



## COUNCIL ECONOMIC DEVELOPMENT COMMITTEE

### MEETING MINUTES – March 2, 2020

**CALL TO ORDER:** Mayor Halliday called the Regular meeting to order at 4:01 p.m.

#### ATTENDANCE (September 2019-July 2020):

| Committee Member       | Present<br>3/2/2020 | All Meetings<br>Year to Date |        | Meetings Mandated<br>By Resolution |        |
|------------------------|---------------------|------------------------------|--------|------------------------------------|--------|
|                        |                     | Present                      | Absent | Present                            | Absent |
| Mayor Halliday (Chair) | ✓                   | 5                            | 0      | 5                                  | 0      |
| Council Member Mendall | ✓                   | 5                            | 0      | 5                                  | 0      |
| Council Member Salinas | ✓                   | 5                            | 0      | 5                                  | 0      |

#### OTHERS IN ATTENDANCE:

Kelly McAdoo, City Manager; Jennifer Ott, Deputy City Manager; Laura Simpson, Director of Development Services; Paul Nguyen, Economic Development Manager; Jeremy Lochirco, Principal Planner; Marcus Martinez, Associate Planner; Phillip Nichols, Code Enforcement Manager; Gabrielle Wright, Police Officer; Maggie Flores, Senior Code Enforcement Inspector; Suzanne Philis, Senior Secretary; Kim Huggett, Chamber of Commerce; Phillip Gardiner, Savannah Quan, Audrey Abadilla, Owen Wise-Pierik, Nathan Subramanion, Anna Lee, Blythe Young, Karen Halfon, Jessica Fuentes, Aleli Nortado, Maria Fernandez-Sotomayor; Pilar Cortes-Vega, Paula Anne Carreon

#### PUBLIC COMMENTS

Hayward Chamber of Commerce President and CEO Kim Huggett handed out the program for the 76<sup>th</sup> Annual Awards Gala honoring the Business Person, Educator, Police Officer and Firefighter of the Year; announced the ribbon cutting for ACES, an organization dedicated to enhancing the quality of life for individuals and families impacted with autism or other special needs; the soft opening of Craft Eatery at the former Cannery Café location; a small business training workshop on March 11<sup>th</sup>; and a luncheon featuring the General Consul of Mexico at the Golden Peacock on March 5<sup>th</sup>.

#### 1. APPROVAL OF MINUTES OF REGULAR MEETING FEBRUARY 3, 2020

A motion to approve minutes from the February 3, 2020 Regular Meeting was made by Council Member Mendall and seconded by Council Member Salinas. The motion was approved.

## **2. MISSION BOULEVARD CODE REGULATIONS UPDATE**

Mayor Halliday noted she had consulted with the City Attorney's Office and was told having a home in the hills above Mission Boulevard was not cause for recusal from the discussion.

Principal Planner and project manager Jeremy Lochirco introduced Associate Planner Marcus Martinez who gave the presentation. Associate Planner Martinez noted the two boundaries of the form-based code: the majority of Mission Boulevard with the exception of the downtown area which was covered under the Downtown Specific Plan; and the area south of Garin Avenue. Next steps included public hearings for both Planning Commission and City Council in May and June, he said.

Council Member Mendall asked if, in general, the request was to eliminate the formed-based code zoning types or to modify them. Principal Planner Lochirco said both. Feedback from Council, he said, was that the idea of the form-based code was too cumbersome and that it, along with the General Plan, had different visions. He said staff didn't want to start over, but to complement the work already done by memorializing the parts they liked. Principal Planner Lochirco also noted staff waited until the Downtown Specific Plan and the Industrial District Regulations had been updated to make the proposed changes to the form-based code.

Council Member Mendall asked if form-based zoning codes were being reversed back to typical zoning codes but with Mission Boulevard characteristics. Principal Planner Lochirco said yes. He said the changes were also consistent with the State which was requiring objective rather than subjective standards.

Council Member Salinas asked for an example of a subjective standard. Principal Planner Lochirco said in some cases it could mean the height of a building, the desired transparency of facades, or the location of specific open space. He said traditional zoning codes were all about uses, whereas the form-based code was about setting expectations and peppering in additional uses like ground floor retail to make it more viable.

Council Member Mendall said he was OK with getting rid of maximum parking requirements because Council kept undoing them anyway but asked if minimum parking requirements were also being removed for the entire form-based code area. Principal Planner Lochirco said that was correct. Council Member Mendall said he would be more comfortable if the revised form-based code included language requiring appropriate levels of parking or suggestions for non-zero levels of parking so Council could use that language as leverage if a large project didn't provide a high enough level of parking. If that was too subjective, he said staff could come up with a range.

Director of Development Services Simpson said any language in the code would have to be clear to meet state requirements. She said staff could provide a range. Principal Planner Lochirco said language could be included with a range that stated that any deviation would need to be part of the site plan.

Council Member Mendall noted under the current form-based code the Kmart site had dual zoning with more density in the middle. He said the new zoning would make it dense all across, but he asked if ground floor commercial would be required. Principal Planner Lochirco said the site was zoned commercial but code language only prohibited residential units on the ground floor; amenities serving the residential above, like a gym or leasing office, would meet the zoning requirements.

Because of the size of the development however, he said, it would receive major site plan review and that would allow for some discretionary review to take place.

Council Member Mendall said in the past he raised concern about a property on Foothill that was zoned commercial but the developer proposed all housing and the project conformed to code. He said he wanted to make sure that wasn't possible at the Kmart site. He wanted language that gave Council the leverage they needed to push for commercial and the clarity for developers so they didn't start down the wrong path. Principal Planner Lochirco said this feedback was helpful but said another question was whether commercial was viable on any street other than Mission (or major roadway frontages). Should commercial also be required on the smaller streets that intersected large projects, he asked.

Council Member Mendall said the last time they talked about it Council wanted to maintain the commercial feel along Mission with substantial retail components. He said there could be exceptions made on a case by case basis, but he still felt that way. Council Member Mendall said he didn't want a row of coffee shops along Mission.

Council Member Mendall received confirmation that all required small streets, initially intended to create small blocks, would be removed from the form-based code. He also expressed support of Council Member Salinas' suggestion to include language from Draft 2 of the code update to limit the types of commercial allowed either by-right or not at all including smoke shops, liquor stores and massage parlors. Of all the versions he said he preferred the more restrictive one. Associate Planner Martinez confirmed those types of uses would be prohibited. Principal Planner Lochirco said bar/cocktail lounge and microbrewery would be conditional uses. Council Member Mendall appreciated and approved the clarification and thanked staff for their work.

Council Member Salinas asked if the new zoning names could have aliases for marketing purposes like the "Health Corridor" or the "Health & Safety" corridor. Director Simpson confirmed he meant branding purposes. Council Member Salinas said by naming them residents who lived nearby would know they lived in a healthy corridor. Principal Planner Lochirco said staff could contextualize the description to identify themes for each zone noting the area north of downtown did have a different feel than areas south. Council Member Salinas confirmed that was the spirit of what he was trying to do.

Council Member Salinas confirmed and approved that existing prohibited retail uses in the form-based code would be kept and possibly expanded.

Council Member Salinas agreed with Council Member Mendall that the Kmart corner should not be 100% housing or just token retail. He said he wanted a heavy commercial development that could include housing. Council Member Salinas said at a recent meeting the Council of Infill Builders recommended flexibility, but he wanted language to expressively include that area be strongly commercial. He said he didn't understand why ground floor retail wouldn't be viable on Mission Boulevard noting the number of cars that drive by on a daily basis.

Mayor Halliday said the form-based code did not work in Hayward. It was meant for new, big open areas, she said, not for infill projects happening at different times. She said the small streets and roads didn't work because no one could anticipate what would be coming in on the next piece of property. Another thing she didn't want to see, she said, was housing fronting Mission Boulevard.

What she did want was community-building amenities. She said she was flexible in the types of retail uses, including things like a gym, community building, child, elder and pet daycare, but agreed with Council Members Mendall and Salinas to maintain the currently listed prohibited uses.

Mayor Halliday acknowledged that Mission Boulevard north of A Street was more business and car-oriented, while south Mission, with all the new housing, should attract the neighborhood-serving retail. She said Council should insist on it.

Mayor Halliday confirmed with staff that slip lanes would also be eliminated from the updated code. In the areas that did have commercial uses already, she asked if the City should start thinking about providing Uber and Lyft stops.

Mayor Halliday asked if the Kmart site could be zoned Commercial, Non-Residential. She noted it was a huge site and one of the best and only locations for neighborhood-serving retail including a supermarket. Principal Planner Lochirco said staff envisioned two commercial overlays, one for the Kmart site, one for the union hall, that would state that the site shall not be developed for residential uses on the ground or first floor except for a leasing office and/or community space. He said the CEDC could recommend a more restrictive use but in most cases, any project at these sites would go to Council for approval.

Mayor Halliday asked Principal Planner Lochirco to describe the type of residential projects that would be allowed for these sites. He explained that at those two sites under major site plan review, density would be enhanced to allow up to 75 residential dwelling units per acre (compared to 55 units now). He said staff was proposing site plan for review for any large site over two acres or with over 300 feet of lineal street frontage.

Mayor Halliday said Lincoln Landing was a good combination of housing and commercial. Council Member Mendall suggested staff set triggers so larger sites received Council review. Principal Planner Lochirco explained that the commercial overlay #2 would be slightly less restrictive but would only allow residential along the street frontage of a site with a conditional use permit.

Looking at one of the maps provided in the staff report, Council Member Salinas asked what the zoning would be at Mission and Pierce where currently there was commercial on one side of the street and residential on the other. Principal Planner Lochirco said Pierce was great example noting because that area had very small lots that wouldn't lend themselves to a lot of different options, single family homes would be allowed by right to keep with the character of the neighborhood. He also commented that some areas would be left out of the revised form-based code for the same reason.

Mayor Halliday asked if the item would be coming to Council Work Session. Principal Planner Lochirco said because the changes weren't huge policy issues the report would go straight to Council for approval. Council Member Mendall commented that Council was in agreement with most of the principles presented.

### **3. REVIEW AND DISCUSSION OF TOBACCO RETAIL LICENSE ORDINANCE AS IT PERTAINS TO THE ACCESSIBILITY OF TOBACCO AND VAPING PRODUCTS TO YOUTH**

Director of Development Services Laura Simpson introduced Maggie Flores, Senior Code

Enforcement Inspector, who gave the presentation, Phillip Nichols, Code Enforcement Manager, to answer any questions, and Detective Gabrielle Wright, who assisted with enforcement efforts. Senior Inspector Flores noted that per a Council referral, staff was asked to review the City's Tobacco Retail License (TRL) ordinance and regulations related to access to tobacco and vaping products by youth.

After the presentation, Mayor Halliday opened the item for Public Comments. The following people spoke in favor of stronger regulation of tobacco and flavored vaping products aimed at youth:

1. Paul Cummings, Tobacco Control Program Director for the Alameda County Department of Public Health
2. Aleli Nortado, Eden Youth Advisory Council Member and Chabot College student
3. Savannah Quan, Chabot College student and volunteer at the Eden Youth and Family Center
4. Pilar Cortes-Vega, Tennyson High School junior
5. Paula Anne Carreon, Tennyson High School junior
6. Jessica Fuentes, Mt. Eden High School junior
7. Maria Fernandez Sotomayor, Program Operations Assistant at the Eden Youth and Family Center, graduate of Cal State East Bay
8. Dr. Phillip Gardiner, Co-Chair of the African-American Tobacco Control Leadership Council, regarding a letter he sent advocating the removal of the menthol exception from the City TRL ordinance
9. Rosalyn Moya, Co-Chair for the Alameda County Tobacco Control Coalition, noted menthol was the second most popular flavor by youth
10. Jennifer Duncan, Substance Abuse Prevention Program Director at the Eden Youth and Family Center
11. Blythe Young, American Heart Association, distributed information
12. Anna Lee, Policy Coordinator, Alameda County Department of Public Health, distributed information
13. Karen Halfon, Executive Director, Eden Youth and Family Center

Council Member Mendall thanked Mr. Cummings for the history from 2014 noting that although the rules and regulations were strong then, they did leave quite a few loopholes. Council Member Mendall noted he co-sponsored the referral to review the City's tobacco ordinance.

Council Member Mendall said he agreed with almost all of the comments made by guests and only had a few comments about the seven staff recommendations. Regarding #1 he said yes, 6-12 months was a reasonable amount of time for the elimination of a business's legal, non-conforming status to be phased out and for the establishments to comply. He said all flavored tobacco products, including menthol, should be banned completely. He suggested that language be broad regarding what nicotine-delivery products were to be targeted by enforcement efforts so it could be interpreted to apply to new products.

Regarding the distance between tobacco retail establishments and schools, Council Member Mendall said efforts tended to be clumsy noting the first goal was to stop new tobacco businesses from opening, the second goal was to stop them from opening near a school. Instead he recommended a cap on the number of businesses. Hayward currently has 114 active tobacco retail establishments, so he suggested a cap of around 50 businesses. That said, Council Member Mendall wanted exception language included so Council could have the ability to overrule the ordinance if the business was a desired retailer such as a full-service grocer. He added that he would love to see something similar

for liquor stores.

Council Member Mendall said the minimum price point for any tobacco product should be \$8 regardless of whether it's a cigarillo or a pack of cigarettes. He said that seemed like the most effective way to eliminate any loopholes and the easiest way to support enforcement efforts.

Council Member Mendall ended by saying let's be leaders again and thanking everyone for coming.

Council Member Salinas asked why the City couldn't ban all tobacco and vaping products. City Manager McAdoo said that would be a legal question and there may be a due process the City would have to follow.

Dr. Gardiner said Beverly Hills banned all tobacco products, but the process was very complicated. He encouraged Members to start with banning flavors. Council Member Salinas said he still wanted to pose the question to the City Attorney noting the cap on the number of tobacco retailers for him was zero.

Council Member Salinas said the map distributed by one of the speakers clearly showed the inequities of distribution of tobacco products to low-income areas including downtown and along the I-880 corridor. He questioned why Council had approved adding cannabis to that mix. Council Member Salinas also expressed disappointment that he wasn't invited to co-sponsor the referral.

City Manager McAdoo said the City could move quickly to ban flavored tobacco products including menthol, but she recommended adding in exceptions to a complete ban.

Council Member Salinas asked if Trader Joe's or Wholefoods sold tobacco and was told no. He asked if Safeway sold tobacco and was told yes. He said if Safeway asked to open another store in Hayward, but they had to be able to sell tobacco products, he would say no. He noted the map of tobacco retail stores did not include Fairway Park, but only areas north of Tennyson including Harder, Jackson, and downtown.

In response to the questions posed by staff, Council Member Salinas said yes to banning flavored tobacco including menthol (then come back with a total ban); yes to phasing out legal non-conforming establishments; and yes to increasing the buffer zone around schools. He again questioned why they were increasing the buffer zone for tobacco but decreasing it for cannabis.

Council Member Salinas asked what would happen to stores that would get included in the larger buffer zone if it was expanded. Director of Development Services Simpson said they would be phased out; when a store closed it could not be replaced by the same use.

Council Member Salinas supported comments made by Council Member Mendall and the staff recommendation to add a section to the ordinance to address enforcement. He said his main concern was eliminating access to tobacco and to correcting the distribution of tobacco within the City noting things had gone hugely awry in the last generation.

Mayor Halliday commented that the City hadn't been able to get rid of the stores that were already here and although Council tried to take action through the form-based code, hadn't really added any restrictions. She agreed with including menthol in the ban of flavors and commented on marketing

efforts in the past and the shocking inventiveness of big tobacco to aim marketing efforts at young people. Mayor Halliday was also surprised to hear from speakers that schools were having such a difficult time restricting smoking including in the classroom.

Mayor Halliday noted the high number of inspections conducted of tobacco retail establishments (449) and the resulting 57 citations. She asked what types of establishment were receiving the most citations and confirmed that CVS banned tobacco products, but Walgreens did not. Detective Wright said all types including some major grocery stores, but mostly vape-only shops, gas stations and liquor stores, several of which were repeat offenders. Mayor Halliday asked how many citations a store could receive before the City shut them down. Senior Code Enforcement Inspector Flores said to-date none had been shut down due to citations.

Mayor Halliday agreed with Council Member Mendall that linear boundaries seemed difficult to enforce so she supported moving toward limiting the number of establishments. She questioned whether the City would run into legal roadblocks if licenses to sell tobacco became non-transferable but said the City should do what it could while still meeting state and federal requirements.

Council Member Salinas asked Mr. Cummings if there were any vape stores in the Montclair area of Oakland. Mr. Cummings said he didn't know of any off hand, but noted it certainly wasn't a low-income community of color. Council Member Salinas said that was his point; that was an example of an area that could grow and thrive, be prosperous and healthy without tobacco retail establishments. Being born and raised in Hayward, he said couldn't believe how many tobacco and liquor stores were in the City and noted it had been going on for a very long time.

Committee members thanked speakers for coming to the meeting and participating in the conversation.

#### **4. FUTURE MEETING TOPICS AS OF MARCH 2, 2020**

Mayor Halliday commented that the City was participating in the Plan Bay Area 2050 and noted the Association of Bay Area Governments had added a new Priority Production Area category for which the City nominated, and was accepted, the entire industrial crescent. She asked staff for a report on what that would do for the City and what that meant.

Economic Development Manager Nguyen said he attended an East Bay EDA Directors meeting and ABAG gave a presentation on the Plan. He said he could invite them to speak to the Committee. Council Member Mendall said that would be great just to make sure they didn't sign up for something they didn't intend to.

#### **COMMITTEE MEMBER ANNOUNCEMENTS AND REFERRALS**

Manager Nguyen gave a quick presentation of new businesses that opened, or were about to open, in Hayward including a Denny's across from Chabot College and Craft Eatery at the former Cannery Café location.

**ADJOURNMENT:** The meeting was adjourned at 6:09 p.m.