



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 7:00 p.m.**

The Special 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 Peixoto.

ROLL CALL

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

PUBLIC COMMENTS

Mr. Kim Huggett, Hayward Chamber of Commerce President, extended an invitation to the International Luncheon with Consul of Guatemala, Patricia Lavagnino, on November 17, 2017, at the Mexican Restaurant & Bar.

CONSENT

Consent Item No. 3 and Item No. 8 were removed for further discussion.

CONSENT

1. Minutes of the Special City Council Work Session Meeting on October 14, 2017 **MIN 17-142**
It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council Work Session meeting on October 14, 2017.
2. Minutes of the City Council Meeting on October 17, 2017 **MIN 17-143**
It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the City Council meeting on October 17, 2017.
3. Adoption of 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); and Article 25 (Hayward Mission Boulevard Corridor Form-Based Code) **CONS 17-650**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated October 17, 2017, was filed.

Mayor Halliday opened the public comments section at 8:06 p.m.

Mr. Jeff Syrop, resident of the Hayward Highland neighborhood, spoke about the possible inclusion of the Bonfare Market shopping plaza as a potential cannabis dispensary site.

Ms. Shahla Azimi, Hayward Boulevard resident, spoke on behalf of her neighbors in strong opposition to the possible Bonfare Market shopping plaza as a potential cannabis dispensary site because of the proximity to California State University East Bay.

Ms. Janice Chinn, Hayward Highland resident, spoke against Bonfare Market shopping plaza as a potential cannabis dispensary site.

Mr. Nasser Azimi, O'Hana Growers President, opposed limiting delivery operations related to cannabis.

City Manager McAdoo noted the City was in receipt of two letters that were distributed to the Council: one from California State University East Bay in opposition to the inclusion of the Bonfare Market shopping plaza potential dispensary site; and another from Mr. Michael Sweeney in general opposition to allowing any dispensaries in the City.

Mayor Halliday closed the public comment period at 8:18 p.m.

Council Member Mendall offered a motion per staff's recommendation with a further modification to the ordinance by removing cannabis uses (retail and delivery) from the Neighborhood Commercial zone district.

Council Member Zermeño seconded the motion.

Discussion ensued among Council Members and City staff related to the proposed regulatory ordinance.

Council Member Salinas noted that after hearing residents object to cannabis dispensaries in Hayward, he would be voting against the motion.

Council Member Zermeño clarified that the further amendment meant that there would not be dispensaries in neighborhoods such as Tennyson Road, Eden Shores, Harder Road, Carlos Bee Boulevard, Hayward Boulevard, Hayward Highland, and Fairway Park.

Council Member Lamnin asked staff to revisit the proposed regulations in a year.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried with the following vote, to adopt the ordinance with a further amendment that would modify the staff recommendation by removing cannabis uses (retail and delivery) from the Neighborhood Commercial zone district:



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MAYOR Halliday
NOES: COUNCIL MEMBERS Salinas
ABSENT: None
ABSTAIN: None

Ordinance 17-15, “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); And Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)”

4. Adoption of Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses **CONS 17-651**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated October 17, 2017, was filed.

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

Ordinance 17-13, “Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses”

5. Adoption of Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control **CONS 17-652**

Staff report submitted by City Clerk Lens, dated October 17, 2017, was filed.

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

Ordinance 17-14, “Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control”

6. Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits **CONS 17-676**

Staff report submitted by City Attorney Lawson, dated October 17, 2017, was filed.

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

Resolution 17-158, "Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits"

7. West Winton Landfill Leachate Conveyance System Replacement Project: Approval of Plans and Specifications, and Call for Bids **CONS 17-674**

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 Mendall, and carried unanimously, to adopt the following:

Ordinance 17-159, "Resolution Approving Plans and Specifications for the West Winton Landfill Leachate Conveyance System Replacement Project, and Call for Bids"

8. Approval of Resolution Accepting the Transfer of Parking Facilities from the Hayward Successor Agency **CONS 17-644**

Staff report submitted by Management Analyst II Stefanski, dated October 17, 2017, was filed.

In response to Mayor Halliday's inquiry about an update on the Redevelopment Agency's resolution, City Manager McAdoo noted the City had received authorization from the Department of Finance for the repayment of the water and sewer loan.

It was moved by Mayor Halliday, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 17-160, "Resolution of the City Council of the City of Hayward Accepting Transfer to Specified Parking Facilities Pursuant to Health and Safety Code Sections 34177(e) and 34181 (a)(1), for Continued Governmental Use, Operation, and Maintenance"



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PUBLIC HEARING

9. 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) **(Continued from 10/17/17) PH 17-096**

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

Interim Development Services Director Bristow announced the report and introduced Assistant Planner Martinez who provided a synopsis of the report.

Discussion ensued among Council Members and City staff about: Accessory Dwelling Units (ADUs) and homeowners' associations and CC&Rs (Covenants, Conditions & Restrictions); planned developments and ADUs; parking requirements; ADUs for low-income individuals; rent control and ADUs; owner-occupancy requirement; a reduced fee program for affordability; internal conversions; and Affordable Housing Impact Fees and Park Dedication in Lieu Fees.

There being no public comments Mayor Halliday opened and closed the public hearing at 8:27 p.m.

Council Member Lamnin offered a motion per staff's recommendation with a minor modification to the text in the proposed resolution (Attachment III) by changing the language from "disabled individuals" to "individuals with disabilities."

The motion died for lack of second and Council Member Lamnin withdrew her motion.

Council Member Lamnin recommended that staff consider evaluating eliminating fees, decreasing fees, and creating an opportunity to pay overtime only if the deed is restricted affordable.

Council Member Zermeño offered a motion per staff's recommendation with the modification requested by Council Member Lamnin.

Council Member Lamnin seconded the motion.

Council Member Mendall noted he was going to vote for the motion only because it was a requirement imposed by the State.

Council Member Márquez noted that the regulation did not get to the core issue of creating and preserving more affordable housing and noted the cost was prohibitive for individuals in need. Ms. Márquez said she would have been inclined to support the motion if ADU units were included in the rent stabilization ordinance.

Council Member Salinas noted that communities in need of housing were going to be most affected by the State regulation.

Council Member Peixoto noted the State regulation changes the character of single-family neighborhoods and noted that vulnerable communities were going to be affected.

Mayor Halliday noted that the City had to comply with a State mandate.

It was moved by Council Member Zermeño, seconded by Council Member Lamnin, and carried to adopt with the following vote:

AYES:	COUNCIL MEMBERS Zermeño, Mendall, Peixoto, Lamnin, Salinas MAYOR Halliday
NOES:	COUNCIL MEMBERS Márquez
ABSENT:	None
ABSTAIN:	None

Introduction of Ordinance 17-_, “An Ordinance Adding Section 10-1.2740 to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code to Revise and Update Regulations Related to the Development of Accessory Dwelling Units”

Resolution 17-161, “Resolution to Adopt a Zoning Text Amendment to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code Related to the Development of Accessory Dwelling Units”

Resolution 17-162, “Resolution Amending the City of Hayward 2018 Fiscal Year Master Fee Schedule for Zoning Conformance Permits Associated with a Zoning Text Amendment to Chapter 10 of the Hayward Municipal Code Related to Accessory Dwelling Units”

WORK SESSION

10. Review of Cannabis Business Operator Selection Process (Report from City Manager McAdoo) WS 17-051



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Staff report submitted by Senior Assistant City Attorney Vigilia, Principal Planner Lochirco, and Management Analyst II Stefanski, dated October 30, 2017, was filed.

Management Analyst II Stefanski announced the report and introduced Mr. Will Cooper with ICF, who provided an overview of the approach to operator selection, overview of application and selection process, and proposed evaluation criteria and weighting.

Mayor Halliday opened the public comments section at 9:00 p.m.

Mr. Richard Fierro, member of Teamsters Local 70, noted that cannabis workers should be represented, and recommended that potential applicants who have a collective bargaining agreement get the full score.

Ms. Kristine Terramoto, Cannabis Division Director for the Teamsters and member of the State's Cannabis Advisory Board, asked for a labor peace agreement.

Ms. Charnel James, with GreenWise Consulting, asked that the following be included in the point evaluation: allow for zoning clearance prior to the application submittal; take into consideration the experience and success of applicants who have operated in other jurisdictions; and get additional points for the location being served.

Mr. Brent Alfieri, industrial property owner, read a section of SB 94 related to evaluation criteria for cannabis permits.

Ms. Gail Lee submitted a card but did not speak.

Mr. Jason Terramoto, owner of a dispensary, urged the Council to speak with folks in the cannabis industry and stakeholders.

Ms. Denise Martellacci asked the Council to request ICF, if chosen, to have an implementation clause that requires businesses to open within six months to a year.

Mr. Dan Szigeti, Director of Sales for Harrens Lab, asked for an exemption to the timeline in the RFP process for testing laboratories.

Mr. Doug Chloupek spoke about his experience with cannabis dispensaries and laboratories, and asked that the application process not be delayed, and to consider in the labor peace agreement a PACE financing.

Mr. Daniel Hovland, Hayward resident, asked that the City take into consideration smaller businesses that might want to operate in the City.

Mr. Alan Descoins, representing local investors, noted they were evaluating locations to operate their business.

Mayor Halliday closed the public comments section at 9:33 p.m.

Discussion ensued among Council Members and City staff regarding: the application process; deposits from cannabis businesses; business presentations to the Council; background investigation of management teams; the \$5,000 application fee; financial analysis; audits and financial practices.

Council Members offered the following suggestions: add to the RFP process timeline a date by when selected businesses need to open; incorporate into the Conditional Use Permit process a condition of approval whereby the permit could be revoked if the business is not operational within a year; modify the language from “labor peace considerations” to “labor peace agreements” in the Labor and Employment Practices section; switch the recommended scoring points of “Labor and Employment Practices (75) with “Community Benefits (150)”; if applicants have an agreement in place with the union, they could get full score in that category; consider another RFP process in six months during the first year; location should be a part of the Review Process section; review the applicant’s history of code violations/compliance in the cities they have operated; consider fast tracking the process for testing laboratories; add an evaluation criteria about youth/adult education and prevention strategies around health risk and smoking; the RFP process has to be a well-executed process; include a check list of items that would make businesses legal; the evaluation criteria for “Management Experience” should receive more weight; for community benefits, share needs from the Community Services Commission and encourage applicants to partner with non-profits in the City that are not receiving funds; consider points for local applicants; let applicants know when a proposal has a location that will not work; consider taking about 100 points from Business Plan and Operations and distribute them to Community Benefits and Environmental Plan and Labor and Employment Practices; note if applications have received community support; and consider plans for payment process and business insurance.

City staff noted a new draft would be provided to Council for final approval.

11. Discussion Regarding Measure EE Cannabis Tax Rate (Report from Finance Director Claussen and City Attorney Lawson) WS 17-050

Staff report submitted by City Attorney Lawson and Finance Director Claussen, dated October 30, 2017, was filed.

Senior Assistant City Attorney Vigilia and Finance Director Claussen provided a synopsis of the report.

Mayor Halliday opened the public comments section at 10:24 p.m.



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Mr. Doug Chloupek spoke about over taxation and noted that a tax rate above 2.5% to 5% of gross sales will not allow businesses to operate.

Mr. Brent Alfieri supported a tax rate of 7% of gross sales over three years and assessing it at a distribution level.

Mr. Daniel Hovland favored a lower tax rate; noted the State was implementing an insurance program; and suggested a cryptocurrency for transactions.

Mayor Halliday closed the public comments section at 10:30 p.m.

Discussion ensued among Council Members and City staff regarding the cannabis tax rate.

Council Members offered the following suggestions: have the Council Budget and Finance Committee vet the cannabis tax rate proposal; three Council Members favored Option 2 (tax at 5% of gross sales for all cultivating and manufacturing and 8% for retail sales dispensaries); one member was amenable to a slightly lower cost for medicinal cannabis; one member favored a tax rate at 10% for retail (store front and delivery) and a lower rate of 5% for all other business except for testing facilities, and revisiting it in two years; and one favored a tax at 10% for retail and smaller increments as it gets closer to production.

CITY MANAGER'S COMMENTS

City Manager McAdoo announced that Assistant City Manager Hurtado was inducted as one of the vice presidents representing the West Coast to serve on the 2017-2018 ICMA Executive Board during the ICMA Annual Conference October 22-25, 2017, in San Antonio, Texas.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas wished everyone a happy Halloween, and encouraged everyone to drive slow as kids were anticipated to be out trick-or-treating.

Council Member Márquez acknowledged the Keep Hayward Clean and Green Task Force's participation in the Make a Difference Day event on October 28, 2017.

Mayor Halliday wished everyone a happy Halloween.

ADJOURNMENT

Mayor Halliday adjourned the special meeting at 10:46 p.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward