blighted property and the laws.

Alameda County Supervisor Gail Steele appreciated all of the comments and efforts made by the Mt. Eden community. She expressed her concerns and those of the residents in the area to preserve its way of life and felt that the best thing to do is to talk about the issues. Many of the issues are resolved, but felt that some type of agreement must be in place on at least eleven issues and urged that there is a memorandum of understanding when this goes to LAFCO. She stated that people feel they are burdened; they are suspicious. The County would like to see this through and sit down with this understanding. She urged Council to sit with this neighborhood and provide a good faith effort to really come to an effective understanding.

Mayor Cooper closed the public hearing at 10:33 p.m.

Mayor Cooper asked about the suggested agreement as suggested by Alameda County Supervisor Steele.

City Manager Armas stated that the LAFCO tax increment agreement is not finalized to date, but hopes that it will be within 60 days. Staff is recommending Council take action. Staff is also motivated to find a reasonable solution. If we move forward there is an opportunity to address the issues as Alameda County Supervisor Steele referenced, but cautioned that a future Council could change the action. If the proposal is approved, the City will provide for the common improvements, but the individual laterals can be costly.

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Mayor Cooper stated that as development comes about impacts will occur and change is inevitable. She noted the strict provisions placed on the homes in the South of 92 on feral cats. In regards to the Mohrland system, it will not be capable of providing pressure for fire protection that is necessary. She expressed the purity of the Hetch Hetchy water that the City provides.

There was discussion on the sewer service inspections. Staff indicated that the annual inspection would be visual, not full blown and could cost approximately \$150.

Council Member Dowling suggested the motion include the addition of a written agreement as advised by Alameda County Supervisor Steele. The phases are in response to the residents. He noted that it has taken a long time to arrive to this point. Council Member Dowling didn't fully realize the powers of the Alameda County Redevelopment Area.

City Manager Armas stated that both City and County Redevelopment Agencies have legal counsels to settle the housing legalities.

Council Member Halliday stated that she would be supporting the motion and would hope that the City works with the Mohrland Water System Board so that nobody is left without water. She apologized to the Mt. Eden community for not attending the meetings and noted that the Mt. Eden neighborhoods would very much be welcomed to be a part of the City of Hayward.

Council Member Henson stated that he would support the motion and that change is inevitable. Both the City and County staff have tried to make it an easy transition and City will try to mitigate the issues. He agreed with Supervisor Steel's comments, agreeing that in the long run it will be beneficial.

It was moved by Council Member Dowling, seconded by Council Member Jimenez, and carried to adopt the staff recommendation as follows with the modification that sewer inspections be visual rather than written:

Resolution 04-147, "Resolution Certifying Program Environmental Impact Report, Adopting Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations for Proposed Annexation and Approving Prezoning of Mt. Eden Annexation Area"

Resolution 04-148, "Resolution Adopting the Negative Declaration and Approving Text Amendment Application No. PL 2004-0338, relating to Provisions in the Light Manufacturing Zoning District for Storage-Related Uses and Design Standards"

Resolution 04-149, "Resolution Adopting the Negative Declaration and Approving Amendment to Article 3 of Chapter 11 of the Hayward Municipal Code Relating to the Mt. Eden Annexation Area"

Resolution 04-150, "Resolution of the City Council of the City of Hayward Making Application to Alameda County Local Agency



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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”

Resolution 04-151, “Resolution Approving Plan for Providing Municipal Services in Relation to Mt. Eden Area Annexation Application”

Introduce Ordinance No. 04-____, “An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Prezoning Certain Territory Considered in Connection with Zone Change Application PL-2004-0313 Relating to the Mt. Eden Annexation Area”

Introduce Ordinance No. 04-____, “An Ordinance Amending Section 10-1.1800 of Article 1 of Chapter 10 of the Hayward Municipal Code”

Introduce Ordinance No. 04-____, “Ordinance Amending Section 11-3.201, Article 3, Chapter 11 of the Hayward Municipal Code Relating to Public Sewer Connections in the Mt. Eden Annexation Area”

In addition, staff would develop an agreement that includes the eleven issues as referred by Supervisor Steele in response to resident concerns, which she will provide in writing.

6. Authorization to Submit Comments to Alameda County Regarding La Vista Quarry Draft Environmental Impact Report

Staff report submitted by Associate Planner Rizk, dated October 12, 2004.

Associate Planner Rizk made the report and responded to Council questions.

Mayor Cooper opened the public hearing at 10:53 p.m.

Opportunity was provided to Mr. McCarrick of Dumbarton Associates, the quarry operator. He displayed a map of the other quarry in the Fremont. He informed the Council that with this decision to continue the operation of the quarry, modernized equipment will be installed. The La Vista Quarry operator is a good custodian and safe operator. He reported that Mission Boulevard is swept daily. He spoke on the existing operation. He stated that he is the need to work asphalt plant during the night to respond to the needs of public works projects.

In response to Council Member Jimenez's questions about the traffic study, the air quality and whether the operator is working with the neighborhoods, Mr. McCarrick stated that the study was done on a peak day with the worst case scenario and that the dust will be minimal. Dumbarton Associates plans to install physical berms and shield noise generation equipment.

Council Member Jimenez asked that there be a separate letter addressing additional EIR concerns. It was noted that Dumbarton Associates has received this report.

