



CITY COUNCIL MEETING
777 B Street, Hayward, CA 94541
Virtual Platform (Zoom)

<https://hayward.zoom.us/j/85125536468?pwd=azZUMm9UTm1LUnNQZzhXWjUvcCtodz09>

Tuesday, March 7, 2023, 7:00 p.m.

The City Council meeting was called to order by Mayor Salinas at 7:02 p.m. The City Council held a hybrid meeting in the Council Chambers and virtually via the Zoom platform.

CALL TO ORDER: Mayor Salinas

Pledge of Allegiance: Council Member Márquez

Present: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche, Syrop, Zermeño
MAYOR Salinas

Absent: None

CLOSED SESSION ANNOUNCEMENT

The City Council convened in closed session at 5:30 p.m., with all members present and no public comment, regarding the annual performance evaluation of the City Clerk pursuant to Government Code section 54957. Mayor Salinas noted there was no reportable action and the meeting adjourned at 6:05 p.m.

PRESENTATION

Mayor Salinas read a proclamation declaring March 2023 as American Red Cross Month in the City of Hayward and presented it to Mr. Michael Gregory who accepted such honor on behalf of the American Red Cross Bay Area Chapter, Alameda County Leadership Council.

PUBLIC COMMENTS

Ms. TJ, Hayward Concerned Citizens representative, referenced the 2/28 Council item related to the approval of ballistic body armor for Hayward Police Department's Response Unit members and expressed support for allocating \$130,000 and not withholding on public safety.

Ms. Peggy Guernsey expressed concern that when an item is assigned to a staff member, residents cannot offer input because there is limited collaboration, and urged for more public participation.

CITY MANAGER'S COMMENTS

There were none.

CONSENT

Consent Item No. 3 was removed from the Consent Calendar for public comment and separate vote.

1. Approve the City Council Minutes of the City Council Meeting on February 21, 2023 **MIN 23-028**

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously, to approve the minutes of the City Council meeting on February 21, 2023.

2. Adopt an Ordinance Amending Article 14, Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses by Amending Section 6-14.13(d) Relating to Commercial Cannabis Permit Application, Amending Section 6-14.14 Relating to Operating and Performance Standards and Adding Section 6-14.18 Relating to Enforcement **CONS 23-131**

Staff report submitted by City Clerk Lens, dated March 7, 2023, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried by the following roll call vote, to adopt the ordinance.

AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche,
Syrop, Zermeño
MAYOR Salinas
NOES: None
ABSENT: None
ABSTAIN: None

Ordinance 23-02, "Ordinance of the City of Hayward, California Amending Article 14, Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses by Amending Section 6-14.13(D) Relating to Commercial Cannabis Permit Application, Amending Section 6-14.14 Relating to Operating and Performance Standards and Adding Section 6-14.18 Relating to Enforcement"

3. Adopt a Resolution Approving Addendum No. 1, Awarding a Construction Contract to Bear Construction, Inc., for the FY23 Median Landscape Improvement - Phase 1, Project No. 05281 in the Amount of \$935,620, and Authorizing a Construction Contingency Change Order Budget of \$189,380, for a Not-to-Exceed Contract Amount of \$1,125,000 **CONS 23-124**

Staff report submitted by Public Works Director Ameri, dated March 7, 2023, was filed.



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Mayor Salinas opened public comment at 7:15 p.m.

Ms. Peggy Guernsey inquired if the proposal allowed for input regarding public landscapes and their maintenance and noted that a plant similar to acacia causes allergies and requested that the Landscaping Division look into it.

Mayor Salinas closed public comment at 7:18 p.m.

City Manager McAdoo indicated the project had already gone through the design process.

In response to Council Member Syrop's inquiry about an analysis of health issues that might occur prior to recommending projects, City Manager McAdoo noted that selection of plants is based on arborist recommendations and added that staff can look into whether plants included in the project are allergenic.

Council Member Roche made a motion to approve the staff's recommendation and Council Member Márquez seconded the motion.

Council Member Márquez noted that concerns expressed by Ms. Guernsey could be addressed at a future Council Infrastructure Committee meeting.

Council Member Andrews noted she looked forward to learning more about landscaping opportunities.

It was moved by Council Member Roche, seconded by Council Member Márquez, and carried by the following roll call vote, to adopt the resolution.

AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche,
Syrop, Zermeño
MAYOR Salinas
NOES: None
ABSENT: None
ABSTAIN: None

Resolution 23-050, "Resolution Approving Addendum No. 1, Awarding a Construction Contract to Bear Construction, Inc., for the FY23 Median Landscape Improvement - Phase 1, Project No. 05281 in the Amount of \$935,620, and Authorizing a Construction Contingency Change Order Budget of \$189,380, for a Not-to-Exceed Contract Amount of \$1,125,000"

- 4. Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with First Shield Security and Patrol, Inc. to Provide Unarmed Security Services at Various City Locations for a Term of Three Years with Two One-Year Options to Extend in a Contract Amount of \$4,600,900 and a Contingency Amount of \$225,000, for a Total Not-to-Exceed Amount of \$4,825,900 **CONS 23-134**

Staff report submitted by Maintenance Services Director Rullman, dated March 7, 2023, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried by the following roll call vote, to adopt the resolution.

AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche, Syrop, Zermeño
MAYOR Salinas
NOES: None
ABSENT: None
ABSTAIN: None

Resolution 23-051, “Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with First Shield Security and Patrol, Inc. to Provide Unarmed Security Services at Various City Locations for a Term of Three Years with Two One-Year Options to Extend in a Contract Amount of \$4,600,900 and a Contingency Amount of \$225,000, for a Total Not-to-Exceed Amount of \$4,825,900”

- 5. Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with AEI Consultants for Environmental Investigation Services to Support the Stack Center Project by Increasing the Not-to-Exceed Amount of the Agreement from \$59,950 to \$200,000 **CONS 23-144**

Staff report submitted by Assistant City Manager Youngblood, dated March 7, 2023, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried by the following roll call vote, to adopt the resolution.

AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche, Syrop, Zermeño
MAYOR Salinas
NOES: None
ABSENT: None
ABSTAIN: None



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Resolution 23-052, "Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with AEI Consultants for Environmental Investigation Services to Support the Stack Center Project by Increasing the Not-to-Exceed Amount of the Agreement from \$59,950 to \$200,000"

PUBLIC HEARING

6. Alcoholic Beverage Regulations Update: Adopt a Resolution Amending Chapter 10, Article 1, Section 10-1.2750 (Alcoholic Beverage Outlets) of the Hayward Municipal Code to Make Updates to the Regulations Governing Alcoholic Beverage Outlets Throughout the City, and Finding that the Action is Exempt from CEQA Review and Introducing an Ordinance Codifying the Amendments **PH 23-013**

Staff report submitted by Acting Development Services Director Buizer, dated March 7, 2023, was filed.

Acting Development Services Director Buizer announced the item and introduced Associate Planner Kowalski who provided a synopsis of the staff report.

Discussion ensued among members of the City Council and City staff regarding: food trucks would not satisfy the food requirement for a separated kitchen and bar on the same premises; happy hour times and proposed modification from 4pm-9pm to 3pm-8pm reflected feedback received from the business community and the Hayward Police Department (HPD) was involved in crafting the amendments and did not offer any objections; if a restaurant was no longer a component at a particular premise that had a bar, under the City's current regulations, a standalone bar would be subjected to a conditional use permit and staff would work with the entity to bring them into compliance before following up with enforcement action; the City would work in partnership with the State Department of Alcoholic Beverage Control (ABC) to enforce liquor license requirements and any local regulations for alcohol establishments; the proposed regulations were heard by the Council Economic Development Committee (CEDC) in September 2022 and outreach was done to businesses citywide; the process for a new business to secure an ABC license; it was noted that no establishment's license had been revoked or suspended in the last two years; the proposed was a modern concept throughout the nation where a brewery entrepreneur handles the beer production, sales and tasting elements and partners with a bona fide restaurateur that operates a standalone kitchen; existing regulations have precluded a number of microbreweries considering Hayward their next home and updating current regulations would give the City an equal footing with neighboring communities that do not have stringent requirements; Economic Development would reengage businesses that shared that current regulations posed a barrier to their entry into the market; and it

was clarified that the proposed regulation was for full-service or standalone kitchen attached to the ground located on the same premise as the bar.

Mayor Salinas opened the public hearing at 7:49 p.m.

Ms. Peggy Guernsey was concerned that the earlier timeframe coincided with the time schools get out, did not appreciate comments that the earlier happy hour timeframe would be of benefit to underpaid teachers, noted the Hayward Chamber of Commerce did have an opinion, and urged that the ratio of food-to-alcohol sales remain at 60:40.

Mr. Eric Yeveerino, Dirty Bird Lounge owner, supported the proposed amendments, and recognized that most bars which previously served just alcohol now sell food to remain competitive in the market, and stated that restaurants make their profits on alcohol sales.

In response to Council Member Márquez's inquiry as to what makes an effective restaurant business model, Mr. Yeveerino noted that good management includes sound decision-making and encourages a clean model.

In response to Council Member Zermeño's inquiry about thoughts on the proposed changes to happy hour, Mr. Yeveerino indicated that happy hour should be reflective of the establishment goals.

Mayor Salinas closed the public hearing at 7:58 p.m.

Members of the City Council thanked public members for their input and staff for the staff report.

In response to Council Member Andrews' inquiry as to what happens if an establishment has too many inebriated customers or high arrest numbers, Detective Wright responded that patrol officers would make arrests, connect with ABC and the owner of the establishment, and the worst-case scenario would include revoking a business license.

Council Member Zermeño shared that his family was successful operating a restaurant and bar for twenty-five years due to good cooking, loyalty by customers, alcohol sales, and taking responsibility for securing transportation for intoxicated customers; expressed that the proposed updates would benefit the City by allowing more businesses to open; supported having a microbrewery and kitchen next to the Bank of the West location which sat vacant since 1960; recommended that staff conduct a poll as to the need for happy hour; favored having specify language informing patrons how to secure transportation; and made a motion to approve staff recommendation.

Council Member Syrop seconded the motion noting the proposed happy hour modification was reasonable; noted the innovative proposal would allow several small businesses to develop and build a name for themselves at a time when rents were high; stated that third spaces provide a place to socialize for those of legal drinking age; and offered a friendly amendment to remove the 60:40 ratio of food to alcohol sales noting the ratio was



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unattainable by most restaurants and underscored the need for a realistic ordinance to align with other cities in the region.

Council Member Zermeño was amenable to removing the food to alcohol sales ratio and wanted to hear from his colleagues.

Associate Planner Kowalski clarified an earlier public comment by indicating the proposed ordinance amendments would apply to restaurants throughout the city.

Council Member Roche expressed the proposed amendments were innocuous to current establishments and were innovative to spur economic development; however, she was concerned about the friendly amendment and thought it needed more exploring to avoid disrupting what was in place with current establishments.

Discussion ensued about the proposed friendly amendment to remove the food to alcohol ratio.

Council Member Roche supported the staff recommendation and proposed ordinance amendments but did not support the friendly amendment.

In response to Council Member Andrews' inquiry for specific language in the ordinance about information for patrons on safe transportation alternatives to get home, City Manager McAdoo cautioned against including specific language other than asking the Police Chief to determine how to roll out the program as transportation methods may change.

Council Member Andrews expressed the model of food service delivery was changing; noted that sometimes establishments take a long time to get started and the proposal provided them an opportunity to practice their skill, establish themselves and bring new businesses to Hayward; and supported innovative thinking that would support economic development.

Council Member Márquez expressed she supported the staff recommendation but not the friendly amendment due to concerns about process and transparency, and did not feel comfortable adopting something that was a substantial change and not in line with what was published in the report; stated it would be fair and reasonable to revisit the friendly amendment at a later date; and reminded the community that Council agendas are available a few days prior to the meeting.

Council Member Goldstein concurred with Council Member Márquez; expressed the proposed friendly amendment was a big change; noted there was nothing substantive to be gained or lost from making the change; favored open and transparent governance where citizens are aware of what decisions the Council is going to make; appreciated the public speakers who stand up for safety around schools, in the downtown, and throughout Hayward, and shared a

personal experience; supported having places in Hayward for residents to hang out, have fun and build community; was open to the possibility for businesses to be more successful in Hayward so future businesses can be attracted to Hayward as a place to open or expand a business; noted that sales tax revenue generated from businesses would help fund staffing levels in the City; and favored the staff recommendation but not the friendly amendment.

