

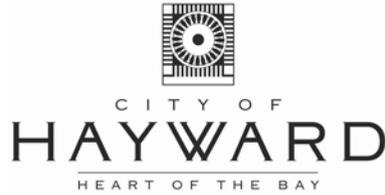


CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA

MARCH 15, 2011

**MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE FRANCISCO ZERMEÑO
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER OLDEN HENSON
COUNCIL MEMBER BILL QUIRK
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER MARK SALINAS**



CITY COUNCIL MEETING FOR MARCH 15, 2011

CLOSED SESSION **Closed Session Room 2B – 5:00 PM**

1. **PUBLIC COMMENTS** *(Limited to items agendized for Closed Session)*
 2. Performance Evaluation
Pursuant to Government Code 54957
 - City Attorney
 3. Conference with Labor Negotiators
Pursuant to Government Code 54957.6
 - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Human Resources Director Robustelli, and Interim Finance Director Stark
 - Under Negotiation: All Bargaining Units
 4. Adjournment to Regular Meeting
-

CITY COUNCIL MEETING **Council Chambers - 7:00 PM**

CALL TO ORDER Pledge of Allegiance Council Member Henson

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council 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 Council 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.)*

HAYWARD CITY COUNCIL, 777 B STREET, HAYWARD, CA 94541
[HTTP://WWW.HAYWARD-CA.GOV](http://www.hayward-ca.gov)

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

1. Approval of Minutes of the Special Joint City Council/Redevelopment Agency Meeting on February 22, 2011
Motion
2. Approval of Minutes of the Special Joint City Council/Redevelopment Agency Meeting on March 1, 2011
Motion
3. Approval of Minutes of the Special Joint City Council/Redevelopment Agency Meeting on March 2, 2011
Motion
4. Utility Service Agreement 11-01 - Rex S. Green and Rita Y. Green (Owner/Applicant) - Request for Water Service for Assessor's Parcel Number 425-0050-022-01, located in the Castle Homes Area of Unincorporated Alameda County
Resolution
5. Financial Management Information System (FMIS) Lease/Purchase
Resolution
6. California Energy Commission Loan Funding Energy Savings Retrofits & Solar Power Installations at City of Hayward Facilities
Resolution

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-



LEGISLATIVE BUSINESS

7. Amendment of Hayward Municipal Code, Chapter 4, Article 1, Sections 4-1.02 through 4-1.04, Relating to Unreasonable Noise (**Report from Assistant City Manager Morariu**)
Introduction of Ordinance

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items

ADJOURNMENT

PUBLIC COMMENT RULES: The Mayor 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 or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the City Clerk at the meeting.

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that 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.

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ****

NEXT REGULAR MEETING – 7:00 PM, TUESDAY, MARCH 22, 2011

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.





**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

MEETING

The Special Meeting of the City Council/Redevelopment Agency was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council/RA Member Halliday.

ROLL CALL

Present: COUNCIL/RA MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,
Henson
MAYOR/Chair Sweeney
Absent: COUNCIL/RA MEMBER None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that Council met with Labor Negotiators pursuant to Government Code 54957.6. There were no reportable items.

PRESENTATION

Business Recognition Award

The City of Hayward presented the February 2011 Business Recognition Award to Autowest Hayward Toyota. Located at 24773 Mission Boulevard, Autowest Hayward Toyota employs 85 employees and sells on average 250 to 300 vehicles per month, which makes it one of the City of Hayward's top sales tax-revenue generators. The award was given in recognition of the contribution this company has made to the community by: maintaining their Hayward location on Mission Boulevard; selling and providing service for eco-friendly and energy efficient vehicles; providing job opportunities to local residents; and contributing to the overall economic well-being of the Hayward community. Mr. Mark Akbar, General Manager and Mr. Albert Martini, Customer Relations Manager, accepted the award on behalf of Autowest Hayward Toyota and thanked Council for such recognition.

PROCLAMATION

The proclamation section was moved to follow public comments.

Black Historic Month

Mayor Sweeney read the proclamation honoring the heritage of African Americans and acknowledging their contributions on a local and national level. Mayor Sweeney proclaimed the

month of February 2011 as Black History Month in the City of Hayward and encouraged the community to celebrate with appropriate programs, ceremonies, and activities. Mayor Sweeney and Council Member Henson presented the proclamation to Ben Henderson, who gladly accepted the proclamation on behalf of Ms. Freedy Davis.

PUBLIC COMMENTS

Mr. David Elkins, Hayward Rotary Club President, indicated the Hayward Rotary Club was established in 1922 and highlighted several of its different projects. Mr. Elkins said the Rotary Club organization was founded in 1905 and became the largest international service organization in the world. He noted that February 23, 2011, would mark the 106th anniversary of the Rotary internationally and thanked the City for proclaiming February 23, 2011 as Hayward Rotary Club Day.

Mr. Jim Drake, Franklin Avenue resident, addressed potential safety issues related to the mini-loop project on Mission Boulevard. Mr. Drake spoke in favor of the current Noise Ordinance and noted that existing language in sections 4-1.02 and 4-1.03 is clear to interpret.

Mr. Tom Silva, representing the Rental Housing Owners Association of Southern Alameda County, asked Council to direct staff to review the proposals to the Historic Preservation Program and requested a 90-day continuance as the Association had serious concerns. Mr. Silva said the Association was grateful for the open communication with staff during this process, but questioned the preliminary list of historic fourplexes. He showed three photographs of rental properties at 22640 6th Street, 21130 Montgomery Street, and 1365 B Street and questioned if the buildings met the threshold for historic preservation. He asked that staff contact him regarding his concerns.

Ms. Monica Shultz, Library Commissioner, asked Council to keep the Library in mind during the mid-year review and consideration of the Governor's budget proposal.

Ms. Linda Bennett, Hayward resident, mentioned that in the past three weeks two homes were burglarized. Ms. Bennett requested that Council write to legislators on the issue of privacy of information on the web. She also noted that the City's Geographic Information System (GIS) has people's information on the website. Ms. Bennett also mentioned that advertisements do not have the business license number on business cards or flyers. She requested that gardeners have their vehicles properly marked to identify them. Mayor Sweeney asked the City Manager to look for legislation regarding privacy and to consider the issues raised by Ms. Bennett.

WORK SESSION (60-Minute Limit)

1. Historic Preservation Program – Proposed Program Elements Update and Status of Post-1946 Multi-Family Residential Buildings

Staff report submitted by Planning Manager Patenaude, dated February 22, 2011, was filed.



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
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Development Services Director Rizk announced the report and introduced Planning Manager Patenaude who provided a synopsis of the report.

Mr. Patenaude mentioned a letter that was received from Greg Jones, President of Prospect Hill Neighborhood Association (PHNA) and noted that staff will research the requested information, which will be part of the presentation at the PHNA meeting in May.

In response to Council Member Quirk's inquiry regarding the three properties in the designated list mentioned by Mr. Silva, Planning Manager Patenaude replied that the list was prepared by the consultant and the buildings were determined to be medium or high integrity for architecture style and the time period they were built, but said the properties would not necessarily be on the final list. Mr. Quirk received clarification from Mr. Patenaude that staff would develop a list of significant properties and would evaluate historic alteration permits for multi-family residential structures by the end of June 2011. Mayor Sweeney noted that Next Steps in the report need to specify that staff would bring back a report in June 2011.

Planning Manager Patenaude confirmed for Mr. Peixoto that historical significance decisions about individual buildings would require a public hearing and that staff would work with neighborhoods in regards to historic districts. Mr. Peixoto expressed concern for designating a neighborhood a historic district prior to meeting with the residents. Mr. Patenaude replied that staff will meet with the neighbors prior to designating a district.

Council Member Henson suggested that when the historic designation is placed on the City's Geographic Information System (GIS), there needs to be clarification for citizens that the designation will prompt a specific permit process. Planning Manager Patenaude mentioned that staff is creating links from the notations in GIS to the Historic Preservation page. Mr. Henson suggested staff needs to review the explanation of the criteria and to also consider creating a preservation park where structures of historic significance could be placed and protected.

Council Member Zermeño was content the City continues to address the Historical Preservation Ordinance, but expressed concern that the City may be forcing homeowners to preserve their residence for historical purposes. Planning Manager Patenaude said that many of the City's tract homes do not fall under the criteria for historical preservation. Mr. Zermeño was in agreement with the staff report that multi-family homes should be evaluated on their own merit.

Council Member Salinas expressed concern that prospective homeowners may be de-incentivized by the costs associated with renovating historic homes and with the requirements of the proposed Residential Energy Conservation Ordinance (RECO). Mr. Salinas, in referring to Greg Jones' e-mail, questioned if the impact of the loop would affect the proposed process. In response to Mr. Salinas' question about outreach, Mr. Patenaude noted that outreach to neighborhoods is part of staff's work program and developing the incentives program would include workshops for homeowners.

Council Member Halliday mentioned that the designated list would be representative of historic resources and was in favor of having a good inventory. Ms. Halliday mentioned that Council's direction to staff was to identify and create a mechanism for homeowners who want to preserve their historic residences and qualify for incentives such as the Mills Act. Ms. Halliday expressed reservation about historic alteration permits and additional costs associated with the review process. Mayor Sweeney agreed with Council Member Quirk that in June Council would be interested in reviewing the Historic Preservation Program.

CONSENT

2. Emergency Wells Supervisory Control and Data Acquisition (SCADA) Installation Project: Approval of Addendum and Rejection of Bids

Staff report submitted by Deputy Director of Public Works Ameri, dated February 22, 2011, was filed.

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

Resolution 11-012, "Resolution Approving Addendum No. 1 and Rejecting All Bids for the Emergency Wells Supervisory Control and Data Acquisition (SCADA) Installation Project, Project No. 7171"

3. Public/Educational/Governmental (PEG) Agreement Renewal

Staff report submitted by Technology Services Director Priest, dated February 22, 2011, was filed.

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

Resolution 11-013, "Resolution Authorizing the City Manager to Negotiate and Execute a One Year Extension to the Existing Agreement with the Chabot-Las Positas College Community District for Interim Public/Education/Government (PEG) Services"

4. Resolution Designating February as Black History Month

Staff report submitted by Mayor Sweeney and Council Member Henson, dated February 22, 2011, was filed.

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

Resolution 11-014, "Resolution Designating February as Black



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

History Month for February 2011 and Each February Hereafter”

LEGISLATIVE BUSINESS

5. Mid-Year Review Fiscal Year 2011

Staff report submitted by Director of Finance Aufer, Human Resources Director Robustelli, and Interim Director of Finance Stark, dated February 22, 2011, was filed.

City Manager David announced the report and introduced Interim Director of Finance Stark who provided a synopsis of the report. Interim Director of Finance Stark noted that there were two corrections to the General Fund Mid-Year Projections chart on page 85 of the Council packet. The language, “Advance from Redevelopment Agency” was changed to “Advance to Redevelopment Agency.” Also, the amount for Contingency was changed from \$42,333,657 to \$4,233,657.

In response to Council Member Quirk’s request for an accounting of the additional \$10 million needed, Human Resources Director Robustelli explained the additional funds is the difference between the adopted budget and the amount staff is projecting from a decrease in revenue from property taxes and cost increases in PERS, retirement, worker’s compensation, healthcare costs, and wage increases.

Mayor Sweeney suggested that staff add line items to the General Fund Summary on page 89 of the agenda packet, under Expenditures – Employee Services, and indicate the projected increases for the different areas and to use similar models for the other tables. Mayor Sweeney noted this would present a clear picture of the ongoing liability.

Council Member Peixoto suggested a side-by-side comparison analysis to be able to understand the comprehensive model vs. the management model and their impacts. In response to Mr. Peixoto’s request to explain balancing a fiscal year budget versus a continuous structural problem, Interim Finance Director Stark explained a structural problem within a budget is something that goes on continually year after year, and is not addressed unless there is an ongoing attempt to resolve it. Ms. Stark said the difference for a single fiscal year budget is that staff is looking to close the gap for that specific year. Mr. Peixoto was glad staff used conservative assumptions particularly with the growth rate.

City Manager David confirmed for Council Member Henson that the Community Services Officer (CSO) position for the Red Light Photo Enforcement Program would be eliminated if the program does not generate the needed revenue to support the position. Mr. Henson asked about grants that may not be available during the current year. Ms. David noted that the City received a federal grant to fund nine officers for three years, but the City faces a challenge because it is obligated to retain the nine officers for the fourth year through the General Fund.

Council Member Halliday requested specific figures related to the Red Light Photo Enforcement Program. City Manager David noted that staff would bring an update in the next couple of months. In response to Ms. Halliday, Ms. David pointed out that staff will continue to research the interoperability program and evaluate if it is the most cost effective and efficient approach to move to a countywide public safety communication system.

Council Member Zermeño noted that the City's budget has received 11 awards for being clear and well presented. Mr. Zermeño requested that the nine officers authorized by the cops grant award be one of the top priorities under the Council's "Safe" priority.

In response to Council Member Salinas' question regarding what would be a meaningful projection for a fiscal outlook, City Manager David responded that a five-year timeframe could allow for a comfortable projection. In response to Mr. Salinas' inquiry if there is a model city that is implementing successful strategies, Ms. David noted some cities have implemented two-tiered retirement or shifted the cost burden of PERS from organization to employees. Ms. David noted it is important for the City to look at its individual needs and construct a program to meet those needs and incorporate best practice elements.

Mayor Sweeney opened the public hearing at 9:02 p.m.

Ms. Kelly Greenne, Library Commission Chair, requested Council to spare the library from further budget cuts. Ms. Greenne enumerated the various services that are provided through the Library and noted how vital the libraries are for the community. She said the library has had over a million visitors over the past couple of years and that the City's recent Services Satisfaction Survey indicated the community is happy with the library services.

Ms. Monica Shultz, Library Commissioner, echoed Ms. Greenne's comments and urged Council to preserve the libraries' budget and mentioned Library and Community Services Director Reinhart's successful efforts in partnering with the Hayward Unified School District.

Ms. Linda Bennett, Library Commissioner, mentioned the libraries provide services without discrimination and listed the array of diverse groups that benefit from these services. Ms. Bennett listed several services provided by the libraries for all ages.

Ms. Lisa Brunner, Library Commissioner, said the main library is the center of downtown for families and children and elaborated on afterschool programs, especially the Homework Help Program and noted that 80% to 90% of students utilize the internet and do their homework. She added that the library has the largest group of volunteers. Ms. Brunner suggested staff research how cities back east were saving money on employee healthcare costs through the Health Care Savings Plan.

Mayor Sweeney closed the public hearing at 9:12 p.m.

Council Member Quirk suggested that staff create a chart similar to Table 1: Management Model on page 15 of the report, that could include data from FY2011 through FY2014, and have an



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

additional table or text that explains the major changes in resources such as loss in revenue from property taxes and major outlays such as personnel cost increases for PERS, salaries and healthcare. Additionally, Mr. Quirk requested including additional liabilities and critical unfunded needs. Mr. Quirk said this should bring clarity to why there is a deficit increase from \$2 million to almost \$12 million.

Mr. Quirk made the motion to approve the resolution with the request to have a chart that runs from FY 2011 through FY 2014 and explains why the numbers are changing over time.

Mayor Sweeney suggested revising the table on Attachment II of the report, FY 2011- General Fund Summary, to add line items that reflect cost increases for PERS, healthcare, retirement, salary increases and workers' compensation, and to include that information as part of the ten-year plan.

Council Member Zermeño seconded the item.

It was moved by Council Member Quirk, seconded by Council Member Zermeño, and carried unanimously, to adopt the following, with a request to create a chart that includes data from FY 2011 to FY 2014 and to have additional text or table that explains why there are major changes to the resources, outlays, additional liabilities, critical unfunded and unfunded needs; and to amend Attachment II of the report to add line items pertaining to PERS, health care, retirement, salary increases, and workers' compensation, and include that information as part of the ten-year plan.

Resolution 11-015, "Resolution Amending Resolution 10-013, As Amended, The Budget Resolution for the City of Hayward Operating Budget for Fiscal Year 2011, Relating to an Appropriation of Funds"

6. Recommended Council Priorities

Staff report submitted by City Manager David, dated February 22, 2011, was filed.

City Manager David provided a synopsis of the report, recommending Council Priorities for FY 2012.

Mayor Sweeney opened the public hearing at 9:25 p.m.

Ms. Sara Lamnin, Sebastopol Lane resident, appreciated the City's outreach efforts to the community and encouraged staff to utilize community resources to communicate and educate the community. Ms. Lamnin mentioned there are 700 non-profit agencies located in Hayward and offered her services.

Mayor Sweeney closed the public hearing at 9:26 p.m.

Council Member Quirk noted that he concurred with Mayor Sweeney's comments that Council's top priorities should be "Safe" and "Clean," but wanted to hear from the rest of Council.

Mayor Sweeney commented on the importance of retaining the overriding priorities of "Safe" and "Clean" as it did not make sense to add a third overriding priority to the list given the current difficult economic environment. Mayor Sweeney did not want to diminish the importance of the sustainability work, but noted that resources should not be diverted from public safety. Council Member Quirk was in agreement with Mayor Sweeney's comments.

Council Member Salinas concurred with the Council priorities given the current economic landscape. Mr. Salinas shared information from the Public Policy Institute of California that indicated the top six jobs were professional services, education, administrative, healthcare, accommodation, food, entertainment, and recreation services. He mentioned that these are established industries in the City. He mentioned that Hayward is an education city and suggested that consideration be given to exploring the potential and opportunity to generate revenue from the educational sector.

Council Member Henson mentioned that he lobbied to keep "Green" as a priority, but given the dire budget circumstances, he concurred with Mayor Sweeney's comments to retain the top priorities of "Safe" and "Clean". Mr. Henson mentioned there will be opportunities to retain grants for the sustainability efforts without listing "Green" as a top priority.

Council Member Halliday felt strongly about retaining "Green" as a top priority. Ms. Halliday said it was important to have environmental concerns as one of the City's top priorities and noted that the items under the new category of "Green" do not fit under "Land Use." She expressed disappointment that her colleagues were retreating on making "Green" a top priority and noted that these initiatives save money and position the City to be more energy efficient. Ms. Halliday mentioned the positive community participation when environmental issues were before Council and that Council made a commitment to be a sustainable city and to improve the quality of the environment.

Council Member Halliday moved to support the Council priorities for FY 2012 as recommended by staff. Council Member Zermeño seconded the motion.

Council Member Zermeño noted that improvements to the sewage treatment plant reported \$78,000 in savings to the City. He addressed the importance of the items under the "Green" priority and added that having the top three priorities could be a draw for incoming families. Mr. Zermeño was also disappointed that colleagues have backed away from the "Green" priority. He supported the motion and reminded his colleagues that both Council and staff have worked hard to promote "Green" issues. Mr. Zermeño encouraged fellow Council Members to support and retain "Green" as a top priority.

Council Member Peixoto agreed with the staff recommendation and mentioned that feedback from the community indicates that safety is their main concern. He said that the priorities make sense and they represent the City and Council's values. Mr. Peixoto was glad to see that the City will be using



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

social media to disseminate information and that the City's newsletter will reach residents with no internet access.

Council Member Henson clarified that he was not retreating from the "Green" priority, but understood that the objective in setting Council priorities was to evaluate the state of the City and to then maximize the efforts of staff in accomplishing these goals. Mr. Henson said that the "Green" priority can be accomplished through the efforts of the Sustainability Committee.

Mayor Sweeney confirmed for Council Member Salinas that the Climate Action Plan is the policy that moves the City in the direction of "Green." Mr. Salinas agreed with Council Member Henson's comments and mentioned that feedback from the community focus on crime and cleanliness and noted that "Clean" and "Green" are closely related.

Council Member Quirk noted that since Council did not seem to concur with the overriding priorities he suggested Council Member Halliday offer two motions; first to adopt the overriding priorities and then to make a second motion to adopt all of the priorities.

It was moved by Council Member Halliday, seconded by Council Member Zermeño, and carried with the following vote, to establish Safe, Clean, and Green as the top Council priorities for FY 2012.

AYES: Council Members Zermeño, Halliday, Peixoto,
Salinas, Henson
NOES: Council Member Quirk
Mayor Sweeney
ABSENT: None
ABSTAINED: None

Council Member Halliday then made a second motion to move to adopt the staff recommended priorities for FY 2012. Council Member Zermeño seconded the motion.

Mayor Sweeney offered an amendment to the "Clean" priority column and asked that the following three items be moved up to the top of the list: strengthen code enforcement citywide (SMASH); implement Neighborhood Partnership Program beyond Phase I; and strengthen and expand KHCG Task Force into neighborhood organizations and promote the Adopt-a-Block program. Additionally, given the current state of the redevelopment budget, he suggested that the category, "Eliminate blight throughout RDA," be moved to the bottom of the list.

Council Members Halliday and Zermeño concurred with the amendment.

It was moved by Council Member Halliday, seconded by Council Member Zermeño, and carried unanimously, to adopt the following, with modifications to the "Clean" priority column and asked

that the following three items be moved up to the top of the list: strengthen code enforcement citywide (SMASH); implement Neighborhood Partnership Program beyond Phase I; and strengthen and expand KHCG Task Force into neighborhood organizations and promote the Adopt-a-Block program. Additionally, given the current state of the redevelopment agencies, he suggested that the item, "Eliminate blight throughout RDA," be moved to the bottom of the list.

Resolution 11-016, "Resolution Approving Recommended Council Priorities for FY 2012"

7. State Budget Update/Governor's Redevelopment Proposal – Discussion of City of Hayward responses

Staff report submitted by Assistant City Manager/Interim Redevelopment Director Morariu, dated February 22, 2011, was filed.

City Manager/Executive Director David announced the report and introduced Assistant City Manager/Interim Redevelopment Director Morariu and Consultant Craig Hill from Northcross Hill & Ach.

Assistant City Manager/Interim Redevelopment Director Morariu provided a background of the redevelopment agencies as it relates to the Governor's proposal to eliminate all redevelopment in California, effective July 1, 2011. Ms. Morariu also presented a PowerPoint presentation and gave an overview that outlined the Redevelopment Agency's outstanding loans.

Mr. Craig Hill offered alternatives to City Council /Redevelopment Agency Board that included protecting the existing obligations to the City, identifying projects at risk, or doing nothing. He added that there is the possibility that the State will have a decision by March 10, 2011, and that City Council /Redevelopment Agency Board action will need to occur for documents to close by that date.

Assistant City Manager/Interim Redevelopment Director Morariu presented three options as follows: 1. Rely on cooperative and loan agreements; 2. Options for land a) land exchange agreement between the Agency and City for payment of debt, b) create an economic development corporation and transfer property from Agency; 3. Options for financing, a) securitize existing obligations between Agency and City (create a bond for existing debt), b) sell a real bond on market leveraging tax increment.

City staff and Mr. Hill responded and clarified questions from City Council /Redevelopment Agency Board Members related to the different options.

Council/RA Member Quirk suggested staff keep a watchful eye on things and supported preparing options 2a) and 3a), and then if necessary, call a special meeting of City Council /Redevelopment Agency Board. Mr. Quirk stated that Hayward has integrity and has spent redevelopment funds properly.



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

Council/RA Member Halliday felt strongly that the State was causing redevelopment agencies to consider proposals that are both risky and costly. Ms. Halliday was in support of exploring option 3a) and to explore 2a) but modifying it to read “land exchange agreement between Agency and City,” and removing the words “for payment of debt.”

Council/RA Member Henson supported exploring option 2a), with the change to the language as proposed by Council/RA Member Halliday, and option 3a). In response to Mr. Henson’s inquiry about the League of California Cities position, Assistant City Manager/Interim Redevelopment Director Morariu noted that the California Redevelopment Association and the League of California Cities are working together and reviewing the legality of the Governor’s proposal and the possibility of a legal challenge.

Council/RA Member Peixoto expressed great concern over the possibility of the elimination of the redevelopment agency and asked if the State were to take over the assets, would it also take over the debt. In response to Mr. Peixoto’s question if Council/RA Members could be seated on the board of an economic development corporation, Assistant City Manager/Interim Redevelopment Director Morariu noted she would need to explore its structure.

In response to Council/RA Member Zermeño’s question about what would happen to employees that are paid through the RDA, Assistant City Manager/Interim Redevelopment Director Morariu responded there are about six positions that are fully funded through RDA monies and staff would need to work with Human Resources to transition those employees.

Council/RA Member Salinas asked if options 2a) and 3a) were prepared, then what would prompt the execution of agreements. Assistant City Manager/Interim Redevelopment Director Morariu responded that once staff sees legislation released, it would go to a City Council/Redevelopment Agency Board vote within 48 hours and this would allow staff the time to review the legislation and make a determination whether the City Manager/Executive Director will execute the agreements that the City Council /Redevelopment Agency Board has authorized. Ms. Morariu explained for Mr. Salinas that if City Council/Redevelopment Agency Board directs staff to explore 2a) and 3a), then staff would come back to City Council /Redevelopment Agency Board with a report that would explain the options in greater detail

There being no public comments, Mayor/Chair Sweeney opened and closed the public hearing at 10:38 p.m.

Mayor/Chair Sweeney asked if the remaining tax increment of \$2,294,289 under RDA could be allocated to repay the General Fund. Assistant City Manager/Interim Redevelopment Director Morariu noted that the existing fund balance could be used to pay off the debt. Mayor/Chair Sweeney suggested the option of exploring the idea of using a portion of unallocated funds towards accelerating repayments of loans.

After discussion ensued, Council/RA Member Quirk offered a motion for staff to explore the following options: 1) Option 2a) - land exchange agreement between Agency and City for payment of debt; 2) Option 3a) - securitize existing obligations between Agency and City; 3) If the RDA has funds, use these funds to repay loans; and 4) Option 2a) - land exchange agreement between Agency and City without repayment of the loan.

Mr. Hill said staff will need to prepare resolutions and documentation approving all of these options to enable the City Manager/Executive Director to execute them once the legislation is approved in Sacramento. He stated that staff is concerned that there will not be enough time to notice a meeting for Council and the Redevelopment Agency Board to approve the documents.

Council/RA Member Zermeño seconded the motion.

Assistant City Manager/Interim Redevelopment Director Morariu said that barring any major glitches, and after consulting with attorneys, staff should have the four options ready for City Council /Redevelopment Agency Board to review on March 1, 2011.

Council/RA Member Quirk confirmed for Council/RA Member Henson that the motion gives staff direction to explore the four options and that City Council /Redevelopment Agency Board wants to see the finished detailed reports at the next meeting. Assistant City Manager/Interim Redevelopment Director Morariu said that staff would also identify the series of events that would prompt the City Manager/Executive Director to execute the documents.

Council/RA Member Halliday concurred with the motion except for option (2a) because of the words “for payment of debt” and mentioned that when staff comes back with the finished documents, City Council /Redevelopment Agency Board would prioritize which options to execute. Ms. Halliday supported the motion on the floor should the series of events occur. She pointed out that the final documents might be a combination of options, e.g. use RDA funds to pay obligations and then securitize the balance.

Mayor/Chair Sweeney said that Council/RA Member Halliday made a good point regarding using one asset to securitize another asset. He noted that if the Governor is successful at eliminating the agency, the six positions funded through the RDA are also on the table. Mayor/Chair Sweeney said it was critical that staff speak frankly and boldly with the legislators on how strongly the City Council/Redevelopment Agency Board feels about the potential elimination of the RDA.

It was moved by Council/RA Member Quirk, seconded by Council/RA Member Zermeño, and carried unanimously, to approve a motion to direct staff to explore the following four options and bring back options on March 1, 2011, and include clear language that would give authority to the City Manager/Executive Director to execute any agreements on behalf of the City Council/Redevelopment Agency Board, if necessary: 1) options for land 2a) - land exchange agreement between Agency and City for payment of debt; 2) options for financing 3a) - securitize existing obligations between Agency and City; 3) if the Agency has funds, use them to repay the obligations; and 4) transfer of land to the City with no repayment of loan.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, February 22, 2011, 7:00 p.m.**

Council Member Salinas announced an Informational Open House “How to Do Business with Public Agencies in Hayward,” on March 2, 2011, from 9:00 a.m. to noon at the City Hall rotunda. Mr. Salinas also announced that the Hayward Unified School District is starting a new attendance policy campaign to educate the community on the importance of student attendance at school and how it generates needed revenue.

Mayor Sweeney expressed concern about a recycling business on West Winton noting that folks frequently double park on the street. He was concerned about potential hazards and asked staff to look into it.

ADJOURNMENT

Mayor/Chair Sweeney adjourned the meeting at 10:55 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:

Miriam Lens, City Clerk, City of Hayward
Secretary, Redevelopment Agency



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, March 1, 2011, 7:00 p.m.**

MEETING

The Special Meeting of the City Council/Redevelopment Agency was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Mayor/Chair Sweeney.

ROLL CALL

Present: COUNCIL/RA MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,
Henson
MAYOR/CHAIR Sweeney
Absent: COUNCIL/RA MEMBER None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that Council met pursuant to Government Code 54957, regarding the City Clerk's Performance Evaluation and took no reportable action.

PUBLIC COMMENTS

Mayor Sweeney asked City Manager David to produce a report about the disturbances that occurred over the weekend at Club ME and Bijou Restaurant. City Manager David said a report would be forthcoming by the end of the week.

Mr. Jim Drake, Franklin Avenue resident, spoke in favor of the current Noise Ordinance for its clear definitions.

Mr. Doug Ligibel, Grand Terrace resident, spoke on behalf of the Downtown Neighborhood Watch and expressed disapproval of the proposed Residential Energy Conservation Ordinance (RECO). Mr. Ligibel mentioned he had submitted a public records request related to violent incidents at Club ME and a second request regarding the 2010 total graffiti cost to the City and the number of hours logged by the Hayward Police Department dealing with graffiti vandalism in 2010. He expressed concern about the violence in downtown in the past 30 days and noted that the downtown leadership group was going to convene an emergency meeting with elected officials, Hayward Chief of Police, and BART Police to address recent incidents.

LEGISLATIVE BUSINESS

1. Update on Status of Redevelopment Agency Budget

City Manager/Executive Director David gave the context of Governor Brown's proposed legislation related to the dissolution of the Redevelopment Agency (RDA) and the creation of a Successor Agency, which would be overseen by an Oversight Board. Ms. David noted the critical dates for the proposed legislation were: January 1, 2011, beyond which no action can take place without possible State challenge, for a three-year period; mid-March as the effective date the legislation could be signed; July 1, 2011, as the time other parts of the legislation could take effect; and June 1, 2012, when a \$1.7 billion payment from all redevelopment agencies is made to the State.

City Manager/Executive Director David introduced Assistant City Manager/Interim Redevelopment Director Morariu and Financial Advisor Craig Hill from Northcross Hill & Ach.

Assistant City Manager/Interim Redevelopment Director Morariu noted that the staff report would ask the City Council/Redevelopment Agency Board to review and potentially take action at a special meeting noticed for March 2, 2011, according to Brown Act requirements. Ms. Morariu indicated that at the City Council/Redevelopment Agency Board meeting on February 22, 2011, the City Council/Redevelopment Agency Board provided staff with direction to pursue three options: evaluation of land transfer without consideration of repayment; securitization of loans with the General Fund, the Sewer Fund, the Water Fund, and possibly Low-Mod Housing Fund; and reduction of loan balances. Ms. Morariu said based on staff analysis there were five recommendations; 1) adjust the RDA and Low-Mod operating budgets; 2) transfer all RDA-owned properties to the City; 3) do not proceed with the securitization of the loan with the General, Sewer, Water and Low-Mod Housing Funds; 4) use remaining RDA Tax Increment fund balance to pay off existing Water and Sewer Fund loans; and 5) approve a loan from the Water and Sewer Funds to the General Fund. Ms. Morariu gave an overview of the RDA operating budget adjustments and property transfer. She added that the next steps involved the City Council/Redevelopment Agency Board to review and discuss staff's recommendation and potentially take action on March 2, 2011.

Assistant City Manager/Interim Redevelopment Director Morariu clarified for Council/RA Member Henson that the proposed action would give the City Manager/Executive Director the authority to execute the necessary documents when certain trigger activities occur. Mr. Henson agreed that action needs to be taken as if the elimination of the RDA is imminent and concurred with Ms. David's comments that these are the most prudent and defensible actions. Ms. Morariu clarified land transfer and securitization options.

Council/RA Member Quirk expressed concern about the difficulty of undoing the proposed actions. Assistant City Manager/Interim Redevelopment Director Morariu responded that based on staff research, the actions would be relatively easy to unravel. Mr. Quirk suggested that City Council /Redevelopment Agency Board convene a closed session to discuss the legal implications of the proposed actions.

Council/RA Member Halliday entertained the idea of letting the State take over the Cinema Place parking garage and letting the State maintain it and inquired about the maintenance expense related to the environmental work at the parking garage. Assistant City Manager/Interim Redevelopment Agency Director Morariu noted that parking lots are of critical economic development value to the downtown area and added that the title holder of the property is responsible for any toxic clean-up. Ms. Halliday added that City Council/Redevelopment Agency Board would need to rely on staff's



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, March 1, 2011, 7:00 p.m.**

recommendations and guidance in order to take the best route to protect the assets of Hayward residents.

Council/RA Member Peixoto expressed concern that the proposed legislation places an administrative burden not only on cities, local agencies and counties, but on the State as well. City Manager/Executive Director David said that the proposed legislation states that the State Controller and Department of Finance will be monitoring all activity.

Council/RA Member Zermeño said he was not in favor of having the State as a landowner within the City and referred to the neglected conditions of Caltrans property. Mr. Zermeño asked about RDA employees and Assistant City Manager/Interim Redevelopment Agency Director Morariu responded that this was part of a labor negotiation process and the City would follow the provisions in the Memorandum of Understanding (MOU). Ms. Morariu added that staff was reviewing options to help the affected employees.

Council/RA Member Salinas inquired if staff had explored different avenues to communicate and educate the community about the proposed legislation and the potential impact to the City and residents. City Manager/Executive Director David mentioned that staff's first responsibility was to inform and educate City Council/Redevelopment Agency Board on the proposed legislation and let them disseminate the information to constituents. Mr. Salinas suggested staff explore utilizing the Chabot College television studio and suggested making a public service announcement.

There being no public comments, Mayor/Chair Sweeney opened and closed the public hearing at 8:02 p.m.

Mayor/Chair Sweeney referred to action six of the March 2, 2011, staff report and requested further breakdown of the proposed one-time funding of \$1,872,952 and suggested a smaller amount for the organizational transition fund. Mayor/Chair Sweeney added that more information will facilitate the decision making process. In response to Mr. Sweeney's question about the State's options for the parking lots and the loss to the City, Ms. David said it would be a loss of control to the City and the State would revert to the Successor Agency with an attempt to sell the property.

Council/RA Member Quirk expressed concern that the State would attempt to sell the parking structure that currently provides movie theater parking. City Manager/Executive Director David said staff was researching agreements that are built into the development agreements where the City is obligated to provide parking. Mayor/Chair Sweeney inquired if the State takes over the asset, do they also incur the agreement obligation. City Manager/Executive Director David said there is likelihood that if a contractual obligation is in place, the asset would not be sold.

Council/RA Member Henson verbalized the frustration that the City and all agencies are experiencing. Mr. Henson agreed with Council/RA Member Salinas' comments on the importance to educate the community as much as possible regarding the proposed legislation and added that it is

vital to clarify that the City is not taking money from the school district. Mayor/Chair Sweeney noted that the new Burbank Elementary School was a success story that was built with Redevelopment funds.

Council/RA Member Halliday agreed with Mayor/Chair Sweeney's comments regarding using available RDA funds to repay the Water and Sewer loans. Ms. Halliday was frustrated with the proposed legislation and she worried that the possible elimination of the RDA would not benefit everyone involved. She mentioned that Hayward has spent redevelopment monies in a manner that it has improved downtown, the environment, and the quality of life. Mr. Hill clarified for Ms. Halliday the issuance of Emergency Refunding Bonds.

Council/RA Member Zermeño said that the State should be looking at the funds used to sustain the prison system, stating that the State spends \$20,000 per prisoner per year as compared to the \$6,000 per student per year.

Mayor/Chair Sweeney asked City Attorney/Agency Counsel Lawson on how to move forward with agendizing a closed session. Mr. Lawson mentioned City Clerk Lens had noticed a special meeting for Wednesday, March 2, 2011 at 7:00 p.m., and City Council/Redevelopment Agency Board could choose to convene a closed session to discuss anticipated litigation after 7:00 p.m., per Government Code section 5495.9 b (1), and 54956.9 b (3A), and 54956.9 c.

Mayor/Chair Sweeney asked Council/RA Member Quirk to clarify his request for a closed session. Mr. Quirk clarified that prior to the City Council /Redevelopment Agency Board taking action, he requested for the City Council/Redevelopment Agency Board to convene a closed session to consult City Attorney/Agency Counsel Lawson about the proposed actions, which could occur at the special meeting on March 2, 2011.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced a basketball fundraising match between Hayward Local 1909 Firefighters and Los Chilonos de Hayward, on Saturday, April 2, 2011, at the Mateo Jimenez Gym. He noted the proceeds will go toward the Muscular Dystrophy Association and the Hayward Youth Commission Scholarship Program.

Council Member Salinas asked City Manager David for information relating to the California Public Records Act and the time involved in processing requests and the amount recovered for performing the tasks involved. City Manager David noted that duplicating and direct expense costs are recovered as allowed under State law.

ADJOURNMENT

Mayor/Chair Sweeney adjourned the meeting at 8:25 p.m.



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
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City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, March 1, 2011, 7:00 p.m.**

APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:

Miriam Lens, City Clerk, City of Hayward
Secretary, Redevelopment Agency



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, March 2, 2011, 7:00 p.m.**

MEETING

The Special Meeting of the City Council/Redevelopment Agency was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council/RA Member Peixoto.

ROLL CALL

Present: COUNCIL/RA MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,
Henson
MAYOR/CHAIR Sweeney
Absent: COUNCIL/RA MEMBER None

LEGISLATIVE BUSINESS

1. Authorization for Redevelopment Agency Operating Budget Adjustments and Inter-fund Transfers; and Approval of Resolution Authorizing City Manager/Executive Director to Execute Property Transfers Between the Agency and the City and to Take Other Identified Actions to Respond to Anticipated State Actions

Staff report submitted by Assistant City Manager/Interim Redevelopment Agency Director Morariu, dated March 2, 2011, was filed.

Assistant City Manager/Interim Redevelopment Director Morariu delivered a presentation noting there were revisions to attachments V and V-A of the staff report, which were resolutions for the transfer of the properties. Ms. Morariu also provided attachment VI - resolution allowing payment of loan obligations to the Sewer, Water and General Funds from the Redevelopment Agency, and attachment VII - resolution allowing execution of a loan agreement between the Sewer, Water, and General Fund. Ms. Morariu reiterated staff recommendation: adjust RDA and Low-Mod operating budgets; transfer all RDA-owned properties to the City; do not proceed with the securitization of the loans; use remaining RDA tax increment fund balance to pay off existing Water and Sewer Fund loans; and approve a loan from Water and Sewer Funds to the General Fund.

Council/RA Member Zermeño favored protecting the three programs, Business Improvement Area, Community Promotions Program, and Public Art, and asked how long the transition period would take. Assistant City Manager/Interim Redevelopment Agency Director Morariu said this would depend on whether the State honored the loan obligation between the General Fund and the RDA, but she anticipated it to be a one-year transition period, after which the programs would be in jeopardy.

In response to Council/RA Member Halliday's inquiries, Assistant City Manager/Interim Redevelopment Agency Director Morariu clarified the Cinema Place environmental remediation cost and the Route 238 settlement administration costs. City Manager/Executive Director David clarified for Ms. Halliday the Supplemental Educational Revenue Augmentation Fund (SERAF) payment for FY2011.

In response to Council/RA Member Henson's request for clarification on the reduction of Tax Allocation Bond Fund (Fund 451), Director of Public Works Bauman said staff is in the process of closing this capital improvement fund and has requested this item be included with the proposed actions. Assistant City Manager/Interim Redevelopment Agency Director Morariu confirmed for Council/RA Member Henson that according to the current data, the staff recommendations are the best course of action.

Council/RA Member Quirk commented that based on staff recommendations, the City Council/Redevelopment Agency Board needed to take action on items one through five, and Mr. Quirk agreed with Mayor/Chair Sweeney's comments that organizational transition costs should be minimized. Mr. Quirk expressed concern regarding utilizing reserve funds or borrowing funds to support programs currently supported by the RDA. City Manager/Executive Director David said setting up a reserve fund did not need to be approved with the rest of the actions, and as staff obtained more concrete data, it could be brought back for City Council/Redevelopment Agency Board's consideration. Mayor/Chair Sweeney reminded City Council/Redevelopment Agency Board that there is a transition involved and it will be necessary to find a balance that allows for an intelligent transition and at the same time be economically responsible.

In response to Council/RA Member Salinas' inquiry if action by the City Council/Redevelopment Agency Board would eliminate the RDA, Assistant City Manager/Interim Redevelopment Agency Director Morariu clarified the action would authorize the City Manager/Executive Director to execute the documents if passage of the legislation appeared imminent and that the legislation would freeze any activities of the RDA for the remainder of the fiscal year. Ms. Morariu added that by taking the action, the City Council/Redevelopment Agency Board would be able to continue moving forward with projects.

Mayor/Chair Sweeney opened the public hearing at 7:28 p.m.

Ms. Linda Mandolini, Eden Housing Executive Director, urged City Council/Redevelopment Agency Board to take action and support staff's recommendation. Ms. Mandolini mentioned Eden Housing had been diligently working to preserve the state-wide funding and noted the proposed legislation would devastate affordable housing production in California. Mayor/Chair Sweeney mentioned the good work done by the Eden Housing project at C and Grand Streets that houses low-income housing for seniors.

Mayor/Chair Sweeney closed the public hearing at 7:30 p.m.



**MINUTES OF THE SPECIAL CITY COUNCIL/
REDEVELOPMENT AGENCY MEETING OF
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777 B Street, Hayward, CA 94541
Tuesday, March 2, 2011, 7:00 p.m.**

Council/RA Member Quirk made a motion for City Council/Redevelopment Agency Board to convene a closed session to discuss the legal implications of the actions recommended by staff. Council/RA Member Zermeño seconded the motion.

It was moved by Council/RA Member Quirk, seconded by Council/RA Member Zermeño, and carried unanimously, to adjourn to a closed session.

Mayor/Chair Sweeney and Council/RA Members convened a closed session at 7:31 p.m.

Mayor/Chair Sweeney and Council/RA Members reconvened the meeting at 8:03 p.m.

City Attorney/Agency Counsel Lawson reported that City Council/Redevelopment Agency Board met in closed session to discuss anticipated litigation and took no reportable action.

Council/RA Member Henson offered a motion to approve actions per staff recommendation, except the resolution authorizing the City Manager to Execute Internal Loan Agreements, which can be determined at a later date. Council/RA Member Quirk seconded the motion.

Mayor/Chair Sweeney offered a friendly suggestion that as part of the motion, staff provide the City Council/Redevelopment Agency Board with regular and timely status reports.

Council/RA Members Henson and Quirk accepted Mayor/Chair Sweeney's friendly amendment. Mr. Quirk requested the maker of the motion to add, with respect to funding organizational transitions, that staff look at the General Fund budget and try to minimize transition costs, and at the same time, make sure the transition is smooth. Council/RA Member Henson concurred.

It was moved by Council/RA Member Henson, seconded by Council/RA Member Quirk, and carried unanimously, to approve actions per staff recommendation, except the resolution authorizing the City Manager to Execute Internal Loan Agreements, which could be determined at a later date. The motion included direction to staff to give City Council/Redevelopment Agency Board regular and timely status reports regarding items related to redevelopment agencies. In terms of funding organizational transitions, that staff look at the General Fund budget and try to effectively minimize transition costs and make sure the transition is smooth.

Redevelopment Agency Resolution 11-05, "Resolution Amending Resolution 10-11, as Amended, the Budget Resolution for the Redevelopment Agency of the City of Hayward Operating Budget for Fiscal Year 2011, Relating to an Appropriation of Funds"

Redevelopment Agency Resolution 11-06, “A Resolution of the Redevelopment Agency of the City of Hayward Approving the Transfer of Certain Agency Owned Real Properties to the City of Hayward and Making Certain Findings Relating Thereto”

Resolution 11-017, “A Resolution of the City Council of the City of Hayward Approving the Transfer to the City of Certain Real Properties Owned by the Redevelopment Agency of the City of Hayward and Making Certain Findings Relating Thereto”

Redevelopment Agency Resolution 11-07, “Resolution Amending Resolution RA-10-11, as Amended, the Redevelopment Budget Resolution for Fiscal Year 2011, Relating to an Appropriation of Funds from the Redevelopment Agency’s Fund 451, for Repayment of Loans from the City’s General Fund, Water Funds and Sewer Fund”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

There were none.

ADJOURNMENT

Mayor/Chair Sweeney adjourned the meeting at 8:06 p.m.

APPROVED:

Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:

Miriam Lens, City Clerk, City of Hayward
Secretary, Redevelopment Agency

DATE: March 15, 2011

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Utility Service Agreement 11-01 – Rex S. Green and Rita Y. Green
(Owner/Applicant) – Request for Water Service for Assessor’s Parcel Number
425-0050-022-01, located in the Castle Homes Area of Unincorporated Alameda
County

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to direct staff to file an application with the Alameda County Local Agency Formation Commission (LAFCo) for approval of an out-of-service area agreement, and, upon receiving LAFCo’s approval, execute Utility Service Agreement No. 11-01, and a Public Street Improvement Agreement related to providing water service for the property fronting Clover Road, bearing County Assessor’s Parcel Number 425-0050-022-01.

BACKGROUND

Government Code §56133 of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) requires that the applicable LAFCo approve an out-of-area service agreement prior to a city providing utility services to a property located within that city’s Sphere of Influence, but outside its jurisdictional boundaries.

In 1954, prior to the aforementioned law, the City and Castle Homes, Inc., executed a Water Service Agreement that requires the City to maintain sufficient water supply for approximately 800 acres of the Castle Homes area, subject to the execution of a Utility Service Agreement (USA) and reasonable conditions. The subject property is located in the unincorporated area of Alameda County, within the boundaries of the Castle Homes area and the Ultimate Water Service Area and Sphere of Influence of the City of Hayward (Attachment II). Many properties in the Castle Homes area, including those in the vicinity of the subject property, already have water connections to the Hayward water system (see Attachment III).

DISCUSSION

The property owners have been in discussion with County Planning and Building Inspection Departments regarding their proposed single-family dwelling unit in the Castle Homes area. They know that one of the conditions of approval will be to obtain approval from LAFCo and the City of Hayward for water service, and are also aware that the process for obtaining water service could take several months. The LAFCo Executive Officer has indicated that LAFCo staff must be able to deem the out-of-area service agreement application complete at least thirty days prior to the scheduled LAFCo public hearing. LAFCo meets every other month, so the next LAFCo public hearing would be May 12, 2011.

Therefore, the property owners wish to apply for the utility service agreement while they are working to resolve requirements by the County Building Inspection Department, with an understanding that a water connection cannot be commenced until they obtain all necessary approvals from appropriate local agencies. The City of Hayward's six-inch water main in Clover Road has capacity to provide water usage for the proposed single-family dwelling on this parcel of land.

Pursuant to the City's practice for providing utility services to properties within its sphere of influence, but outside its jurisdictional boundaries, the owner will sign a Public Street Improvement Agreement committing to install roadway improvements and pavement tie-in along Clover Road at a future date, and also agreeing to not object to a future annexation of the property, if and when requested by the City. Clover Road is in fair condition and does not have Portland cement concrete curb, gutter, and sidewalk improvements on both sides, all of which would have to be installed by the owners after water service connection and after future annexation, and which requirement will be incorporated in the agreement. Requiring such an agreement is consistent with past practice.

In conjunction with City Attorney's review, it is staff's opinion that this action of approving of a utility service agreement, deferred street improvement agreement, and related connection is exempt from CEQA under what is referred to as the 'general rule' exemption. Government Code §15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines states that a project is exempt from CEQA if, "the 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 has concluded that the action being recommended is not a project under CEQA; therefore, it is not subject to environmental review pursuant to the aforementioned section of the Code.

FISCAL IMPACT

There will be no fiscal impact to the City's General Fund as a result of execution of this agreement. The owners will pay into the City's Enterprise Fund for all the expenditures, added maintenance costs, and applicable fees associated with the water service, in accordance with the City's fee schedule in effect at the time of issuance of the utility service permits.

PUBLIC CONTACT

A public hearing is not required for the filing of a utility service agreement or a Public Street Improvement Agreement. Staff sent a copy of this report to the owner.

NEXT STEPS

Should the Council adopt the attached resolution to authorize filing an application with LAFCo, staff will file a CEQA Notice of Exemption with the Alameda County Clerk and submit an application to LAFCo within the next ten days for the LAFCo public meeting on May 12, 2011. Upon receiving LAFCo approval, the agreements will be executed, and, assuming the home is approved by County Planning and Building Inspection and built, the property owner can commence the water connection upon payment of the applicable water fees.

Prepared by: John Nguyen, P.E., Development Review Engineer

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Draft Resolution
- Attachment II Project Location Map
- Attachment III Map showing Castle Home Area Properties Connected to Hayward Water System

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY TO THE ALAMEDA COUNTY LOCAL AGENCY FORMATION COMMISSION FOR APPROVAL TO ALLOW THE CITY TO PROVIDE WATER SERVICE TO THE PROPERTY FRONTING CLOVER ROAD, BEARING ASSESSOR'S PARCEL NUMBER 425-0050-022-01, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE UTILITY SERVICE (USA 11-01) AND PUBLIC STREET IMPROVEMENTS AGREEMENTS

WHEREAS, water service from the City of Hayward (City) has been requested by the owner of the property fronting Clover Road, bearing Assessor's Parcel No. 425-0050-022-01 (the Property); and

WHEREAS, the Property is located within the City of Hayward's Sphere of Influence; and

WHEREAS, pursuant to City policy, the Property owner has signed Public Street Improvement and Utility Service Agreements to install street improvements across the Property frontage at a future date and to agree to annexation of the Property into Hayward when requested by City; and

WHEREAS, the City is required to apply to the Alameda County Local Agency Formation Commission (LAFCO) for approval of out-of-service area agreements to allow the City of Hayward to provide water service to properties located outside the City limits, but within its Sphere of Influence; and

WHEREAS, the Property owner has agreed to pay the LAFCO application processing costs;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to direct staff to file an application with the Alameda County Local Agency Formation Commission requesting that the City of Hayward be allowed to provide water service for the Property.

BE IT FURTHER RESOLVED that, provided LAFCO approves an out-of-area service agreement pursuant to Government Code §56133, the City Manager is also authorized to execute a utility service agreement (Utility Service Agreement 11-01) and a public street improvement agreement in the form of the agreements on file in the office of the City Clerk, to which reference may be made for further particulars.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

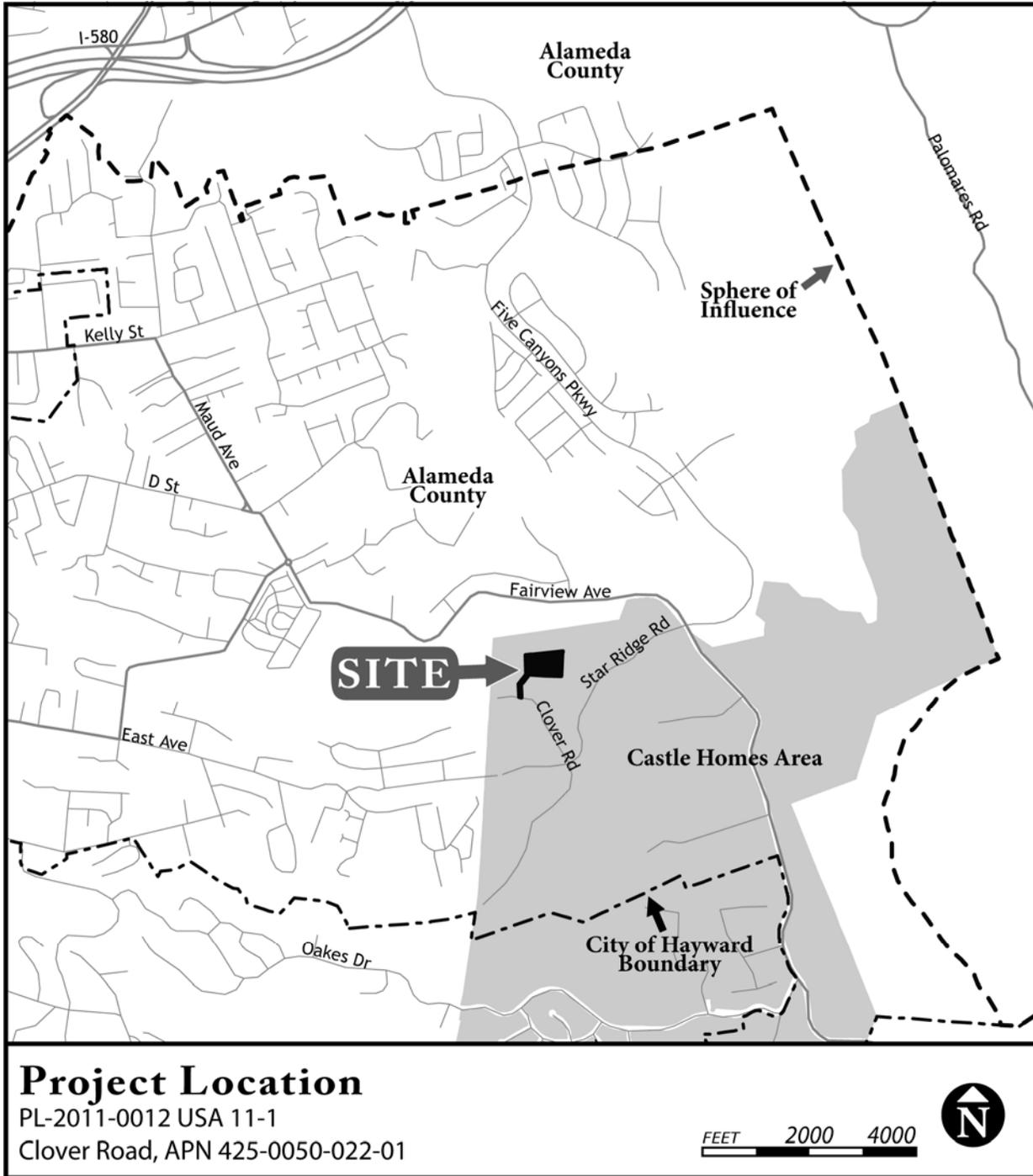
ABSENT: COUNCIL MEMBERS:

ATTEST:

Miriam Lens, City Clerk

APPROVED AS TO FORM:

Michael Lawson, City Attorney



Project Location

PL-2011-0012 USA 11-1
Clover Road, APN 425-0050-022-01

FEET 2000 4000

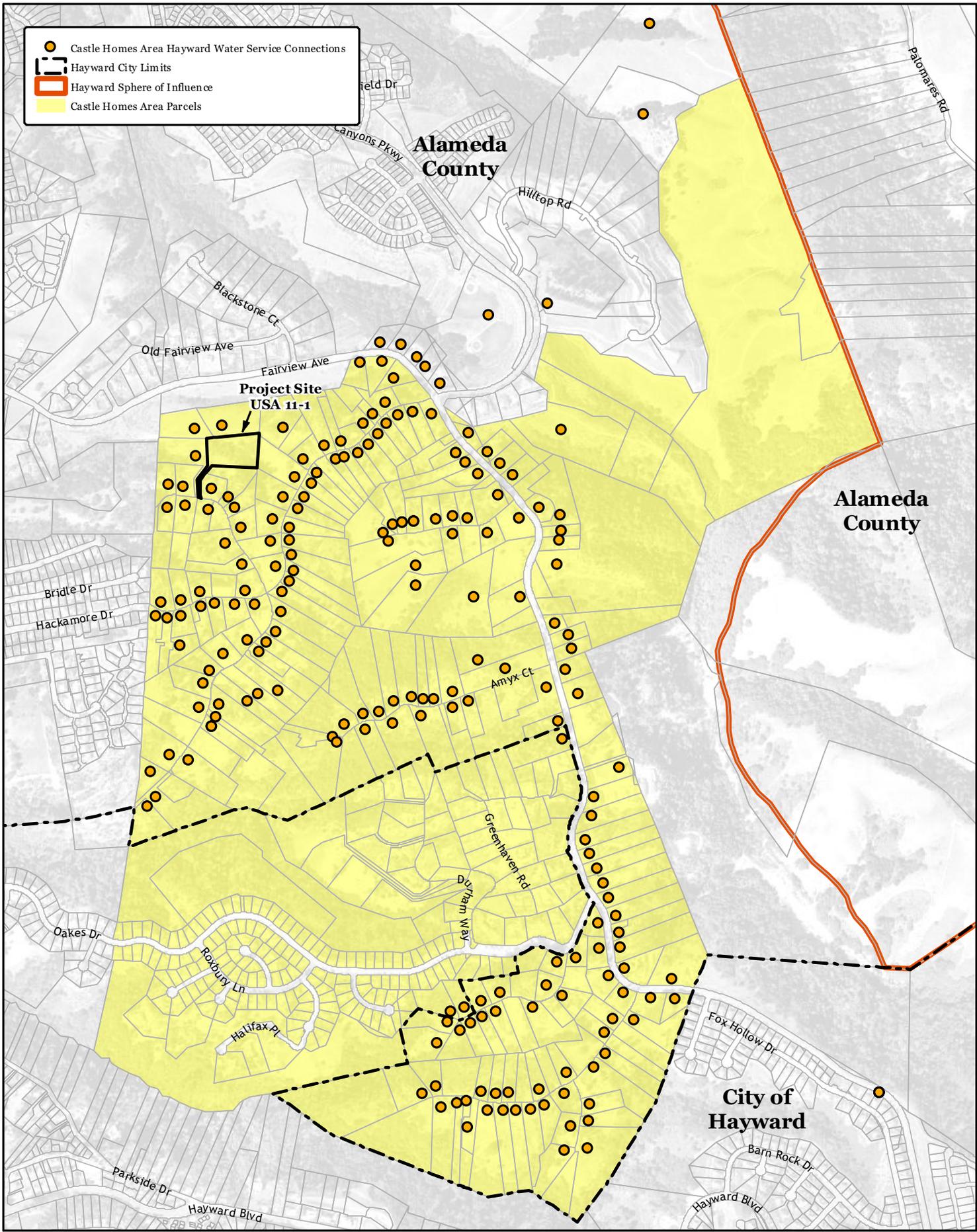




Castle Homes Service Connections



-  Castle Homes Area Hayward Water Service Connections
-  Hayward City Limits
-  Hayward Sphere of Influence
-  Castle Homes Area Parcels



DATE: March 15, 2011

TO: Mayor and City Council

FROM: Technology Services Director

SUBJECT: Financial Management Information System (FMIS) Lease/Purchase

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to execute an Equipment Lease/Purchase Agreement and other documents necessary to execute a Financial Management Information System (FMIS) lease/purchase.

BACKGROUND

In March of 2006, Council authorized the purchase of an upgraded Unisys computer system using lease/purchase financing. This Unisys computer system runs the City's existing Financial Management Information System (FMIS). FMIS encompasses all accounting applications including general ledger, utility billing, business license, payroll, accounts payable, accounts receivable and fixed asset accounting, as well as City budget preparation and monitoring.

Staff anticipated that this computer system would serve the City for up to five years, which has been the case. The lease/purchase obligation and five year license and maintenance agreement will conclude in March 2011. Unisys offers a slightly more powerful model of this series of computer, which is fully supported and less expensive than continuing with the current model. The City could upgrade to the new model with no disruption to service. Consequently, in order to maintain the City's present computing capability *and* realize cost savings; staff is recommending the lease purchase of an upgraded Unisys computer system.

DISCUSSION

Staff has utilized the FMIS system for many years, and is presently working on planning, procuring and implementing a new citywide Enterprise Resource Planning (ERP) system, which once fully implemented, would replace the current FMIS system. This project is in the initial planning, process mapping and needs assessment stage. It is anticipated that a vendor could be selected later this year. An implementation schedule would then be formulated and is highly dependent on the vendor ultimately selected.

Regardless of the vendor selected and the resulting implementation timeline, the City will require its FMIS system to be operational until the new system is completely implemented and for a short

period beyond. This could take anywhere from 18 months to 3 years following selection of the vendor. The proposed new system will be on a three year lease.

The cost to continue to operate the current computer system for three more years under the proposed license and maintenance agreement renewal is estimated to be approximately \$359,000 (license and maintenance fees only) over three years.

As a result, staff is recommending that the City enter into a three year lease/purchase agreement for an upgraded system at a lower total cost than continuing use of the current system. The total cost for the upgraded system over three years is estimated at \$332,000, or \$110,665 per year (lease/purchase payment includes hardware, license and maintenance fees), approximately \$27,000 less than maintaining our existing system.

FISCAL IMPACT

There will be no fiscal impact to the 2011 budget. This is due to the fact that the current payment for the lease/purchase agreement ending in March 2011 for the existing Unisys computer system is nearly identical to the estimated payment for the new computer lease/purchase. Funding for 2012 was included in the proposed 2012 budget, as well as the Technology Services ten year plan. Consequently, it will not be necessary to amend the 2011 budget to fund the new lease/purchase agreement.

PUBLIC CONTACT

None.

NEXT STEPS

If Council authorizes the City Manager to execute a lease/purchase agreement, then staff will negotiate the most favorable interest rate. Staff estimates that the interest rate will be in the range of 3.1% to 3.5% based on recent transactions.

Prepared and Recommended by: Clancy Priest, Technology Services Director

Approved by:



Fran David, City Manager

Attachments: Attachment I: Resolution
Attachment II: Proposed Lease

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION AUTHORIZING EXECUTION OF EQUIPMENT LEASE/PURCHASE AGREEMENT AND OTHER DOCUMENTS NECESSARY TO PROCURE COMPUTER EQUIPMENT

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute an Equipment Lease/Purchase Agreement, and other documents that may be necessary in order to procure computer equipment lease financing necessary, on terms satisfactory to the City Manager and in a form approved by the City Attorney. Such lease agreement shall be subject to the City Council’s annual appropriation of funds.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

March 11, 2011
 Mr. Mark Guenther
 City of Hayward
 777 B Street
 Hayward, CA 94541-5007

Unisys Leasing / Key Government Finance 39225 N. Winchester Road Wadsworth, IL 60083 847-672-6127 P 847-778-8799 C 216-357-6657 F	
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Dear Mr. Guenther:

Unisys Leasing is pleased to present our lease proposal to the City of Hayward. We value the business relationship that we have had with the City of Hayward, and look forward to the opportunity of continuing that relationship. I have included our 36 Month Lease Proposal for your review and consideration. In summary, our proposal is as follows:

LESSOR: Unisys Leasing / Key Government Finance

LESSEE: City of Hayward

EQUIPMENT:		<u>3 – Year</u>
	Hardware (Taxable)	\$18,968.00
	Software (Taxable)	\$157,672.00
	SSU's (Taxable)	\$37,803.00
	Services	\$25,400.00
	Maintenance	\$69,774.00
	Freight	\$378.00
	Install	\$1,531.00
	Sales Taxes (9.75%)	\$20,908.19
	TOTAL PURCHASE PRICE	\$332,434.19

EXPIRATION: This proposal shall terminate on March 21, 2011, and may only be renewed or extended with the Approval of Unisys Leasing / Key Government Finance.

LEASE QUOTE:	Amount	* Effective Rate	Payments	Pmts / Year	Term	Adv. / Arr.
	\$332,434.19	2.98%	\$9,664.66	12	36 Months	Arrears

* Unisys Leasing and G Force reserve the right to allocate the payment between principal and interest as they, in their sole judgment, deem appropriate. Therefore the actual interest rate appearing in any contracts which may result from this proposal may be different than the "Effective Rate" shown above. **The payment, however, shall not change.**

LEASE: This is a tax-exempt, municipal government lease with the title to the property passing to Lessee. This is a net lease under which, all costs, including insurance, maintenance and taxes, are paid by Lessee for the term of the lease. Lease Start Date is April 1, 2011, and all required lease documentation must be fully executed and returned to Lessor by March 21, 2011. The first rental due date would be April 30, 2011.

APPROVAL: This proposal, until credit approved, serves as a quotation, not a commitment by Lessor to provide credit or property. Lessor acceptance of this Proposal is subject to credit approval, and collateral / essential use review and approval, by Lessor.

The interest rate quoted herein assumes that the interest component of the Payments is exempt from federal income tax. Lessor will provide a taxable financing proposal if it is determined that the financing will not qualify for tax-exempt interest rates. Additionally, this proposal is based on current money market conditions and may be adjusted by Lessor to reflect movements in the actual money market conditions at the time of funding.

The financing contemplated by this proposal is subject to the execution and delivery of all appropriate documents (in form and substance satisfactory to Lessor), including without limitation, to the extent applicable, the Master Lease Agreement, any Schedule, financing statements, legal opinion or other documents or agreements reasonably required by Lessor.

Mr. Guenther, Thank you for the opportunity to present this proposal to City of Hayward. If you have any questions, please feel free to contact me at my number or e-mail address below. If you wish to accept this proposal, please do so by signing below and returning this proposal to me via FAX or e-mail. Upon receipt of this proposal, Lessor will promptly begin its credit, collateral and essential use review process.

Sincerely

Rick Grum

Rick Grum
Account Executive
847-672-6127
216-357-6657 Fax
rick.grum@key.com

Proposal Accepted by Lessee: City of Hayward
By:
Title:
Date:

DISCLOSURE STATEMENT

To help the government fight the funding of terrorism and money laundering activities, federal law requires financial institutions to obtain, verify, and record information that identifies each customer who opens an account. Therefore, all new and existing customers are subject to the identity verification requirements.

When a customer opens an account with us, we will ask for the customer's name, address and identification number, and in the case of an individual, his or her date of birth. For business accounts, we may also obtain this information for individuals associated with the business. We may also request to see a driver's license or other identifying documents. In all cases, we are committed to protecting the privacy and identity of each of our customers.

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised a right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is: Office of the Comptroller of the Currency, Customer Assistance Unit, 1301 McKinney Avenue, Suite 3450, Houston, TX 77010-9050. Each applicant may request (within 60 days of denial) a written statement from this creditor of the reasons for any credit denial and such statement will be provided within 30 days of the request. Please send requests to: Office of Credit Disclosure, 1000 South McCaslin Blvd., Superior, Colorado 80027-9456.

DATE: March 15, 2011

TO: Mayor and City Council

FROM: Director of Maintenance Services

SUBJECT: California Energy Commission Loan Funding Energy Savings Retrofits & Solar Power Installations at City of Hayward Facilities

RECOMMENDATION

That Council adopts the attached Resolution (Attachment I) approving a California Energy Commission (CEC) loan financing Energy Efficiency & Energy Generation Projects.

BACKGROUND

The California Energy Commission, through the Energy Conservation Assistance Act, provides low-interest (3%) loans for energy savings upgrades and energy savings generation projects. Cities, Counties, and Special Districts are eligible for the loan program. The loans are paid by utilizing the energy savings produced by lighting upgrades and solar power generation equipment installed. The term of the loan is 15 years.

DISCUSSION

Lighting system upgrades are planned for the Police Department, City Hall, Fleet Maintenance building, City Hall parking garage (B & Watkins St.), and Cinema Place parking garage. Lighting upgrades in the three buildings include: energy saving fluorescent fixtures; occupancy sensors; computer - controlled light timing for energy efficiency; and LED exit lights.

Parking garage lighting upgrades are supported by the CEC Energy Technology Assistance Program (ETAP), utilizing Federal American Recovery and Reinvestment Act funding to promote the latest technology with rebates. The new system utilizes wireless motion sensor and photocell sensors with a wireless mesh network to turn on lights when the garage is occupied. LED pole lights will replace existing fixtures on the top deck of garages.

Solar Power systems are proposed for the Utilities Building on Soto Road and the Streets/Water building at the corporation yard. The open un-cluttered roofs of these buildings efficiently accommodate solar power arrays.

FISCAL IMPACT

The combined energy savings projects will save a total of \$111,981 of electricity costs annually to the City.

Facility	Annual Electricity Savings (kWh)	Annual Electricity Cost Savings	Project Cost
Police Dept	55,154	\$13,800	\$67,500
City Hall	98,600	\$24,700	\$110,565
Fleet Maintenance	54,706	\$3,128	\$15,350
City Hall Parking Garage	101,569	\$25,444	\$104,175
Cinema Place Parking Garage	84,414	\$21,109	\$66,629
Streets Solar	45,212	\$9,000	\$194,978
Utilities Solar	76,860	\$14,800	\$327,955
Total	516,515	\$111,981	\$887,152
<i>PG&E REBATES</i>			<i>\$138,111</i>
<i>NET COST</i>			<i>\$749,041</i>

The annual loan payment of \$73,867 will be funded by the annual energy savings of \$111,981, within the current Facilities operating budget, for an annual estimated net savings of \$38,114 during the life of the fifteen-year loan. The useful life of the energy project is twenty-five years. After repayment of the loan, the City will realize 100% of the electricity savings (approximately \$111,981) for ten years.

Prepared by: Vic Avila, Facilities Manager

Recommended by: Matt McGrath, Maintenance Services Director

Approved by:



Fran David, City Manager

Attachments: Attachment I: Resolution (Approving California Energy Commission Loan)

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member _____

RESOLUTION APPROVING A LOAN FROM THE CALIFORNIA ENERGY COMMISSION TO FINANCE ENERGY SAVINGS LIGHTING RETROFITS AND SOLAR POWER GENERATION SYSTEMS AT CITY FACILITIES.

WHEREAS, the California Energy Commission provides loans to schools, hospitals, local governments, special districts, and public care institutions to finance energy efficiency improvements;

NOW THEREFORE, BE IT RESOLVED, that City Council authorizes City of Hayward to apply for an energy efficiency loan from the California Energy Commission to implement energy efficiency measures.

BE IT ALSO RESOLVED, that in compliance with the California Environmental Quality Act (CEQA), City Council finds that the activity funded by the loan is a project that is exempt under code section 15301 Class 1(a) because energy savings retrofits are being performed in existing facilities.

BE IT ALSO RESOLVED, that if recommended for funding by the California Energy Commission, the City Council authorizes City of Hayward to accept a loan up to \$887,152.

BE IT ALSO RESOLVED, that the amount of the loan will be paid in full, plus interest, under the terms and conditions of the Loan Agreement, Promissory Note and Tax Certificate of the California Energy Commission.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and empowered to execute in the name of City of Hayward all necessary documents to implement and carry out the purpose of this resolution, and to undertake all actions necessary to undertake and complete the energy efficiency projects.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



DATE: March 15, 2011

TO: Mayor and City Council

FROM: Assistant City Manager
City Attorney

SUBJECT: Amendment of Hayward Municipal Code, Chapter 4, Article 1, Sections 4-1.02 through 4-1.04, Relating to Unreasonable Noise

RECOMMENDATION

That the City Council introduces the attached Noise Ordinance.

SUMMARY

The proposed revised Noise Ordinance (the “Ordinance”) will establish standards for determining unreasonable noise by regulating noise decibel levels and by enacting criteria that City staff can utilize to assess whether noise is unreasonable; such assessment can then be used to determine whether informal dispute resolution or enforcement action is warranted to resolve certain noise related community concerns. The Ordinance also authorizes, as an enforcement tool, the issuance of an administrative citation for violations of its provisions, in addition to all other civil and criminal remedies permissible under the current ordinance

BACKGROUND

The City’s current Noise Ordinance, originally enacted in 1959 and amended to add the provisions on construction noise in 1986, is set forth in Hayward Municipal Code sections 4-1.02 through 4-1.04, accessible at <http://www.hayward-ca.gov/municipal/HMCWEB/PublicNuisances.pdf>. The City regulates noisy animals pursuant to its Animal Control Regulations, which can be found at <http://www.hayward-ca.gov/municipal/HMCWEB/AnimalControlRegs.pdf>. Noise generated at the Hayward Executive Airport is governed by the Hayward Executive Airport Code at <http://www.hayward-ca.gov/municipal/HMCWEB/HaywardExecutiveAirportCode.pdf>. Since animal and airport noises are regulated separately in the City’s Municipal Code, those noises are not discussed in this report or addressed in the proposed Ordinance.

Residents from a variety of neighborhoods throughout the City, who attended Neighborhood Partnership Program meetings over the last year, frequently conveyed that the current Noise Ordinance lacks the specificity needed to effectively enforce its provisions. Enforcement staff in the organization have concurred that the existing ordinance is challenging to enforce due to a lack of clear criteria. Consequently, staff began preparing revisions to the existing ordinance. During a

work session on October 26, 2010, the City Council considered the revisions proposed by staff, and then directed staff to obtain feedback from the community on those proposed revisions. The staff report for that work session can be accessed at <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp102610-01.pdf>.

Staff hosted a community meeting on December 9, 2010, that was attended by thirty- six community members, as well as staff from the City Attorney's Office, the Hayward Police Department, the Development Services Department, and the City Manager's Office, including representatives from the Neighborhood Services and Community Preservation Programs. In addition to the comments expressed at the December community meeting, staff publicly announced and widely posted the proposed revisions, which resulted in additional public feedback. Public comments were accepted over a two month period, through February 28, 2011. In consideration of input received from the Council and community, staff made revisions to the ordinance that was presented to Council in October; these revisions are described later in this report.

DISCUSSION

The City's Existing Noise Policies

The City's 2002 General Plan includes a Noise Element that establishes noise guidelines for new development in Hayward. The Noise Element can be accessed at <http://www.hayward-ca.gov/about/generalplan/xAppendix-M.pdf>. The City's current noise ordinance prohibits "unnecessary" noise that disturbs the peace, quiet, and comfort of the community. However, other than construction noise, the current ordinance does not establish objective criteria for determining if any particular noise causes a disturbance under the ordinance. In the context of construction activities as outlined in the existing ordinance, construction noise more than six dBAs above the ambient noise level at certain hours of the day is defined as a violation; however, baseline ambient noise levels are not easily determined, which makes the identification of a violation and subsequent enforcement of these provisions impracticable (See definition of dBA below.)

Nature of the Problem

Unreasonable noise is annoying, disturbing, and has a negative impact on one's quality of life. The objectionable nature of noise can be caused by its pitch or loudness. Pitch is the height or depth of a tone or sound, depending on the relative rapidity of the vibrations (the frequency) by which it is produced. Higher pitched sounds are louder to humans than lower pitched sounds. Loudness is the intensity of the sound waves.

In addition to loudness and pitch, there are technical noise measurement scales used to describe noise. A decibel (dB) is a unit of measurement that indicates the relative amplitude of a sound. Sound levels in decibels are calculated on a logarithmic basis. Since sensitivity to noise increases during the evening and at night – as ambient noise decreases – noise measurement is weighted depending on when the sound occurs. The most common method of sound measurement in California is the A-weighted sound level, or dBA. According to the Occupational Safety and Health Administration (OSHA), to avoid the risk of hearing loss, the maximum allowable level of sound exposure is ninety dBA averaged over eight hours.

Some examples of dBAs for various settings and activities follow. Levels of seventy-five to eighty dBAs are noise levels commonly found at the first row of development adjacent to a freeway. Heavy truck traffic registers approximately ninety dBAs at fifty feet. A garbage truck, gas lawn mower, and a chain saw each register one hundred dBAs to a listener close by. An alarm clock, a hair dryer, or a food blender registers sound levels of eighty dBAs at close proximity to the source. Construction equipment (including jackhammers, concrete mixer/trucks, dump trucks, and bulldozers) registers sound levels between eighty and eighty-eight dBAs. A noisy restaurant, a large business office, or a vacuum cleaner registers sound levels of seventy dBAs. Conversational speech, clothes dryers, and air conditioning units register sound levels in the range of sixty dBAs.

The Proposed Noise Ordinance

According to staff research, there are three basic approaches that local governments use to control noise problems: (1) noise control provisions using dBA standards; (2) the adoption of subjective noise disturbance criteria; or (3) a combination of the two. In the proposed ordinance, staff recommends using the combination approach, so that enforcement officers have additional flexibility when working to resolve noise complaint issues. Staff also recommends that the dBA threshold levels described in the proposed Ordinance remain consistent with the Noise Element of the City's General Plan to provide clarity and uniformity between the provisions within the Hayward Municipal Code.

Regulation by Decibel

The proposed ordinance regulates noise by decibel levels, which vary depending on the type of property. For single family residential property, the maximum decibel level is seventy dBAs between 7 a.m. and 9 p.m. and sixty dBAs between 9 p.m. and 7 a.m. For multi-family residential property, the maximum decibel level is sixty dBAs at any time. For commercial and industrial property, the maximum decibel level is seventy dBAs, unless the property abuts residential property, in which case, the residential decibel ceilings apply. The decibels for residential, commercial, and industrial uses are measured at the property line. The decibels for multi-family properties are measured three feet from walls, floors, and ceilings.

Vehicle Noise

With respect to noise emanating from vehicle sound systems, if the sound can be heard fifty feet from a vehicle while on a public street, then an enforcement officer can issue a citation. The California Vehicle Code, which supersedes the local noise ordinances, also uses a distance of fifty feet to measure sound violations on State highways. To ensure consistency throughout the City, the Ordinance uses the fifty-foot distance as well. If the vehicle is on private property, then an officer can issue a citation if the sound can be heard twenty-five feet from either the vehicle or the property line. Motorcycle and vehicle exhaust systems, along with other vehicle equipment, are also regulated by the State; if an exhaust system is modified so that the noise emitted by the vehicle exceeds State standards, it is illegal. With respect to motorcycles, the noise limit depends on the year the motorcycle was manufactured. For motorcycles manufactured after 1985, the limit is eighty dBAs. Violators could be cited under the Vehicle Code or the proposed Noise Ordinance.

Regulation by Subjective Criteria

In addition to decibel regulation, the Ordinance establishes new subjective criteria upon which the City's noise enforcement officials can base a determination that noise, other than vehicular or construction noise, is unreasonable. Under the proposed ordinance, enforcement officers can utilize either the decibel provisions or the subjective criteria, giving them added flexibility to address the broad range of noise complaints that may arise in the community. Many jurisdictions that have adopted ordinances with subjective criteria also have provisions for decibel-based violations. This flexibility is helpful if a sound level meter is not readily available or if two complainants are unwilling to sign statement. No such subjective criteria exist in the current Ordinance. The new criteria include the following:

1. The volume or loudness of the noise;
2. The pitch or frequency of the noise;
3. Whether the nature of the noise is usual or unusual;
4. Whether the origin of the noise is natural or unnatural;
5. The tonal or rhythmic quality of the noise;
6. Whether the noise is recurrent, intermittent, or constant;
7. Whether the noise is from a commercial or noncommercial activity;
8. If the noise is from a commercial activity, whether the particular activity or use is permitted in the area, and whether the noise could be reasonably expected to derive from the use;
9. Whether the noise is a necessary attribute of a particular use or activity;
10. The proximity of the noise to residential sleeping facilities;
11. The proximity of the noise to offices or places of work;
12. The number of persons affected or the density of inhabitation of the area;
13. The nature or zoning of the area within which the noise emanates;
14. The amount and type of background noise, if any;
15. The time of day or night that the noise occurs;
16. The day of the week; and
17. The duration of the noise.

The ordinance does not require that all the above criteria be met in any single incident. The enforcement officer may determine that the noise is so unreasonably loud that the remaining criteria need not be considered. It is likely that most unreasonably loud noises will implicate more than one of the listed criteria.

Enforcement of the Ordinance

The proposed revisions to the Noise Ordinance authorize the City Manager, rather than the Chief of Police, to delegate enforcement responsibilities of the Noise Ordinance to City personnel. This is in response to citizen concerns about limiting enforcement responsibilities to police officers, and provides greater latitude for the assignment of noise enforcement duties to other personnel, such as Code Enforcement Officers.

“Unreasonable” noise as defined in the Ordinance is, in essence, a “public nuisance” that negatively impacts the broader community. While the City has the authority to issue an administrative citation that would impose fines and fees in order to abate this public nuisance, the issued citation must be able to withstand a legal challenge at an Administrative Hearing. To provide this burden of proof, the City must provide evidence that a violation of the Ordinance actually occurred. A written statement signed by a complainant that is corroborated by a sound meter operated by an authorized City official would provide such evidence. Alternatively, two or more witnesses (residing in different households) who are willing to provide signed statements about violations that are not based on decibel levels could be used. For excessive vehicle noise in the public right-of-way, the proposed ordinance mirrors the provisions of State law, which authorizes the enforcement officer to issue a citation based on the officer’s own observation of the violation.

Some community members commented that City noise enforcement officials should not be given the discretion to determine whether a violation of the Ordinance has occurred; that if a complaint is made, the official should be required by the law to issue a citation, particularly if a warning was ineffective. Enforcement officers must be able to corroborate that a violation exists in order for the citation to be deemed valid and warranted if challenged in an administrative hearing. The recommended objective and subjective criteria, corroborated by either a sound meter reading or a second signed witness statement, will provide both enforcement officials and Administrative Hearing Officers clearer guidance than currently exists to render judgments about whether a citation is warranted. The current ordinance does not have any of the proposed criteria upon which to take enforcement action, e.g. the subjective criteria or the dBA levels.

There was concern, expressed by some Council members and some residents about the requirement for signed statements and the possibility of retaliation. Under the current ordinance, a verified complaint is required. As a practical matter, corroborating evidence is needed only if legal action such as the issuance of an Administrative Citation occurs. City officials may, based on an anonymous complaint, issue a warning to parties causing unreasonable noise that they are in violation of the Ordinance and that they must cease the noise-generating activity or be subject to fines and fees, without divulging the source of the complaint. In some instances this will be enough to solve the problem. Staff recommends retaining the provisions of the Ordinance that allow enforcement officers the discretion to issue citations or warnings, depending on the circumstances.

Concern was expressed that introducing “subjective criteria” into the Noise Ordinance would lead to the inconsistent enforcement of the law. That is, some field officers may decide that the subjective criteria have been met and take enforcement action, while others, given the same circumstances, would not. The recommended criteria are intended to provide City officials more concrete guidance than currently exists in the law. The current ordinance lacks any criteria to determine whether non-construction noise is reasonable, and this vagueness has led, in part, to the problems staff and the community have experienced with enforcement as the ordinance is presently written. In addition to the use of the administrative citation process, the proposed ordinance authorizes a full menu of remedies, which include civil and criminal action.

If noise problems do not affect the larger community, these matters are best resolved directly by the involved parties. City officials are available to assist in mediating or facilitating a solution among those involved. Staff anticipates that both code enforcement and police personnel will respond to

noise complaints that arise during regular business hours. Police will respond to noise complaints after regular business hours and on weekends, when City code enforcement staff are off duty.

Sound Level Meters

After discussion involving HPD, Community Preservation personnel, and the Assistant City Manager, staff determined that the use of sound level meters would broaden enforcement options. HPD will acquire seven sound level meters, and Community Preservation will acquire one meter. The HPD meters would be kept by the shift supervisors (sergeants and lieutenants) and obtained by patrol officers as needed during and after regular business hours. Upon arrival at the scene, the patrol officer could request that the shift supervisor bring the noise meter to the scene. The Community Preservation sound meter will be available for use by code enforcement staff during regular business hours. Depending on the outcome of the pilot program, staff may make the determination to purchase additional sound level meters, allowing patrol staff and community preservation staff to keep these meters in their vehicles at all times.

Prior to deployment of the sound meters, staff will undergo training on their use in the context of the provisions of the proposed ordinance. Use of the meters will provide a more objective mechanism for establishing clear violations of the ordinance.

Administrative Fines

The City's administrative citation fines are \$100 for the first violation, \$200 for the second violation and \$500 for the third and subsequent violations within a thirty-six-month period. While some members of the public recommended increasing the fines, these fine levels are consistent with state guidelines, and staff believes that they are sufficient to deter chronic noise violations. If staff discovers after implementation of the Ordinance that the fines are inadequate, the adjustment of the fine levels can be revisited.

Exemptions

The Ordinance contains exemptions for emergency response activities. Mass transit and other publicly owned properties and operations where the City does not have the authority to regulate are also exempt from the Ordinance. Private functions occurring on public property, such as City Hall Plaza, must submit a permit application, through which the benefit to the public is considered and the resulting public nuisance is mitigated. Also exempted is the use of power generators during power outages and periodic maintenance, or as medically necessary. Some of the public comments received were opposed to these staff recommended exemptions. However, staff believes these exemptions to be reasonable and consistent with exemptions in other jurisdictions.

Hardship Provisions

If compliance with the Ordinance is impracticable or unreasonable, the City Manager is authorized to grant a temporary noise permit, for a period not to exceed six months, with the possibility of

renewal if the applicant is able to show good cause why compliance could not be achieved in the initial six months and a schedule for compliance.

Evaluation

It was recommended by members of the public that the revised Noise Ordinance, if adopted, be evaluated for effectiveness after a six-to-nine month period. Staff concurs with this recommendation. After this test period, which will include an opportunity for the public to comment, further administrative and ordinance revisions will be recommended to Council as appropriate.

Community Concerns

Of all of the comments received by community members, the most commonly identified sources of unreasonable noise were loud parties and vehicle sound systems and/or exhaust systems. Excessively loud music, whether from residences or vehicles, was the singular, most frequently voiced concern.

Another concern voiced by some residents involved noise conflicts where different zoning districts meet. This type of conflict often arises in the context of a commercial or industrial district adjoining a residential district. Staff has attempted to address this type of noise complaint in the proposed ordinance by establishing special decibel levels for commercial and industrial uses that are adjacent to residences. The subjective criteria also are a tool to address whether the noise is unreasonable in the context of neighboring commercial and residential uses: the right to peaceful enjoyment of one's property is balanced against the right of the business operator to conduct business in a reasonable manner.

Some residents felt the fines that are identified in the proposed revised ordinance should be increased, although this was not a unanimous opinion. Some speakers requested that a violator receive a citation without a prior warning or that the issuance of a warning or citation be mandatory, rather than a decision left to the discretion of the enforcement officer. It is common for local ordinances, including the City's Community Preservation ordinance, to allow individuals with a reasonable opportunity to correct the problem. In code enforcement actions, the property owner is sent a Notice to Abate the violation. Similar due process considerations make it prudent to provide a warning to the person responsible for the noise that their conduct violated the ordinance and give the person the opportunity to cease the offending behavior.

Most people were supportive of using sound meter devices as a means of corroborating that a violation of the ordinance has been committed. The use of sound level meters was viewed by many as a preferred method of substantiation to the alternative requirement of two independent complainants. With regard to using sound meter devices, there was general support for imposing clearly defined decibel ceilings, although there was no consensus as to the exact sound levels that would constitute a violation.

Quite a few speakers complimented the Hayward Police Department's response to noise complaints. However, many also commented that those people causing noise disturbances often resume their

problematic activity soon after the police leave the vicinity. Also, in recognition of the fact that the City has limited law enforcement resources and that noise complaints are a lower level priority than many other calls for service received by the Police Department, many speakers at December's community meeting recommended that other City personnel (or in certain areas such as around City Hall, contracted guards), be authorized to enforce the Noise Ordinance, either in lieu of or in addition to police officers. Staff has addressed this concern by recommending that one sound meter be purchased for Community Preservation Officer use, allowing these staff members to address some additional noise complaints during regular business hours. Depending on the outcomes of the pilot program, staff may determine the need to purchase additional sound meters for both Police Department and Community Preservation use.

PUBLIC NOTICE OF THE PROPOSED REVISIONS TO THE NOISE ORDINANCE

On February 25, 2010, a public notice about the March 15, 2011 and the March 22, 2011 City Council meetings at which this report and the proposed changes to the Hayward Noise Ordinance will be considered, was widely distributed to the public. Staff sent the notice to neighborhood and several other email group lists used by the City as well as to those who attended the December 9, 2010 community meeting about this matter. Those attending the December 9 community meeting who did not provide email addresses received the notice by telephone or by mail. Additionally, the notice was posted on the City's website and on the Hayward Facebook page on February 25, 2011. The notice was also posted on the same date on the standard public bulletin boards and other public notice locations used by the City around City Hall and at both Hayward Library branches. In addition to the March 15, 2011 meeting, at which the proposed Ordinance is to be introduced, members of the public are encouraged to attend and participate in the March 22, 2011 City Council meeting, when the Ordinance will be considered for adoption by the City Council.

FISCAL IMPACT

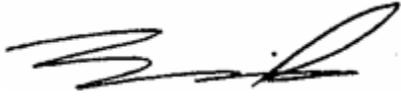
The payment of citations will offset some of the costs associated with the enforcement of the Ordinance. Properly calibrated sound meters, which meet industry standards designed for enforcement purposes, will cost approximately \$400 each, including tax and delivery. Staff proposes that, initially, seven sound meters be purchased by the Hayward Police Department, and one by the Community Preservation Program. Additional devices will be purchased if it is determined that more are needed to effectively enforce the revised Ordinance. The cost of the sound meter devices and associated staff training will be paid for from current Departmental budget allocations. No additional allocations are requested at this time.

In addition to the actual acquisition costs of the sound meters, there will be staff time required to implement the provisions of the proposed ordinance, along with increased staff time to monitor and enforce this ordinance. Staff supports the six-to-nine month trial period suggested by the public, during which time the impacts on staff time can be more effectively measured and evaluated.

Prepared by:

David Korth, Neighborhood Partnership Manager
Kelly Morariu, Assistant City Manager
Maureen Conneely, Assistant City Attorney

Approved by:

A handwritten signature in black ink, appearing to read 'Fran David', written over a horizontal line.

Fran David, City Manager

Attachments:

Attachment I: Ordinance Amending Hayward Municipal Code, Chapter 4, Article 1, Sections 4-1.02 through 4-1.04

ORDINANCE NO.

ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 4,
SECTIONS 4-1.02 THROUGH 4-1.04, OF THE HAYWARD
MUNICIPAL CODE RELATING TO NOISE

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

Section 1. It is hereby declared to be the policy of the City that the peace, health, safety, and welfare of the residents of Hayward require protection from unreasonable noises from any and all sources in the community. It is the intention of the City Council to regulate and control the adverse effect of unreasonable noises on residents under conditions of use that may have a severe impact upon the auditory senses of a reasonable person.

