



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **PLANNING COMMISSION**

**NOVEMBER 7, 2013**

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CITY OF HAYWARD  
777 B STREET, HAYWARD, CA 94541-5007  
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LIVE BROADCAST – LOCAL CABLE CHANNEL 15

**AGENDA**  
**HAYWARD PLANNING COMMISSION**  
**THURSDAY, NOVEMBER 07, 2013 , AT 7:00 PM**  
**COUNCIL CHAMBERS**

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**MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:**

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

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**ROLL CALL**

**SALUTE TO FLAG**

**PUBLIC COMMENT:** (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

**ACTION ITEMS:** (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

**PUBLIC HEARINGS:** For agenda item No. 1, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision. For agenda item No. 2 and agenda item No. 3, the Planning Commission may make a recommendation to the City Council.

1. Adopt Findings for Denial for Conditional Use Permit (Application No. PL-2012-0069) and Vesting Tentative Tract Map (Application No. PL-2013-0070) associated with 194 townhomes and 16,800 square feet of commercial space on an 11.33 acre site located at 22301 Foothill Boulevard. Integral Communities (Applicant); MDS Realty II & 22301 Foothill Hayward, LLC (Owners)

**[Staff Report](#)**  
**[Attachment I - Findings for Denial](#)**



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

[Attachment II - Draft Planning Commission Meeting Minutes from October 17, 2013](#)

2. Text Amendment (PL-2013-0437 TA) to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities.

[Staff Report](#)  
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3. Related to internet gaming establishments, proposed revisions to the definitions section of the Hayward Zoning Ordinance (Section 10-1.3500) and proposed amendment to the Hayward Municipal Code adding Article 16 to Chapter 4 regarding simulated gambling devices; the project is exempt from environmental impact analysis, per the California Environmental Quality Act (CEQA Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment)); Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

[Staff Report](#)  
[Attachment I - Ordinance re Simulated Gambling Devices](#)  
[Attachment II - Ordinance re Definitions Amendments](#)  
[Attachment III - Findings](#)

**COMMISSION REPORTS:**

4. Oral Report on Planning and Zoning Matters
5. Commissioners' Announcements, Referrals

**APPROVAL OF MINUTES**

6. None.

**ADJOURNMENT**

**PLEASE TAKE NOTICE** that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

**NOTE:** Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.



**DATE:** November 7, 2013

**TO:** Planning Commission

**FROM:** Damon Golubics, Senior Planner

**SUBJECT:** **Adopt Findings for Denial for Conditional Use Permit (Application No. PL-2012-0069) and Vesting Tentative Tract Map (Application No. PL-2013-0070) associated with 194 townhomes and 16,800 square feet of commercial space on an 11.33 acre site located at 22301 Foothill Boulevard. Integral Communities (Applicant); MDS Realty II & 22301 Foothill Hayward, LLC (Owners)**

**RECOMMENDATION**

Based upon direction given to staff at the October 17, 2013 public hearing, staff recommends that the Planning Commission adopt the attached findings supporting the denial of the @ The Boulevard project.

**SUMMARY**

After listening to public testimony and reviewing the merits of the project, the Planning Commission on October 17 voted to deny the project, without prejudice, and directed staff to prepare findings supporting denial for the Commission’s consideration at its next meeting. In doing so, the Planning Commission encouraged the applicant to return with a slightly modified version of plans presented last summer.

Because the Planning Commission did not take final action on the project on October 17, 2013, the ten-day appeal period for the Commission’s decision to deny the project commences with the adoption of the findings for denial and runs from Friday, November 8<sup>th</sup> to Monday, November 18<sup>th</sup> at 5:00 p.m.

Information presented to the Planning Commission at the October 17 public hearing is available on the City’s website at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2013/PCA13PDF/pca101713full.pdf> . Attachment I contains the findings for denial for consideration by the Planning Commission and Attachment II contains the draft minutes for the October 17<sup>th</sup> meeting.

**NEXT STEPS**

Should the Planning Commission’s decision be appealed by an interested party or called up by a member of the City Council, a future hearing before the City Council would be scheduled.

Alternatively, the applicant could return to the Planning Commission with a revised site plan, tentative map and conditional use permit application that provides: 1) commercial and office uses on the ground floor fronting Foothill Blvd.; 2) higher-density housing and, potentially, a height variance to allow both higher-density housing and common area open space adjacent to the rear of the parcel; and 3) amenities and architecture ensuring the development of a high-end housing product.

*Prepared by: Damon Golubics, Senior Planner*

*Reviewed by: Pat Siefers, Planning Manager*

Approved by:



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David Rizk, AICP  
Development Services Director

Attachments:

Attachment I      Recommended Findings for Denial  
Attachment II     October 17, 2013 Draft Meeting Minutes

## FINDINGS FOR DENIAL

### Conditional Use Permit Application No. PL-2012-0069, and Vesting Tentative Tract Map Application No. PL-2013-0070

*Findings for Denial – California Environmental Quality Act:*

1. Pursuant to CEQA Guidelines Section 15270(a), CEQA does not apply to projects which a public agency rejects or disapproves.

*Findings for Denial – Conditional Use Permit:*

2. **The proposed use is not desirable for the public convenience or welfare.**

The Project, and specifically residential uses on the first floor of the Project, is not desirable for the public convenience and welfare because the Project will convert a large, vacant commercial building into a mixed-use community without ground floor commercial uses along the entire Foothill Boulevard frontage. This Project will not create the desired economic stimulus and high-density housing inventory near adjacent employment and retail centers to reduce vehicle miles traveled, nor will the Project, through both its site plan and its amenities, be considered a transit-oriented development. A transit oriented community is desirable at this location, which is less than one-half mile to the Hayward BART Station. No rental units are proposed as part of this Project. The Project would provide a low-density ownership housing product with few on-site amenities. Providing ground-floor residential units could provide more active “eyes on the street” later in evenings, in line with “crime prevention through environmental design” (CPTED) principles; however, ground floor commercial development along the entire Foothill Boulevard frontage with high density housing would better serve this part of Downtown Hayward. The site is considered a key opportunity site for Hayward commercial and office development due to its location close to Downtown Hayward, extensive frontage on Foothill Blvd., transit access, and size (11.33 acres). Sufficient lands exist elsewhere in the City for the type of residential, low-density development which this Project proposes.

3. **The proposed use will impair the character and integrity of the zoning district and surrounding area.**

The Project site is surrounded by a mix of residential uses, commercial uses and offices uses. The proposed addition of 194 townhomes would introduce a new residential product different from the existing residential mix of single family and medium density residential homes fronting Hazel Avenue and much of the neighborhood to the north (Rex Road, Oakview Avenue, Kimball Avenue, and Rio Vista Street). Also, more neighborhood-serving commercial space should be oriented towards the existing neighborhood to the north. Larger existing commercial space exists south of the project site serving the needs of downtown shoppers looking for such services. Specifically, this Project, as currently designed, focusses on complementing the existing downtown area and not the existing neighborhood to the north. Locating more neighborhood-serving commercial space oriented towards the north would not impair the character and integrity of the surrounding and would serve as a bridge or connection to this neighborhood. As currently designed, the project would impair

the character of the lower density neighborhoods to the north.

As designed, traffic leaving the Project on Hazel Avenue will be required to turn right eastward so that existing neighborhoods to the west would not experience increased traffic through their neighborhoods; however, the opportunity for pass-through traffic remains a potential problem associated with the design of the proposed development. The applicant had proposed islands in the middle of Hazel Avenue while a “pork chop island” design on the Project site was thought to be the best way to direct traffic back to Foothill Boulevard, a major arterial, instead of into the existing residential neighborhood.. There is no guarantee that either traffic design feature will preclude Project traffic from making illegal left turns from the Project site into the existing neighborhood, even with medians within Hazel Avenue or with pork chop islands designed into each Hazel Avenue egress point; thus, the Project has the potential to negatively impact the character and integrity of the existing lower density residential neighborhoods adjacent to the Project.

No specific evidence was presented at the Planning Commission hearing on October 17, 2013, that the Project would entail higher quality materials/finishes and architecture envisioned by the City. Only verbal affirmation by the applicant that these features would be incorporated into the Project at the time of building permit submittal has been provided. The Commission finds the Project submittal lacking in detail as to superior high quality materials, finishes and architecture. The applicant testified that the standard specification level for the townhomes would consist of tile entries, wood cabinets, pre-wiring, etc., but formal details of such specifications were not shown on the submitted plans, nor presented to the Commission for either interior or exterior treatments.

**4. The proposed use will be detrimental to the public health, safety, or general welfare.**

Public testimony identified issues that might be a detriment to the public health, safety and welfare. Those issues include concerns that cultural resources might be uncovered on-site during the demolition and construction phase of the Project and traffic impacts from the Project that could potentially worsen levels of service at intersections along Foothill Boulevard and the surrounding City street system. Based upon the analysis in the Project Initial Study, it is highly unlikely that cultural resources would be uncovered as part of any site construction; and traffic impacts would not worsen beyond the Hayward General Plan Circulation Element’s established environmental impact threshold policy for roadway intersection levels of service. The existing Mervyn’s headquarters building may be considered “historic” since the existing on-site structure is over 50 years old (the threshold for structures designated as historic) The recent Historical Resources Survey and Inventory Report doesn’t shown the former Mervyn’s Headquarters site as a historic resource even though it technically qualifies based upon the age of the structure. . Although the City’s park dedication standards require up to 3.18 acres of on-site public parkland, no public park would be provided as part of the Project (the nearest public park, Carlos Bee, is approximately one mile away from the Project site). Also, demand for on-street parking surrounding the site would increase if the Project were to be built.

The use of the reduced trip generation rates for access to BART may not be appropriate because the market for home-buyers, according to the developer, would be San Francisco Peninsula residents who work in Silicon Valley and BART does not serve that market. The transit orientation of the development has not been established, since the Project has no bus stop, no shuttle or other transit-friendly amenities and is providing three-car garages with tandem parking in many cases and a minimum of two-car garages for all units. The prior use, Mervyn's headquarters offices, provided a frequent shuttle to the Hayward BART Station.

The small commercial spaces proposed do not provide the size or type of commercial use warranted on Foothill Blvd. or the type of job generation commensurate with use of one of the last large commercial parcels centrally located in Hayward.

**5. The proposed use is not in harmony with the applicable City policies and the intent and purpose of the zoning district involved.**

The current General Plan designation of the site is Downtown - City Center / Retail and Office Commercial (CC-ROC). On page C-4 of Appendix C of the General Plan, the Downtown - City Center Area has the following text that explains the unique vision for this area:

“This area is a major activity center in the planning area. It contains major public facilities such as City Center and the Main Library, retail and office areas, and high-density residential areas. Mixed-use development is encouraged to promote the pedestrian orientation and to maintain the downtown area as an integrated living, working, shopping and recreational area. The boundary of this area is delineated in the Downtown Hayward Design Plan.”

Although this development is identified as a mixed use project, the attached single family townhomes cannot be considered “high-density residential.” The proposed density of the project is 21 units per acre. The allowable density is up to 65 dwelling units per acre. There is no lower end or minimum density standard for the site. With the exception of the new pedestrian/bicycle trail along San Lorenzo Creek, the Project as a whole cannot be viewed as pedestrian-oriented, given the great amount of covered parking that accompanies each new townhome fostering possible automobile usage, as well as the lack of sidewalks in the development and the lack of transit orientation. Also given the minimal amount of commercial space proposed, this development may not be considered an “integrated living, working, shopping and recreational area” in the Downtown area.

