



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 17, 2017, 7:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Mendall.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR Halliday
Absent: None

CLOSED SESSION

City Attorney Lawson announced the City Council convened in closed session regarding three items: 1) conference with labor negotiators pursuant to Government Code 54957.6; 2) conference with legal counsel pursuant to Government Code 54956.9 regarding Russell City Energy Company v. City of Hayward, California Court of Appeal, No. A144749; 3) conference with legal counsel pursuant to Government Code 54956.9 regarding City of Hayward, et al v. Board of Trustees, California State University, California, Court of Appeal, No. A132423; and noted there was no reportable action.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, spoke about the trees that were planned to be replaced at Santa Clara and Jackson Streets.

Mr. Monzella Curtis and residents of Aloha Apartments on Jackson Street submitted a document for the record and pleaded with the Council for stronger protection of tenants' rights and stricter rules for landlords and managers.

The following Hayward residents requested a traffic light at the intersection of Tahoe Avenue and Hesperian Boulevard to avoid future accidents and to protect pedestrians. It was noted that pedestrians had been injured at the mentioned crosswalk.

Mr. Samuel Fuenzalida

Mr. Williard Hout

Mr. Eduardo Mauricio Jr.

Mr. Kourosch Dinyari, Hayward resident and president of the Clarendon Hills Homeowners Association on Alquire Parkway, reported there had been an increase in crime at the apartment complex and shared a recent incident.

Ms. Wynn Grcich, Hayward resident, noted that chlorine in drinking water increases breast cancer risk and spoke against the bill related to cell phone towers.

Mayor Halliday noted AC Transit was holding a meeting on October 21, 2017 at Hayward City Hall about enhancements to Transbay routes. Mayor Halliday also recognized the Fire, Police, and Building personnel who have been helping with the fires in Northern California.

Mayor Halliday asked if the Council was amenable to move Item No. 11 before Item No. 9. There was consensus to move up the item.

CONSENT

1. Minutes of the City Council Meeting on September 26, 2017 **MIN 17-133**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the City Council meeting on September 26, 2017.

2. Minutes of the City Council Meeting on October 3, 2017 **MIN 17-136**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the City Council meeting on October 3, 2017.

3. Minutes of the Special City Council Work Session Meeting on October 3, 2017 **MIN 17-139**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the Special City Council Work Session meeting on October 3, 2017.

4. Approval of Final Map Tract 8302 (Olympic Station), associated with the previously approved Vesting Tentative Tract Map and proposed development of 23 detached single-family homes on a 2.5-acre site located at 645 Olympic Avenue, (APN 465-0055-012-03); Huntwood Avenue, Hayward, Inc. (Applicant/Owner) **CONS 17-410**

Staff report submitted by Development Services Interim Director Bristow, dated October 17, 2017, was filed.

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

Resolution 17-151, "Resolution Approving Final Map for Tract 8302 and Authorizing the City Manager to Execute a Subdivision Agreement"

5. Filing Nuisance/Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations **CONS 17-573**

Staff report submitted by Development Services Interim Director Bristow, dated October 17, 2017, was filed.

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



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Resolution 17-152, "Resolution Confirming the Report and Non-Abatable Code Violations and Penalties Liens List Associated with the Code Enforcement Division and Community Preservation/Rental Housing Programs"

6. Consideration of California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy (PACE) **CONS 17-634**

Staff report submitted by Utilities and Environmental Services Director Ameri, dated October 17, 2017, was filed.