Section 2. Upon the adoption of this Ordinance, Sections 4-1.02 through 4-1.04 of the Hayward Municipal Code are hereby repealed and, in substitution thereof, new Sections 4-1.02 through 4-1.04.3 of the Hayward Municipal Code are hereby enacted to read as follows:

“NOISE REGULATIONS

SEC 4-1.02 UNREASONABLE NOISES. It shall be unlawful for any person to disturb the peace, quiet, and comfort of the community, or any portion thereof, or neighborhood therein, by creating or causing to be created any unreasonable noises, as hereinafter defined, in the City of Hayward.

SEC. 4-1.03 APPLICATION AND ENFORCEMENT; DEFINITIONS.

(a) Unless otherwise exempt as provided herein, these regulations shall apply to noises from any and all sources in the City, except noises originating from operations at the Hayward Executive Airport, which shall be regulated in the manner provided for in the Airport Noise Ordinance, and from animals, which shall be administered in accordance with the City’s Animal Control Ordinance.

(b) The regulations allow for different methods of enforcement. The appropriate method of enforcement shall be determined by the Enforcement Officer.

(c) Definitions. The following words and phrases have the meanings set forth in this subsection, unless the context in which any such word or phrase is used clearly requires another meaning:

dB. “dB” means decibel as herein defined.

dBA. “dBA” means decibels measures on an A-weighted scale, as herein defined in “Noise Level” below.

Decibel. “Decibel” or dB means a unit measure of sound (noise) level relative to a standard reference sound on a logarithmic scale. The decibel level of a given sound is determined as twenty times the logarithm to the base 10 of the ratio of the pressure in micronewtons per square meter of the sound being measured to the standard reference sound pressure of 20 micronewtons per square meter (0.0002 microbar).

Emergency response activities. “Emergency response activities” means activities necessary to restore, preserve, protect, or save lives or property from imminent danger of loss or harm.

Enforcement Officer. The “Enforcement Officer” for purposes of these regulations is the City Manager or her/his designee.

Noise Level. “Noise Level” means the level of noise measured in decibels on the A-weighted scale with a sound level meter satisfying at least the applicable requirements for Type 1 or Type 2 soundlevelmeters as defined in the most recent American National Standard Specifications. The meter shall be set for slow response speed, except that for impulse noises or rapidly varying sound levels, fast response speed may be used. For outside measurements, the microphone shall not be less than four feet above the ground, at least four and one-half feet distant from walls or similar large reflecting surfaces, and shall be protected from the effects of wind noises and other extraneous sounds by the use of screens, shields, or other appropriate devices. For inside measurements, the microphone shall be at least three feet distant from any wall, and the average measurement of at least three microphone positions throughout the room shall be determined.

Property Plane. “Property Plane” means a vertical plane including the property line which determines the property boundaries in space.

Public Property. “Public Property” means property owned by the City of Hayward.

Unreasonable Noise. “Unreasonable Noise” means noise produced by human voice, machine, device, or any combination thereof, that is so loud that it disturbs the peace and quiet of any neighborhood or impinges upon the quiet enjoyment of property, such that the average person of normal sensitivity would find the noise objectionable.

SEC. 4-1.03.1 NOISE RESTRICTION BY DECIBEL.

(a) Residential Property Noise Limits.

1. No person shall produce or allow to be produced by human voice, machine, device, or any combination of same, on residential property, a noise level at any point outside of the property plane that exceeds seventy (70) dBA between the hours of 7:00 a.m. and 9:00 p.m. or

sixty (60) dBA between the hours of 9:00 p.m. and 7:00 a.m.

2. No person shall produce or allow to be produced by human voice, machine, device, or any combinations of same, on multifamily residential property, a noise level more than sixty (60) dBA three feet from any wall, floor, or ceiling inside any dwelling unit on the same property, when the windows and doors of the dwelling unit are closed, except within the dwelling unit in which the noise source or sources may be located.

(b) Commercial and Industrial Property Noise Limits. Except for commercial and industrial property abutting residential property, no person shall produce or allow to be produced by human voice, machine, device, or any other combination of same, on commercial or industrial property, a noise level at any point outside of the property plane that exceeds seventy (70) dBA. Commercial and industrial property that abuts residential property shall be subject to the residential property noise limits set forth in subsections (a)(1) and (2) above.

(c) Public Property Noise Limits. Except as otherwise provided in these regulations, no person shall produce or allow to be produced on public property, by human voice, machine, device, or any combination of same, a noise level that exceeds sixty (60) dBA at a distance of 25 feet or more from the source. Noise from activities of the City of Hayward is exempted from these regulations.

(d) When the Enforcement Officer responds to an initial complaint of unreasonable noise and perceives activities or circumstances that violate Section 4-1.03.1, the Enforcement Officer may issue a written warning or a citation, specifying those activities or circumstances that constitute a violation of these regulations.

SEC. 4-1.03.2 UNREASONABLE NOISE NOT MEASURED BY DECIBEL EMANATING FROM PRIVATE PROPERTY. This section contains a separate and independent method of determining whether a violation of the noise regulations has occurred. No person shall willfully or negligently make, produce or allow to be produced, at any time, any unreasonable noise. Enforcement of this section shall not require the use of a sound level meter.

(a) A violation of this section shall be proven by reference to one or more of the following criteria:

1. The volume or loudness of the noise (based on the distance away from the source at which the noise can be clearly heard);
2. The pitch or frequency (i.e., vibrating sound waves) of the noise;
3. Whether the nature of the noise is usual or unusual;
4. Whether the origin of the noise is natural (i.e., caused or produced by a person or persons) or unnatural;
5. The tonal or rhythmic quality of the noise;
6. Whether the noise is recurrent, intermittent, or constant;
7. Whether the noise is from a commercial or noncommercial activity;

8. If the noise is from a commercial activity, whether the particular use or activity is permitted in the area, and whether the noise could be reasonably expected to derive from the use or activity;

9. Whether the noise is a necessary attribute of a particular use or activity (i.e., routine solid waste collection or a properly functioning mechanical device);

10. The proximity of the noise to residential sleeping facilities;

11. The proximity of the noise to offices or places of work;

12. The number of persons affected, or the density of inhabitation of the area;

13. The nature or zoning of the area within which the noise emanates or in which the impact of the noise occurs;

14. The amount and type of background noise, if any;

15. The time of the day or night the noise occurs (indicating the relationship of the noise to the normal activities that occur at a given time);

16. The day of the week; and

17. The duration of the noise.

(b) When the Enforcement Officer responds to an initial complaint of unreasonable noise and perceives activities or circumstances that violate Section 4-1.03.2, the Enforcement Officer may issue a written warning to any individual exercising or claiming control of the property or assuming responsibility of the activities or circumstances.

(c) If, within seventy-two (72) hours following the issuance of a written warning, a second complaint concerning unreasonable noise at the same location is received, then the Enforcement Officer may ask the complainants to sign a statement indicating the manner in which the complainants were disturbed and agreeing to appear as a witness at an administrative hearing or trial. If the Enforcement Officer obtains signed statements from at least two complainants who do not reside at the same address, then the Enforcement Officer may issue a citation to a resident of the property upon which the activities or circumstances exist or to any individual exercising or claiming control of the property or assuming responsibility for the activities or circumstances.

SEC. 4-1.03.3 NOISE FROM VEHICLES.

(a) No person shall use or operate any radio, tape player, record player, compact disc player, or any similar device in or on a vehicle located on any public property within the City in a manner that is audible to a person of normal hearing sensitivity more than fifty feet from such vehicle, nor shall any person use or operate any such device on or in a vehicle located on private property in a manner that renders the device audible to a person of normal hearing sensitivity more than twenty-five feet from the vehicle or beyond the property line of such private property, whichever is greater. Noise from a radio, tape player, record player, compact disc player, or other similar device in or on a vehicle located on a public highway shall be regulated in the manner provided for by the California Vehicle Code.

(b) Vehicle horns, or other devices primarily intended to create a loud noise for warning purposes, shall not be used when a situation endangering life, health or property is not imminent.

SEC. 4-1.03.4 CONSTRUCTION AND ALTERATION OF STRUCTURES;
LANDSCAPING ACTIVITIES.

Unless otherwise provided pursuant to a duly-issued permit or a condition of approval of a land use entitlement, the construction, alteration, or repair of structures and any landscaping activities, occurring between the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays, and 7:00 a.m. and 7:00 p.m. on other days, shall be subject to the following:

- (a) No individual device or piece of equipment shall produce a noise level exceeding eighty-three (83) dBA at a distance of twenty-five (25) feet from the source. If the device or equipment is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close as possible to twenty-five (25) feet from the equipment.
- (b) The noise level at any point outside of the property plane shall not exceed eighty-six (86) dBA.
- (c) During all other times, the decibel levels set forth in Section 4-1.03.1 shall control.

SEC. 4-1.03.5 CATEGORICAL EXEMPTIONS. The following activities or sources of noise are exempt from the provisions of these regulations:

- (a) Alarms and Warning Devices: Aural alarms or warning devices, including but not limited to fire alarms, burglar alarms, and emergency vehicle sirens and air horns. However, if a standard or minimum noise level is prescribed for particular type of aural alarm or warning device by the laws or regulations of the State of California, the noise emitted from such alarm or warning device shall not exceed such standard or minimum level by more than three (3) dBA.
- (b) Emergency Response Activities: Noise from emergency response activities.
- (c) Events at Which No Mechanical or Amplifying Equipment is Employed: Noise from events conducted lawfully and without the use of sound of any kind that is mechanically produced or amplified or focused by any means.
- (d) Audio Equipment Used by Public Safety Officers: Noise from audio equipment used or operated by public safety officers in the performance of their duties.
- (e) Generators Required for Medical Purposes; Power Outages: Noise from generators required for medical purposes or during power outages.

SEC. 4-1.04 EXEMPTIONS AUTHORIZED BY PERMIT - IMMEDIATE
COMPLIANCE IMPRACTICAL OR UNREASONABLE.

(a) A conditional noise permit may be granted to temporarily exempt a particular source of noise from one or more provisions of these regulations if the applicant can show that, notwithstanding the application of all available noise abatement techniques, the immediate compliance with the requirements of these regulations would be impractical or unreasonable. The term of a noise permit shall not exceed six months, provided that the term may be renewed upon a further showing of good cause and that any extension is conditioned upon a schedule of compliance with the requirements of these noise regulations, including the details of methods to effectuate that compliance.

(b) Applications for a conditional noise permit shall be made to the department assigned by the City Manager to process such permits upon a form provided therefor. The City Manager, or his or her designee, may deny or approve an application, subject to such conditions or limitations as deemed advisable and taking into consideration the purpose and intent of these regulations.

SEC. 4-1.04.1 EXEMPTIONS AUTHORIZED BY PERMIT- SPECIAL EVENTS ON PUBLIC PROPERTY WITH NOISE PRODUCED BY MECHANICAL OR AMPLIFYING EQUIPMENT.

(a) The City Manager, or his or her designee, may issue a permit exempting from any special event conducted on public property at which noise is produced by any mechanical or amplifying equipment which will, or is likely to, exceed the noise limits imposed by these regulations, if it is determined that:

1. The event is of interest to a substantial number of persons residing in the City;
2. The event is open to all persons residing in the City, subject only to the payment of a reasonable fee, if any, by those persons attending the event; and
3. Compliance with these regulations would unreasonably interfere with the conduct of the event.

(b) Applications for a permit under this subsection shall be filed at least 14 days prior to the date the special event is to take place. Such application shall be in the form prescribed by the City Manager and shall contain the name of the person or persons sponsoring the event, a description of the event, the date and times the event is scheduled to take place, and such other information as may be required.

(c) Following the filing of an application for a permit under this section, the City Manager, or his or her designee, shall issue a permit granting such exemption if it is found that such special event complies with all the requirements of this subsection. However, reasonable conditions may be imposed on the conduct of the special event, including limitations on the dates and times during which the event may take place, limitations on the level of noise produced at the event, and a requirement that the permittee take reasonable measures as may be prescribed to mitigate the adverse effect of the noise produced at the event.

(d) If a separate permit for an activity covered by this subsection is required by City policy or practice, then the applicant shall not be required to obtain a noise permit hereunder.

SEC. 4-1.04.2 CONFLICT OF LAW. The requirements of these Noise Regulations do not supersede any obligations and/or requirements imposed under the City's Zoning Ordinance. In the event of a conflict between these regulations and the Zoning Ordinance, the more restrictive provision controls.

SEC. 4-1.04.3 CUMULATIVE REMEDIES; PENALTIES; ADMINISTRATIVE HEARINGS.

(a) Any person who violates any provision of these noise regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in the noise regulations shall be cumulative and in addition to any other procedures provided in the Hayward Municipal Code or by state law for the abatement of any of the conditions described herein, and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition.

(b) In addition to all other remedies or penalties provided by law, a violation of these regulations is punishable by administrative penalties as set forth in Chapter 1, Article 7 of the Hayward Municipal Code.

(c) Any person subject to administrative penalties pursuant to these regulations shall have the right to request an administrative hearing in accordance with Hayward Municipal Code 1-7.07 through 1-7.10, inclusive. The right to judicial review shall be governed by Section 1-7.13 Administrative Citation, Right to Judicial Review, of the Hayward Municipal Code. The administrative penalties imposed by this section do not preclude other potential civil actions or criminal prosecution under any other provision of law.

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 30 days upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of , 2011, by Council Member .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of , 2011, 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