Page C-3 of that General Plan appendix lays out the vision for areas with a Retail and Office Commercial land use designation:

“These areas include the regional shopping center (Southland Mall), community shopping centers, concentrations of offices and professional services, and portions of the downtown area and South Hayward BART Station area where mixed retail and office uses are encouraged. Not shown are neighborhood convenience centers that support and are compatible with residential areas.”

Again, the minimal amount of proposed commercial space in relationship to the proposed attached single family townhome units cannot be considered the right mix of such uses as envisioned by the General Plan.

One additional section of the General Plan further speaks to what the Project should be pursuant to City policies:

“Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.”

This Project does not carry forward this key notion of having “continuous retail frontage to pedestrian shopping areas” since the design of the proposed commercial uses along Foothill Boulevard creates an “unwarranted intrusion” of attached single family housing unit to the detriment of other retail/commercial uses along this key frontage in Downtown Hayward. This Project does not “encourage residential and office uses to locate above retail uses.”

These sections of the General Plan show that the proposed Project is not consistent with the policies of the General Plan in that the Project provides ground floor residential use and minimal ground floor commercial use. City residents testified to their strong desire to have a major retail/office presence and a use that will generate good jobs at this key City development site.

It should be noted that this section of Foothill Boulevard is different from other sections of Downtown Hayward. This section of Foothill Boulevard is a multi-lane arterial with high-speed, high-volume vehicular traffic that is not very pedestrian-friendly. B Street is considered an example of a more pedestrian-friendly environment with a continuous retail frontage and presence, with lower volumes of traffic traveling at lower speeds in just two lanes. Future development plans for this site should try to design to this unique area of Downtown Hayward.

*Findings for Denial - Vesting Tentative Tract Map:*

**6. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451. [Subdivision Map Act §66474(a)]**

The proposed subdivision is not consistent with the Hayward General Plan, since the mixed use development request provides for an attached single family townhome product instead of a desired “high-density residential” development envisioned by the City’s General Plan. With the exception of the new pedestrian/bicycle trails along San Lorenzo Creek, the Project cannot be considered pedestrian oriented given the great amount of covered parking that accompanies each new townhome fostering possible automobile usage. Also given the minimal amount of commercial space proposed, this development would not be considered an “integrated living, working, shopping and recreational area” in the downtown area pursuant to the provisions of the “City Commercial – Residential

Office Commercial (CC – ROC)” land use category of the General Plan.

**7. That the design or improvement of the proposed subdivision is inconsistent with applicable general and specific plans. [Subdivision Map Act §66474(b)]**

The proposed subdivision is not of an acceptable design consistent with the Hayward General Plan, since the internal access roads within the Project are narrower than the required width for such private streets and require an exception to the City’s standard circulation design and roadways standards. The proposed Project is an underutilization of the site. A previous development plan for the site incorporated more housing units and additional ground floor commercial space designed into the Project, which was more in keeping with what the General Plan envisioned for this section of Downtown Hayward.

**8. That the site is not physically suitable for the type of development. [Subdivision Map Act §66474(c)]**

The geotechnical investigation performed by Berlogar, Stevens & Associates (February 10, 2012), which is referenced in the Project IS and MND, shows that the proposed subdivision might not be suitable for the proposed development since an additional geotechnical evaluation of the site is necessary prior to a building permit issuance for the Project. This site was formerly impacted by flooding and may be subject to future flooding.

**9. That the site is not physically suitable for the proposed density of development. [Subdivision Map Act §66474(d)]**

The site is too large and important by way of its location, size, zoning and existing structures (multi-level parking garage and office building) to dedicate to low density residential development. A Project that generates jobs and high density use is more appropriate for this key site in the City.

**10. That the design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. [Subdivision Map Act §66474(e)]**

The Project, as proposed, raises concerns about public service access, traffic and parking, consistency with local and regional plans, flooding hazards, a potentially important structure in the history of Hayward’s development, Native American artifacts and remains, and lack of usable open space in the common areas.

**11. That the design of the subdivision or type of improvements is likely to cause serious public health problems. [Subdivision Map Act §66474(f)]**

At the hearing, the public voiced concerns regarding safe access to adjacent neighborhoods due to the traffic into and out of the development and its impact on the surrounding street system. In addition, concerns were voiced about noise, parking, traffic and air quality during construction of the Project. The Project adds minimal housing inventory near adjacent employment and retail centers to reduce vehicle miles traveled,

which reduces impacts on air quality and greenhouses gases. A more intensive project (more housing units and additional commercial square footage) would provide greater benefit to adjacent employment and retail centers as envisioned by the City's General Plan.

**12. That the design of the subdivision or the type of improvements may conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. [Subdivision Map Act §66474(g)]**

There are no existing public easements within the boundary of the proposed subdivision, nor are any easements necessary. The Project site is fully developed and currently consists of a 336,000 square foot unused office building and parking facilities, and therefore, there is currently no public access through the property.



MINUTES OF THE REGULAR MEETING OF THE CITY OF HAYWARD PLANNING COMMISSION Council Chambers Thursday, October 17, 2013, 7:00 p.m. 777 B Street, Hayward, CA94541

sometimes viewed as the forgotten area in Hayward since most of the current developments have been occurring in Downtown Hayward and Mission Boulevard Corridor areas.

Commissioner Lavelle indicated her support of the motion. She appreciated the efforts being made by Rouse Properties in searching for a grocery store that could serve the Southland neighborhood. Commissioner Lavelle supported having an Asian grocery store noting that this was overdue to have in the community. She stated that there were already a few successful Hispanic supermarkets in the community. Commissioner Lavelle commented that the proposed site of the health club was perfect for new modern design and also pointed out that the restaurants in the Southland Mall area were doing well. She encouraged City Sports Club to be innovative in the programs that they offer and recommended that the facility consider coordinating outdoor activities.

Commissioner Márquez acknowledged Mr. Bogue for being present and for his comment regarding the need for a grocery store at the Southland Mall site. She conveyed to Rouse Properties that there were examples of malls that have gone through transformations and improved for the better and she expressed the same hope for Southland Mall. Commissioner Márquez recommended to the applicant to consider modifying the façade of the mall by having outdoor entrances to its stores.

Chair Faria supported the motion, commenting that the health club will be a significant improvement to the area and also appreciated the efforts being made to bring a grocery store to the Southland Mall site.

- AYES: Commissioners Loché, Trivedi, McDermott, Lamnin, Márquez, Lavelle  
Chair Faria
- NOES: None
- ABSENT: None
- ABSTAINED: None

2. Request for adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approval of a Conditional Use Permit (Application No. PL-2012-0069) and Vesting Tentative Tract Map (Application No. PL-2013-0070) associated with 194 townhomes and 16,800 square feet of commercial space on an 11.33 acre site located at 22301 Foothill Boulevard. Integral Communities (Applicant); MDS Realty II & 22301 Foothill Hayward, LLC (Owners)

Senior Planner Golubics provided a synopsis of the report. He pointed out that staff proposed to modify Conditions of Approval Nos. 12 and 47. Staff recommendation was that Condition of Approval No. 47 be stricken, as this was similar to Condition No. 12; and Condition No. 12 was the preferred one. There was a Condition of Approval No. 26(h) which addressed traffic improvements. One of the conditions which they had before was for raised medians on Hazel to prevent left turn movements out of the project site. He noted that staff recommendation was to change the language from having raised medians to incorporating "pork chop" islands. Staff recommended that

Condition of Approval No. 64(d) which related to the grading and building permit requirements be modified to state that “Prior to issuance of Building or Grading Permits, a final clearance **if required** shall be obtained from..” in order to give flexibility to the applicant.

Senior Planner Golubics said that staff looked at the fiscal impact analysis of the project. He stated that if the townhomes – range for pricing of townhomes \$518,000 and \$608,000 – if entire project was sold at the minimum sales price of \$518,000 there would be a negative impact of \$9,609 on the finances of the City; however if the entire project was sold at the higher price, then City would gain \$7,279. If there were entire development were to sell for mixed prices between the range, then it would not be a drain on the City resources to drain this project.

Staff recommended that the Planning Commission adopt the mitigated negative declaration...

Senior Planner Golubics clarified for Commissioner Trivedi that the cost differential to the City would be for the whole project, and were based upon the lower and higher end of the suggested sales prices of the homes. The deficit or impact to the City would be \$9,609. These were conservative estimates made by staff using their analysis tools. The sale price of \$608,000 would be a gain to the City of \$7,279.

In response to Commissioner Trivedi’s question regarding the traffic impact of the proposed development, Senior Planner Golubics stated that in comparing the traffic at the time when Mervyns was in operation to the present day, there was a significant reduction in traffic evidenced today.

Commissioner Loché thanked staff for the report. In response to Commissioner Loché’s question, staff confirmed that the development would be located approximately ½ mile away from the BART station. Commissioner Loché expressed that he was doubtful that individuals residing at the proposed development would walk to the BART station as they would have to cross some major roadways.

Senior Planner Golubics indicated that there was no direct route leading from the project site to the BART station. He mentioned that the traffic analysis which was performed revealed that there was a reduced impact on traffic as people were using transit options and were walking to the existing retail and commercial uses in the downtown area.

Director Rizk noted that there may not be a notable change in the traffic impact, but there was reduction in traffic nonetheless in terms of people walking to BART and/or taking buses.

Transportation Manager Frascinella stated that the development was considered to be transit oriented due to its close proximity to BART. He noted that the development was projected to result in a 9% reduction of vehicle trips in the area.

Senior Planner Golubics responded to Commissioner Loché’s question that staff was not aware if the applicant had any confirmed businesses that could occupy commercial spaces in the Central City-Commercial (CC-C) zoning district. He further noted that that there were certain permitted and conditional uses that would be allowed in the CC-C zoning district.

Commissioner Lamnin appreciated the amount of work that staff and the applicant have done on the project. She asked staff to address what type of drain the proposed development may have on City



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CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, October 17, 2013, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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resources.

Senior Planner Golubics responded that the financial drain on City resources would be the services that would be offered to new residents at the development site; these would consist of police, fire, sewer and water services. He confirmed for Commissioner Lamnin that this would be mitigated by the community facilities district which was included in the conditions of approval.

Senior Planner Golubics noted for Commissioner Lamnin that there will be a new building code that will become available January 1, 2014 and this will include green standards that were much higher than the City standards that were in place today.

Commissioner Márquez thanked staff for the report. She asked staff to address why rental units were no longer an option in the proposed development.

Senior Planner Golubics responded that this was a decision taken by the developer to go for a for-sale housing product instead of having a rental units available and he indicated that the developer could elaborate more on the reasoning behind this business decision.

Commissioner Lavelle asked staff to clarify if one of the open space areas was intended to be used for a park or if it was a bio-retention area.

Senior Planner Golubics indicated that this space was ended to be used as a park and also as a bio-retention area; however, he noted that the final design of this had not been put forth yet. He stated that this section of the development was not included in the open space requirement and confirmed for Commissioner Lavelle that the open space requirement had already been met in the proposed plan because every townhome in the development will have a private outdoor deck in addition to there being group open space areas.

Senior Planner Golubics stated that another nearby place for residents of the new development to visit for recreational use was the Carlos Bee Park.

Commissioner Lavelle expressed that the California Code of Regulations (CCR) should not prohibit homeowners in the proposed development from being able to barbeque on their private outdoor decks, especially if the development did not possess a park where residents could barbecue.

Senior Planner Golubics stated that staff would make a note of this when they are reviewing the CCR, prior to forwarding this to the City Attorney's Office for review.