Mayor Salinas thanked Council Member Andrews for thinking about economic development in new creative ways; shared his experience about a new age of breweries and restaurants along the Central Coast; underscored the proposal was Hayward’s version of redefining the landscape by decoupling food from liquor and having two separate entities in the same building; stated that cities were following the model to give entrepreneurs opportunities to establish restaurants and give existing owners a creative space to explore new innovative ways; commented the space between the Masonic building and Union Bank will be redefined; expressed that ABC already has a 50:50 food to alcohol ratio that has to be obeyed and restaurant owners have to follow regulations set by their permit and ABC license; and supported the proposed 50:50 food to alcohol sales ratio which was a state standard and one that was followed by other cities.

Council Member Syrop noted he wanted to put the amendment forward as it would give businesses the best chance at surviving and being able to get a foothold and thrive; commented that members of the Council were elected to represent interests of the community and it was his obligation to weigh in at the public meeting as he thinks voters expect him to; and favored keeping the friendly amendment on the floor.

In response to Council Member Zermeño’s inquiry for staff to evaluate not having a happy hour or no ratio within the next year, City Manager McAdoo noted that it may not be feasible; however, Council could give staff direction and reprioritize other competing projects.

Council Member Zermeño, as the maker of the motion, did not accept adding the friendly amendment to his motion.

Council Member Syrop withdrew seconding the motion and Council Member Goldstein seconded the motion.

It was moved by Council Member Zermeño, seconded by Council Member Goldstein, and carried by the following roll call vote, to adopt the resolution and approve the introduction of an ordinance.

- AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche, Syrop, Zermeño
MAYOR Salinas
- NOES: None
- ABSENT: None
- ABSTAIN: None



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Resolution 23-053 “Alcoholic Beverage Regulations Update: Adopt a Resolution Amending Chapter 10, Article 1, Section 10-1.2750 (Alcoholic Beverage Outlets) of the Hayward Municipal Code to Make Updates to the Regulations Governing Alcoholic Beverage Outlets Throughout the City, and Finding that the Action is Exempt from CEQA Review and Introducing an Ordinance Codifying the Amendments”

Intro Ordinance 23- “An Ordinance Amending Chapter 10, Article 1, Section 10- 1.2750 (Alcoholic Beverage Outlets) of the Hayward Municipal Code to Update the Regulations Governing Alcoholic Beverage Outlets Throughout the City”

LEGISLATIVE BUSINESS

7. FY 2023 Mid-Year Budget: Adopt a Resolution Approving the FY 2023 Mid-Year Budget Update and Five-Year General Fund Update **LB 23-011**

Staff report submitted by Finance Director Gonzales, dated March 7, 2023, was filed.

Director of Finance Gonzales provided a synopsis of the staff report.

In response to Council Member Zermeño’s inquiry regarding the drop in revenues from 2023 to 2024, Finance Director Gonzales noted the change was attributed to one-time transfer of American Rescue Plan Act (ARPA) funds.

In response to Council Member Zermeño’s inquiry about the possibility in the future to set aside Measure C funds for a new police building, City Manager McAdoo stated that Measure C expires in 2034 and might not be possible; shared that funds were being used for the initial design work and conceptual thinking; and staff would provide more information to the Council Budget and Finance Committee (CBFC) and subsequently to the Council.

In response to Council Member Andrews’ questions about Measure T (Real Property Transfer Tax) revenues and other revenue generators, Finance Director Gonzales responded there was no projected change at midyear and a report on adjusting the Transient Occupancy Tax would be presented at an upcoming CBFC meeting. Council Member Andrews encouraged staff to explore more opportunities as hotels were not doing well financially.

City Manager McAdoo added that a consulting firm would assist with evaluating the 2016 financial model and during a work session the Council could explore strategies to focus on over the next couple years.

In response to Council Member Syrop's inquiry about Measure C operating expenditures over the next ten years, Finance Director Gonzales responded that an escalation factor was built in for approximately 7% each year for police and maintenance services that can be used for employee related expense increases such as benefits, medical, cost of living adjustments, and contract needs; and added that other funds were transfers to unfunded liabilities for other post-employment benefits.