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

Resolution 17-153, "Resolution of the City Council of the City of Hayward Approving, Authorizing, and Directing Execution of a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority; Consenting to the Inclusion of Properties Within the Territory of the City in the California Municipal Finance Authority Open PACE Programs; Authorizing the California Municipal Finance Authority to Accept Applications from Property Owners, Conduct Contractual Assessment Proceedings and Levy Contractual Assessments Within the Corporate Boundaries of the City; and Authorizing Related Actions"

Resolution 17-154, "Resolution of the City Council of the City of Hayward Authorizing the City Manager to Execute Member Addendums to the Association of Bay Area Governments Regional Collaborative Services Agreement with Residential PACE Programs Operating in Hayward"

WORK SESSION

7. Status Updates and Provide Direction on Prioritization of FY 2018 Schedule of Activities Related to Housing Affordability and Anti-Displacement Strategies (Report from City Manager McAdoo) **WS 17-049**

Staff report submitted by Library Director Reinhart and Assistant City Manager Hurtado, dated October 17, 2017, was filed.

City Manager McAdoo provided a synopsis of the staff report.

Mayor Halliday opened the public comments section at 7:34 p.m.

Ms. Aisha Wahab, Hayward resident, recommended having more affordable housing; having strategic high-density developments; supporting “just cause” evictions; adjusting the affordable housing percentage for new developments and reconsidering in-lieu fees; adjusting rent increases based on CPI; and combating displacements.

Mr. Ruben Medrano, Hayward resident, spoke about issues with his lease agreements at Aloha Apartments.

Ms. Mia Carbajal, East Bay Housing Organizations (EBHO) representative, suggested that the Council request proposals on how to strengthen the rent control ordinance and include a “just cause” eviction, and asked for consideration of anti-displacement strategies.

Mr. Joe Navarro, Hayward resident, supported having discussion related to housing affordability and anti-displacement strategies, and hoped for a dialogue beyond profits that includes the human and compassion aspect.

Mr. Zachariah Ojendra, Hayward resident, recommended applying the rent control ordinance and eviction for cause to more units; increasing the applicability of the rental unit definition; lowering rent increase limits; getting rid of vacant decontrolled units; supporting the repealing of the new construction clause of the Costa-Hawkins Act; and considering community land trust proposals.

Mayor Halliday closed the public comments section at 7:50 p.m.

Council Members were overall in agreement with the four overarching affordable housing strategies and programs. Council Members expressed prioritization for the following: Strategy 4 (Issue NOFA/RFP for Measure A1 Affordable Rental Housing Development Projects); Strategy 5 (Update and Revise the Affordable Housing Ordinance); Strategy 1 (Residential Rent Stabilization Ordinance – Additional Study and Review); and the Anti-Displacement overarching affordable housing strategies and programs to prevent displacement of current residents from their homes.

Council Members also expressed a desire to explore other strategies: consider stricter control of rent and a “just cause” eviction with an education component; address situations such as the outcry from renters who were displaced after a management firm sold the apartment complex to another firm and increased rents; continue to streamline the permitting process; look for strong legislation that places a moratorium on no cause evictions; bring more affordable housing incorporated with market rate housing; have the proper protocols in place to ensure protection of neighborhoods’ rights when bringing the City into compliance related to Accessory Dwelling Units; get the Rental Housing



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Association involved with rent issues and make them a part of the solution to help affected renters.

There was a request to hold a work session before issuing NOFA/RFP for Measure A1 Affordable Rent Housing Development projects.

8. Discussion of the Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees (Report from City Manager McAdoo) **WS 17-046**

Staff report submitted by Library and Community Services Director Reinhart and Assistant City Manager Hurtado, dated October 17, 2017, was filed.

City Manager McAdoo provided a summary of current Affordable Housing Ordinance requirements and introduced Mr. David Doezema from Keyser Marston Associates who provided an overview of the Residential Nexus and Financial Feasibility Study.

Mayor Halliday opened the public comments section opened at 8:32 p.m.

Ms. Pamela Glassoff, Eden Information & Referral employee, noted her agency receives a high volume of housing related calls from low-income residents and recommended allowing rents for the on-site units to be set up at 50% of Area Median Income (AMI).

Ms. Lisa Vorderbrueggen, Building Industry Association of the Bay Area (BIA) representative, urged the Council to retain the fee-by-right option for affordable housing units; reward developers for providing affordable units on-site; set in-lieu fees at a reasonable level; and grandfather any development projects in the pipeline.

