



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, May 20, 2008, 8:00 p.m.**

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**MEETING**

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

**ROLL CALL**

Present: COUNCIL MEMBERS Rodriquez, Quirk, Halliday, Ward, Dowling,  
Henson  
MAYOR Sweeney  
Absent: COUNCIL MEMBER None

**CLOSED SESSION ANNOUNCEMENT**

Mayor Pro Tempore Quirk indicated that there were no announcements related to the discussion of real estate negotiations for State-owned parcels previously held in Closed Session.

Mayor Sweeney reported that there were no announcements regarding the conference with legal counsel related to potential litigation.

**PUBLIC COMMENTS**

Wynn Grcich spoke against the construction of power plants and impacts from their emissions to local water supplies, such as chlorine and ammonia.

Christine Dorigo spoke in opposition to power plants and urged the Council to stop their construction as they will emit toxic wastes into our air as well as to our water.

Alex Dias also made comments opposing power plant construction in Hayward.

Doug Ligibel spoke on the recent murder at Southland Mall and expressed concern that such violence is increasing and similar acts of violence may occur in the A, B and C Streets corridor in the downtown as it is developed. He also commented on the increase of gang-related crime at the Hayward BART station area. He urged additional police staffing to address this.

Rob Simpson reiterated his experience with blocking power plant construction efforts. He indicated that he has had problems with the City's website and cannot find information on power plants nor the related agenda reports. He also stated that he has not been able to view the webcast. Lastly, he commented on the anti-power plant rally held earlier in the day at Chabot College. Mayor Sweeney asked staff to respond to this request related to the City's website and webstream.

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City Clerk Reyes made a brief announcement related to the recruitment for the Hayward Youth Commission as well as for the recruitment of Hayward residents for its various boards, commissions, committees and task forces.

### **CONSENT CALENDAR**

Consent Items 1 through 6, and 9 were removed for separate votes. Council Member Halliday reported that she was absent from the May 13<sup>th</sup> Council Meeting, but read the staff reports and the draft minutes and was ready to make a decision on the three proposed ordinances to be adopted.

1. Approval of Minutes of the City Council Meeting of May 6, 2008

It was moved by Council Member Dowling, seconded by Council Member Henson, and unanimously carried, to approve the minutes of the City Council Meeting of May 6, 2008, as revised by Council Member Quirk.

2. Approval of Minutes of the City Council Meeting of May 13, 2008

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried, with Council Member Halliday abstaining, to approve the minutes of the City Council Meeting of May 13, 2008, as revised by Council Member Quirk.

3. Adoption of an Ordinance Amending Article 3, Chapter 1, Sections 1-3.00 through 1-3.200 of the Hayward Municipal Code, Relating to Penalties

Staff report submitted by City Clerk Reyes, dated May 20, 2008, was filed.

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

Ordinance 08-08, "Ordinance Amending Article 3 to Chapter 1 of the Hayward Municipal Code; Penalties"

4. Adoption of an Ordinance Adding Article 7 to Chapter 1 of the Hayward Municipal Code, the Administrative Citation Ordinance

Staff report submitted by City Clerk Reyes, dated May 20, 2008, was filed.

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

Ordinance 08-09, "Ordinance Adding Article 7 to Chapter 1 of the Hayward Municipal Code; Administrative Citations"



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5. Adoption of an Ordinance Amending Chapter 10, Article 1, of the Hayward Municipal Code by Rezoning Certain Territory in Connection with Zone Change Application No. PL-2007-0634 Relating to the Properties at 29200, 29338, 29370, 29402, and 29606 Bodega Street

Staff report submitted by City Clerk Reyes, dated May 20, 2008, was filed.

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

Ordinance 08-10, "An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Territory in Connection with Zone Change Application No. PL 2007-0634 Relating to the Properties Located at 29200, 29338, 29370, 29402 and 29606 Bodega Street"

6. Sulphur Creek Enhancement Project: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 20, 2008, was filed.

Council Member Quirk stated that he supports this action, but had desired to see something done with Sulphur Creek at the Cannery project. He did express that he was not on this Council when the Cannery Plan was approved, but agreed with the development. He recommended that when there is development at the South Hayward BART Station, something can be included relative to the creeks. Mayor Sweney stated that he agreed with those remarks.

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

Resolution 08-071, "Resolution Approving Plans and Specifications for the Sulphur Creek Enhancement Project, Project No. 6847 and Call for Bids"

7. Pavement Rehabilitation FY08 - Huntwood Avenue, Santa Clara Street and Whitman Street: Award of Contract

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 20, 2008, was filed.

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

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Resolution 08-069, "Resolution Awarding Contract to G. Bortolotto & Co. Inc., for the Pavement Rehabilitation FY 08 – Huntwood Avenue, Santa Clara Street, and Whitman Street Project, Project No. 5191"

8. Adoption of the 2006 State Standard Plans and Specifications, the 2008 City Standard Details, and Authorization for the Director of Public Works to Make Updates to the City Standard Details and Adopt Future State Standard Plans and Specifications, as Necessary

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 20, 2008, was filed.

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

Resolution 08-070, "Resolution Adopting Standard Plans, Specifications, and Details for Public Works Construction for the City of Hayward, Authorizing the Director of Public Works to Make Updates to the City Standard Details and Adopt Future State Standard Plans and Specifications, and Repealing Resolution No. 03-079 and All Other Resolutions in Conflict Herewith"

9. Adoption of a Resolution in Support of Restoring State Funding for Programs that Meet the Needs of People with Disabilities, Older Adults, Children and Youth

Staff report submitted by City Manager Jones, dated May 20, 2008, was filed.

Jessica Lehman, representing Community Resources for Independent Living (CRIL), expressed her concern with the Governor's and State legislature's budget cuts. She noted the specific impacts to Hayward and commended Council for this effort to inform the State government that this is not the right solution for local government. She urged Mayor Sweeney and Council to encourage neighboring cities and colleagues to take similar action. She thanked the Council for this effort.

Vanessa Proee spoke in support of the resolution. She stated that it will be difficult for her if the cuts are made which could mean that she may need to return to a nursing home as she will not be able to afford rent or to receive dental and eye care.

Council thanked Ms. Lehman and asked that she notify Council of any events that will be held by CRIL or the coalition in this regard. It was noted that there are insufficient funds for all of the various programs, including education at the state level. It is difficult for our legislators to increase taxes as there is a required two-thirds vote for increasing revenues. It was recommended that staff disseminate this resolution as requested.



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

Resolution 08-072, "Resolution Against the California State Budget Proposal to Reduce Funding for Services and Programs for People with Disabilities, Seniors, Children and Youth in California"

**HEARING**

10. Parcel Map No. 7460 Michael Lindow (Applicant/Owner) – Request to Amend Parcel Map to Certain Conditions of Approval Pertinent to Street Improvements Along the Campus Drive and University Court Frontages – Project Located on the Southwest Corner of University Court and Campus Drive

Staff report submitted by Development Review Engineer Nguyen, dated May 20, 2008, was filed.

Director of Community and Economic Development (CED) Daluddung stated that this is on at the request of the City Council. She commented on that because the staff recommendation is to revise the map; it must be handled as a public hearing and introduced Development Review Engineer Nguyen who reviewed the findings.

Development Review Engineer Nguyen reported that this project began with the approval of a tentative map in September of 1999. The site improvement plans were approved in December of 2001, but the construction did not begin until 2005. He noted the two re-considerations that the applicant/owner has requested, which includes a deferred improvement agreement. Mr. Nguyen reported that this project consists of three new homes on University Court. Staff reviewed the current street configuration and described the street improvement needs. The requirement will be to install a cul-de-sac at the terminus prior to the issuance of the certificate of occupancy for the third home. The conditions of approval will be revised as approved by the City Engineer.

Council Member Dowling thanked staff and Mr. Lindow for arriving at this agreement. He asked about the timing for the first punch list and asked about the normal timeframe for such a development. Director of CED Daluddung noted that this is an anomaly as it generally takes ten to fourteen days to process. She discussed the City's permit program, which is the Eden Systems, a permit tracking software. She reviewed this project timeframe and the discussions that occur during the permit process.

Council Member Ward expressed his concern related to setting a precedent if the Council approves the revised conditions of approval. Director of CED Daluddung concurred that this is a special circumstance with special considerations and that the current policy will not be impacted.

Council Member Henson confirmed that the conditions of approval are still in place, only deferred. The new homeowners will pay for the required improvements. Council Member Henson asked about the sprinklers requirement and how the cost of the cul-de-sac is distributed. Public Works Director Bauman stated that the sprinkler requirement was always there, but explained that the issue was the water hook-up fee.

Council Member Henson confirmed that the cul-de-sac is considered to be beneficial to those three properties, as they own the property just in front of this.

Mayor Sweeney opened the public hearing at 8:46 p.m.

John Moran, a neighbor of this project, spoke in its support.

Vyas Nafta resides on University Court. He purchased his property and did a subdivision and commented on his deferred street improvement agreement. He explained his difficulties that were burdensome and expensive. He noted that he has paid for his frontage even though it benefits the rest of the users of the street. He asked when this improvement will occur as the street needs to be widened. He agreed that the improvements need to be made and he was willing to pay for his share.

Michael Lindow, applicant and owner, informed the Council that currently he is in negotiations with the bank to reduce the amount of pay-off to make this project possible. The plan is to complete the cul-de-sac and has accepted the Campus Drive improvements deferral. He stated that he discussed the project with City staff and indicated that he paid for the new re-engineered drawings so that the cost can be reduced. He has offers on the properties and anticipates the bank's approval.

Rob Simpson commented in support of the applicant/owner and commended him on the homes. He stated that he previously owned property on this street, rehabilitated it and improved the neighborhood.

Mayor Sweeney closed the public hearing at 8:54 p.m.

Council Member Quirk moved the staff recommendation, thanked staff and Mr. Lindow for their mutual efforts to come to a resolution and also thanked the neighbors for their support.

Mayor Sweeney expressed his concerns relative to how the property owners will be notified on the deferred street improvements agreements and their obligations. Staff responded that the agreements run with the land. Mayor Sweeney asked that this be added to the motion.

Council Member Henson seconded Council Member Quirk's motion with the direction to staff. He was pleased with the outcome and noted that this solution will be beneficial in the long run.

It was moved by Council Member Quirk, seconded by Council Member Henson, and unanimously carried, to adopt the following with direction to staff to notify the new owners of these three properties and inform them of the recorded deferred public street improvement agreements:



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Resolution 08-073, "Resolution Approving Amendments to Parcel Map 7460 Relating to Certain Conditions of Approval Pertinent to Street Improvements Along Campus Drive and University Court"

11. Introduction of an Ordinance Amending Chapter 5, Article 6, of the Hayward Municipal Code, Prohibiting the Use of Tobacco Products in or Around Public Places in the City of Hayward

Staff report submitted by Assistant to the City Manager Saad, dated May 20, 2008, was filed.

Assistant to the City Manager Saad reported that this is on the agenda at the direction and request of the Council. She defined the current smoking ordinance and the subsequent legislative action since it was adopted, noting that smokers are not a specially protected category under the "equal protection clause." This ordinance will prohibit smoking in all facilities, areas and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency. This ordinance establishes a smoking distance of 20 feet outside any enclosed public place. This is a distance that was established after several studies on the impacts of second hand smoke. Signs will need to be posted in every building regulated by this ordinance. She described the ability to impose administrative penalties and utilize the civil enforcement process. She enumerated the various agencies that have passed similar ordinances including the school district. She described the health rationale and responded to Council questions.

Council Member Ward stated that the concept of this ordinance is good, but expressed his concern that this could seem as if the City is trying to control people's lives. He works in San Francisco and has noted the ordinances there. He commented that this would impact the entire downtown core and cause enforcement problems. He would prefer to see specific prohibitions such as entry doorways and enclosed public spaces.

Council Member Halliday appreciated the work and discussed the reasons for her support. She asked whether there might be a consideration to allow particular smoking areas in businesses. She recalled a Planning Commission action that required the Turf Club to build a smoking area in the back of a business. She also described the Palace Card Club's smoking area. Staff indicated that if businesses have private parking lots, smoking is allowed as long as it is more than 20 feet from the entryway. Staff will query other cities on this aspect of the ordinance.

Mayor Sweeney opened the public hearing at 9:22 p.m.

Dee Dee Ligibel spoke in support of this ordinance, noting the impacts of second hand smoke. She also noted that cigarette butts are a fire hazard. She also urged the need to ban plastic bags.

Lloyd Clifton is an antique dealer with a business in the downtown. He expressed concern on second hand smoke in his business. He noticed that current bar owners are cleaning up after

smokers in front of their businesses, but noted how the landscaped beds, the grounds around the dining areas just outside the B Street Bistro, are impacted by cigarette debris. He cited the non-smoking requirement at Bay Street commercial center in Emeryville.

Rob Simpson commented on the effects of second hand smoke, but stressed the importance of keeping places in this community for people who have made the choice to smoke.

Doug Ligibel shared his experience with smokers. He stated that he is a nationally certified rehab counselor and an addictions professional and that many of his clients have compared addiction and recovery from smoking equally as damaging as narcotics. One of his concerns is the number of underage smokers. It is more than a littering issue. He commended staff for the staff report and the draft ordinance. He commented that this does not deny smokers to smoke in their own car.

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

Council Member Rodriguez asked how this will impact BART. It was noted that BART has jurisdiction for its facilities and currently it does not allow smoking in many of its areas.

Mayor Sweeney thanked the speakers in support of this ordinance. He thanked Assistant to the City Manager Saad and Assistant City Manager David for their excellent report. He then moved the introduction of this ordinance as it will be good for the downtown, for business and for the public's health. He commented that this will eliminate the impacts of those who smoke in front of the Stein Room. Lastly, he commented that Mr. Simpson, an advocate of public health, argued against the ordinance.

Council Members Quirk and Henson seconded Mayor Sweeney's motion.

Council Member Quirk asked whether smoking while walking would be allowed. There was discussion with the consensus that there are sidewalks within 20 feet of entryways and thus not permitted. He emphasized that this is not about the right of smokers, but this is the right of people who do not smoke. He shared his experience with an outstanding individual, Ilene Rockman, who never smoked in her life, but died at 50 years old of lung cancer.

Council Member Dowling commented about the ordinance that was passed to forbid the soliciting by the homeless in medians. He stated how he would call the police, but was told that there was no staff to dispatch, thus the ordinance is unenforceable. This ordinance will be unenforceable. He could see how it could be used to harass the undesirables and ticket smokers. There needs to be more outreach to the business community on this. He would not be supporting this introduction.

Council Member Henson stated that Council Member Dowling's concerns are quite valid. He also understood the concerns of Council Member Ward. However, he noted that State smoking restrictions have tightened since 1998. He declared that second hand smoke in reality is first hand smoke that impacts non-smokers' health. Smoking is a personal habit, but choices must be made. There are carcinogens in cigarettes and we have to do everything to protect our public health. He agreed that it will be difficult to enforce due to the Police Department's more prioritized issues, but this will have some impact. He would support the motion.



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Council Member Halliday commented on her recent air flight and her experience with a smoker who could not smoke due to restrictions. She commented on the ban in restaurants and how it was noted that it might impact businesses, but it did not. She agreed with Mr. Ligibel's comments and agreed that cigarettes do cause so much harm in our society. She thanked Mayor Sweeney for bringing this forward.

Council Member Rodriguez commented that she strongly opposed the "banning" issue. She expressed her concern as to what will be banned next, maybe books, maybe paper bags but she stressed the importance of avoiding the process of banning. However, she recognized that many other cities are doing this and smoking is a health issue.

Mayor Sweeney urged staff that prior to implementation, there be a good outreach and education effort in the community to bring awareness of this new ordinance.

It was moved by Mayor Sweeney, seconded by Council Members Quirk and Henson, and carried to introduce this amendment to the ordinance by the following roll call vote:

Introduction of Ordinance 08-\_, "An Ordinance Amending Chapter 5, Article 6 of the Hayward Municipal Code, Prohibiting the Use of Tobacco Products in or Around Public Places in the City of Hayward"

AYES: Council Members Rodriguez, Quirk, Halliday  
Henson  
MAYOR Sweeney  
NOES: Council Members Ward, Dowling  
ABSENT: None  
ABSTAINED: None

## **COUNCIL REPORTS**

Council Member Henson briefed the Council with information from the National League of Cities related to the foreclosure crisis, issues on public safety and efforts to address issues in climate change and water conservation. He reported on HR 5818, the Neighborhood Stabilization Act that will provide a one year loan to help to ease the burden of vacant housing. This would help counties and cities with high rates of foreclosures. Another legislative effort is HR 3221 that will provide \$300 billion for mortgage loans to help borrowers re-finance at lower rates. This would allow state housing finance agencies to sell an additional \$10 billion in tax exempt mortgage bonds.

Council Member Henson also spoke on a public safety law, the Berme Grant, that was cut by 2/3<sup>rd</sup> and there is an emergency supplemental bill to restore that cut. This bill has strong support. Lastly, he commented on the effort on climate and water, Climate Change Drinking Water Adaptation Research Act, which is SB 2970 that will direct EPA, the Department of Commerce Energy and

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Interior to establish a comprehensive research program on water quality to explain its impact on climate change.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 9:51 p.m., in memory of Roxanne Salinas. Council Member Dowling noted that Roxanne attended St. Bede's Catholic School, Chabot College and California State University Hayward. She was the youth and teen coordinator for HARD and was instrumental in hosting the popular youth event, "Battle of the Bands." She was a past staff member of the Hayward Youth Commission. She is survived by her mother Lori, brothers, Mark and Anthony Salinas. Donations may be made to the HARD Foundation. Council Member Dowling noted that Ms. Salinas was a person with great energy and would be sorely missed.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

**ATTEST:**

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Angelina Reyes, City Clerk, City of Hayward