



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, February 23, 2010, 7:00 p.m.**

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**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 Dowling.

**ROLL CALL**

Present: COUNCIL MEMBERS Zermefio, Quirk, Halliday, May, Dowling, Henson  
MAYOR Sweeney  
Absent: COUNCIL MEMBER None

**CLOSED SESSION ANNOUNCEMENT**

Mayor Sweeney reported that Council met with Real Property Negotiators pursuant to Government Code 54956.8, regarding property at 22695 Foothill Boulevard, APN 428-066-085-00. There was no reportable action.

**PROCLAMATION**

**Red Cross Month**

Mayor Sweeney read the proclamation declaring the month of March 2010 as American Red Cross Month. Mayor Sweeney urged all Hayward residents to continue to give time, blood and money to help the American Red Cross. Representing the American Red Cross Bay Area Council Board of Directors, Ms. Cortes Saunders-Storno accepted the proclamation and thanked Council and those who have donated to the American Red Cross.

**PUBLIC COMMENTS**

Ms. Patricia Gowin, Sarah Place resident, thanked Council Members Dowling and May for the contributions they made to the City. Ms. Gowin noted that at a past meeting, the Council recognized Mr. Paul Cabrera, her mail delivery person. She mentioned her current mail carrier and expressed appreciation for the people who deliver the mail. Ms. Gowin also mentioned receiving the weekly Tri City Voice and made reference to an article about the "American Cancer Society Discovery Shop" in Fremont and encouraged the public to visit and donate to the shop.

**CONSENT CALENDAR**

1. Resolution to Join the Bay Area Climate Collaborative

Staff report submitted by Senior Planner Pearson, dated February 23, 2010, was filed.

**DRAFT**

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

Resolution 10-015, "Resolution Authorizing the City of Hayward to Become a Member of the Bay Area Climate Collaborative and Authorizing the City Manager to Execute the Bay Area Climate Collaborative Charter"

2. Resolution to Join Green Cities California and to Adopt the United Nations Urban Environmental Accords

Staff report submitted by Senior Planner Pearson, dated February 23, 2010, was filed.

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

Resolution 10-016, "Resolution Authorizing the City Manager to Execute All Documents Necessary for the City of Hayward to Join Green Cities California"

Resolution 10-017, "Resolution Adopting the United Nations Urban Environmental Accords and Authorizing the City Manager to Execute All Documents Necessary to Implement Adoption of the Accords"

3. Measure B Pavement Rehabilitation FY10: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Fakhrai, dated February 23, 2010, was filed.

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

Resolution 10-018, "Resolution Approving Plans and Specifications for the Measure B Pavement Rehabilitation FY10 Project, Project No. 5171, and Call for Bids"

4. Pavement Rehabilitation - Slurry Seal: Hesperian Blvd and Industrial Blvd (Districts 17 & 21)  
- Approval of Plans and Specifications and Call for Bids

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

Resolution 10-019, "Resolution Approving Plans and Specifications for the Slurry Seal: Hesperian Blvd. and Industrial Blvd. (District 17 & 21) Project, Project No. 5139, and Call for Bids"

5. Resignations of Kelly Doyle-Pasion and Gary Steinberger from the Keep Hayward Clean and Green Task Force, and Julie Lind from the Human Services Commission

Staff report submitted by City Clerk Lens, dated February 23, 2010, was filed.

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

Resolution 10-020, "Resolution Accepting the Written Resignation of Kelly Doyle-Pasion and Gary Steinberger from the Keep Hayward Clean and Green Task Force and Julie Lind from the Human Services Commission"

6. Public Education Government (PEG) Interim Agreement with Chabot Community College

Staff report submitted by Technology Services Director Priest, dated February 23, 2010, was filed.

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

Resolution 10-021, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with the Chabot-Las Positas College Community District for Interim Public Education Government (PEG) Services"

Resolution 10-022, "Resolution Amending Resolution No. 09-082, As Amended, the Budget Resolution for Fiscal Year 2009-2010, Relating to an Appropriation of Funds for Public Education Government (PEG) Interim Agreement with Chabot Community College"

7. Resolution in Support of the Proposed Local Taxpayer, Public Safety, and Transportation Act of 2010

Staff report submitted by Assistant City Manager David, dated February 23, 2010, was filed.

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

Resolution 10-023, "Resolution in Support of the Proposed Local Taxpayer, Public Safety, and Transportation Protection Act of 2010"

## **PUBLIC HEARING**

8. Developer Incentives Package: Amendment to Articles 1 and 3 of Chapter 10 and Sections 8-15.04 and 10-16.30 (c) of the Hayward Municipal Code to Increase the Term of the Initial Approval of Development Applications and Subdivision Maps and Clarify Various Related Provisions, and to Allow Deferral of Payment of Supplemental Building Construction and Development Tax and Park-In-Lieu Fees

Staff report submitted by Associate Planner Koonze, dated February 23, 2010, was filed.