Council Member Henson inquired on the truck traffic that will be a significant part of this and unavoidable. He asked for if any technology will be used to mitigate issues. He was concerned with the plan to extend hours of operation and weekend operations.

Mr. McCarrick, representing Dumbarton Associates, reported that he is currently working to address noise created by equipment reversing. He is also working with Alameda County staff to shield noise created by the asphalt plant during night operations. He noted that night operations would depend on the need by public works projects.

Kendra Mendall spoke against the continued operation of the quarry and its adverse impact to her neighborhood. She spoke strongly against it and felt that it was not compatible with the new developments in the area. She cited noise, traffic and dirt. She also reported that asthma seems to be a really big problem in this area. She asked that the City request a delay.

Mark Wolf representing Local 870 summarized concerns dealing with air quality. He cited particulate matter in the air as well as other criterion pollutants from engine exhausts as well as diesel pollutants that cause cancer. He noted that the EIR study underestimates the level of emissions from these sources as directed by the Bay Area Air Quality Management District. He felt that the EIR rated them below the significant thresholds and thus no mitigations are required. He also commented on noise issues and noted that he is submitting a comment letter, but urged the Council to send an additional letter to address the air quality issues. He urged that land uses be considered and what uses might be pre-empted if this is approved.

Mimi Bauer reported that she hears the back-up beeps way before 7 a.m. She suggested there be a subject line on the letter or the project referenced. In her opinion, this letter might be too technical. She expressed her concern about the viability about her neighborhood. She suggested the asphalt plant be moved to the Dumbarton site that will be closed and is not near residential and that this would not be a financial hardship for the owner. She expressed health concerns as she has a son with asthma. Lastly, she commented on the speeding trucks during the 18 months when the South of 92 development was under construction and the wear on the City's streets.

Council Member Jimenez commended Ms. Bauer's enthusiasm and comments.

Mayor Cooper closed the public hearing at 11:28 p.m.

Mayor Cooper agreed with Council Member Dowling's concerns as well as those who spoke relating to air quality. She felt the issues raised are absolutely legitimately. She did not feel that this quarry and its



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impacts have a place in this community. She felt that this is the wrong business for this site and the future of Hayward and could not see it operate beyond its expiration in 2008.

Council Member Halliday agreed. She stressed that this process is in the wrong hands. She commended Alameda County Supervisor Steele for being present, but felt that she is one of five. She would agree to amend the motion to request that annexation occur prior to the permit process. She agreed with the Mark Wolf and with Ms. Bauer, who suggested the use and the need for a buffer for the neighborhoods near the quarry.

Council Member Jimenez, the maker of the motion, agreed to authorize the submittal and recommended that a copy be sent to Alameda County Supervisor Steele.

Council Member Ward seconded his motion. He commended Ms. Bauer and Ms. Mendall for speaking on this issue and for speaking on behalf of their neighborhoods. With regard to the action, he asserted that the Council's purpose is to provide comments to the document. He cited past subdivision and development approvals that have occurred with the knowledge that the quarry continued to operate. He noted that the homes in these subdivisions have risen and thus the quarry has not impacted property values. He felt that if the County does approve the permit, improvements, including technical improvements, will occur. He noted that County imposed conditions of approval could reduce air quality emissions, noise, conditions of the trucks, and required street cleaning.

There is a potential beneficial impact associated with the quarry expansion in terms of the operations rather than the length of time. He specified that the County has a right to act on this site as it remains in its jurisdiction. He stressed that it is the Council's job to identify the mitigation measures and monitored appropriately consistent with CEQA.

Council Member Dowling was concerned that the EIR does not mention Hayward concerns as the approved proposed senior complex, the Redevelopment area, the BART station plan, nor the State owned land that will eventually be released. There are developments in the area who are concerned about the weekend and night time hours. He commended staff for preparing the letter, and suggested that staff include a discussion to address the City's land use and land use policies.

Planning Associate Rizk stated that CEQA analyses require a land use study and staff can raise that issue with Alameda County staff.

City Manager Armas responded that Council Member Dowling would like assurance that the EIR be evaluated and considered in a larger context in terms of the Mission-Garin Plan land use proposals.

Council Member Dowling asked that this be addressed in Council's response to the EIR. Both the maker of the motion and the second agreed. He also suggested that the annexation be done first and then the use permit extension process. He asked for an update on the annexation procedures.

City Manager Arms updated the Council on the annexation process, stating that staff is working with the County to execute property tax and exchange agreements as well as a sales tax agreement that may be resolved within the next few weeks. In January or March, LAFCO will conduct the annexation hearing.

Council Member Dowling noted that the Alameda County Planning Commission will conduct a hearing on the quarry in November. He suggested the Council request that Alameda County slow down its permit process and have the City annexation completion first. The City applied for annexation over a year ago, so it should be considered prior to the quarry permit extension request.

City Manager Armas reported that the City is commenting on the Draft EIR and suggested that this request be a separate matter for Council to consider. City Attorney O'Toole advised that this matter be placed on the subsequent agenda.

It was moved by Council Member Jimenez, seconded by Council Member Ward, and unanimously carried with an additional letter to be reviewed at the following meeting regarding the City's land use policies in relation to the quarry operation.

COUNCIL REPORTS

There were no Council reports.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 11:46 p.m.

APPROVED:

Roberta Cooper, Mayor, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward