



**MINUTES OF THE SPECIAL CITY COUNCIL/  
REDEVELOPMENT AGENCY MEETING OF  
THE CITY OF HAYWARD**  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, November 17, 2009, 8:00 p.m.

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**MEETING**

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

**ROLL CALL**

Present: COUNCIL/RA MEMBERS Zermefio, Quirk, Halliday, Dowling, Henson  
MAYOR/Chair Sweeney  
Absent: COUNCIL/RA MEMBER May

Mayor Sweeney indicated that Council/RA Member May was on her way to the meeting.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Lawson reported that Council met with Legal Counsel pursuant to Government Code 54956.9, regarding pending litigation - Pollar, et al., v. County of Alameda, et al., U.S.D.C. No. 08-CV-04196-BZ; pursuant to Government Code 54956.9, regarding pending litigation - Walker v. City of Hayward, et al., U.S.D.C., No. 07-CV-06205-TEH; pursuant to Government Code 54956.9, regarding pending litigation - Rental Housing Owners, etc v. City of Hayward Alameda County Superior Court No. HG09433908; and pursuant to Government Code 54956.9 (c), regarding an anticipated case. There was no reportable action.

**PUBLIC COMMENTS**

Ms. Wynn Grcich, Industrial Parkway resident, played a portion of a tape recording of a show named Fresh Air NPR on October 19, 2009, regarding water pollution from power plants.

Ms. Jessica Huertas, West Street resident, reported that drivers do not obey the posted speed limit on the West Street "s" curve and added that there were several times when she was almost hit by vehicles. Mayor Sweeney directed staff to meet with Ms. Huertas and look into the issue.

Mr. Vern Ward stated he owns a rental house on Pulaski Drive and reported that the residents of the house next door have been selling drugs for some time. Mr. Ward was told that the Police are aware of the activity, but nothing has been done. Mr. Ward stated that his property has been damaged as a result of being next to the house and asked that the Narcotic Division address the concern. Mayor Sweeney asked that Assistant City Manager David meet with the Wards to obtain all relevant contact information and forward to the Police Chief. Mrs. Nancy Ward added that the majority of the drug activity occurs in the morning when children are in school and late at night.

**DRAFT**

## CONSENT CALENDAR

1. Approval of Minutes of the City Council Meeting on November 3, 2009

It was moved by Council Member Henson, seconded by Council Member Dowling, and carried with Council Member May absent, to approve the minutes of the City Council Meeting of November 3, 2009, with minor administrative changes.

2. Authorize the Executive Director to Negotiate and Execute a Contract with Hall-Alminana, Incorporated for the Preparation of a Specific Plan for the Mission Boulevard Corridor

Staff report submitted by Senior Planner Pearson, dated November 17, 2009, was filed.

It was moved by Council/RA Member Henson, seconded by Council/RA Member Dowling, and carried with Council/RA Member May absent, to adopt the following:

Redevelopment Agency Resolution 09-24, "Resolution Authorizing the Executive Director to Negotiate and Execute a Professional Services Agreement with Hall-Alminana, Incorporated for the Mission Boulevard Corridor Specific Plan Project"

3. Public Safety Computer Aided Dispatch/Records Management System (CAD/RMS) Computer Systems Hardware Acquisition

Staff report submitted by Technology Services Director Priest, dated November 17, 2009, was filed.

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

Resolution 09-171, "Resolution Authorizing the City Manager to Purchase Computer Hardware to Support the City's Public Safety Computer Aided Dispatch/Records Management System (CAD/RMS) Project"

4. Utilities SCADA Software Conversion and Programming Update: Approval of Addenda and Award of Contract

Staff report submitted by Deputy Director of Public Works Ameri, dated November 17, 2009, was filed.

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



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Resolution 09-172, "Resolution Approving Addendums No. 1 and 2, and Awarding the Contract to D.W. Nicholson Corporation, for the Utilities SCADA Software Conversion and Programming Update Project, Project Nos. 7038, 7039, 7537 and 7538"

5. Adoption of a Resolution Accepting the Report and Adopting Findings Confirming the City's Compliance with the Mitigation Fee Act, Related to Fees Collected for Development Projects

Staff report submitted by Budget Administrator Blohm, dated November 17, 2009, was filed.

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

Resolution 09-173, "Resolution Accepting the Report and Adopting Findings Related to Fees Collected for the Development Projects Subject to the Requirements of the Mitigation Fee Act"

6. City Manager Contract Amendment

Staff report submitted by Mayor Sweeney, dated November 17, 2009, was filed.

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

Resolution 09-174, "Resolution Approving the Amendments to the City Manager's Employment Agreement and Authorizing the Mayor to Execute the Agreement on Behalf of the Council"

7. Appointment to Alameda County Mosquito Abatement District

Staff report submitted by Mayor Sweeney, dated November 17, 2009, was filed.

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

Resolution 09-175, "Resolution Appointing Paul Garcia as City of Hayward Representative to the Alameda County Mosquito Abatement District"

## **PUBLIC HEARING**

8. Adoption of a Resolution of Necessity to Initiate Eminent Domain Proceedings to Acquire Real Property for the Route 238 Corridor Improvement Project located at 24874 Mission Boulevard-Assessor's Parcel No. 445-0150-052-01

Staff report submitted by Deputy Director of Public Works Fakhrai,  
dated November 17, 2009, was filed.

Director of Public Works Bauman noted that on November 16, 2009, the City was in receipt of a request from Mr. Mathew Zaheri's representative, Mr. Armas, who requested postponement of the item until December 1, 2009, because they were unable to attend the meeting. Mr. Bauman noted that staff was concerned that an additional two-week delay would impact the condemnation and could cause further delays for the construction schedule. Mr. Bauman emphasized that Council's action did not preclude settlement and recommended moving forward with the process while the City continued to negotiate in good faith based on the latest appraisal information available. Mr. Bauman provided a synopsis of the report.

Council Member Halliday expressed concern about not granting the request to continue the item to the next Council meeting of December 1, 2009. In response to Ms. Halliday's inquiry as to the impact of not accommodating the continuation request and on the overall outcome, Mr. Bauman expressed concern that a postponement would cause a schedule delay, which in turn would create the potential of additional costs to the project. Mr. Bauman explained that by Council taking action, staff would proceed with the Court action, the offer amount would be deposited with the State and Mr. Zaheri could withdraw that amount. He added that negotiations would continue to proceed. City Attorney Lawson added that Council's action would not affect the ultimate outcome.

In response to Council Member Henson, Public Works Director Bauman confirmed that Mr. Zaheri signed the original purchase agreement with the reversion clause. Mr. Henson asked for reassurance that should Council decide to take action, it would not preclude continuing negotiations with Mr. Zaheri and his representatives. Mr. Bauman added that Mr. Zaheri did not choose to accept the City's offer of paying for the cost of an independent appraisal and that he believed his property is valued at \$1.2 million.

Council Member Zermefio did not agree with taking action on the item when neither the owner nor his representative was in attendance at the meeting.

Council Member Dowling noted that the owner made a reasonable request to move the item to December 1, 2009, but understood Public Works Director Bauman's reasoning about the effect of delaying the project. In response to Mr. Dowling's inquiry if Mr. Bauman had spoken to Mr. Armas about the City's offer, Mr. Bauman noted that Mr. Armas could not attend due to a prior commitment and they have been unable to discuss the City's offer. Mr. Bauman stated that Mr. Owen Poole, the City's representative, had made offers but has received no response.



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There being no comments, Mayor Sweeney opened and closed the public hearing at 8:25 p.m.

Council Member May entered the Council Chambers at 8:25 p.m.

Council Member Quirk indicated that Mr. Zaheri and Mr. Armas are not responding to the offers and did not consent to an independent appraisal. Mr. Quirk added that the postponement could cause the City to miss a good portion of the construction season and added that there was no guarantee that Mr. Zaheri and Mr. Armas would be in attendance on December 1, 2009. Mr. Quirk made a motion per staff recommendation.

Council Member Henson seconded the motion reiterating Public Works Director Bauman's statement that Council's action would not preclude further negotiations and therefore agreed to move forward.

In response to Council Member Zermefio's question about a consequence of a failed motion, Public Works Director Bauman stated that if Council did not approve the Resolution of Necessity, the City could not acquire the property by condemnation and it would be difficult to negotiate with the property owner. City Attorney Lawson added that without five affirmative votes, the resolution would not pass.

Council Member Dowling stated that eminent domain actions could be seen as controversial and therefore property owners should be allowed to speak. Mr. Dowling also understood the concern about Court dates and believed that once the project is advertised, the City would be successful. Mr. Dowling added that Mr. Zaheri was disputing the price and not the action of taking the property and therefore was in favor of honoring the request of postponing the meeting until December 1, 2009.

Council Member Halliday was inclined to grant the postponement request, but was also aware that Mr. Zaheri knew about plans for the property and thought that his concern was about price negotiations, something that was outside the Council's realm. She agreed with the motion.

It was moved by Council Member Quirk, seconded by Council Member Henson, and carried with Council Members Zermefio and Dowling voting no, to adopt the following:

Resolution 09-176, "Resolution of Necessity Declaring a Public Need for and Authorizing the Acquisition and Immediate Possession by Eminent Domain Proceedings or Otherwise of Real Property for the Route 238 Corridor Improvement Project at 24874 Mission Boulevard (APN 445-0150-052-01) Owned by Mathew Zaheri"

9. Introduction of an Ordinance Amending Sections of the Article 5 of Chapter 9 of the Hayward Municipal Code Relating to the Residential Rental Inspection Ordinance

**DRAFT**

Staff report submitted by City Attorney Lawson and Director of Development Services Rizk, dated November 17, 2009, was filed.

City Attorney Lawson provided a synopsis of the report noting that the report included amendments to the ordinance that was first introduced on October 6, 2009, and in response to comments from the Rental Housing Owners Association of Southern Alameda County provided on October 20, 2009. Mr. Lawson added that there was an additional amendment to the second paragraph of Sec. 9-5.306-Notice and Entry, on the first page of the proposed Ordinance, that read as follows: "It shall be the responsibility of the Owner or the Owner's designated representative to make a good faith effort to obtain the consent of the tenants to inspect the subject rental housing units or otherwise obtain legal access to the units."

Council Member Quirk asked clarification about the language, "or otherwise obtain legal access to the units." City Attorney Lawson responded that the ordinance relates to both occupied and unoccupied units. Mr. Lawson said this is a timely reminder that in the absence of consent, an inspection warrant is required by the ordinance. Mr. Lawson stated that an inspection warrant does involve a Court order that will allow the City entry into both occupied and unoccupied units.

Council Member Henson asked if the amended language is consistent with other cities that have similar type ordinances. City Attorney Lawson confirmed the language does reflect a number of similar programs that have been adopted by cities and counties around the State. Mr. Henson asked if the warrant process includes the owner. Mr. Lawson stated if an inspection warrant is necessary, the City will name any and all persons who have control over the unit, including owners.

Council Member Zermeño inquired if there has been a time when a tenant agrees to the inspection but the owner does not. Director of Development Services Department Rizk stated he was not aware of any instance as he is not as directly involved as the Rental Housing Manager.

Council Member Halliday mentioned one of the issues raised in the letter from the Rental Housing Owners Association, dated October 20, 2009, was related to the 14-day period for noticing an inspection. Ms. Halliday requested clarification about the 14-day notice and asked if there has been any consideration given to setting a different notice period. Director of Development Services Department Rizk stated the practice of the Rental Housing Program is to send notices at least a month in advance and clarified that the ordinance stipulates at least 14 days because this is standard language in other jurisdictions. Ms. Halliday asked about the "no access fee" that was mentioned in the letter and said she understood that in this ordinance, the City is asking owners to make a good faith attempt to obtain consent, but that they are not penalized if they are not able to obtain it. City Attorney Lawson noted that it would be difficult to determine when and under what circumstances that fee might be applied. Mr. Lawson confirmed that when the City has to obtain a warrant, it would be at the City's expense.

Council Member Quirk was confounded by the phrase "good faith effort." In response to Mr. Quirk's inquiry whether "make a good faith effort" to obtain the consent of the tenants to inspect the rental housing units also pertained to "otherwise obtain legal access to the units," City Attorney Lawson stated that "make a good faith effort" probably does not apply to the second phrase. Mr. Quirk asked if the second phrase strictly applied to units that do not have tenants. Mr. Lawson



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replied that the important phrase was “obtain legal access” whether occupied or not. Mr. Lawson noted if the language were deleted nothing would be lost. Mr. Quirk favored deleting the phrase, “otherwise obtain legal access to the units.”

Council Member Henson expressed concern that if that language is deleted, other circumstances might not be addressed. City Attorney Lawson stated if a unit is occupied by a tenant, there needs to be consent or a warrant, and if the unit is not occupied, then the owner can give consent. If the owner does not give consent, then a warrant will be obtained. Mr. Lawson added that other circumstances can be addressed with a warrant. Mr. Lawson concluded that if the language is deleted, the sentence does not lose strength.

Council Member Zermefio noted that nothing will be lost if the language was deleted because the next sentence brings clarification.

Mayor Sweeney opened the public hearing at 8:47 p.m.

Mr. Verne Perry, representing the Rental Housing Owners Association of Southern Alameda County, referred to the letter that was submitted on October 20, 2009. Mr. Perry noted that it was difficult to comment on the additional amendment as he was not clear what “a good faith effort” meant or how it could be measured. Mr. Perry reiterated his previous objections and noted that the amendments did not address the code sections that make it impossible for a landlord to enter a unit for the purpose of an inspection. He added that the City is going to spend resources, time and effort, to obtain a warrant from a Court to force their way in. Mr. Perry clarified that the Association does not condone an owner opposing an inspection when a tenant is having a problem getting an existing code violation repaired and has requested the City inspect the problem.

Council Member Henson asked Mr. Perry to confirm that the Association does not want the landlord/owner involved in the consent process. Mr. Perry concurred. Mr. Henson asked Mr. Perry to offer a revised language to Section 9-5.306, Notice and Entry of the proposed Ordinance. Mr. Perry stated the government official needs to obtain the consent.

Council Member Zermefio asked for clarification that the Association does not want the owner to be forced to obtain consent. Mr. Perry stated that he does not think an owner can legally obtain tenant’s consent for a government intrusion.

Mayor Sweeney closed the public hearing at 8:57 p.m.

Mayor Sweeney used his prerogative to move the item per staff recommendation with an additional amendment to the second paragraph of Sec. 9-5.306-Notice and Entry, on the first page of the proposed Ordinance, to read as follows: “It shall be the responsibility of the Owner or the Owner’s designated representative to **make a good faith effort** to obtain the consent of the tenants to inspect

the subject rental housing units or otherwise obtain legal access to the units.”

Council Member Dowling seconded the motion.

Council Member Quirk offered a suggestion to strike out “otherwise obtain legal access to the units,” from the second paragraph of Sec. 9-5.306-Notice and Entry, on the first page of the proposed Ordinance. He added that it could read as if the City is forcing the owner to obtain consent. He expressed concern at the way the Ordinance could be interpreted in Court.

It was moved by Mayor Sweeney, seconded by Council Member Dowling, and carried with Council Members Zermefio and Quirk voting no, to adopt the following with an additional amendment to the second paragraph of Sec. 9-5.306-Notice and Entry, on the first page of the proposed Ordinance, to read as follows: “It shall be the responsibility of the Owner or the Owner’s designated representative to **make a good faith effort** to obtain the consent of the tenants to inspect the subject rental housing units or otherwise obtain legal access to the units.”

Introduction Ordinance 09-\_, “Ordinance Amending Sections of  
Article 5 of Chapter 9 of the Hayward Municipal Code Relating to  
the Residential Rental Inspection Ordinance”

As Mayor Sweeney abstained during the participation of the introduction of the following items, he turned the gavel over to Mayor Pro Tempore Henson and left the Council Chambers. Mayor Pro Tempore Henson presided the meeting.

## LEGISLATIVE BUSINESS

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

Staff report submitted by City Clerk Lens, dated November 17,  
2009, was filed.

City Clerk Lens indicated that the item was introduced on November 3, 2009, and because it did not garner a unanimous vote, it was placed under Legislative Business to allow for discussion.

Council Member Quirk indicated that when he made the motion to waive the \$15,000 processing fees for the Jordan properties, he did not take into account future Master Fee Schedule increases. Mr. Quirk expressed concern and asked if staff could bring a report on December 1, 2009, to clarify the language regarding the waived fee.

Discussion ensued, and at the request of Council Member Quirk and with Council’s concurrence, Council directed staff to bring back a report under the consent calendar to clarify that the City will not collect a General Plan and Zone Change amendment processing fee related to the Jordan properties.



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Council Member Halliday was in support of bringing back a report that expressed Council's intent for the record and could be properly voted upon.

In response to Mayor Pro-Tempore Henson's inquiry for the best approach to handle the clarification of the motion, City Attorney Lawson responded that a resolution would state the Council's intent.

At the request of Council Member Quirk, and with Council's concurrence, Council directed staff to bring back a report, under the consent calendar, regarding clarification of the motion provided on November 3, 2009, that determines the City will not collect a General Plan and Zone Change amendment processing fee for the rezoning of the Jordan properties.

There being no public comments, Mayor Pro Tempore Henson opened and closed the public hearing at 9:10 p.m.

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

Ordinance 09-12, "An Ordinance Amending Section 11-3.201 of Chapter 11, Article 3 of the Hayward Municipal Code, Establishing an Exception to the Requirement to Connect to the Public Sewer System for Certain Properties in the Mt. Eden Phase II Annexation Area"

11. Adoption of an Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Pre-Zoning Certain Territory Located in the Mt. Eden Annexation Phase II Study Area

Staff report submitted by City Clerk Lens, dated November 17, 2009, was filed.

Mayor Pro Tempore Henson indicated that the item was introduced on November 3, 2009 and because it did not garner unanimous votes, it was placed under Legislative Business to allow for discussion.

There being no public comments, Mayor Pro Tempore Henson opened and closed the public hearing at 9:11 p.m.

It was moved by Council Member Zermefio, seconded by Council Member Dowling, and carried with Mayor Sweeney absent, to adopt the following:

Ordinance 09-13, "An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Pre-Zoning Certain Territory Located in the Mt. Eden Annexation Phase II Study Area"

**COUNCIL REPORTS**

Mayor Pro Tempore Henson reported that as a member of stopwaste.org, he attended a San Jose City Council meeting, where the City voted to ban Styrofoam products. He noted that the ordinance could be used as a model for jurisdictions in Alameda County.

**ADJOURNMENT**

Mayor Pro Tempore Henson adjourned the meeting at 9:13 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward  
Chair, Redevelopment Agency

**ATTEST:**

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Miriam Lens, City Clerk, City of Hayward  
Secretary, Redevelopment Agency