Development Services Director Rizk provided a synopsis of the report and referred to a letter that was submitted by Russell Pitto from SIMEON Commercial Properties, which is associated with the business park development at Highway 92 and Industrial. Mr. Rizk stated that originally there was a planned development district approved several years ago and in February 2008 there was an amendment that expired in February 2009. He stated that SIMEON is requesting that the discretionary approvals be extended to match the approvals that occurred in 2008 and 2009. Mr. Rizk stated that based on conversations with the City Attorney, staff is not recommending the approvals be retroactive. Mr. Rizk also noted that Hayward Area Recreation & Park District (HARD) had concerns with the deferral of the Park-In-Lieu fees, primarily the lack of assurance in collecting the fees.

Council Member Henson asked about the deferral process for residential developers who would like to participate in the Green Building program. Director of Development Services Department Rizk explained that the deferral process would be extended to any developer who builds in accordance with the Green Building Ordinance for private development and these developers would not have sunset date at the end of 2012. Mr. Henson asked about the concerns that HARD has about the Park-In-Lieu fees. HARD is concerned that these fees will not be paid. Mr. Rizk explained that staff envisions the obligation of paying the fees be written as the responsibility of the developer and staff is trying to ensure through the recommendations that the fees do not get passed on to the buyers.

Council Member Dowling referred to the letter from SIMEON regarding the fact that SIMEON's permit has expired and asked if SIMEON will have to reapply. Director of Development Services Department Rizk confirmed that SIMEON will have to reapply because their permit will not be retroactive per staff's recommendation.



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Council Member Zermefio referred to the letter from SIMEON noting that it would be advantageous for the City, and particularly for that area to have some retail space and asked if there is a possibility of reconsidering assistance to SIMEON Properties. Director of Development Services Department Rizk noted that in discussions with the City Attorney's office, to avoid legal issues the course to follow is to move forward and not grant any extension. Mr. Rizk noted that the City does not issue a certificate of occupancy until the fees are paid. Mr. Zermefio inquired if this procedure is similar to other cities and how well it has worked for them. Mr. Rizk replied that staff has done research and very few municipalities have similar actions. Mr. Zermefio stated that he favors the spirit of the proposal.

Council Member Quirk pointed out that SIMEON has invested \$250,000 in that area and asked if SIMEON found two tenants and came to the City, how long would it take to process their permit and what additional costs would they incur. Director of Development Services Rizk noted that it would involve a hearing before the Planning Commission and estimated it would take about three months with a cost of no more than \$5,000.

Mayor Sweeney commented that SIMEON was the same company that wanted the City to allow alcohol to be sold at the 7-Eleven.

Mayor Sweeney opened the public hearing at 7:32 p.m.

Mr. Paul Campos, Senior Vice President and General Counsel for the Home Builder's Association, expressed support for staff's recommendation. Mr. Campos noted that the proposed action is a good first step for the City and noted that other communities have enacted economic stimulus packages with fee deferral, fee reductions and waivers, entitlement extensions, and incentives. Mr. Campos said that this sends the message that Hayward wants businesses and wants to stimulate jobs.

Mr. Larry Lepore, Park Superintendent with HARD, indicated that City staff has voiced the concerns of HARD and he expressed his support of promoting development. Mr. Lepore stated that a monitoring system needs to be put in place to make sure that City staff has the ability to document which developers have requested deferment of fees and to be able to provide HARD with this list. Mr. Lepore wanted to ensure that Council is aware of all of the risks no matter how minimal.

Mayor Sweeney closed the public hearing at 7:36 p.m.

Mayor Sweeney asked Development Services Director Rizk to address the concerns raised by Mr. Lepore in reference to the monitoring system. Mr. Rizk indicated that if the Developers Incentive Package is approved, staff will be utilizing the Permit Tracking System to follow up on project. Mr. Rizk explained that the system tracks when fees are paid, or not paid, and would generate a monthly report. The System would be able to identify projects that have been issued certificates of occupancy but have not paid their in-lieu fees.

In response to Mayor Sweeney, Mr. Rizk stated that the proposed changes shown in Attachments II and III are permanent changes relating to the subdivision and zoning ordinances. Mayor Sweeney commented that those ordinances should come back to Council to review how the amended ordinances are performing. Mayor Sweeney also suggested that the first time a developer tries to pass the fees onto a new homeowner, Council should be immediately informed.

Director of Development Services Department Rizk confirmed for Council Member Halliday that the information generated by the Permit Tracking System can be shared with HARD. In reference to Attachment III, Mr. Rizk explained for Ms. Halliday that the Certificate of Merger is an application related to combining or consolidating one or more parcels into a fewer number of parcels and that currently only the Planning Director has the authority to approve or disapprove those applications. Mr. Rizk explained that the change is to allow the Planning Director to designate a civil engineer to sign off on the applications. Ms. Halliday made a motion per staff recommendation to approve the resolution and the three ordinances.

Council Member Zermefio seconded the motion.

Council Member Quirk noted that Mayor Sweeney had suggested the ordinances come back to Council for review. Mr. Quirk suggested the review should be before January 1, 2013. Council Members Halliday and Zermefio concurred with the suggestion. Mr. Quirk also noted that the Mayor was concerned that the developer will try to pass the fees onto new homeowners and asked staff the best way to address this. Discussion ensued and Council and City staff agreed that, as part of the motion, Council gave direction to staff that when a violation to the Ordinance occurs, e.g., abuse of the system, the issue and the Ordinance would need to come back to Council for further consideration and action. Council Members Halliday and Zermefio concurred with the addition.

It was moved by Council Member Halliday, seconded by Council Member Zermefio, and carried unanimously, to adopt the following, including that the ordinances need to come back to Council for review before January 1, 2013, and any violation of the Ordinance will need to be brought to Council for further discussion and action:

Resolution 10-024, "Resolution Certifying that the Initial Study and Negative Declaration Have Been Completed in Compliance with the California Environmental Quality Act and Approving Text Amendment No. 2009-0595"

Intro Ordinance 10-\_, "Ordinance Amending Article 1 of Chapter 10 of the Hayward Municipal Code and Adopting New Approval Periods for Development Applications and Other Related Amendments"

Introduction Ordinance 10-\_, "Ordinance Amending Article 3 of Chapter 10 of the Hayward Municipal Code and Adopting New Approval Periods for Subdivision Map Applications and Other Related Amendments"



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Introduction Ordinance 10-\_, "An Ordinance Amending Section 8-15.04 and Section 10-16.30, Subsection (c), of the Hayward Municipal Code Relating to Provisions for Payment of Certain Development Fees"

**LEGISLATIVE BUSINESS**

9. Transmittal of the Comprehensive Annual Financial Report for the Year Ended June 30, 2009; and of the "Communication of Internal Control Related Matters" and "Communication with Those Charged with Governance"

Staff report submitted by Director of Finance Auker, dated February 23, 2010, was filed.

Director of Finance Auker provided a synopsis of the report.

Council Member Henson noted that the audit shows that the City is structurally in good shape in regards to the reporting process. At the request of Mr. Henson, Finance Director Auker clarified the Statement 45 of the Governmental Accounting Standards Board (GASB) and noted that figures can fluctuate year to year. Mr. Henson also inquired about the comments relating to the cash receipts from the Evidence Unit of the Police Department. Ms. Auker explained that a special audit was conducted of the process and timing of when the Evidence Unit sends collected receipts to the Finance Department. It was found that the Evidence Unit's 'timing' was not a recommended practice. Ms. Auker stated that a policy was set up so that those receipts would be submitted to the Finance Department on a regular basis. Ms. Auker noted that reconciling some of the deposit accounts was also recommended and staff is working with the Police Department on this.

Council Member Zermefio noted that it was commendable that the City has received the Government Finance Officers Association (GFOA) award for the past 23 consecutive years. In response to Mr. Zermefio's comment about the new policy, Director of Finance Auker noted that as soon as staff received the comments from the auditors, staff met with Police Department staff and new procedures were implemented.

Council Member Halliday asked about the language on page one of the Financial Statement letter relating to the lack of Management Discussion and Analysis for the Redevelopment Agency. Director of Finance Auker explained that was a disclosure that is required by the audit firm. Ms. Auker stated that the Redevelopment Agency is included in the Citywide Financial Statements and that is where the Management Discussion and Analysis is located.

There being no comments, Mayor Sweeney opened and closed the public hearing at 8:03 p.m.

It was moved by Council Member Henson, seconded by Council Member Quirk, and carried unanimously, to accept the Annual Financial Report.

**DRAFT**

10. Adoption of Ordinance Amending Chapter 5 Article 1 of the Hayward Municipal Code Relating to Collection of Delinquent Charges for Solid Waste Collection and Disposal

Staff report submitted by City Clerk Lens, dated February 23, 2010, was filed.

In response to Mayor Sweeney, City Manager Jones indicated that the adoption of the Ordinance could be deferred to April.

It was moved by Council Member Henson, seconded by Council Member Halliday, and carried unanimously, to defer the adoption of the Ordinance to a meeting in April and incorporate the agreement between the City of Hayward and Waste Management of Alameda County related to the collection of delinquent garbage accounts.

**COUNCIL REPORTS**

Council Member Zermefio announced that Chabot College is having a Financial Aid Festival in its cafeteria on Saturday, February 27<sup>th</sup>.

Council Member Henson noted the kick-off of the U.S. Census on February 18<sup>th</sup> was successful and urged everyone to participate to ensure a complete count. Mr. Henson also reminded folks that the census is on the list of Council's priorities.

Council Member Dowling announced that Hayward Century Theatre will be having a Best Picture and Best Director Festival for the Academy Award nominees on March 6<sup>th</sup> from noon to midnight. He noted that all five films will be shown for \$25.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 8:08 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

**ATTEST:**

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Miriam Lens, City Clerk, City of Hayward