Commissioner Lavelle stated that it was odd that the developer was required to report information on the sales price and the annual income levels of future residents and she also indicated that it was important to be cognizant of the fact that the prices of the townhomes may even fluctuate after the development of the site to an amount outside of the described price range of \$518,000 to \$608,000.

Senior Planner Golubics responded that Commissioner Lavelle raised a good point regarding Condition of Approval No. 12 needing more flexibility. He noted that the goal behind the estimated pricing range of the townhomes in the development site was intended to bring in households that had a higher level of income.

Commissioner Lavelle pointed out that Condition of Approval No. 47 which was proposed to be removed by staff, contained language that would allow the Development Services Department to review the sales price information of the townhomes in the development site, and she noted that Condition of Approval No. 12 did not have this language. Commissioner Lavelle commented that the language of Condition of Approval No. 12 appeared odd to her because she had not seen such language included in conditions of approval before. She stated that she was aware that the intent of the proposed development was to draw households with upper and middle level incomes to Hayward and that she was agreeable with this.

Director Rizk commented that the objectives of Conditions of Approval Nos. 12 and 47 was that the targeted population of residents would be attracted to the development site as the townhomes will have moderate to higher range sales prices. He expressed that Condition of Approval No. 12 does provide the flexibility which Commissioner Lavelle had alluded to. Director Rizk stated that staff could revise the language of Condition of Approval No. 46 to state that the household income level may generally be in the range of \$133,600.

Commissioner Lavelle stated that the language of Condition of Approval No. 46 needs to be modified to note that the \$133,600 average annual household income level was in support of the City's goals to attract middle income level residents to the proposed neighborhood.

Commissioner Lavelle expressed to staff that the design and layout depicted in the current drawings of the townhomes (Attachment V) were vague. She stated the new developments in the City should have a design which was modern and attractive, especially if the goal was to attract middle to high income level homeowners.

Director Rizk stated that the language of Condition of Approval No. 46 does include that residential units will be constructed using high quality materials and finishes and this condition of approval will allow staff to review the design plans of the project as they become available. Commissioner Lavelle responded that she would prefer that more specific language be added to the condition of approval.

Commissioner Lavelle asked staff what will happen to the park dedication in-lieu fees which the developer will be paying to the City amounting to \$2,210,630 and how will this be utilized in the future.

Mr. Larry Lepore, Park Superintendent of the Hayward Area Recreation and Park District (HARD), stated that the park dedication in-lieu fees were required to be deposited into a trust account which was managed by the City and the County of Alameda. He noted that the City of Hayward had five zones and the park dedication in-lieu fees could be utilized for HARD projects belonging to these five zones.

Chair Faria mentioned that the staff report did not contain sufficient floor plans of the proposed



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development. She asked staff if the residential units would have charging stations for electric vehicles.

In response to Chair Faria's question, Senior Planner Golubics stated that charging stations for electric vehicles may be included as a requirement for the developer to have on-site. He noted that on page 21 of the floor plans, there were four different unit configurations.

In response to Commissioner Márquez's question, Director Rizk responded that four community meetings were held over the last year and a half.

Chair Faria opened the public hearing at 8:58 p.m.

Mr. Mark Butler, representative for Integral Communities, thanked staff for working with his company for the last two years on the development project. He noted that the project started off as a much larger community that consisted of 557 rental units and this was reduced to 194 for-sale units, after doing lots of community outreach.

Commissioner McDermott disclosed that she met Mr. Butler regarding the proposed development.

In response to Commissioner McDermott's question, Mr. Butler shared that the community outreach also consisted of meeting with members of Prospect Hill, who preferred the for-sale housing over the rental units. He commented that the reduction in the housing units also helped to soften concerns about increased traffic. Mr. Butler noted that to disperse the traffic in the development area, more access points were added along Hazel Avenue, City Center, and Foothill Boulevard. He added that a pedestrian corridor was added along San Lorenzo Creek. Mr. Butler pointed out that there will be a buffer between the townhomes along Foothill Boulevard which will serve to separate these units from the street.

Commissioner Márquez disclosed that she met with Mr. Butler regarding the development project.

In response to Commissioner Márquez's question, Mr. Butler indicated that the retail space will be constructed at the same time as the residential community. He shared that Integral Communities had spoken with some prominent landlord families that were situated in Hayward; however, they have not started the marketing for the retail sites yet.

Mr. Butler responded to Commissioner Márquez's question that there were no plans to utilize a shuttle service from the development to BART.

Commissioner Lamnin disclosed that she met with Mr. Butler and expressed her appreciation for developing a good plan for the community and for the investment that Integral Communities was making in Hayward. She asked Mr. Butler how many retail spaces the development would consist of.

Mr. Butler responded that there was a total of 16,800 square feet of commercial space; however, they have not yet determined how many retail uses will occupy the commercial site.

Commissioner Lamnin asked staff if the project considered having first floor living space, pointing out that one of the floor plan options presented by Integral Communities had the potential of having a bedroom and bathroom on the first floor; however, the kitchen facilities and remainder of the living space was all upstairs.

Mr. Butler stated that all of the units have a large garage for two cars with extra storage space, noting that some of the plans could even accommodate three cars to being parked side by side. He shared that one of the floor plans had a standard bonus room downstairs and three of the four plans had the option of adding a bedroom to the first floor. He noted for Commissioner Lamnin that a master suite could be built on the first floor which would consist of a bedroom, bathroom, and a kitchenette.

Commissioner Trivedi said that the proposed project did not contain many community amenities and asked Mr. Butler to clarify who the targeted population was that would be purchasing the housing units.

Mr. Butler responded that there were landscaped paseos that run between the front doors of the housing units, noting that neighboring units had common meeting areas and that there was a place for residents to place their barbecue grill. He commented that the design plan of the proposed development was better than the Grove at Cannery Park townhouses and described the location of the proposed development as being a better location than the Cannery, and thus being a proven marketplace. Mr. Butler exemplified that the targeted population of homeowners for the proposed site could be mid-level managers or individuals working in Silicon Valley or the peninsula. He explained that the townhomes would have luxury amenities like wood cabinets and optional feature such as stainless steel appliances, granite countertops.

In response to Commissioner McDermott's question, Mr. Butler noted that the proposed development would approximately be priced \$25,000 more than the townhomes being sold at the Grove at Cannery Park.

Commissioner McDermott pointed out that some higher-end homes nowadays already came standard with amenities such as granite countertops and stainless steel appliances.

Mr. Butler stated that he was not aware of what the exact cost of the residential units would be including the optional features as the development would be built by a venture partner of Integral Communities; however, he shared that the optional features may raise the price of the homes by approximately 3-4%.

Mr. Butler clarified for Commissioner Márquez that all of the living space for the residential units were on the second and third floors; however, it was optional to have living space on all three levels by having ground floor living and this would be possible in three of the four floor plans. He said the units that have the ground floor living in addition to the second and third floors would depend on the builder. Mr. Butler noted that this design might work for someone who was disabled, for instance.



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Commissioner Márquez commented that it was important to her that the development take into account that a design plan was needed which would promote aging in place of potential residents at the development site.

Mr. Butler confirmed for Commissioner Trivedi that the development would not be a gated community and that the streets, park and trail would be privately maintained.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, stated that twelve of the fourteen businesses that were participating in the Hayward Restaurant Walk supported the proposed project. He shared that there were potentially four restaurants that may be coming to Hayward and that these restaurants also expressed interest that the proposed development would attract residents with disposable income to Hayward. Mr. Huggett shared the idea that the downtown area can be rejuvenated by creating residential units. He noted that the business members of the Chamber were pleased with the Planning Commission's recent decision to approve sixty units of senior housing on A Street.

Ms. Gail Brooks, property owner at Vista Del Plaza Lane, stated that her property was situated diagonally across the former Mervyns headquarters and indicated that she was in opposition to the proposed development. Her preference was to have the site remain commercial use as this would create jobs. Ms. Brooks said that if the site was to remain commercial use, there would be less crime occurring in the neighborhood. She noted that there were a myriad of problems related to Foothill Boulevard and some of these problems were auto air population and the homeless problem. She said that if the Planning Commission did approve the project, her recommendation was that the AC Transit bus stop be moved from the north part of City Center Street to the south part of City Center Street. Ms. Brooks shared that the intersection at Hazel Avenue and City Center Street was a heavily traveled section and suggested that traffic be directed to the opposite side of the development where drivers could make a right or left turn. Ms. Brooks recommended that before the development of the residential units was completed, that the City require that the developer have a major retailer committed to the proposed retail site in order to avoid more empty storefronts in Hayward.

Ms. Brooks confirmed for Commissioner McDermott that it was her opinion that the proposed development would create more traffic congestion.

Mr. Frank Goulart, with business address on Main Street, noted that for CEQA purpose, the parking lot of the former Mervyns headquarters experienced some flood problems in the past. He shared that the proposed development area was an ancient lake bed and requested that a condition of approval be added requiring that Native Americans be notified when digging was occurring on the site. Mr. Goulart stated that the Integral Communities team had been friendly and responsive to his concerns; however, he disagreed with changing the Mervyns site from a commercial zone to a residential zone. He stated that the Mervyns site was originally intended to be changed into a new commercial development site and the goal was to preserve the Historic Mission Corridor. Mr. Goulart agreed with utilizing the ground floor for commercial uses and having residential uses on top. He

commented that the residential uses above the ground floor commercial space could be used for student housing for California State University East Bay students. Mr. Goulart mentioned that the study conducted by Dr. Howard and the San Luis Obispo University students explored having a convention center at the Mervyns site in addition to a couple soccer fields, and he commented that this would have been a good economic generator for the City. He compared the proposed development to the development by the downtown Hayward BART station which he described as being a dangerous area because there was a lack of commercial activity mixed into the area. Mr. Goulart advised the Planning Commission to hold off on taking action as the site of the proposed project was a prime commercial property in downtown Hayward, and he noted that this was the only location in downtown Hayward where a convention center could be located.

Mr. Larry Lepore, stated that HARD staff had worked directly with Integral Communities in developing a bike path and he expressed his support of the development. He shared that the vision was to have a trail from the shoreline going all the way to the ridge trail. Mr. Lepore commented that it was important to ensure that trail links do happen in order to continue with the vision, and he indicated that the developer had linked the pathway in the development site with the trail.

Mr. Lepre confirmed for Chair Faria that he was satisfied with the increase in the width of bike path to eight feet.

Mr. Charles Butterfield, real estate broker with Butterfield Real Estate Firm based in San Jose, stated that he had over thirty years of experience in real estate. He commented that in contrast to what was stated in the staff report, his belief was that the Mervyns building was an important historic structure for Hayward. Mr. Butterfield stated that the payment amount of approximately \$2.2 million was not an adequate amount to pay for the compensation of the park dedication in-lieu fee for 3.2 acres of land. He recommended that the development should not rely upon parking on public streets for additional overflow parking. Mr. Butterfield disagreed that the traffic impacts caused by the proposed development would be insignificant stating that residents at the proposed development would not be taking BART to commute to work in the Silicon Valley as BART does not continue that far.

Ms. Latina Ellis, resident of Hazel Avenue, stated that her home was located directly across from the Mervyns site and she emphasized that she works, lives, and plays in Hayward. She was concerned as to how the nearby existing community that she resides in would be affected by the proposed development, especially during construction period. Ms. Ellis wondered if the proposed development would eventually lead to the redevelopment of the surrounding neighborhood where she resides. She shared that there would be increased traffic on Hazel Avenue as a result of the development.

Mr. Michael Urioste, resident of Prospect Street, commented that it appeared to him that a decision had already been made and that the proposed development was going to be approved, whether he as a member of the community liked the project or not. He shared that he had made several efforts to get a copy of the study conducted by Dr. Howard on other possible uses at the former Mervyns headquarters, and he indicated that he was unable to get a copy of this report.

In response to Mr. Urioste's comments, Commissioner McDermott stated that as a Planning Commissioner, she always made an informed decision regarding Planning matters after she had



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read and reviewed all of the information made available to her in staff reports.

Mr. Larry Ball, resident of Hazel Avenue, said the current neighborhood was ethnically diverse and that it consisted of good people and blue-collar workers. He indicated that individuals passing by the neighborhood seem to be the ones causing the problems. Mr. Ball stated that the lighting in the neighborhood was bad and that they were experiencing problems tied to prostitution and homelessness, all caused by blight. He shared that the residents in his neighborhood feel neglected, noting that his neighborhood was not consulted regarding the proposed development even though they were located across the street from the site of the project. Mr. Ball expressed that a commercial development at the former Mervyns site may benefit the members of his neighborhood through the provision of jobs.

In response to Mr. Ball's comments, Commissioner Trivedi responded that the problems that the Mr. Ball's neighborhood was experiencing with blight, may be caused by the fact that the former Mervyns site was a big vacant lot at the moment. Commissioner Trivedi stated that he was glad that City staff was present to make a note of Mr. Ball's concerns.

Commissioner Lamnin requested that staff follow up with Mr. Ball and organize a neighborhood partnership meeting where the problems related to lighting and crime can be examined.

Commissioner McDermott commented that a project of this magnitude should have consulted the surrounding neighborhood.

Mr. Mark Donahue, a Hayward resident, stated that the former Mervyns site was viable to be restored. He indicated that the housing units at the proposed project will take a longer period of time to sell than the developer had described. Mr. Donahue shared that there will be a four to five year interruption to the existing community on Hazel Avenue. He shared that he had a business plan for the proposed site which could be used to employ 15,000 people.

Chair Faria closed the public hearing at 10:07 p.m.

Commissioner Lavelle stated that she was generally in support of the project. She clarified that the Planning Commission had the responsibility of either approving the project or declining it. Commissioner Lavelle recommended that the following language be added to Condition of Approval No. 46, "Higher incomes households has been defined as...annual income of \$133,600, **to demonstrate meeting the City's goals for diverse housing.**" Commissioner Lavelle stated that staff had proposed that Condition of Approval No. 47 be removed. She recommended that this condition of approval be substituted with another statement saying that "**A specific design element should include details on the windows of the units, including such items as awnings, shutters, and other window designs. The roofing of the townhomes should consist of varying materials and colors.**" Commissioner Lavelle noted that on Condition of Approval No. 42, there was reference to the final exteriors of the building, she requested that the following text be added to the end of this condition: "**there shall be no pink, orange, or purple paint on the exterior of any of**

**the buildings.”** She commented that the downtown area needed a consistent look and feel and she stated that the proposed project should look equally attractive and modern.

Commissioner Trivedi expressed that he was still torn about the project and that he didn't think that it was probable to have a new corporate entity occupying the entire former Mervyns site. He indicated that he was in support of having part of the site consist of housing units. He commented that although the proposed development attempted to attract a specific target population to the downtown area as potential homeowners, he expressed that he was underwhelmed with the designs of the townhomes which were presented by the developer. Commissioner Trivedi stated that it was important to have more commercial opportunities in the proposed site. He said that the townhomes appeared to be crammed into the proposed site and that there were not many amenities available to prospective residents, causing him to doubt the attractiveness of the housing units at the given price point.

Commissioner Loché shared that he met with the developer during a previous phase. He stated that the developers operated in good faith on this project and this was exemplified in how they reached out to the community. Commissioner Loché stated that he was a proponent for bringing more residential uses to the downtown area, which was why he supported the senior housing project; however, he pointed out that the proposed site was a key location in the downtown and that he believed it was possible to have a business entity in this commercial site. He recommended that it was too soon to decide what to do with the proposed site. Commissioner Loché mentioned that the Mervyns headquarters closed in 2008 and that the last five years of the economy were the worst since the Great Depression. He stressed that it would be a mistake if the City gave up right now in finding a new company to occupy the former Mervyns site. Commissioner Loché said that no residents in Hayward have said to him that the proposed development was what the City needed at this location; instead, the feedback that he got was either that the building was sitting vacant so let's put anything there or that the proposed development was not right for this site. He indicated that a project which was a better fit for the site was needed. Commissioner Loché underscored that he could not support the project for these reasons.

Commissioner Lamnin said that she was equally challenged regarding her stance on the proposed project. She acknowledged the hard work that Integral Communities had done in putting together the proposed development, emphasizing how responsive they had been to the community and that the developer acted as a good neighbor to the community. She disagreed that this project was reflective of what the surrounding neighbors envisioned for the site. Commissioner Lamnin shared that in the past, she worked near Hazel Avenue and thus she understood the traffic problems the proposed development might create. She stated that a project which had first floor retail and had multi-floor renters above the retail uses would be more acceptable to her. She mentioned that a development with mixed units that were for-sale and rental units would be beneficial to the area. Commissioner Lamnin said that the community had voiced that they wanted families and students to be able to live in this downtown area. Commissioner Lamnin recommended that the proposed development project be revised and modified to include university and retail inclusion, in addition to the development contributing to the creation of jobs for members of the community.

Commissioner Lamnin made a motion that the applicant revise the proposed development and then bring this project back to the Planning Commission for reconsideration.



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Commissioner Márquez seconded the motion.

Commissioner McDermott stated that one of the major concerns in the development area was parking. In regards to the utilization of public transit, she noted that the public would be more inclined to use public transportation if it were made easily accessible.

Mr. Goulart confirmed for Commissioner McDermott that the Prospect Hill residents were opposed to having housing on the ground floor.

Commissioner McDermott stated that prior to starting an establishment at a certain location the business would perform a demographic study of the area. She stated that the development project being proposed by Integral Communities would help shift the demographics of the community, making the City more attractive to other businesses. She pointed out that downtown businesses were hoping for uses that would sustain their business. Commissioner McDermott said that she was not supportive of a motion requiring that this item be brought back.

Commissioner Márquez seconded the motion requiring that the item be brought back to the Planning Commission for approval after it had been revised. She realized the importance of having residential units in the downtown area as it would rejuvenate the economy; however, she felt that the proposed housing development was too dense and it might lead to increased traffic concerns in the future. Commissioner Márquez expressed that she had mixed feelings about modifying the zoning of the site from commercial to mixed use. She noted that if the economic situation was different, the City could bring in anchor stores to the area such as Target, Michaels, Starbucks, to name a few which would assist in job creation as this was a dire need in the community. Commissioner Márquez stated that she liked the binder which was presented to Planning Commissioners during summer 2013 as this design plan contained residential uses that were apartment units and the plan also included beautiful outdoor amenities. She was disappointed that a lot of features from the previous design plan have changed. Commissioner Márquez stressed the importance of having housing options for students and also having housing units that would support the aging in place of Hayward's older residents. She indicated that there were too many unknowns and concerns with the proposed project. She applauded Integral Communities for their hard work; however, she was not comfortable going forward with the project based upon the information received at the present meeting.

Commissioner Lamnin indicated that the project presented over the summer was different than the current proposal, noting that the previous design plan seemed to have addressed more of the communities' concerns. She said that the current proposal included the option for residents to have up to a three car garage which identified that the intent of residents living in this neighborhood would be to drive. Commissioner Lamnin stated that there were many questions with the current plan and that it seemed incomplete.

Commissioner Lavelle commented that if the preference was to not permit the residential units to have three car garages, conditions could be placed requiring that the ground floor space be used for

an in-law unit or adding an additional bedroom. Commissioner Lavelle noted that three car garages would be a preferred option because this would help reduce the number of vehicles being parked on the streets.

Commissioner Lamnin rephrased her motion, to deny the proposed application without prejudice and give Integral Communities the opportunity to come back with a revised plan and direct staff to bring back findings for denial.

Commissioner Márquez seconded the motion.

Chair Faria noted that Hayward was in need of jobs and businesses; however, she did not think that it was possible to have a large company build a store other than a mall at the proposed site. Chair Faria pointed out that the progression of technology had resulted in most people shopping online and that due to this more stores have downsized their facilities. She said that mixed development such as the proposed project was needed because it contained residential units which would help to support the downtown area.

- AYES: Commissioners Loché, Trivedi, Lamnin, Márquez
- NOES: Commissioners McDermott and Lavelle  
Chair Faria
- ABSENT: None
- ABSTAINED: None

**COMMISSION REPORTS:**

~~3. Oral Report on Planning and Zoning Matters~~

~~Director Rizk responded to Commission Lamnin's request about an alleged auto repair that was occurring on the streets of Pompano Avenue. He reported that Code Enforcement staff looked into this and they did not see any auto repair occurring on the street.~~

~~Director Rizk shared that there will be a Special Planning Commission Meeting held on Thursday, October 24, 2013 which will be a General Plan Update Work Session. He noted that on Thursday, November 7, 2013, the first item which the Planning Commission will review will be a text amendment related to internet gaming and the second item will be related to the housing element stated in the General Plan Update and also related to transitional and supportive housing.~~

~~4. Commissioners' Announcements, Referrals~~

~~None~~

**APPROVAL OF MINUTES**

~~5. September 5, 2013 – Unanimously approved~~

~~6. September 19, 2013 – Unanimously approved with one correction and Chair Faria abstaining~~

**DATE:** November 7, 2013

**TO:** Planning Commission

**FROM:** Sara Buizer, AICP, Senior Planner

**SUBJECT:** Adoption of Negative Declaration and Request for Text Amendment (PL-2013-0437 TA) to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities. Applicant: City of Hayward

## **RECOMMENDATION**

Staff recommends that the Planning Commission recommends that the City Council adopt the Negative Declaration and approve the proposed text amendment to: (1) add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) replace Section 10-1.145 of the Zoning Ordinance with new Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities, subject to the attached findings.

## **SUMMARY**

The General Plan Housing Element and Municipal Code, including the South Hayward BART/Mission Boulevard Form-Based Code and Zoning Ordinance, need to be modified to be consistent with State law and to qualify for a streamlined review by the State Housing and Community Development (HCD) Department of the Housing Element update. Without these amendments in place, the certification of the Housing Element is in jeopardy. Absent a certified Housing Element, the City may not qualify for funding for future housing development projects, including the provision of affordable housing.

## **BACKGROUND**

The City is in the process of a Comprehensive General Plan Update, including an update to the 2010 adopted Housing Element. Government Code Section 65583 and 65583.2 require the

housing element to provide for a variety of housing types, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

The housing element must also identify a zone, or zones, where emergency shelters are a permitted use without discretionary review (Government Code Section 65583(a)(4)) and demonstrate that transitional housing and supportive housing are considered a residential use and subject to only those restrictions that apply to other residential dwellings of the same type in the same zone.

Government Code Section 65583(a)(4) requires an analysis of potential and actual government constraints upon the maintenance, improvement or development of housing for persons with disabilities, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis should also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for housing for persons with disabilities.