Rev. Sophia DeWitt, East Bay Housing Organizations (EBHO) program director, supported increasing impact fees to provide more funding for the creation of affordable housing, and expressed concern about eliminating the fee-by-right payment for larger projects.

Ms. Mia Carbajal, EBHO representative, supported the possibility of raising residential impact fees, and expressed that eliminating the fee-by-right for large projects would hinder the City's ability to raise enough local match to attract outside funding for affordable housing.

Ms. Chu Rao, developer, requested a mechanism for developers, housing agencies and City staff to have meaningful dialogue around timelines for development projects.

Mr. Tony Dutra, Dutra Land and Consulting Services, Inc. president, requested that the Affordable Housing Ordinance have a grandfathering provision for projects that have filed applications with the City, and to also consider a combination of alternatives.

Mr. Andy Madeira, Senior Vice President of Real Estate Development for Eden Housing, noted the need to have in-lieu fees to build affordable housing units.

Ms. Marcela Ruiz, Hayward resident, via a Spanish-English interpreter, spoke about housing-related irregularities with Aloha Apartments.

Mr. Zachariah Oquenda, Hayward resident, noted that Goals 2 and 5 of the Housing Element addressed housing needs and the commitment to people from various socio-economic backgrounds; and asked that staff evaluate community land trust.

Ms. Heather Enders, Hayward resident and Planning Commission Member, supported the argument in favor of affordable inclusionary housing and a policy that allows for an increased fee structure. Ms. Enders also wanted the Council to reevaluate school and park impact fees.

Mayor Halliday closed the public comments section at 9:07 p.m.

Discussion ensued among Council Members, Mr. David Doezema, and City staff about the findings in the Residential Nexus and Financial Feasibility Study and the recommendation for amendments to the Affordable Housing Ordinance (AHO) and related fees. The City Council appreciated the comments offered by all stakeholders.

Council Members offered the following feedback regarding key policy questions: keep the fee-by-right option but set it to a high level; allow developers to pay in-lieu fees as long as they are high; increase AHO fees at the upper end of the range (\$20) per square foot; adjusting fees annually based on the rate of increase in the Consumer Price Index (CPI) was the general consensus with one preferring the ENR Historical Construction Cost Index; for the grandfathering provision in the AHO, consider a middle point for developers who have their applications in the pipeline; there was some agreement with the preliminary recommendations related to inclusionary requirements for rental and homeownership; requirements should be the same regardless of geographic location; incentivize complete communities by building units that are affordable by design; for the grandfathering provision, have a menu of options that can be offered to the development community so they are not exempt but have options that benefit the community such as a land dedication; incentivize on-site affordable units with lower units that are owner occupied or primarily renter occupied and prioritized for existing Hayward residents in need of housing; use resources to measure the need in the community related to housing; consider transit-oriented inclusionary requirements; have staff present the Council two to three options on how to increase funding streams from applicants who are in the stage of application submitted but not finalized; maximize the fee option to leverage enough revenue for additional funding; do not impose geographical conditions in the AHO but perhaps provide leverage in some areas; provide more analysis on amount of money needed to build



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affordable housing; and provide more analysis about the monitoring cost of doing the rental on-site.

Mayor Halliday noted staff would make modifications to the AHO amendments and bring the ordinance to the Council meeting on November 7, 2017.

PUBLIC HEARING

9. Adoption of a Resolution and Introduction of Ordinances Related to Cannabis: 1. Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code. 2. Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward. 3. Ordinance adding Article 14 to Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses. 4. Ordinance amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control. 5. Revisions in the City's 2018 Master Fee Schedule to include Commercial Cannabis Licensing and Inspection program. (Report from City Attorney Lawson and Interim Development Services Director Bristow) **PH 17-091**

Staff report submitted by Development Services Interim Director Bristow and City Attorney Lawson, dated October 17, 2017, was filed.

Senior Planner Lochirco provided an overview of the proposed land use ordinances, revisions to the smoking pollution control ordinance, and revisions to the Master Fee Schedule for commercial cannabis licensing. Senior Planner Lochirco noted that Attachment III (Land Use Ordinance) had been revised to clarify buffers from park areas to specify parks containing children's playgrounds and/or children's activities and to add a provision that would allow the Planning Commission the ability to reduce the required buffer from public parks and open space areas upon findings of necessity. Senior Assistant City Attorney Vigilia provided an overview of the regulatory ordinance.

Discussion ensued among Council Members and City staff regarding: proposed land use ordinance and regulatory ordinance; Administrative Use Permit (AUP) and Conditional Use Permit (CUP); scoring criteria for the Request for Proposal (RFP) process; limiting the number of cannabis businesses; process for checking if someone is under the influence of cannabis; including valid workers' compensation insurance and labor agreement language in the scoring criteria of the RFP; restricting delivery hours of operation within business hours; buffers for administrative uses and conditional uses; hours of operation; 600-foot buffer zone from sensitive land uses; cannabis delivery v. distribution; process for renewing a permit and license revocation; fees to recuperate startup cost; specify the timeframe in which the City needs to be notified of a change in ownership; inspections;

special use permit findings, increasing the annual cannabis license fee to cover youth education as a community benefit.

Mayor Halliday opened the public hearing section at 11:08 p.m.

Mr. Nasser Azimi, president for O'Hana Growers, urged the Council to not limit the number of cannabis permits, but allow the RFP and the CUP process to control any proliferation of bad operators.

Mr. Chad Hagle suggested that the City not allow applicants to submit an RFP without an identifiable site or to be highly favored if they do. Regarding Section 10.1-3603 of the ordinance, Mr. Hagle urged the Council to treat the Downtown CBD zone differently when applying the buffer to the Giuliani Plaza Children's Park to avoid eliminating most of the downtown from consideration by cannabis operators.

Ms. Charnel James, with GreenWise Consulting, provided a document for the record and concurred with the prior speaker about applying the 600-foot buffer from the boundary of the Children's Playground at Giuliani Plaza. Ms. James asked that the language in Findings Number 1 be eliminated or reworded and Findings Number 3 be eliminated because it was already a requirement under the CUP process.

Mr. Brent Alfieri noted that the Bureau of Cannabis Control can issue a temporary license if the applicant has a valid license permit or other authorization issued by the local jurisdiction.

Ms. Denise Martellacci was concerned with the requirement to have "armed" security guards. Ms. Martellacci suggested that for social events, cannabis consumers have private closed events.

Mr. George Boyadjian, with 420 College, asked the City to consider safe places for cannabis consumption and asked that a buffer of 200-foot be considered for the Downtown and that applicants providing identifiable sites be given more points during the RFP process.

Mr. Dustin Watson requested that the hours of operation not be codified in the ordinance, and if needed, recommended changing the hours from 9am to 9pm.

Ms. Lauren Mendelsohn, with a law firm representing a local resident and prospective applicant, expressed concern with the former language in the land use ordinance related to parks, and urged the Council to not have "armed" security guards at the premises.

Ms. Esther Lopez, prospective applicant, appreciated the flexibility provided to prospective cannabis applicants.

Ms. Roberta Chew, Caltrans retiree, recommended that approved retail sites have entrance and exit points to avoid interference with other businesses and stay away from residential areas. Ms. Chew asked that proposed maps be improved to make them more legible.



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Mr. Hector Villasenor requested that labor agreement be included in the proposal and to consider the two IRS provisions relating to cannabis businesses. Mr. Villasenor requested changing hours of operations and noted that most transactions happen between 6pm to 12am.

Mayor Halliday closed the public hearing section at 11:32 p.m.