In response to Council Member Syrop's question about budget allocations for current vacancies and capital improvement, City Manager McAdoo responded that Measure C funds were used for specific intent of the ballot measure underscoring that vacancy savings would go to the General Fund first; and noted that staff was evaluating building modular locker rooms at HPD with ARPA and Measure C funds.

In response to Council Member Márquez's request for an overview of CBFC discussion at the previous week, Finance Director Gonzales shared there was discussion about the \$5.9 million appropriation related to workers' compensation, consideration of potential public safety facility improvements using Measure C funds, Measure C updates as a standing item at CBFC meetings, staff would look at finance policies related to real property transfer tax and threshold and a policy related to revenue received in excess of its threshold, and noted that these policies would be presented to CBFC for potential changes to be included in the City budget. Council Member Márquez noted there was also a request to get a historical chronological timeline of ballot measures.

In response to Council Member Roche's inquiry related to the request for \$500,000 for fuel cost and what was being done to convert the fleet to electric, Finance Director Gonzales responded that as vehicles are replaced the City considers hybrid and electric vehicles as options, but there were specific vehicles related to public safety that did not lend for electric vehicle types. In response to Council Member Roche's inquiry regarding increasing the fund the City had in place for rental assistance since the County's eviction moratorium was ending, City Manager McAdoo shared that staff was assessing the impact and having a supplemental budget for additional resources, and staff was determining what programs the City can offer to assist tenants.

In response to Council Member Goldstein's inquiry on whether the midyear appropriations include the expense for 68 vacancies in public safety, Finance Director Gonzales responded that the appropriations were related to cost-of-living adjustments for HPOA, Local 1909, and unrepresented staff; and indicated that every budgeted position was included assuming vacant positions are filled in order to get a true projection of the impact it would have in future fiscal years.

There being no public comment, Mayor Salinas opened and closed the public hearing at 9:06 p.m.



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Council Member Márquez made a motion to move the staff recommendation and Council Member Roche seconded the motion.

Council Member Márquez appreciated City Manager McAdoo's announcement that the Council will be reengaging the fiscal model to see fiscal impacts of decisions, and asked if the Finance team could collaborate with the Economic Development team in advance of the work session to get their perspective on revenue generation. Council Member Márquez added that while it was great to consider ballot measures, the City cannot always go to voters and hoped to bank on the expertise of Economic Development to have a menu of options.

It was moved by Council Member Márquez, seconded by Council Member Roche, and carried by the following roll call vote, to approve the resolutions.

AYES: COUNCIL MEMBERS Andrews, Goldstein, Márquez, Roche,
Syrop, Zermeño
MAYOR Salinas
NOES: None
ABSENT: None
ABSTAIN: None

Resolution 23-054, "Resolution Amending Resolution 22-146, as Amended, the Budget Resolution for the City of Hayward Operating Budget for Fiscal Year 2023, Relating to an Appropriation of Funds"

Resolution 23-055, "FY 2023 Mid-Year Budget: Adopt a Resolution Approving the FY 2023 Mid-Year Budget Update and Five-Year General Fund Update"

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Member Roche wished everyone a Happy St. Patrick's Day.

Council Member Andrews announced the Keep Hayward Clean and Green Task Force was organizing a neighborhood beautification event at St. Joachim Catholic Church on March 25, 2023.

Council Member Zermeño invited all to the downtown street party to celebrate the 147th birthday of the City of Hayward on March 11, 2023.

Mayor Salinas acknowledged City Manager McAdoo for allocating necessary funds for the unhoused population in anticipation of the upcoming storm and confirmed there were sandbags available at 16 Barnes Court.

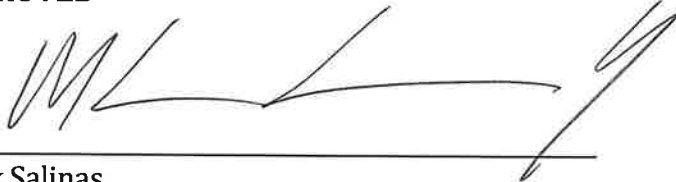
COUNCIL REFERRALS

There were none.

ADJOURNMENT

Mayor Salinas adjourned the City Council meeting at 9:14 p.m.

APPROVED



Mark Salinas
Mayor, City of Hayward

ATTEST:



Miriam Lens
City Clerk, City of Hayward