Government Code Section 65583(c)(3) requires that the housing element provide a program to address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities. The program shall remove constraints to and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

## **DISCUSSION**

Transitional and Supportive Housing - State law requires that the City treat transitional and supportive housing as a residential use, subject to those restrictions that apply to other residential dwellings of the same type in the same zone. Transitional and supportive housing must be permitted in all zones that allow residential uses and cannot be subject to any restrictions not imposed on similar dwellings in the same zone. Staff is proposing to make two amendments to comply with this State law. The first is to add a definition for Transitional and Supportive Housing to Section 10-1.3500 (Definitions) of the Zoning Ordinance which says the following:

**TRANSITIONAL AND SUPPORTIVE HOUSING.** Transitional and supportive housing are permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone.

Secondly, staff is proposing to amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both transitional and supportive housing as allowed functions.

Reasonable Accommodations - State law also requires that the City have an established program or process to provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Section 10-1.145 of the Hayward Zoning Ordinance includes a statement that the “Zoning Ordinance do(es) not preclude providing reasonable accommodations for persons with disabilities.” However, the section does not outline a program or process for reasonable accommodations. Staff is proposing to replace Section 10-1.145 with a new section outlining such a process. Below and Attachment III includes the modified Section 10-1.145.

SEC. 10-1.145 REASONABLE ACCOMMODATION.

A. Purpose. The purpose of this Section is to provide a procedure for individuals with disabilities to request reasonable accommodation in seeking equal access to housing under the federal Fair Housing Act and the California Fair Employment and Housing Act (hereafter “Acts”) in the application of zoning laws and other land use regulations, policies, and procedures.

B. Applicability.

1. A request for reasonable accommodation may be made by any person with a disability or their representative, when the application of a requirement of this zoning code or other City requirement, policy, or practice acts as a barrier to fair housing opportunities. For the purposes of this section, a “person with a disability” is any person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has record of such impairment. This section is intended to apply to those persons who are defined as disabled under the Acts.
2. A request for reasonable accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.
3. A reasonable accommodation is granted only to the household that needs the accommodation and does not apply to successors in interest to the site.
4. A reasonable accommodation may be granted in compliance with this Section without the need for the approval of a variance.

C. Procedure.

1. A request for reasonable accommodation shall be submitted on an application form provided by the Development Services Department or in the form of a letter to the Director of Development Services, and shall contain the following information:
  - a) The applicant’s name, address, and telephone number;
  - b) Address of the property for which the request is being made;

- c) The current use of the property;
  - d) The basis for the claim that the individual is considered disabled under the Acts, including verification of such claim;
  - e) The zoning code provision, regulations, or policy from which reasonable accommodation is being requested; and
  - f) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
2. If the project for which the request for reasonable accommodation is being made requires some other discretionary approval (including use permit, design review, etc.), then the applicant shall file the information required by Subsection C1 of this Section for concurrent review with the application for discretionary approval.
  3. A request for reasonable accommodation shall be reviewed by the Director of Development Services or his/her designee, if no approval is sought other than the request for reasonable accommodation. The Director or his/her designee shall make a written determination within 45 days of the application being deemed complete and either grant, grant with modifications, or deny a request for reasonable accommodation.
  4. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the Planning Commission. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the Planning Commission in compliance with the applicable review procedure for the discretionary review.
- D. Approval Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:
1. Whether the housing in the request will be used by a person with a disability under the Acts;
  2. Whether the request for reasonable accommodation is necessary to make specific housing available to a person with a disability under the Acts;
  3. Whether the requested reasonable accommodation would impose an undue financial administrative or enforcement burden on the City;
  4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to, land use and zoning;
  5. Potential impact on surrounding uses;
  6. Physical attributes of the property and structures; and

7. Other reasonable accommodations that may provide an equivalent level of benefit.
- E. Conditions of Approval. In granting a request for reasonable accommodation, the Director of Development Services or his/her designee, or the Planning Commission as the case might be, may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings. The condition shall also state whether the accommodation granted shall be removed in the event that the person for whom the accommodation was requested no longer resides on the site.
- F. Appeals.
1. Any person dissatisfied with any action of the Director of Development Services pertaining to this Section may appeal to the Planning Commission within 10 days after written notice of the Director's decision is sent to the applicant. The appeal is taken by filing a written notice of appeal with the Director of Development Services and shall specify the reasons for the appeal and the grounds asserted for relief.
  2. Any person dissatisfied with any action of the Planning Commission pertaining to this Section may appeal to the City Council within 10 days after the rendition of the decision of the Planning Commission. The appeal is taken by filing a written notice of appeal with the Director of Development Services and shall specify the reasons for the appeal and the grounds asserted for relief.
  3. The City Council shall, by resolution, adopt and from time to time amend a fee for the filing of appeals. Such fee shall be for the sole purpose of defraying costs incurred for the administration of appeals. The fee for an appeal shall be paid at the time of and with the filing of an appeal. No appeal shall be deemed valid unless the prescribed has been paid.
  4. If an appeal is not filed within the time or in the manner prescribed in this subsection, the right to review of the action against which the complaint is made shall be deemed to have been waived.
  5. After filing an appeal, the appropriate hearing body shall conduct a public hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date, and place of hearing shall be given to the appellant, and to any other persons who have filed a written request for notice. Such notices shall be mailed to the appellant and the applicant at least ten days prior to the hearing.
  6. The Planning Commission or City Council shall review *de novo* the entire proceeding or proceedings relating to the decision, and may make any order it deems just and equitable, including the approval of the application. Any hearing may be continued from time to time.

*Findings for Text Amendment Approval* - The Planning Commission may recommend approval of the text amendment to the City Council based on the following required findings:

**1. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward**

The Text Amendment is to treat transitional and supportive housing as permitted uses in residential zones as any other residential use in the same zone. Transitional housing is a type of supportive housing used to facilitate the movement of homeless individuals and families to permanent housing. Supportive housing is permanent rental housing linked to a range of support services designed to enable residents to maintain stable housing and lead fuller lives. Providing development opportunities for a variety of housing types promotes diversity in housing price, style and size, and contributes to neighborhood stability by offering more affordable and move-up homes and accommodating a diverse income mix. The Text Amendment related to Reasonable Accommodation will identify and describe the process for requesting a reasonable accommodation from established regulations to address the needs of persons with disabilities and address the housing needs of the disabled.

**2. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans**

The Text Amendment brings the existing Zoning Ordinance into conformance with State law requirements related to the process of providing reasonable accommodations from existing requirements for persons with disabilities as well as the treatment of Transitional and Supportive Housing the same as any other residential use would be treated in the same zone.

**3. Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified**

The Text Amendment does not involve the reclassification of any property.

**4. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations**

The Text Amendment does not involve the reclassification of any property.

## **ENVIRONMENTAL REVIEW**

This proposal is defined as a “project” under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. Staff has prepared a Negative Declaration and Initial Study, which indicates there will be no significant environmental impacts resulting from the project. The environmental document was made available for public review from October 25, 2013 through November 13, 2013. No comments were received as of the writing of this report.

## **PUBLIC CONTACT**

As part of the Housing Element Update, the City held a stakeholder workshop on August 15, 2013. Staff sent a survey to Housing advocacy groups, housing developers and social service providers, inquiring about issues to include in the Housing Element Update. In addition, Staff also posted a series of Housing Element related questions on the Hayward2040 site.

## **SCHEDULE**

Following action, these proposed Text Amendments will be heard by the City Council on December 17, 2013. If approved by the City Council, staff will make related changes to the Housing Element and will bring the draft Housing Element back to the Planning Commission and City Council for review and recommendation prior to submittal to the California Department of Housing and Community Development for their review of the updated Housing Element.

Prepared by: Sara Buizer, AICP, Senior Planner

Recommended by:



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Pat Siefers  
Planning Manager

Approved by:



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David Rizk, AICP  
Development Services Director

Attachments:

- Attachment I: Required Findings
- Attachment II: Ordinance adding Definition for Transitional and Supportive Housing
- Attachment III: Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code
- Attachment IV: Ordinance showing revised Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities
- Attachment V: Initial Study and Negative Declaration

## FINDINGS FOR APPROVAL

### Text Amendment Application No. PL-2013-0437

#### *Findings for Approval – California Environmental Quality Act:*

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.
2. The project will not result in any development that would adversely affect any scenic resources.
3. The project will not result in any development that would have an adverse effect on agricultural land.
4. The project will not result in any development that would have significant impacts related to changes into air quality.
5. The project will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.
6. The project will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The text amendment will not affect on geological hazards.
8. The text amendment will not affect any greenhouse gas emissions.
9. The text amendment will not affect water quality standards.
10. The text amendment is not in conflict with the policies of the City General Policies Plan or the Zoning Ordinance.
11. The text amendment could not result in a significant impact to mineral resources since no construction will take place as part of this project.
12. The text amendment could not result in a significant noise impact.
13. The text amendment could not result in a significant impact to public services.

14. The text amendment could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.
15. The text amendment could not result in a significant impact to parking.

***Findings for Approval – Text Amendment:***

1. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward

The Text Amendment is to treat transitional and supportive housing as permitted uses in residential zones as any other residential use in the same zone. Transitional housing is a type of supportive housing used to facilitate the movement of homeless individuals and families to permanent housing. Supportive housing is permanent rental housing linked to a range of support services designed to enable residents to maintain stable housing and lead fuller lives. Providing development opportunities for a variety of housing types promotes diversity in housing price, style and size, and contributes to neighborhood stability by offering more affordable and move-up homes and accommodating a diverse income mix. The Text Amendment related to Reasonable Accommodation will identify and describe the process for requesting a reasonable accommodation from established regulations to address the needs of persons with disabilities and address the housing needs of the disabled.

2. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans

The Text Amendment brings the existing Zoning Ordinance into conformance with State law requirements related to the process of providing reasonable accommodations from existing requirements for persons with disabilities, as well as the treatment of Transitional and Supportive Housing the same as any other residential use would be treated in the same zone.

3. Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified

The Text Amendment does not involve the reclassification of any property.

4. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations

The Text Amendment does not involve the reclassification of any property.

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE  
SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS,  
RELATING TO TRANSITIONAL AND SUPPORTIVE  
HOUSING

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES  
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution  
, approving the text changes requested in Zone Change Application PL-2013-0437 TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to Definitions, is hereby amended  
to add definitions for Transitional and Supportive Housing.

The definition of “Transitional and Supportive Housing” is hereby added to read as follows:  
Transitional and supportive housing are permitted as a residential use and only subject to those  
restrictions that apply to other residential dwellings of the same type in the same zone.

Section 3. Severance. Should any part of this ordinance be declared by a final decision  
by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the  
authority of the City, such decision shall not affect the validity of the remainder of this ordinance,  
which shall continue in full force and effect, provided that the remainder of the ordinance, absent the  
unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this  
ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the  
day of \_\_\_\_\_, 2013, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held  
the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**FORM-BASED CODE**

**TABLE 9. SPECIFIC FUNCTION & USE**

South Hayward BART / Mission Boulevard

**TABLE 9: Allowed Functions.** This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	<b>T4</b>	<b>T5</b>	<b>CS</b>
<b>a. RESIDENTIAL</b>			
Multiple Family	P	P	-
Second Dwelling Unit	P	P	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-
<b>b. LODGING</b>			
Bed & Breakfast	AU	AU	-
Hotel	CU	CU	-
<b>c. OFFICE</b>			
Office	P	P	-
<b>d. RETAIL</b>			
Alcohol Sales**	CU	CU	-
Artisan/Craft Production	P	P	-
Appliance Repair Shop	P	P	-
Check Cashing & Loans	-	-	-
Dance/Nightclub	-	-	-
Equipment Rentals	AU	AU	-
Home Occupation	P	P	-
Indoor Recreation	AU	AU	CU
Kennel	AU	AU	-
Liquor Store	-	-	-
Massage Parlor	CU	CU	-
Media Production	AU	P	-
Pawn Shop	-	-	-
Personal Services	P	P	-
Printing and Publishing	AU	P	-
Recycling Collection Area	AU	AU	-
Restaurant	P	P	-
Retail Sales	P	P	CU
Tattoo Parlor	-	-	-
Tobacco Specialty Store	-	-	-
Small Motion Picture Theater	P	P	CU
Large Motion Picture Theater <sup>(1)</sup>	CU	CU	CU
Live Performance Theater	P	P	CU

	<b>T4</b>	<b>T5</b>	<b>CS</b>
<b>e. CIVIC</b>			
Assembly*	AU	AU	CU
Conference Center	-	CU	CU
Cultural Facility	P	P	CU
Park & Recreation	P	P	P
Parking Facility	AU	AU	CU
Public Agency Facility	P	P	P
Religious Facility*	AU	AU	CU
Wind Energy	P	P	P
<b>f. OTHER: AGRICULTURE</b>			
Vegetable Garden	P	-	P
Urban Farm	P	P	P
Community Garden	P	P	P
Green Roof			
Extensive	P	P	P
Semi Intensive	P	P	P
Intensive	P	P	P
Vertical Farm	-	P	P
<b>g. OTHER: AUTOMOTIVE</b>			
Automobile Repair (Minor)	AU	AU	-
Automobile Repair (Major)	CU	CU	-
Drive -Through Facility	CU	CU	-
Gas Station	CU	CU	-
Taxi Company	AU	AU	-
<b>h. OTHER: CIVIL SUPPORT</b>			
Fire Station	P	P	P
Hospital	CU	CU	CU
Medical/Dental Clinic	AU	AU	CU
Mortuary	AU	AU	CU
Police Station	P	P	P
<b>i. OTHER: EDUCATION</b>			
Day Care Center	P	P	CU
Day Care Home	AU	AU	-
Educational Facility	AU	AU	CU
Vocational School	AU	AU	CU

(-) = NOT PERMITTED  
(P) = BY RIGHT  
(AU) = ADMINISTRATIVE USE PERMIT  
(CU) = CONDITIONAL USE PERMIT

\* Places of Assembly and Religious Facility: for properties fronting Mission Blvd., such uses are not allowed within one half mile of existing similar uses that front Mission Blvd.

\*\* Unless exempted by the Alcohol Beverage Outlet Regulations contained in Section 10-1.2735(b) of the Hayward Municipal Code or specifically exempted by this Code

<sup>(1)</sup> An application for conditional use Permit for a Large Motion Picture Theater shall be accompanied by a study acceptable to the Planning Director documenting the absence of negative impact upon the downtown of the opening of another Large Motion Picture Theater.

ORDINANCE NO.

ORDINANCE OF THE CITY OF HAYWARD,  
CALIFORNIA REPLACING SECTION 10-1.145  
TO CHAPTER 10, ARTICLE 1 OF THE  
HAYWARD MUNICIPAL CODE  
REGARDING REASONABLE ACCOMMODATION

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 10-1.145 is added to replace Section 10-1.145 Chapter 10 of the Hayward Municipal Code and is hereby enacted to read as follows:

“SEC. 10-1.145 REASONABLE ACCOMMODATION.

- A. Purpose. The purpose of this Section is to provide a procedure for individuals with disabilities to request reasonable accommodation in seeking equal access to housing under the federal Fair Housing Act and the California Fair Employment and Housing Act (hereafter “Acts”) in the application of zoning laws and other land use regulations, policies, and procedures.
- B. Applicability.
  - 1. A request for reasonable accommodation may be made by any person with a disability or their representative, when the application of a requirement of this zoning code or other City requirement, policy, or practice acts as a barrier to fair housing opportunities. For the purposes of this section, a “person with a disability” is any person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has record of such impairment. This section is intended to apply to those persons who are defined as disabled under the Acts.
  - 2. A request for reasonable accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.
  - 3. A reasonable accommodation is granted only to the household that needs the accommodation and does not apply to successors in interest to the site.
  - 4. A reasonable accommodation may be granted in compliance with this Section without the need for the approval of a variance.
- C. Procedure.
  - 1. A request for reasonable accommodation shall be submitted on an application form provided by the Development Services Department or in the form of a letter

to the Director of Development Services, and shall contain the following information:

- a) The applicant's name, address, and telephone number;
  - b) Address of the property for which the request is being made;
  - c) The current use of the property;
  - d) The basis for the claim that the individual is considered disabled under the Acts, including verification of such claim;
  - e) The zoning code provision, regulations, or policy from which reasonable accommodation is being requested; and
  - f) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
2. If the project for which the request for reasonable accommodation is being made requires some other discretionary approval (including use permit, design review, etc.), then the applicant shall file the information required by Subsection C1 of this Section for concurrent review with the application for discretionary approval.
  3. A request for reasonable accommodation shall be reviewed by the Director of Development Services or his/her designee, if no approval is sought other than the request for reasonable accommodation. The Director or his/her designee shall make a written determination within 45 days of the application being deemed complete and either grant, grant with modifications, or deny a request for reasonable accommodation.
  4. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the Planning Commission. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the Planning Commission in compliance with the applicable review procedure for the discretionary review.
- D. Approval Findings. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:
1. Whether the housing in the request will be used by a person with a disability under the Acts;
  2. Whether the request for reasonable accommodation is necessary to make specific housing available to a person with a disability under the Acts;
  3. Whether the requested reasonable accommodation would impose an undue financial administrative or enforcement burden on the City;

4. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to, land use and zoning;
  5. Potential impact on surrounding uses;
  6. Physical attributes of the property and structures; and
  7. Other reasonable accommodations that may provide an equivalent level of benefit.
- E. Conditions of Approval. In granting a request for reasonable accommodation, the Director of Development Services or his/her designee, or the Planning Commission as the case might be, may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings. The condition shall also state whether the accommodation granted shall be removed in the event that the person for whom the accommodation was requested no longer resides on the site.
- F. Appeals.
1. Any person dissatisfied with any action of the Director of Development Services pertaining to this Section may appeal to the Planning Commission within 10 days after written notice of the Director's decision is sent to the applicant. The appeal is taken by filing a written notice of appeal with the Director of Development Services and shall specify the reasons for the appeal and the grounds asserted for relief.
  2. Any person dissatisfied with any action of the Planning Commission pertaining to this Section may appeal to the City Council within 10 days after the rendition of the decision of the Planning Commission. The appeal is taken by filing a written notice of appeal with the Director of Development Services and shall specify the reasons for the appeal and the grounds asserted for relief.
  3. The City Council shall, by resolution, adopt and from time to time amend a fee for the filing of appeals. Such fee shall be for the sole purpose of defraying costs incurred for the administration of appeals. The fee for an appeal shall be paid at the time of and with the filing of an appeal. No appeal shall be deemed valid unless the prescribed has been paid.
  4. If an appeal is not filed within the time or in the manner prescribed in this subsection, the right to review of the action against which the complaint is made shall be deemed to have been waived.
  5. After filing an appeal, the appropriate hearing body shall conduct a public hearing for the purpose of determining whether the appeal should be granted. Written notice of the time, date, and place of hearing shall be given to the appellant, and to any other persons who have filed a written request for notice. Such notices shall be mailed to the appellant and the applicant at least ten days prior to the hearing.

- 6. The Planning Commission or City Council shall review *de novo* the entire proceeding or proceedings relating to the decision, and may make any order it deems just and equitable, including the approval of the application. Any hearing may be continued from time to time.”

Section 2. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 3. This Ordinance shall become effective immediately upon adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of \_\_\_, 2013, by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_ , 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:  
Mayor of the City of Hayward

DATE:

ATTEST:  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward



**DEPARTMENT OF  
DEVELOPMENT SERVICES  
Planning Division**

**NEGATIVE DECLARATION**

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

**I. *PROJECT DESCRIPTION:***

Text Amendment to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions ; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities and renumber the remaining sections accordingly. City of Hayward (Applicant)

**II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:***

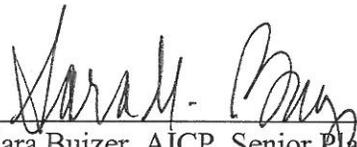
The proposed project could not have a significant effect on the environment.

**III. *FINDINGS SUPPORTING DECLARATION:***

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.
2. The project will not result in any development that would adversely affect any scenic resources.
3. The project will not result in any development that would have an adverse effect on agricultural land.
4. The project will not result in any development that would have significant impacts related to changes into air quality.
5. The project will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.
6. The project will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.

7. The text amendment will not affect on geological hazards.
8. The text amendment will not affect any greenhouse gas emissions.
9. The text amendment will not affect water quality standards.
10. The text amendment is not in conflict with the policies of the City General Policies Plan, and the Zoning Ordinance.
11. The text amendment could not result in a significant impact to mineral resources since no construction will take place as part of this project.
12. The text amendment could not result in a significant noise impact.
13. The text amendment could not result in a significant impact to public services.
14. The text amendment could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.
15. The text amendment could not result in a significant impact to parking.

**IV. PERSON WHO PREPARED INITIAL STUDY:**

Signature:   
Sara Buizer, AICP, Senior Planner

Dated: October 24, 2013

**V. COPY OF INITIAL STUDY IS ATTACHED**

For additional information, please contact the City of Hayward Planning Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4207



**DEPARTMENT OF DEVELOPMENT SERVICES  
Planning Division**

**INITIAL STUDY CHECKLIST**

**Project Title:** Zoning Text Amendments – Transitional and Supportive Housing and Reasonable Accommodations

**Lead agency name/address:** City of Hayward; 777 B Street, Hayward, CA 94541

**Contact person:** Sara Buizer, AICP, Senior Planner

**Project location:** Citywide

**Project sponsor's**

**Name and Address:** City of Hayward; 777 B Street, Hayward, CA 94545

**General Plan Designation:** N/A

**Zoning:** N/A

**Project description:** Text Amendment to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions ; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10.1.145 related to Reasonable Accommodation for Persons with Physical Disabilities and renumber the remaining sections accordingly.

**Surrounding land uses and setting:** Various; Citywide

**Other public agencies whose approval is required:** None

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

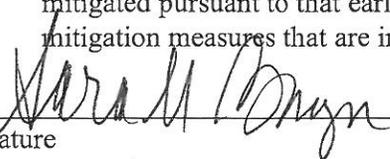
- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology /Soils                     |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality          |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems        | <input type="checkbox"/> Mandatory Findings of Significance |

**DETERMINATION: (To be completed by the Lead Agency)**

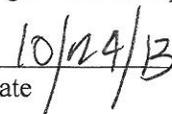
On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature



Date



Printed Name

Sara M. Buiizer

For

## EVALUATION OF ENVIRONMENTAL IMPACTS:

## ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. AESTHETICS -- Would the project:</b>				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not affect a scenic vista, damage scenic resources, impact the visual character nor create a source of substantial light and glare, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**II. AGRICULTURE AND FOREST**

**RESOURCES:** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use, or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not convert any agricultural land, conflict with any known Williamson Act Contracts, involve the loss or conversion of forest land, thus no impact.				
<b>III. AIR QUALITY</b> -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not obstruct implementation of an air quality plan, violate any air quality standard, expose sensitive receptors to pollutant concentrations nor create objectionable odors, thus no impact.				
<b>IV. BIOLOGICAL RESOURCES -- Would the project:</b>				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				
<b>Comment:</b> The Text Amendment will not affect sensitive species, riparian habitat, wetlands, interfere with the movement of migratory fish or wildlife species, conflict with the tree preservation ordinance or habitat conservation plan, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>V. CULTURAL RESOURCES --</b> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?				
<b>Comment:</b> The Text Amendment will not impact any historical resource, archaeological resource, paleontological resource nor disturb any human remains, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>VI. GEOLOGY AND SOILS --</b> Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> The Text Amendment will not expose people or structures to adverse effects of earthquake ground shaking, landslides, ground failure or liquefaction, risks associated with expansive soils or involve the use of septic tanks, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VII. GREENHOUSE GAS EMISSIONS --**

Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Comment:</u> The Text Amendment will not generate greenhouse gas emissions no conflict with the City's Climate Action Plan aimed at reducing greenhouse gas emissions, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VIII. HAZARDS AND HAZARDOUS MATERIALS --** Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comment:** The Text Amendment will not involve the use of hazardous materials, or be within the vicinity of an airport or private airstrip, thus no impact.

**IX. HYDROLOGY AND WATER QUALITY**

-- Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
j) Inundation by seiche, tsunami, or mudflow? <b>Comment:</b> The Text Amendment will not violate any water or wastewater standards, alter existing drainage patterns, contribute to water runoff, degrade water quality, or subject people or structures within a flood hazard area, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**X. LAND USE AND PLANNING** -- Would the project:

a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comment:** The Text Amendment will not physically divide the community, conflict with any land use plan or a habitat conservation plan, thus no impact.

**XI. MINERAL RESOURCES** -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Comment:** The Text Amendment will not involve the loss of any local, regional or state mineral resources, thus no impact.

**XII. NOISE** -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not generate excessive noise, expose people to excessive noise, increase ambient noise levels nor be within the vicinity of an airport or private airstrip, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIII. POPULATION AND HOUSING --**

Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not induce substantial population growth nor displace people or existing housing, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIV. PUBLIC SERVICES --**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not create a need for construction of new or altered public facilities whose construction would cause significant environmental impacts; thus, no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XV. RECREATION --**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not increase the use of existing parks or facilities that would substantially deteriorate such facilities, nor involve the construction or expansion of existing recreational facilities; thus, no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XVI. TRANSPORTATION/TRAFFIC --**  
Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Comment:</b> The Text Amendment will not affect the performance of the circulation system, conflict with the congestion management program, change any air traffic patterns, increase hazards due to a design feature, or impact any emergency access, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XVII. UTILITIES AND SERVICE SYSTEMS**

-- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste?				
<b>Comment:</b> The Text Amendment will not exceed wastewater treatment requirements, involve construction or expansion of existing wastewater treatment facilities, impact any water supply or wastewater treatment, nor exceed the capacity of any landfill, thus no impact.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? <b>Comment:</b> The Text Amendment will not impact the quality of the environment, reduce habitat, eliminate important examples of California history, involve cumulative impacts or involve any environmental impacts that may cause substantial adverse impacts on human beings, thus no impacts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**DATE:** November 7, 2013

**TO:** Planning Commission

**FROM:** Director of Development Services

**SUBJECT:** **Related to internet gaming establishments, proposed amendment to the Hayward Municipal Code adding Article 16 to Chapter 4 regarding simulated gambling devices and proposed revisions to the definitions section of the Hayward Zoning Ordinance (Section 10-1.3500); the project is exempt from environmental impact analysis, per the California Environmental Quality Act (CEQA Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment)); Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward**

## **RECOMMENDATION**

Making the required findings identified in this staff report and in Attachment III, that the Planning Commission finds the proposed amendments exempt from the California Environmental Quality Act and recommends that City Council approves the attached ordinances adding Article 16 to Chapter 4 related to simulated gambling devices and amending Hayward Municipal Code Section 10-1.3500 related to internet cafes.

## **SUMMARY**

Staff recommends revisions to the City's regulations to address businesses that provide internet access to customers, and to distinguish between computer gaming that does not include cash prizes from use of simulated gambling devices that include cash prizes. Businesses that provide simulated gambling devices attract undesirable activities that have significant negative impacts on the surrounding community.

## **BACKGROUND**

On February 19, 2013 the City Council enacted Ordinance No. 13-03 ("ordinance") as an interim urgency ordinance pursuant to California Government Code § 65858. The express purpose of the ordinance was to establish a temporary moratorium on the development, establishment, and operation of Computer Gaming and Internet Access Businesses in the City of Hayward. A Computer Gaming and Internet Access Business was defined in the ordinance as an "establishment that provides one or more computers or other electronic devices for access to the World Wide Web, Internet, e-mail, video games or computer software programs that operate alone or are networked

(via LAN, WAN or otherwise) or that function as a client/server program, and which seeks compensation or reimbursement in any form, from users.”

The ordinance imposed a 45-day moratorium on the issuance of all City approvals, including business licenses, use permits, variances, sign permits, building permits and zoning text amendments for Computer Gaming and Internet Access Businesses. The ordinance also declared the establishment, maintenance or operation of a Computer Gaming and Internet Access Business within the City limits of the City of Hayward as a public nuisance. The moratorium was subsequently extended through the enactment of Ordinance No. 13-05 on April 2, 2013, after a duly noticed public hearing and was to remain in force until no later than February 18, 2014.

The moratorium was enacted in response to the establishment of three businesses that ostensibly described themselves as “business centers” that rented computer time to patrons and provided other ancillary business related services, such as facsimile and copy services. The three businesses were: Worldnet Business Center, LLC located at 22620 Vermont St; Net Connection Hayward, LLC located at 778 B Street; and I Biz, LLC located at 22466 Maple Court. These businesses obtained business licenses through the Finance Department, the applications for which did not indicate simulated internet gambling, and commenced operations in late 2012 and early 2013. However, based on complaints from citizens and upon investigation by Hayward Police officers, it was revealed that the businesses were engaged in activity that appeared to be online computer-based gambling.

Computer Gaming and Internet Access Businesses promote the sale of computer time by offering entries into a sweepstakes with every purchase. Based on the amount of computer time purchased, customers are provided a certain number of credits to play games on the computers. These games hold out the possibility of winning cash prizes. Frequently, the games have the appearance of Vegas-style games of chance, such as slot machines, thus creating a casino-like atmosphere. The operators of these establishments assert that although the games appear to be gambling games, which are highly restricted and regulated under state law, they are actually “sweepstakes” that are provided as a means of promoting the businesses of renting computer time in compliance with state law requirements relating to the operation of sweepstakes. That said, it appears that the resemblance of the games to casino-style games, and the possibility of winning cash prizes by playing them, is a driving factor for the customers that patronize these Computer Gaming and Internet Access Businesses.

The City Attorney’s Office served cease and desist letters on three businesses in February 2013 and April 2013, requesting that the businesses cease the sweepstakes component of the businesses due to the fact that the use was not listed as a permitted use under the Zoning Ordinance, was of questionable legality under state gambling laws, and was in violation of the moratorium. Worldnet, LLC, closed its business in February 2013 after being evicted by the property owner for reasons unrelated to the City’s actions. Net Connection Hayward, LLC and I Biz, LLC responded by initiating litigation in United States District Court challenging the validity of the moratorium and seeking a preliminary injunction against its enforcement, (*Net Connection Hayward, LLC v. City of Hayward* U.S. District Court Case No. 13-1212; *IBiz, LLC v. City of Hayward*, U.S. District Court Case No. 13-1537). During the course of the litigation, an additional business called Chances Are, LLC, which obtained a business license in January 2013, commenced operations at 22632 Main

Street. The City instituted a civil action against Chances Are, LLC in Alameda County Superior Court (*City of Hayward v. Chances Are, LLC et. al.* Alameda County Superior Court Case No. RG 13681065) and Chances Are, LLC responded with a suit in federal court, *Chances Are, LLC v. City of Hayward*, U.S. District Court Case No. 13-2383.

The U.S. District Judge in the *Net Connection* and *I Biz* matters concluded that the text of the moratorium was too broad and violated the First Amendment. The Court further concluded that the City would be better served by enacting a more narrowly focused ordinance directed specifically toward the sweepstakes activity in order to comply with the First Amendment.

The attached ordinance and recommended revisions to the City's codes respond to the Court's direction.

## DISCUSSION

*Simulated Gambling Device Ordinance (New Chapter 4, Article 16 of the Hayward Municipal Code)* - The proposed Simulated Gambling Device Ordinance would add Article 16 to Chapter 4 of the Hayward Municipal Code. The ordinance would make it unlawful "for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices." The term "simulated gambling device" is defined to mean "any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee." The ordinance further defines specific terms used to describe a simulated gambling device. The definitions are cumulative and every condition provided must be met for something to qualify as a simulated gambling device under the ordinance.

The first part of the definition requires that a person "connect" an "object" to a "device." A "device" is "any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games" and includes "any associated equipment necessary to conduct the operation of the device." An "object" is "a coin, bill, ticket, token, card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration." The "connection" that must be made between the two can be an "insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting."

Once the connection is made, the device must make "a computer simulation" of a "game" available to "play or operate." A 'computer simulation' includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation" The definition of "game" under the ordinance includes "slot machines, poker, bingo, craps, keno, [or] any other type of game ordinarily played in a casino," and "a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, [or] sweepstakes" and "any other game associated with gambling or which could be associated with gambling." Playing or operating the computer simulation of a game "includes the use of skill, the application of the element of chance, or both." Finally, a "payoff" is defined as "cash, monetary or other credit, billets,

tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.”

To illustrate, it is helpful to examine how the activities of the existing businesses in Hayward (i.e., Net Connection, LLC; I Biz, LLC; and Chances Are, LLC) fit within the context of the ordinance and would be prohibited by it. The business’ computers (devices) are, upon swiping (connecting) an account card (object), available to play (utilizing skill and/or chance) a computer simulation of casino games (for example, a slot machine), which may entitle the player to a payoff (for example, cash) for winning the sweepstakes.

The model for this ordinance is Section 222.7 through 222.15 of the Seminole County, Florida Code of Ordinances. Seminole County enacted its ordinance in response to the proliferation within the County of businesses similar to those currently found in Hayward. Staff chose to model Hayward’s ordinance on the Seminole County ordinance because it is narrower in scope than the emergency moratorium adopted by the Hayward City Council, which is in line with the federal judge’s direction in the Net Connection and I Biz lawsuits. Additionally, the ordinance has withstood similar Constitutional challenges to those which were successful against Hayward’s emergency moratorium, see *Allied Veterans of the World, Inc. v. Seminole County, Florida* U.S. District Court Case No. . 6:11-cv-155-Orl-28DAB.

Revisions to Zoning Ordinance Definitions (see Attachment II) – Because internet usage is not specifically listed as being allowed in the Zoning Ordinance, and due to concerns with internet gaming/stimulated internet gambling, staff is also recommending that amendments to the Zoning Ordinance definitions section (Section 10-1.3500) be made to clarify and address such uses, as follows:

- “Commercial Amusement Facility” definition is amended to include or allow internet access usage, but specifically prohibits a Commercial Amusement Facility from having simulated gambling devices. A Commercial Amusement Facility is allowed with an administrative use permit in the General Commercial (CG), Central Business (CB, applicable to Southland Mall), and the Central City-Commercial (CC-C, applicable to downtown) zones and with a conditional use permit in the Central City-Plaza (CC-P, along front portions of major streets in downtown core) and Flood Plain zoning districts.
- “Copying or Reproduction Service” and “Mailing or Facsimile Service” definitions are amended to allow internet usage as an ancillary use, but specifically prohibit businesses from operating simulated gambling devices. Such uses are allowed in all commercial zones, the Industrial (I), Airport Terminal–Commercial (AT-C), and Airport Terminal–Industrial Park (AT-IP) zones; and with an administrative use permit in the Central City-Residential (CC-R) zone.
- “Office” definition is amended to prohibit the operation of simulated gambling devices.
- “Recreational Facility” is amended to specifically prohibit the operation of simulated gambling devices. Such facilities are allowed in the Open Space (OS) zone as a primary use; with administrative use permits in all residential and commercial zones, except the Limited Commercial (LC), Office Commercial (CO), and Regional Commercial (CR) zones; and with conditional use permits in the Agricultural (A), Central City-Plaza (CC-P), and Flood Plain (FP) zones.

Staff is not recommending that the zones where such uses are allowed be changed, but that the definition for these uses be changed to specifically address internet usage.

*Text Amendment Findings* – The City Council must make the following four findings in order for the proposed text amendments to be approved. Staff’s responses to the findings are shown below and included in Attachment III.

**A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Hayward Police Department reports that there have been approximately fifty calls for service since the beginning of 2013 to the three existing businesses in the City that engage in simulated gambling. The Alameda County Sheriff’s Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators. The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery and possession of stolen property. The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend’s cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes and, thereby, reducing the threat to the public’s health, safety and welfare posed by these establishments.

**B. The proposed change is in conformance with all applicable, officially adopted policies and plans.**

The proposed text amendment is conformance with City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.

- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict, in which the three existing simulated gambling establishments are located, is to “establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.” The proposed text amendment will help eliminate undesirable uses that have a negative impact on the City and, thus, attract new desirable uses.

**C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.**

No properties are proposed to be reclassified. New businesses are required to have adequate streets and facilities before operating, as currently mandated.

**D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.**

No properties are proposed to be reclassified. The proposed regulations and text amendment would provide clarification regarding which types of electronic games are permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts on surrounding properties and neighborhoods.

Environmental Impact Analysis – The proposed text amendments are exempt from environmental impact analysis under the California Environmental Quality Act; CEQA Regulation 15321 (exemption for governmental regulatory activities) and CEQA Regulation 15061(b)(3). Section 15061(b)(3) from the CEQA Guidelines states “[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Staff concludes there is no possibility the text changes would cause a significant environmental impact.

## **PUBLIC CONTACT**

Notice of this hearing was published in *The Daily Review* newspaper on October 26, 2013. Also, notice of his hearing was sent on October 24 to the property owners and operators of the three existing simulated internet gambling businesses in Hayward and surrounding property owners and residents, as well as to the Hayward Chamber of Commerce.

## **NEXT STEPS**

Staff will forward the Planning Commission’s recommendation to the City Council. A public hearing has been tentatively scheduled before the City Council for December 3, 2013.

Approved by:



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David Rizk, AICP  
Development Services Director

### Attachments

- Attachment I: Draft Ordinance Regarding Proposed New Regulations Regarding Simulated Gaming Devices (new Article 16 to Chapter 4 of the Hayward Municipal Code)
- Attachment II: Draft Ordinance Regarding Proposed Revisions to the Zoning Ordinance Definitions (showing proposed revisions) (Hayward Municipal Code Section 10-1.3500)
- Attachment III: Findings for Recommended Text Amendments and CEQA Exemption

ORDINANCE NO.

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA  
ADDING ARTICLE 16 TO CHAPTER 4 OF THE HAYWARD  
MUNICIPAL CODE REGARDING PROHIBITION OF  
SIMULATED GAMBLING DEVICES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 16 is added to Chapter 4 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 16

PROHIBITION OF SIMULATED GAMBLING DEVICES

SEC. 4-16.00 FINDINGS AND PURPOSE. The City Council of the City of Hayward finds as follows:

- A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs.
- B. Pursuant to Article XI, Section 7 of the California Constitution the City of Hayward may make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- C. Pursuant to California Government Code Section 38771 the City Council may declare what activities or conditions may constitute a nuisance.
- D. It is a goal of the City Council to establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- E. Within the past year several businesses describing themselves variously as "business centers" and "internet cafes" have opened within the City. These businesses purport to offer customers access to personal computers, photocopy and facsimile services. In an apparent effort to promote the sale of such services the business offers entries into a sweepstakes, the results of which may be revealed in several ways, including by playing games on the business' computers. Patrons can select from multiple games,

many of which have the appearance of casino-style games of chance, such as slot machines. Winning sweepstakes entries may be redeemed at the business for cash payouts.

- F. Businesses that utilize simulated gambling devices, such as those found in “business centers” and “internet cafes” in Hayward present unique challenges for local government. These businesses provide the allure of traditional gambling by offering casino-like computer games and cash prizes without facing the strict regulations imposed by the State on traditional gambling.
- G. Many of the negative community impacts that would be expected from a gambling establishment have manifested themselves in relation to “business centers” and “Internet cafes” that provide simulated gambling devices in Hayward. At least one establishment was the target of a robbery and another was the site of multiple arrests by Alameda County Sheriff’s deputies and California Department of Corrections and Rehabilitation parole officers.
- H. The City Council and City offices have received numerous complaints from community members voicing concern over these businesses that they perceive as “gambling houses” operating within the City.
- I. The intent of the City Council in adopting this ordinance is to protect public health, safety and welfare by prohibiting broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the City Council in prohibiting simulated gambling devices in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices that may be regulated pursuant to California law. In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

SEC. 4-16.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

(a) "Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

(b) "Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":

(1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.

(2) The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.

(3) The term "object" means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.

(4) The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.

(5) The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

(6) The term "game" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.

(7) The term "payoff" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

(8) The use of the word "gambling" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this Article is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

(c) "Slot machine" has the same meaning as specified in Section 330b of the California Penal Code.

SEC. 4-16.20 SIMLUATED GAMBLING DEVICES PROHIBITED. It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

SEC. 4-16.30 EXEMPTIONS. This Article does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.

SEC. 4-16.40 CONSTRUCTION WITH STATE LAW. Nothing in this Article is intended to conflict with the provisions of state law concerning gambling, slot machines, gambling devices or lotteries. In the event of a direct and express conflict between this Article and state

law, California law, as applicable, controls.

SEC. 4-16.50 VIOLATIONS.A violation of this Article shall be a misdemeanor subject to a fine of \$1000 or imprisonment in County jail for six (6) months, or both a fine and imprisonment. A violation of this Article is also declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances.

SEC. 4-16.60 APPLICATION. The provisions of this Article shall apply retroactively to any person who commenced to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices prior to the effective date of this Article and engages in such activity after the effective date of this Article.

Section 2. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 3. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of \_\_\_, 2013, by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_ , 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE  
SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS,  
RELATING TO SIMULATED GAMBLING DEVICES

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES  
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution , approving the text changes requested in Zone Change Application PL-2013-0388 TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to Definitions, is hereby amended to add text (as indicated by underline) to the following definitions, to conform to the City’s Simulated Gambling Devices ordinance introduced herewith.

The definition of “Commercial Amusement Facility” is hereby amended to read as follows: “A facility offering entertainment to the public, for a fee or by membership subscription, for example, ticket, door charge, amusement device fee. Said facility shall include but not be limited to, internet access usage, theaters, arcades (place of business containing five or more amusement devices), billiard parlors, golf courses (including miniature golf), water slides, indoor soccer, batting cages and bowling facilities. Four (4) or less manually or coin- or token- or slug-operated viewing or electronic or video game machines or other amusement devices (excluding juke boxes) located in association with other permitted uses and activities, such as, but not limited to, taverns, restaurants, book stores, grocery stores, motels, hobby shops or toy stores, music or stereo stores, laundromats, barber or beauty shops, or computer stores shall be considered accessory to the permitted use. Under no circumstance, as a primary, permitted or accessory use, shall any Commercial Amusement Facility be allowed to operate Simulated Gambling Devices as defined in the City’s Municipal Code. (See HMC Chapter 4, Article 16.)”

The definition of “Copying or Reproduction Service” is hereby amended to read as follows: “An establishment which provides printing services to customers. Typically includes blueprint machines, reproduction machines, paper goods and binding services (spiral binding, glue binding, staples, etc.), and may include as an ancillary use, access to the internet. Also see ‘NEWSPAPER PRINTING FACILITY.’ Under no circumstance, as a primary, permitted or accessory use, shall any Copy or Reproduction Service be allowed to operate Simulated Gambling Devices as defined in the City’s Municipal Code. (See HMC Chapter 4, Article 16.)”

The definition of “Mailing or Facsimile Service” is hereby amended to read as follows: “An establishment which provides postal services and a facsimile machine available to the public for a fee. Typically includes packaging and weighing facilities, and may include related copy work or

wrapping paper and greeting cards for sale at retail as an ancillary use, as well as internet access as an ancillary use. Under no circumstance, as a primary, permitted or accessory use, shall any Mailing or Facsimile Service be allowed to operate Simulated Gambling Devices as defined in the City’s Municipal Code. (See HMC Chapter 4, Article 16.)”

The definition of “Office” is hereby amended to read as follows: “An establishment which provides administrative services such as business or professional services (i.e., law firm, stock broker, insurance or real estate office) or medical or travel agent services, to the public for a fee. Offices uses typically include copying and facsimile machines. Under no circumstance, as a primary, permitted or accessory use, shall any Office be allowed to operate Simulated Gambling Devices as defined in the City’s Municipal Code. (See HMC Chapter 4, Article 16.)”

The definition of “Recreational Facility” is hereby amended to read as follows: “Those facilities maintained to provide a pastime, sport or exercise as a means to refresh one’s body or mind, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses. May be a commercial or non-commercial facility. Under no circumstance, as a primary, permitted or accessory use, shall any Recreational Facility be allowed to operate Simulated Gambling Devices as defined in the City’s Municipal Code. (See HMC Chapter 4, Article 16.)”

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of \_\_\_\_\_, 2013, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**FINDINGS FOR APPROVAL****Text Amendment No. PL-2013 -0388TA  
City of Hayward****Amendment to Hayward Municipal Code Chapter 10, Article 1 (Zoning Ordinance) Related to Revisions to Definitions Section Regarding Simulated Gambling Devices**

The text amendment is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to CEQA Regulation 15321 (exemption for governmental regulatory activities) and CEQA Regulation 15061(b)(3). The project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the text amendment may have a significant effect on the environment.

**A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Hayward Police Department reports that there have been approximately fifty calls for service since the beginning of 2013 to the three existing businesses in the City that engage in simulated gambling. The Alameda County Sheriff's Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators. The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery and possession of stolen property. The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend's cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes and, thereby, reducing the threat to the public's health, safety and welfare posed by these establishments.

**B. The proposed change is in conformance with all applicable, officially adopted policies and plans.**

The proposed text amendment is in conformance with city policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict, in which the three existing simulated gambling establishments are located, is to “establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.” The proposed text amendment will help eliminate undesirable uses that have a negative impact on the City and, thus, attract new desirable uses.

**C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.**

No properties are proposed to be reclassified. New businesses are required to have adequate streets and facilities before operating, as currently mandated.

**D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.**

No properties are proposed to be reclassified. The proposed regulations and text amendment would provide clarification regarding which types of electronic games are permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts to surrounding properties and neighborhoods.