Council Member Zermeño offered a motion per staff's recommendation with friendly amendments: to include valid workers' compensation insurance and labor agreement as part of the scoring process for the Request for Proposals (RFP); align delivery hours with alcohol regulations; and change hours of operation from 9am to 9pm.

Council Member Mendall seconded the motion with the following amendments: adopt a resolution to limit the number of retail licenses to three; modify the ordinances by removing the word "armed" from the security guard language; evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; and review language to allow a business application to move forward absent a provisional/permanent State license, but not allow to open until it has a provisional/permanent State license.

Council Member Zermeño accepted the friendly amendments offered by Council Member Mendall.

Council Member Salinas expressed support for the motion with caution and recommended to add a youth education community benefit component in the RFP related to smoking and health risk factors.

Council Member Lamnin offered an amendment to the motion that hours of operation not be included in the ordinance but be specified in the Conditional Use Permit application process.

Council Members Mendall and Zermeño were amenable to the amendment offered by Council Member Lamnin.

Discussion ensued about removing cannabis businesses from certain districts, and it was noted that the intent was to remove cannabis businesses from zones that are primarily residential.

Council Member Márquez expressed support for the motion including all friendly amendments.

Mayor Halliday expressed support for the motion with caution. In response to Mayor Halliday's inquiry about the 600-foot buffer in the Downtown, staff noted there is opportunity to be flexible with safety protocols in place which could be included in the Conditional Use Permit process.

The motion on the floor was re-stated as follows: per staff recommendation with the following friendly amendments: to include valid workers' compensation insurance and labor agreement as part of the scoring process for the Request for Proposals (RFP); align delivery hours with alcohol regulations; remove hours of operation from the ordinance and have them specified in the Conditional Use Permit application process; adopt a resolution to limit the number of licenses to three retail dispensaries; remove the word "armed" from the security guard language; evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; allow applications to move forward with provisional/permanent State license, but not allow them to open without the provisional/permanent State license; and include in the RFP process a youth education community benefit component.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously with the friendly amendments, to adopt the following:

Resolution 17-156, "Resolution Adopting Findings Supporting Amendments to the City of Hayward Municipal Code Establishing Regulations for Personal Cannabis Cultivation and the Establishment of Commercial Cannabis Land Use Regulations"

Introduction of Ordinance 17-_, "Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses Through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); An Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)"

Introduction of Ordinance 17-_, "Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses"

Introduction of Ordinance 17-_ "Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control"



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Resolution 17-157, “Resolution Amending the City of Hayward 2018 Fiscal Year Master Fee Schedule for Commercial Cannabis Licensing Associated with Amendments to Chapter 6, Article 14 and Zoning Text Amendment to Chapter 10 of the Hayward Municipal Code Related to Commercial Cannabis Businesses”

10. Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant) (Report from Interim Development Services Director Bristow) **PH 17-089**

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously to continue the item to October 30, 2017.

Council Member Márquez requested that the item be the first item on the October 30, 2017 agenda.

11. Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Financing of Airport Development Improvements by APP Properties, Inc. (Report from Public Works Director Fakhrai) **PH 17-090**

Staff report submitted by Public Works Director Fakhrai, dated October 17, 2017, was filed.

Airport Manager McNeeley provided a synopsis of the staff report.

In response to Council Member Márquez’s inquiry about the proposed resolution referring to a City Treasurer, staff noted the reference should be to Finance Director and not City Treasurer.

There being no public comments, Mayor Halliday opened and closed the public hearing section at 10:03 p.m.

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

Resolution 17-155, “Resolution Approving the Issuance by California Statewide Communities Development Authority of Tax-Exempt Obligations in an Aggregate Principal Amount Not-To-Exceed \$750,000 for the Facility (As Defined Below) and Authorizing Related Actions”

CITY MANAGER'S COMMENTS

There were none.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Mayor Halliday noted that the October 24, 2017 Council meeting was canceled and a special meeting would be held on Monday, October 30, 2017.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 12:12 a.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward