



**CITY COUNCIL MEETING
REMOTE PARTICIPATION
Tuesday, March 2, 2021, 7:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m. The meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order No 29-20 dated March 17, 2020 regarding the COVID-19 pandemic. Members of the City Council, City Staff, and members of the public participated via the Zoom platform.

CALL TO ORDER

Pledge of Allegiance: Council Member Zermeño

ROLL CALL

Present: COUNCIL MEMBERS Andrews, Márquez, Salinas, Wahab, Zermeño
MAYOR Halliday
Absent: COUNCIL MEMBER Lamnin

CLOSED SESSION ANNOUNCEMENT

The City Council convened in closed session at 6:00 p.m., regarding conference with legal counsel concerning two anticipated litigation cases, with Council Member Lamnin absent. City Attorney Lawson announced before the closed session there were two separate cases pursuant to Government Code section 54956.9(d)(4) and Government Code section 54956.9(d)(2). City Attorney Lawson indicated the first case was discussed pursuant to Government Code section 54956.9(d)(4) involving facts and circumstances known to the City warranting a decision on whether to initiate litigation; and further it was announced that case two was discussed pursuant to Government Code section 54956.9(d)(2) involving facts and circumstances known to potential plaintiffs or claimants that would give rise to litigation. City Attorney Lawson noted the Council took no reportable action regarding both items. Council Member Márquez recused herself and did not participate in the second item.

PRESENTATIONS

Mayor Halliday gave each member of the City Council the opportunity to read a preamble of the Proclamation declaring March 2021 as Women's History Month in the City of Hayward. The proclamation was presented to the American Association of University Women (AAUW). Ms. Helen Carr, AAUW Financial Officer of the Hayward-Castro Valley branch, accepted such special recognition.

Mayor Halliday read a Proclamation declaring March 2021 as Art IS Education Month in the City of Hayward. A clip of individual performances by the orchestra synced into one video was shared with all attendees. The proclamation was presented to the East Bay Youth Orchestra (EBYO). Ms. Carol Morgan, Chair of EBYO Board, accepted such special recognition.

PUBLIC COMMENTS

Dr. Anatole Bogatski, Vice President of Operations at Life Chiropractic College West, noted the college is the largest chiropractic college in the western U.S. and shared that on March 13, 2021, the College is celebrating its 40th anniversary.

Mayor Halliday noted the City would be issuing a Certificate of Commendation to the college recognizing its anniversary and contributions to the community.

Mr. Anthony Tassone, with GreenKey, discussed a police body camera analytics pilot that Hayward had been selected for and elaborated on product particulars.

Ms. Thu Nguyen, CSUEB nursing student, recommended a citywide mental health awareness campaign aiming to destigmatize mental health, bring the community together, and include resources and services.

Ms. Linda, Hayward resident, expressed concern about the encampment between Mission Boulevard and Foothill Boulevard near St Regis Retirement Center, and asked what the City was doing to keep areas clean.

City Manager McAdoo responded the City was aware of the encampment and was prioritizing a few encampments for outreach and placement.

Ms. Valerie Anderson expressed support for considering of use of technology to share plans online and the use of the Zoom platform after in-person meetings resume.

City Manager McAdoo discussed the implementation of EnerGov would allow for further virtual access for plan submittal and plan check, aiming for full implementation by summer.

CONSENT

Council Member Wahab highlighted her concern with the Strategic Roadmap stating many items have already been completed, clarified how she voted, asked for clear formatting throughout the report, and made a motion to approve the Consent Calendar.

Council Member Márquez seconded the motion and asked if Council Member initials at the top of vote charts can be carried over on each page to make it easier to follow.

City Manager McAdoo noted a complete summary of the Strategic Roadmap retreat will be brought to a work session in late March when the City Council will be able to make changes and provide comments.



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1. Approve City Council Minutes of the Special City Council Meeting on February 13, 2021
MIN 21-030

It was moved by Council Member Wahab, seconded by Council Member Márquez, and carried unanimously with Council Member Lamnin absent, to approve the minutes of the City Council meeting on February 13, 2021.

2. Approve City Council Minutes of the City Council Meeting on February 16, 2021 **MIN 21-031**

It was moved by Council Member Wahab, seconded by Council Member Márquez, and carried unanimously with Council Member Lamnin absent, to approve the minutes of the City Council meeting on February 16, 2021.

3. Adopt a Resolution Authorizing the City Manager to Negotiate and Execute a Landscape Maintenance Contract for Route 238 (Phase 1 and 2) with Los Loza Landscaping, in an Annual Amount of \$270,000 and Approving an Additional \$20,000 Annually for Contingencies **CONS 21-082**

Staff report submitted by Director of Maintenance Services
Rullman dated March 2, 2021, was filed.

It was moved by Council Member Wahab, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Andrews, Márquez, Salinas, Wahab, Zermeño
MAYOR Halliday
NOES: None
ABSENT: COUNCIL MEMBER Lamnin
ABSTAIN: None

Resolution 21-029, "Resolution Authorizing the City Manager to Negotiate and Execute a Contract for Route 238 (Phase 1 and 2) Landscape Maintenance with Los Loza Landscaping in an Annual Amount of \$270,000 and Approving an Additional \$20,000 Annually for Contingencies"

PUBLIC HEARING

4. Switzer Residence: Adopt a Resolution Approving a Proposed Single-Family Residence and Attached Accessory Dwelling Unit on a Vacant 0.21-Acre Hillside Lot with an Average Slope Greater than 20% Located at 2579 Home Avenue, Assessor Parcel No. 081D-1660-040-00, Requiring Approval of Site Plan Review and Grading Permit Application No. 202000579, Categorically Exempt from the California Environmental Quality Act (CEQA) per Section 15303, Class 3. **PH 21-011**

Staff report submitted by Development Services Director Simpson, dated March 2, 2021, was filed.

Development Services Director Simpson introduced Associate Planner Martinez who provided a synopsis of the staff report and highlighted the amendment of Condition of Approval No. 28 which included the following text, "Drainage from the lot shall be collected in a ditch along its frontage on Home Avenue. The ditch shall be maintained and extended to an existing drain across Home Avenue. The lot driveway on Home Avenue shall have a 12-inch drainpipe for passage of drainage in the ditch."

Associate Planner Martinez and Assistant City Attorney Brick addressed questions posed by members of the City Council indicating the applicant's property does not meet the minimum lot size for two single family homes; staff did not receive correspondence in support of the project; there is no significant frontage for street parking in the neighborhood; the applicant met with Old Highlands Homeowners Association (OHHA) board members and the City's development review engineer to work on the storm drainage mitigation; primary neighbor concerns regarding storm drainage issues were alleviated; Condition of Approval No. 28 was amended in response to feedback received; the 1998 OHHA plan was incorporated into the General Plan to have a single consolidated document; Condition of Approval 35(e) would be corrected to reflect the right project; the Accessory Dwelling Unit's height (ADU) is in compliance with City requirements; there is flexibility in the General Plan to make changes to preserve neighborhood characteristics; and subjective criteria cannot be basis for a project denial under the Housing Crisis Act and Housing Accountability Act.

Mayor Halliday opened the public hearing at 8:20 p.m.

The following speakers opposed the proposed single-family residence and attached Accessory Dwelling Unit based on the following concerns: the postcard/mailed sent out by the City about the proposed house was misleading and did not depict the multi-level structure of the house; the proposed size of the house will be a visual impact to the neighborhood; the City has an agreement to retain the semi-rural character of the neighborhood consistent in size, scale, and appearance with existing residential structures; the house does not conform to height regulations; the ADU size and height is not in conformance with code requirements; the construction needs to adhere to 1998 requirements established for the neighborhood; OHHA had no input in development of the 2040 General Plan; construction equipment planned to be stored on site; negative effect on wildlife; proposal visually dominates the landscape; and the applicant should have read the OHHA plan and designed a home consistent with guidelines.



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Ms. Margaret Warhurst, Home Avenue resident
Mr. Grant Anderson, Hayward resident
Mr. John Vukasin, OHHA Board Member
Ms. Natalie Feulner, Home Avenue resident
Ms. Valerie Caveglia, Hillcrest Ave resident
Ms. Sara Ellen Daniel, Home Avenue resident
Ms. Teresa Dulberg, neighbor
Ms. Valerie Anderson, Hillcrest resident
Mr. George Dimic, Hayward resident
Mr. Robert Carlson, OHHA Board President

Mr. Bradley Switzer, project applicant, noted he discussed storm drainage improvements with City staff and OHHA board members and showed them how heights will be within guidelines; parking will be sufficient for all vehicles; ADU was intended for extended family not for rental; has worked with City staff to address comments and mitigate design concerns; has a courtyard and has considered planting trees along the side to improve neighbors view; and noted minimal construction equipment will be parked on property and supplies will be brought in stages.

Mayor Halliday closed the public hearing at 8:56 p.m.

Council Member Zermeño noted that given opposition from neighbors and OHHA Board and based on 1998 agreement to keep the character of the neighborhood semi-rural, he made a motion to deny the proposed project.

Council Member Salinas seconded the motion.

Mayor Halliday noted the Council was reviewing the project due to rules established in the Hayward Municipal Code for a Grading Permit.

City Manager McAdoo noted that if the Council acts on a motion to deny, staff would need to research findings for denial to bring back.

Council Member Salinas expressed there was concern about the height of a challenged property, received confirmation the 1998 agreement was incorporated into the General Plan, and received validation Council could recommend more full landscaping plan for neighborhood review prior to approval.

Council Member Márquez acknowledged the time and resources that went into the project and noted her preference would be to table the project for two to three months to allow the applicant to further discuss with the neighbors and focus on concerns raised.

Discussion ensued among Council Members and City staff about improvements to the postcard and notification procedures, issues related with the height of the house and other concerns raised, and procedures for tabling the item or denying it without prejudice.

Council Member Wahab recommended more frequent updates to community plans and streamlined communication to the community, noted that multi-family dwellings are going to become more common and multi-generational households are cost-effective and seen in many cultures, asked that the height issue be addressed, and preferred to table the item to give the applicant and OHHA Board an opportunity to communicate top three concerns in a reasonable manner.

Council Member Andrews thanked the applicant for providing clear renderings, noted the issue is massing of building that is dense for the area, noted ADUs could be rented for a minimum of 30 days, was fine tabling the item for a shorter timeline (2 months), recommended that a City staff mediate discussions, noted the site was the applicant's property, agreed with Council Member Salinas' suggestion about the landscaping, and added the Council cannot deny a project based off of the definition of community character.

Mayor Halliday confirmed the lot could not accommodate two separate homes, but the ADU could be detached, noted she would support a motion for denial, and discussed unique features and character of the Old Highlands neighborhood.

Council Member Andrews wanted to make sure City staff and Council had the same level of concern for other areas in the city where properties do not fit the character of the neighborhood but get built because not all communities can engage with the City.

Council Members Zermeño withdrew his motion and offered a new motion to continue the item to the May 4, 2021 Council meeting for the purpose of addressing concerns raised and arrange for a City staff to mediate discussions among the applicant and neighbors.

Council Member Salinas seconded the motion. Council Member Salinas responded to Council Member Andrews' comment noting he recalled previous instances where the City had applied an equity component to ensure the influence on the process is applied across the board.

Council Member Wahab thanked the community for their willingness to work with the applicant, noted the desire to be flexible and ensure all parties are satisfied; and reiterated the City's commitment to better communication and easy-to-follow updates.

Members of the City Council thanked community members for all the input provided.

It was moved by Council Member Zermeño, seconded by Council Member Salinas, and carried by the following roll call vote, to continue the item until May 4, 2021 to address all concerns raised including arranging for City staff to mediate discussion among the applicant and neighbors:



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MAYOR Halliday
NOES: None
ABSENT: COUNCIL MEMBER Lamnin
ABSTAIN: None

Mayor Halliday called for a recess at 9:45 p.m. and reconvened the meeting at 9:50 p.m.

5. Rainbow Court Single-Family Residence: Adopt a Resolution Approving Site Plan Review and Grading Permit Application for Proposed Single-Family Residence on a Vacant 0.12-Acre Hillside Lot with an Average Slope Greater than 20%, Located at 2382 Rainbow Court, Assessor Parcel No. 425-0410-029-00, Application No. 202002396. **PH 21-017**

Staff report submitted by Development Services Director Simpson, dated March 2, 2021, was filed.

Development Services Director Simpson introduced Associate Planner Emura who provided a synopsis of the staff report.

There being no speakers, Mayor Halliday opened and closed the public hearing at 9:58 p.m.

Council Member Salinas made a motion to approve staff's recommendation.

Council Member Zermeño seconded the motion.

In response to Mayor Halliday's inquiry about the significance of the height limit of 606 feet, Associate Planner Emura clarified it referred to the elevation from sea-level, specific to a few lots in the subdivision, designed not to limit views.

Council Member Wahab noted a correction to the staff report referring to a March 11, 2021 meeting which should have been March 11, 2020.

It was moved by Council Member Salinas, seconded by Council Member Zermeño, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Andrews, Márquez, Salinas, Wahab, Zermeño
MAYOR Halliday
NOES: None
ABSENT: COUNCIL MEMBER Lamnin
ABSTAIN: None

Resolution 21-030, "Resolution Approving the Site Plan Review with Grading Permit Application No. 202002396 for the Construction of a New Single-family Residence at 2382 Rainbow Court"

LEGISLATIVE BUSINESS

6. Municipal Facility License Agreement Template: Adopt a Resolution Approving the Municipal Facility Master License Agreement Template for the Attachment of Wireless Facilities to City-Owned Vertical Infrastructure in the Public Right-of-Way, and Authorizing the City Manager to Execute Master Facility License Agreements with Qualified Companies in Substantial Conformance with the Template and Upon Approval by the City Attorney as to Form **LB 21-008**

Staff report submitted by Assistant City Manager Ott dated March 2, 2021, was filed.

Assistant City Manager Ott announced the item and introduced Information Systems Manager Roush who provided a synopsis of the staff report. Ms. Gail Karish, outside counsel from Best, Best & Krieger, was also available to answer questions.

Ms. Gail Karish addressed questions raised by Council Member Márquez regarding the provision of fiber-in-lieu of payment.

Mayor Halliday opened the public hearing at 10:13 p.m.

Mr. Paul Gimelberg, with Verizon Wireless, expressed concern about the proposed Municipal Facility License Agreement (MFLA) template alleging it poses conflicts with applicable federal and state law including a 2018 Federal Communications Commission order, referred to the February 23, 2021 letter from Sherman & Howard which outlined six objections to the MFLA, and urged the Council to decline approval of the MFLA.

Mayor Halliday closed the public hearing at 10:16 p.m.

Assistant City Manager Ott acknowledged the Council had received the letter; noted the deposits are not fees, one is for the regulatory process and the other for the property owner transaction; and added the fee schedule can be changed once staff has a better idea of costs moving forward.

Ms. Kirsh clarified the areas Verizon contested have been addressed in prior discussions, noted the City wanted to include a provision preventing companies from signing the agreement and turning around to sue over the terms, added Verizon has accepted such language in contracts with other organizations, and added issues brought forward are resolvable and can be addressed in further conversations with vendors.



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In response to Council Member Wahab's inquiry, Ms. Kirsh noted the cost to rent a pole is set by the FCC with an escalation clause and the FCC was given responsibility for setting standards for safe use of antennas.

Council Member Wahab noted the infrastructure of the City regarding technology was 21st century for businesses to thrive and for residents to reduce the digital divide; and made a motion to accept staff recommendation.

Council Member Zermeño seconded the motion noting the item will benefit the community.

In response to Council Member Zermeño's inquiry about concerns raised by Verizon, Ms. Kirsh and staff assured him other concerns are details to be worked out and resolved in individual agreements.

It was moved by Council Member Wahab, seconded by Council Member Zermeño, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Andrews, Márquez, Salinas, Wahab, Zermeño
MAYOR Halliday
NOES: None
ABSENT: COUNCIL MEMBER Lamnin
ABSTAIN: None

Resolution 21-031, "Resolution Approving the Municipal Facility License Agreement Template for the Attachment of Wireless Facilities to City-Owned Vertical Infrastructure in the Public Right-of-Way and Authorizing the City Manager to Execute Master Facility License Agreements with Qualified Companies in Substantial Conformance with the Template and Upon Approval by the City Attorney as to form"

7. Planning Commission Vacancy: Acceptance of Resignation of Mr. Gary Patton from the Planning Commission Effective April 1, 2021, and Direction on Process for Filling the Vacancy **LB 21-009**

Staff report submitted by City Clerk Lens dated March 2, 2021, was filed.

City Clerk Lens provided a synopsis of the staff report and indicated staff was recommending appointing former Council Member Mendall to fill the vacancy until September 2021 and amend the resolution to include such action.

Mayor Halliday opened the public hearing at 10:35 p.m.

Former Council Member Al Mendall confirmed his willingness to serve for a short period of time to give the Council the time to do a proper recruitment.

Mayor Halliday closed the public hearing at 10:37 p.m.

Discussion ensued among Council Members and City staff regarding the discussion during the February 20, 2021 retreat about appointing Council Member Mendall; the resolution could be corrected to clarify the term would expire in September; the 2020 appointment process when an alternate had been identified during the recruitment process to avoid a special recruitment; outreach via a water bill insert; the number of major applications and potentially controversial items coming before the Planning Commission and the need to have an odd number of commissioners to avoid split votes as a justification to appoint former Council Member Mendall; former Council Member Mendall's past service on the Planning Commission would benefit the Commission during the short term appointment; and the appointments of Commissioner Oquenda and Commissioner Ali-Sullivan.

Council Member Wahab noted that while former Council Member Mendall was qualified for the short-term appointment, she found the appointment troublesome, added she would prefer a lottery system to select Planning Commissioners, and added there were interviewees from 2020 who should have been considered such as Mr. Timothy Kim who had applied two times.

Council Member Salinas made a motion to move item and appoint former Council Member Mendall to fill the vacancy until the new commissioner is appointed and sworn in in September 2021.

Council Member Márquez seconded the motion with the clarification to also accept the resignation of Planning Commissioner Patton; acknowledged staff has been extremely taxed; added it would have been difficult to bring someone up to speed in anticipation of multiple work sessions and with a special recruitment it would have taken a long time to consider new candidates; added this was the best option considering a limited time period; and offered that in the next recruitment the Council could consider two alternates for the Planning Commission.

Council Member Zermeño noted this was the best way to go about the unexpected vacancy, it was a special circumstance, and other applicants could be considered in July, and was amenable to the idea of a second alternate.

Council Member Andrews noted there were lessons to be learned on how to present topics like this to the Council; preferred a two-step process to have the opportunity to name options; and praised Planning Commissioner Patton noting he was instrumental in providing guidance and expertise.



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Mayor Halliday shared thoughts about Planning Commissioner Patton, noted he had worked in the Planning Department in another city, and he had made great contributions.

It was moved by Council Member Salinas, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the resolution with an amendment to indicate former Council Member Mendall was appointed to fill the upcoming Planning Commission vacancy and his appointment would expire in September 2021 when a new commissioner is appointed and sworn in:

AYES: COUNCIL MEMBERS Andrews, Márquez, Salinas, Zermeño
MAYOR Halliday
NOES: None
ABSENT: COUNCIL MEMBER Lamnin
ABSTAIN: COUNCIL MEMBER Wahab

Resolution 21-032, "Resolution Accepting the Resignation of Mr. Gary Patton from the Planning Commission and Appointing Former Council Member Al Mendall to Fill the Vacancy Until September 2021"

CITY MANAGER'S COMMENTS

There was no comment.

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Member Andrews thanked representatives from Caltrans and Hayward Area Recreation and Park District Board Director Hatcher for attending last week's Keep Hayward Clean and Green Task Force meeting, gave kudos to everyone working at the COVID vaccination site, thanked Council Members Salinas and Zermeño for their reminders to report items via Access Hayward, and thanked all who are working to keep streets clean.

Council Member Wahab congratulated former Council Member Mendall on his appointment to the Planning Commission, highlighted Women's History Month and noted the work to promote equity does not end with Black History Month, and asked City Manager McAdoo to send Council the most recent numbers of unemployment and job loss in Hayward.

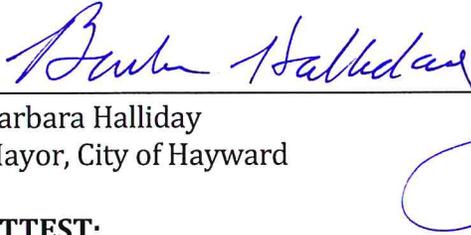
COUNCIL REFERRALS

There were none.

ADJOURNMENT

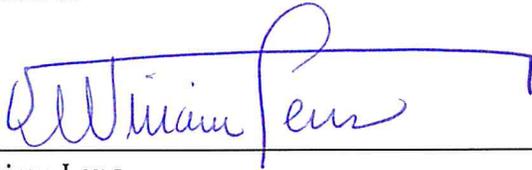
Mayor Halliday adjourned the meeting at 11:04 p.m.

APPROVED



Barbara Halliday
Mayor, City of Hayward

ATTEST:



Miriam Lens
City Clerk, City of Hayward