



CITY OF
HAYWARD
HEART OF THE BAY

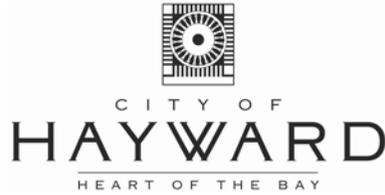
CITY COUNCIL AGENDA

APRIL 26, 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**

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CITY COUNCIL MEETING FOR TUESDAY, APRIL 26, 2011

CLOSED SESSION
Closed Session Room 2B – 4:30 PM

1. **PUBLIC COMMENTS** *(Limited to items agendaized for Closed Session)*
 2. 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
 3. Conference with Legal Counsel
Pursuant to Government Code 54956.9
 - Anticipated Litigation (One Case)
 4. Adjournment to Regular Meeting
-

COUNCIL MEETING
Council Chambers - 7:00 PM

CALL TO ORDER Pledge of Allegiance Mayor Sweeney

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Affordable Housing Week – May 6 – 15, 2011

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)

NON-ACTION ITEMS: *(Work Session and Informational Staff Presentation items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.)*

WORK SESSION (60-Minute Limit)

1. Draft Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code

[Staff Report](#)

[Attachment I - Proposed General Plan Designations \(Figure 3-6 of DSEIR\)](#)

[Attachment II - Proposed Zoning Regulations \(Figure 3-7 of DSEIR\)](#)

[Attachment III - Regulating Plan](#)

[Attachment IV - T5 and T4 Standards \(Table 12 in Draft FBC\)](#)

[Attachment V - Summary Table \(Table 2-1 of DSEIR\)](#)

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 CALENDAR

2. New Sidewalk – Bellina Street: Approval of Plans and Specifications and Call for Bids

[Staff Report](#)

[Attachment I - Resolution](#)

[Attachment II - Project Location Map](#)

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*
-

PUBLIC HEARING

3. Master Fee Schedule Update *** Continued to May 3, 2011 ***

[Staff Report](#)

[Attachment I Staff Report](#)

[Attachment I Resolution](#)

APRIL 26, 2011



[Attachment II Fine and Bail](#)

LEGISLATIVE BUSINESS

4. Adoption of Interim Moratorium Ordinance Regarding Supermarkets of 20,000 Square Feet or More or Large Retail Stores Containing at least 10,000 Square Feet or Ten Percent of Area Devoted to Sale of Grocery or Non-Taxable Items

[Staff Report](#)

[Attachment I - Draft Ordinance](#)

[Attachment II - Zoning District Uses Summary Table](#)

[Attachment III - Trip Generation Summary Table](#)

5. Opposition to AB 438 (Williams) County Free Libraries

[Staff Report](#)

[Attachment I Resolution Opposing AB 348](#)

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, MAY 3, 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.

APRIL 26, 2011



3

DATE: April 26, 2011

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Draft Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code

RECOMMENDATION

That Council reads and comments on this report and the draft Supplemental Environmental Impact Report (SEIR) for the South Hayward BART/Mission Boulevard Form-Based Code¹.

BACKGROUND

On July 28, 2008 and December 2, 2008, the City Council held work sessions to discuss whether to prepare a Form-Based Code for the area encompassed by the 2006 South Hayward BART/Mission Boulevard Concept Design Plan. The Council directed staff to present such an idea to the Planning Commission, which was done during a January 15, 2009 work session. The City Council ultimately authorized proceeding with development of a Form-Based Code for the South Hayward BART area on May 26, 2009. A public design charrette was held September 30 through October 4 in 2009, which provided the public an opportunity for input on the formation of the Form-Based Code contents. A draft Form-Based Code was presented during work sessions to City Council on April 27, 2010, and to the Planning Commission on May 13, 2010. Revisions to the draft South Hayward BART/Mission Boulevard Form-Based Code have been made since those work sessions that reflect input from the Council and Commission, and where applicable, input received on the draft Mission Boulevard Corridor Form-Based Code.

In July of 2010, the Redevelopment Agency Board authorized the Agency's Executive Director to enter into a contract for an amount not to exceed \$75,000 with Lamphier-Gregory to prepare a Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code project. A contract was subsequently executed and a draft SEIR has been prepared, which is the subject of this report and work session.

¹ The Draft SEIR and Form-Based Code are available on the South Hayward BART/Mission Boulevard Form-Based Code Project webpage at: <http://www.hayward-ca.gov/forums/SHBARTFBC/shbartfbcforum.shtm>.

The draft SEIR “tiers” off two EIRs previously certified by the City: the 2006 South Hayward BART/Mission Boulevard Concept Design Plan Program EIR² and the 2009 Route 238 Bypass Land Use Study Program EIR³.

In December of last year, the City prepared an Initial Study and issued a Notice of Preparation (NOP), indicating it was going to prepare a SEIR associated with the Form-Based Code, and asking for input as to what the SEIR should address (see Appendices A and B in the draft SEIR). Two comment letters were received in response to the NOP, from the State Department of Transportation (Caltrans) and Dr. Sherman Lewis of the Hayward Area Planning Association (see Appendix A in the draft SEIR). Each commenter spoke to transportation and circulation/parking issues, and preparation of the draft SEIR included consideration of those comments.

The draft SEIR was released for public review and comment on April 4, 2011. Copies are available on the City’s website, at the Permit Center on the first floor of City Hall, as well as at the two Hayward library locations. The public review/comment period on the draft SEIR runs through Friday, May 20, 2011. Interested parties are encouraged to submit comments on the draft SEIR during that time period.

DISCUSSION

Overview of the Form-Based Code – The Form-Based Code would replace the 2006 Concept Design Plan and the majority of existing Zoning Regulations that are applicable to the Concept Design Plan area, which entails an approximately 240-acre area along Mission Boulevard and centered on the South Hayward BART Station. Adoption of the Form-Based Code would also entail amendments to the General Plan Land Use Map and Zoning Map, as shown in Attachments I and II.

The South Hayward BART/Mission Boulevard Form-Based Code is consistent with the Smart Code template, and identifies “Transect” zones. Transect zones are based on the concept of the “Transect,” which is a system of ordering human habitats in a range from the most natural to the most urban. The Transect describes the physical character of place at any scale according to the density and intensity of land use and urbanism.

The South Hayward BART/Mission Boulevard Form-Based Code would establish a new Civic Space zone and two new “Transect” zones: T5 (Urban Center Zone: 35-55 units per net acre) and T4 (Urban General Zone: 17.5-35 units per net acre, similar to the existing High Density Residential Zoning District density). The T5 zone also includes two density overlay zones: Overlay Zone 1, which allows densities of 75-100 units per net acre, generally within one-quarter mile of the South Hayward BART station; and Overlay Zone 2, which allows densities of 40-65 units per net acre, generally within the area between one-quarter to one-half mile of the South Hayward BART station. New roadways or “thoroughfares” are also envisioned, which would

²The 2006 South Hayward BART/Mission Boulevard Concept Design Plan and related EIR are available on the City’s website at: <http://www.hayward-ca.gov/forums/SHBART/shbartforum.shtm>.

³The 2009 Route 238 Bypass Land Use Study information and related EIR are available on the City’s website at: <http://www.hayward-ca.gov/forums/rte-238blus/238blus.shtm>.

further help to promote pedestrian activity and increased access to the the South Hayward BART station and bus transfer facility, whilealso reducing reliance on the automobile. Attachment III shows the new Regulating Plan for the Form-Based Code that indicates where different zones are located along with their development densities, and Attachment IV includes tables that summarize new development standards for the two new transect zones.

The draft SEIR evaluates the environmental effects associated with future land use and development pursuant to implementation of the Form-Based Code. It is envisioned that development consistent with the Form-Based Code could result in 771 more housing units and 218,613 square feet of additional commercial space than would be expected per the Concept Design Plan that was analyzed in the Concept Design Plan EIR.

What is a "Supplemental" EIR?-Supplemental Environmental Impact Reports (SEIR) evaluate the potential environmental impacts that might reasonably be anticipated to result from modifications to previously approved projects. In short, the primary purpose of an SEIR is to address the impact difference between the previous and current projects. Another purpose of an SEIR is to evaluate potential environmental impacts based on new information that became available after certification of the previous California Environmental Quality Act (CEQA) Documents.

Prior to drafting the SEIR, a number of environmental topics were addressed in an Initial Study and determined to result in: (a) no new significant impact; and/or (b) no substantial increase in the severity of previously identified significant impacts. These topics included: Agricultural Resources; Biology; Cultural Resources; Geology/Soils; Hazards; Hydrology/Water Quality; Land Use/Planning; Mineral Resources; Noise; Population; Housing; Public Services; Recreation; and Utilities/Service. Pursuant to CEQA, those topics are not addressed further in the draft SEIR.

However, the Initial Study did reveal new potentially significant impacts and/or substantial increases in the severity of previously determined significant impacts under the remaining CEQA topics of: Air Quality; Aesthetics; Greenhouse Gas Emissions; and Transportation/Traffic. In the case of this draft SEIR, the following new information is addressed: (1) the CEQA Guidelines were amended to include requirements for addressing greenhouse gas emissions and global climate change; and (2) new thresholds and guidelines for determining air quality impacts were approved by the Bay Area Air Quality Management District (BAAQMD).

Summary of Draft Supplemental Environmental Impact Report–The draft SEIR is a programmatic EIR that assesses impacts at a general, versus project-specific, level. The 2006 Concept Design Plan EIR and 2009 Route 238 Bypass Land Use Study EIR were also programmatic EIRs. Following the first introductory chapter, Chapter 2 of the draft SEIR provides an Executive Summary and Impact Overview Table, and Chapter 3 contains a detailed project description. Chapters 4 through 7 include analyses and identify impacts and mitigation measures associated with the following four environmental impact topic areas: Aesthetics; Air Quality; Greenhouse Gas Emissions; and Traffic. The draft SEIR indicates, as explained in greater detail below, that implementation of the Form-Based Code would have no impact, a less than significant impact, or a less than significant impact after mitigation for these four environmental topic areas.

As reflected in Attachment V (Summary Table of the draft SEIR), the following five impacts are identified as potentially significant and requiring mitigation. The traffic impacts analysis assumes the Route 238 Corridor Improvement Project is completed, which is anticipated by the end of 2012. Other impacts identified in Chapters 4 through 7 are categorized as less than significant.

Impact Air-2: Siting of Sensitive Receptors Near Highway Emissions and Related Risks - Development anticipated per the Form-Based Code would bring additional uses involving sensitive receptors, which could include residences, schools, day care centers, playgrounds, and medical facilities, to sites exposed to increased health risks from vehicle emissions along Mission Boulevard (Highway 238). To mitigate these impacts, and in accordance with new guidelines of the Bay Area Air Quality Management District (BAAQMD), it is recommended that an overlay zone be established extending 500 feet from Mission Boulevard or a reduced distance if coordinated with BAAQMD. The mitigation measure would require: (a) shielded or buffered outdoor areas for sensitive receptors; (b) installation of compliant air filtration systems for buildings containing sensitive receptors; or (c) in lieu of items (a) and (b), demonstrate through a Health Risk Assessment that no threat to health exists. If this project's SEIR is ultimately certified by City Council, the Form-Based Code would need to be revised to reflect this mitigation measure.

Impact Traf-1: LOS at Dixon Street-East 12th Street/Tennyson Road - Adding traffic anticipated with development consistent with the Form-Based Code to the 2025 baseline would cause this intersection to operate at level of service (LOS) F in the AM peak-hour condition. To mitigate this impact to a less-than-significant level and improve LOS to LOS D in the AM peak-hour, the draft SEIR recommends that an exclusive right turn pocket and a shared through-left turn lane be created in the southbound direction on the East 12th Street approach. Other intersection improvements would entail that lane geometries in the northbound direction include an exclusive left-turn pocket and a shared through-right turn lane, signal phasing would be changed to split phasing in the northbound and southbound directions, with a southbound right-turn overlap during eastbound and westbound protected left turn phases, and U-turns in the eastbound direction would be prohibited to minimize conflicts with southbound right-turning vehicles.

Impact Traf-2: LOS at Mission Boulevard/Industrial Parkway - Adding additional traffic associated with development per the Form-Based Code to the 2025 Baseline would cause this intersection to operate at LOS E in the AM peak-hour. The draft SEIR indicates that an overlapping signal with the southbound left protected phase be added for the westbound right turn lane, which would reduce this impact to a less-than-significant level and improve the LOS at the intersection to LOS D in the AM peak-hour.

Impact Traf-3: LOS at Mission Boulevard/Tennyson Road - The previous EIRs did not identify impacts at this intersection as significant. With additional assumed traffic resulting from development consistent with the Form-Based Code, Mission Boulevard at Tennyson Road is projected to operate at LOS E in the AM peak-hour. Split phasing signal timing in the eastbound and westbound directions is already being constructed as part of the Route 238 Corridor Improvement Project. However, in addition to the split phasing, the following would need to be accomplished to reduce this impact to a less-than-significant level and improve the intersection to LOS D in the AM peak-hour: (a) convert the eastbound through lane to an

eastbound shared through-left lane; (b) stripe the westbound approach to a shared left-through lane and an exclusive right turn lane; (c) provide overlap phasing for westbound and eastbound right turns; and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.

Impact Traf-4: LOS at Mission Boulevard/Harder Road - The previous EIRs did not identify impacts at this intersection as significant. Adding additional traffic anticipated with implementation of the Form-Based Code to the Year 2025 baseline would cause the Mission Boulevard/Harder Road intersection to operate at LOS E in the PM peak-hour. To mitigate this impact to a less-than-significant level and improve the LOS at the intersection to LOS D in the PM peak-hour, the draft SEIR says to convert the signal phasing of this intersection to split phasing with right-turn overlap phasing in the eastbound and westbound directions during the northbound and southbound protected left-turn phase. In conjunction with the signal phasing changes, the following measures are also recommended: (a) convert one eastbound exclusive left turn lane into a shared left and through; (b) convert one eastbound through lane into an exclusive right; (c) provide overlap phasing for the westbound right turns and for the eastbound right turns, and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.

With the exception of the mitigation at Mission Boulevard/Harder Road, which would require right-of-way take, most of the intersection signal modifications are relatively minor. The traffic impact analysis did assume implementation of the Route 238 Corridor Improvement project and staff did evaluate whether those mitigations on Mission Boulevard should be implemented as changes to the Corridor Improvement project, but concluded such changes would not be appropriate at this time. This Program SEIR covers a long time period and it is possible regional traffic, as well as actual developments, may change in the future from what is projected in the traffic impact analysis associated with the Form-Based Code implementation. Therefore, and due to such issues as possible unnecessary right-of-way take needed for mitigation at the Mission Boulevard/Harder Road intersection, such measures were not incorporated into the Route 238 Corridor Improvement Project. With regard to timing of these four traffic mitigations, standard City practice requires a traffic study for larger individual developments (over 100 new peak hour trips) and that process would be used to determine the timing of each mitigation, based on the specific impacts of new developments and evaluation by the City's Director of Public Works.

Chapter 8 of the draft SEIR identifies the previous three alternatives analyzed in the 2006 Concept Design Plan EIR and the three alternatives analyzed in the 2009 Route 238 Bypass Land Use Study EIR, as well as a "No Project" alternative that would essentially reflect development consistent with current land use/zoning regulations. Because the draft SEIR for the Form-Based Code identified one new potentially significant, but mitigatable impact related to the level of service at Mission Boulevard and Harder Road, the "No Project" alternative is identified as the environmentally superior alternative in Chapter 8. In cases where the "No Project" alternative is identified as the environmentally superior alternative, the CEQA requires that the second most environmentally superior alternative be identified. The Form-Based Code project would generally represent the next-best alternative in terms of the fewest impacts, and it would meet the City's objectives to the same extent as the projects evaluated in the previous EIRs.

Chapter 9 of the draft SEIR addresses growth inducement (not created by the project beyond what was previously analyzed), significant irreversible changes (none identified), significant and unavoidable impacts, and cumulative impacts (none identified, other than those identified in Chapter 4 through 7). Although no new significant and unavoidable impacts related to implementation of the Form-Based Code have been identified, four previously identified significant and unavoidable impacts identified in the previous two EIRs would still exist and require a re-adoption of statement of overriding considerations by the City Council. Those include: air quality impacts associated with inconsistency with the Regional Air Quality Plan (Concept Design Plan EIR Impact 4.2-1); cumulative air quality impacts (Concept Design Plan EIR Impact 4.2-2); and cumulative traffic impacts (Concept Deesign Plan EIR Impact 4.7-4 and Route 238 Bypass Land Use Study EIR Impact 411-1).

ECONOMIC AND FISCAL IMPACTS

There would be no economic or fiscal impacts associated with certification of the SEIR. However, a fiscal impact report and market analysis were prepared associated with the proposed Form-Based Code, which are available on the Form-Based Code project page under “Documents and Studies” at: <http://www.hayward-ca.gov/forums/SHBARTFBC/shbartfbcforum.shtm>.

The fiscal impact report indicated an overall positive fiscal impact associated with projected development in accordance with the Form-Based Code during the next twenty years, with accrued tax increment revenue going to the City’s Redevelopment Agency, but a negative impact to the General Fund without such increment and without assessments associated with new Community Services Districts (CSDs). CSDs would be required for new developments, per Council policy.

As detailed in the fiscal impact report, the development spurred by the Form Based Code in the project area is estimated to have a net negative impact on the General Fund of approximately \$379,000 per year by 2020 and approximately \$403,000 annually by 2030. However, such deficits are shown to be offset with assessments associated with new CSDs. In addition, tax increment revenue, estimated to be \$505,941 annually by 2020 and \$1,835,880 annually by 2030, would accrue to the Redevelopment Agency, resulting in a net overall positive fiscal impact. Obviously, if the Redevelopment Agency is eliminated, there would be no tax increment revenue accruing to the Agency and the figures in the study would need to be revised.

PUBLIC CONTACT

On April 1, 2011, notices of the availability of the Draft SEIR were sent to property owners and tenants in the Form-Based Code project area and to those within 300 feet of the project area, which amounted to over 2,300 notices. Also, notice of the availability of the Draft SEIR was published in *The Daily Review* newspaper on Saturday, April 2, two days before the start of the public review period for the draft SEIR. Finally, a notice of availability was filed with the Alameda County Recorder’s Office on April 1, and fifteen copies of the Draft SEIR and a Notice of Completion were filed with the California State Clearinghouse office on April 4. As of the writing of this report, staff has not received any comments on the Draft SEIR.

NEXT STEPS

The Planning Commission will hold a public meeting on Thursday April 28, 2011, at 7:00 pm to take public testimony and provide comments to staff on the Draft SEIR. Following the close of the public comment period on May 20, any comments received on the Draft SEIR, including those from Council members and Planning Commissioners, will be addressed in the Final SEIR, along with any revisions to the Draft SEIR. It is anticipated that the Final SEIR, along with the Form-Based Code and related amendments to the City's General Plan and Zoning Ordinance, will be presented to the Planning Commission for consideration at a noticed public hearing in late June 2011. The Planning Commission recommendation will then be forwarded to the City Council for consideration and a final decision at a noticed public hearing, anticipated for late July 2011. The Form-Based Code would be effective 30 days after adoption.

Prepared and Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Proposed New General Plan Land Use Designations
- Attachment II: Proposed new Zoning Designations
- Attachment III: Regulating Plan of the Form-Based Code
- Attachment IV: Development Standards of Transect Zones T4 and T5
- Attachment V: Impacts/Mitigation Measures Summary Table (Table 2-1) of the draft SEIR



Figure 3-6: Proposed General Plan Designations

0 500 1,000 2,000 Feet



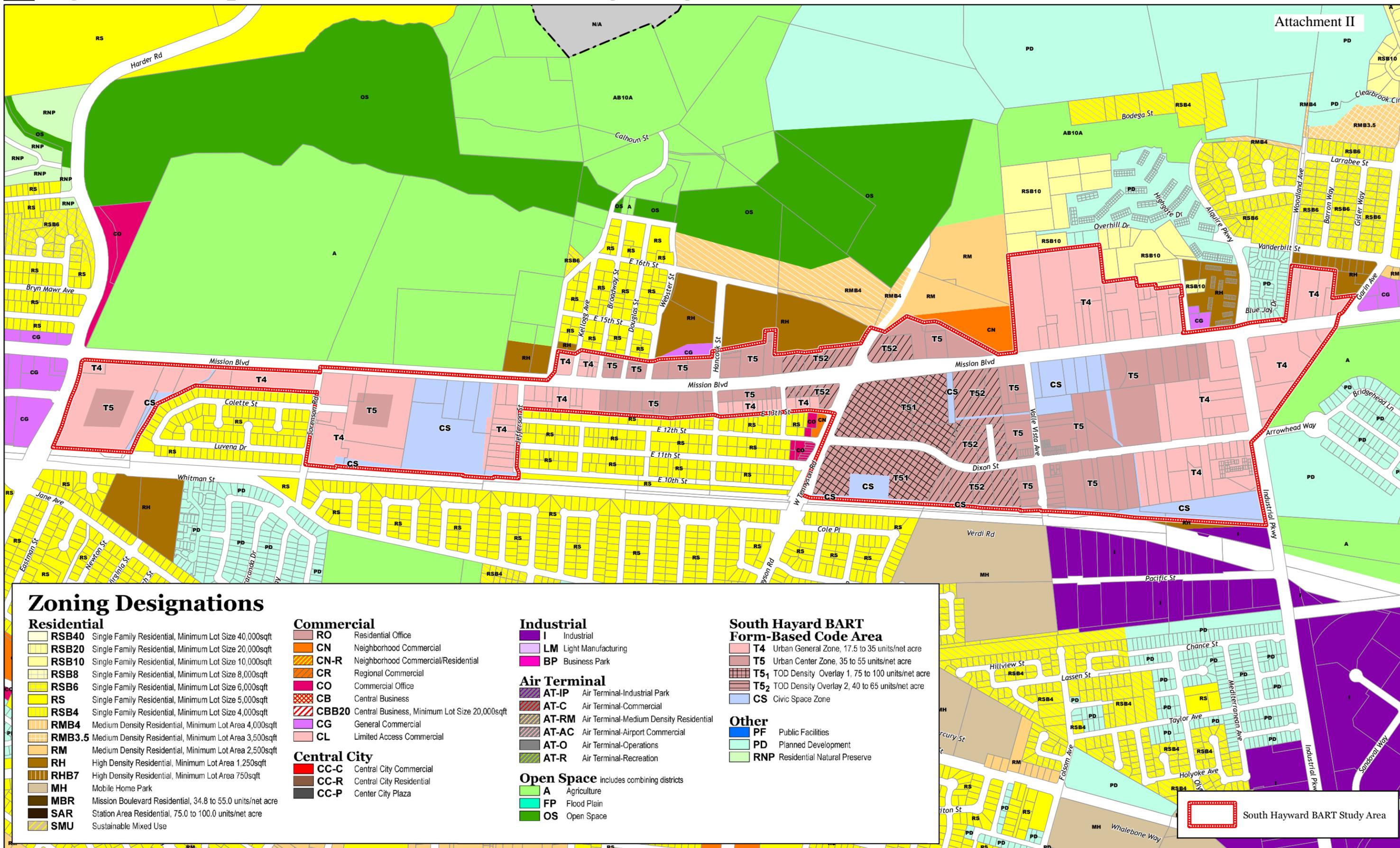
General Plan Land Use Designations		
Residential	Commercial	Open Space
Rural Estate Density 0.2-1.0 units/net acre	Retail and Office	Parks and Recreation
Suburban Density 1.0-4.3 units/net acre	General Commercial	Limited Open Space
Low Density 4.3-8.7 units/net acre	Commercial/High Density Residential	Baylands
Mobile Home Park 8.7-12.0 units/net acre	Downtown—City Center	Public & Quasi-Public
Limited Medium Density 8.7-12.0 units/net acre	High Density Residential	Public and Quasi Public
Medium Density 8.7-17.4 units/net acre	Retail and Office Commercial	
High Density 17.4-34.8 units/net acre	Industrial	
Sustainable Mixed Use 17.4-100.0 units/acre	Industrial Corridor	
	Mixed Industrial	

South Hayward BART Study Area



Figure 3-7: Proposed Form-Based Code Zoning Designations

0 500 1,000 2,000 Feet



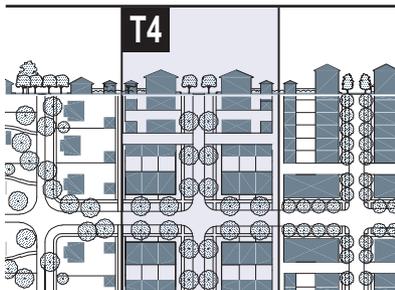


Legend

- Project Area
- Parcels
- ★ Terminated Vistas
- ⋯ Mandatory Shopfront Overlay
- ⋯ Recommended Shopfront Overlay
- T4 Urban General Zone: 17.5 DU/Acre min; 35 DU/acre max
- T5 Urban Center Zone: 35 DU/Acre min; 55 DU/acre
- TOD Density Overlay 1: 75 DU/acre min; 100 DU/acre max
- TOD Density Overlay 2: 40 DU/acre min; 65 DU/acre max
- Civic Space Zone
- Civic Buildings

- For illustrative purpose only:**
- Civic Spaces outside of the project area
 - ⋯ 238 Bypass Trail Location
 - ⋯ 5 Min/10 Min Walk (Pedestrian Shed)
 - ⋯ Future pedestrian/bicycle bridge





(see Table 1)

j. BUILDING CONFIGURATION (see Table 7)

Principal Building	4 stories max, 2 min
Outbuilding	2 stories max.

e. LOT OCCUPATION (see Table 11e)

Lot Width	18 ft min 120 ft max.
Lot Coverage	80% max

f. SETBACKS - PRINCIPAL BUILDING (see Table 11f)

(f.1) Front Setback Principal	6 ft. min. 24 ft. max.
(f.2) Front Setback Secondary	6 ft. min. 24 ft. max
(f.3) Side Setback	0 ft. min.
(f.4) Rear Setback	3 ft. min.*
Frontage Buildout	60% min at setback

g. SETBACKS - OUTBUILDING (see Table 11g)

(g.1) Front Setback	20 ft. min. + bldg. setback
(g.2) Side Setback	
(g.3) Rear Setback	3 ft. min.

h. BUILDING DISPOSITION (see Table 8)

Edgeward	permitted
Sideward	permitted
Rearward	permitted
Courtyard	permitted

i. PRIVATE FRONTAGES (see Table 5)

Porch & Fence	permitted
Terrace or Lightwell	permitted
Forecourt	permitted
Stoop	permitted
Shopfront	permitted
Gallery	permitted
Arcade	not permitted

Refer to Summary Table 11

PARKING PROVISIONS (see Section 10-24.245)

Rental DU: 1.75 max per unit
For Sale DU/Residential Condominium: 2.0 max per unit
Non-residential Function: no min - no max

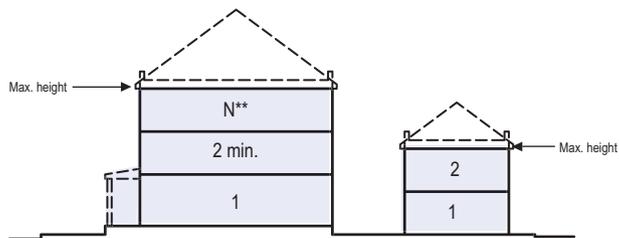
*or 15 ft. from center line of alley

***"N" stands for any Stories above those shown, up to the maximum. Refer to metrics for exact minimums and maximums

Note: Letters on the Table (j. Building Configuration, e. Lot Occupation, etc) refer to the corresponding section in Summary Table 11.

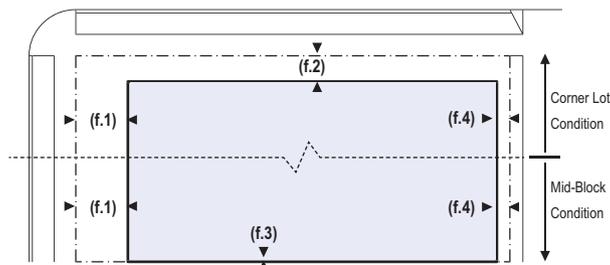
BUILDING CONFIGURATION

1. Building height shall be measured in number of Stories, excluding Attics and raised basements.
2. Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 11 ft with a maximum of 25 ft.
3. Height shall be measured to the eave or roof deck as specified on Table 7.



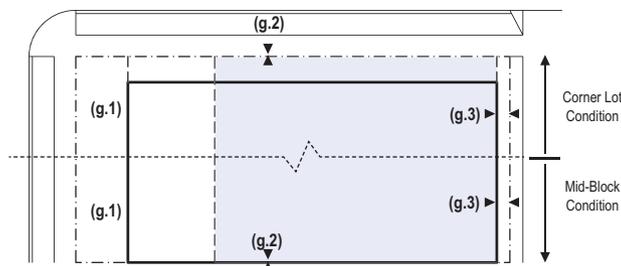
SETBACKS - PRINCIPAL BLDG

1. The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as shown.
2. Facades shall be built along the Principal Frontage to the minimum specified width in the table.



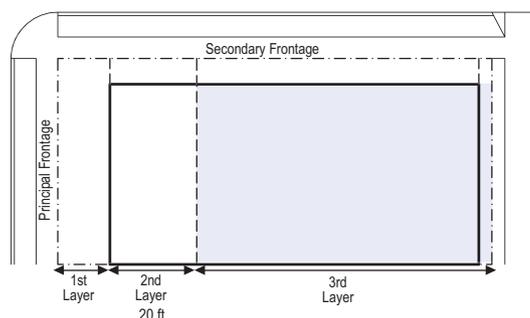
SETBACKS - OUTBUILDING

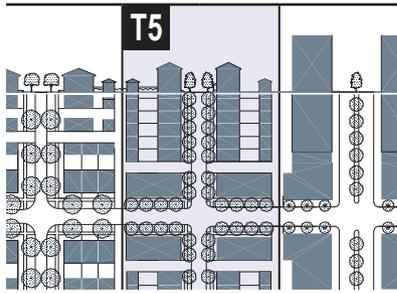
1. The Elevations of the Outbuilding shall be distanced from the Lot lines as shown.



PARKING PLACEMENT

1. Covered and uncovered parking spaces may be provided within the third Layer as shown in the diagram (see Table 15d).
2. Trash containers shall be stored within the third Layer.





(see Table 1)

j. BUILDING CONFIGURATION (see Table 7)

Principal Building	6 stories max. 3 min.
Outbuilding	2 stories max.

e. LOT OCCUPATION (see Table 11e)

Lot Width	18 ft min 250 ft max.
Lot Coverage	90% max

f. SETBACKS - PRINCIPAL BUILDING (see Table 11f)

(f.1) Front Setback Principal	2 ft. min. 12 ft. max.
(f.2) Front Setback Secondary	2 ft. min. 12 ft. max.
(f.3) Side Setback	0 ft. min. 24 ft. max.
(f.4) Rear Setback	3 ft. min.*
Frontage Buildout	80% min at setback

g. SETBACKS - OUTBUILDING (see Table 11g)

(g.1) Front Setback	40 ft. max. from rear prop.
(g.2) Side Setback	0 ft. min. or 2 ft at corner
(g.3) Rear Setback	3 ft. max.

h. BUILDING DISPOSITION (see Table 8)

Edgeyard	not permitted
Sidyard	permitted
Rearyard	permitted
Courtyard	permitted

i. PRIVATE FRONTAGES (see Table 5)

Porch & Fence	not permitted
Terrace or Lightwell	permitted
Forecourt	permitted
Stoop	permitted
Shopfront	permitted
Gallery	permitted
Arcade	permitted

Refer to Summary Table 11

PARKING PROVISIONS (see Section 10-24.245)

Rental DU:	1.5 max per unit
For Sale DU/Residential Condominium:	1.8 max. per unit
Non-residential Function:	no min. - no max.

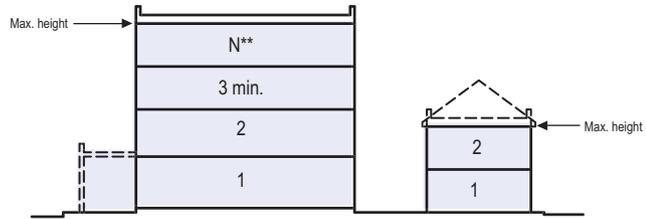
*or 15 ft. from center line of alley

***"N" stands for any Stories above those shown, up to the maximum. Refer to metrics for exact minimums and maximums

Note: Letters on the Table (j. Building Configuration, e. Lot Occupation, etc) refer to the corresponding section in Summary Table 11.

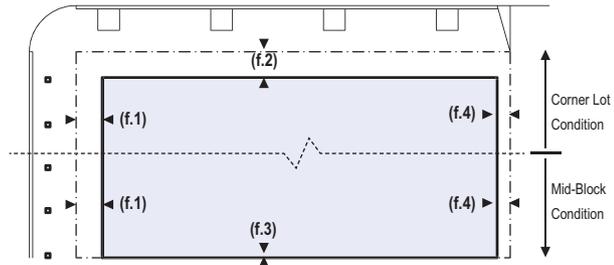
BUILDING CONFIGURATION

1. Building height shall be measured in number of Stories, excluding Attics and raised basements.
2. Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 11 ft with a maximum of 25 ft.
3. Height shall be measured to the eave or roof deck as specified on Table 7.
4. Expression Lines shall be as shown on Table 7.



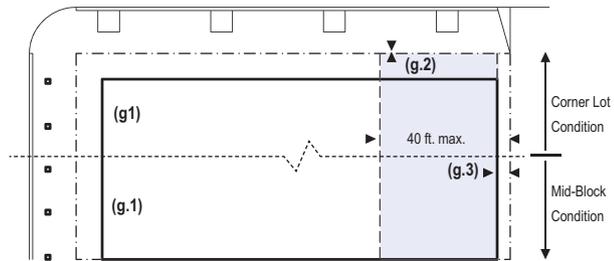
SETBACKS - PRINCIPAL BLDG

1. The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as shown.
2. Facades shall be built along the Principal Frontage to the minimum specified width in the table.



SETBACKS - OUTBUILDING

1. The Elevations of the Outbuilding shall be distanced from the Lot lines as shown.



PARKING PLACEMENT

1. Covered and uncovered parking spaces may be provided within the third Layer as shown in the diagram (see Table 15d).
2. Trash containers shall be stored within the third Layer.

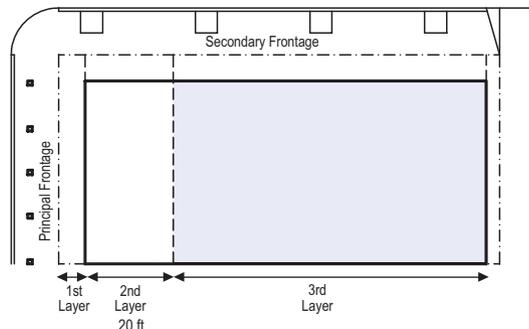


TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
Significant and Unavoidable Impacts		
N/A	N/A	N/A
Less than Significant Impacts After Mitigation		
<p>Air-2: Siting of Sensitive Receptors Near Highway Emissions and Related Risks. Development anticipated under the Project would bring additional sensitive uses (which could include residences, schools, day care centers, playgrounds, and medical facilities) to sites exposed to increased health risks from vehicle emissions from Mission Boulevard (Highway 238). Such exposure would represent a potentially significant impact.</p>	<p>Air-2: Highway Overlay Zone. The Project shall include an overlay zone extending 500 feet from Mission Boulevard or a reduced distance if coordinated with BAAQMD. This overlay zone shall include the following considerations and mitigation:</p> <p><u>Indoor Air Quality:</u></p> <p>In accordance with the recommendations of the California Air Resources Board (CARB) and the Bay Area Air Quality Management District, appropriate measures shall be incorporated into the project design in order to reduce the potential health risk due to exposure to diesel particulate matter to achieve an acceptable interior air quality level for sensitive receptors. The appropriate measures shall include one of the following methods:</p> <p>(a). Development project applicants shall implement all of the following features that have been found to reduce the air quality risk to sensitive receptors and shall be included in the project construction plans. These features shall be submitted to the Development Services Department for review and approval prior to the issuance of a demolition, grading, or building permit and shall be maintained on an ongoing basis during operation of the project.</p> <p>i. For sensitive uses (residences, schools, day care centers, playgrounds, and medical facilities) sited within the overlay zone from Mission Boulevard, the applicant shall install, operate and maintain in good working order a central heating and</p>	LTS

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
	<p>ventilation (HV) system or other air take system in the building, or in each individual unit, that meets or exceeds an efficiency standard of MERV 13. The HV system shall include the following features: Installation of a high efficiency filter and/or carbon filter to filter particulates and other chemical matter from entering the building. Either HEPA filters or ASHRAE 85% supply filters shall be used.</p> <p>Project applicants shall maintain, repair and/or replace HV system on an ongoing and as needed basis or shall prepare an operation and maintenance manual for the HV system and the filter. The manual shall include the operating instructions and the maintenance and replacement schedule. This manual shall be included in the CC&Rs for residential projects and/or distributed to the building maintenance staff. In addition, the applicant shall prepare a separate homeowners manual. The manual shall contain the operating instructions and the maintenance and replacement schedule for the HV system and the filters.</p> <p>(b) Alternative to (a) above, a project applicants proposing siting of sensitive uses (residences, schools, day care centers, playgrounds, and medical facilities) within the overlay zone around Mission Boulevard shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Development Services Department for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA</p>	

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
	<p>concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</p> <p><u>Exterior Air Quality:</u></p> <p>(c) To the maximum extent practicable, individual and common exterior open space proposed as a part of developments in the Project area, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.</p> <p>(d) Alternative to (c) above, an HRA could be prepared and implemented to take into account the risk specifics of the site, as more fully described in item (b) above.</p>	
<p>Traf-1: (Dixon Street-East 12th Street at Tennyson Road) Adding Project-generated traffic to the 2025 Baseline would cause this intersection to operate at LOS F in the AM peak-hour condition. This would be a potentially significant impact.</p>	<p>Traf-1: (LOS at Dixon Street/Tennyson Road) Create an exclusive right turn pocket and a shared through-left turn lane in the southbound direction (on the East 12th Street approach).</p> <p>Lane geometries in the northbound direction would include an exclusive left-turn pocket and a shared through-right turn lane.</p> <p>Signal phasing would be changed to split phasing in the northbound and southbound directions, with a southbound right-turn overlap during eastbound and westbound protected left turn phases.</p> <p>U-turns in the eastbound direction would be prohibited to minimize conflicts with southbound right-turning vehicles.</p>	<p>LTS</p>
<p>Traf-2: (LOS at Mission Boulevard/Industrial Parkway) Adding Project-generated traffic to the 2025 Baseline would cause this intersection to operate at LOS E in the AM peak-</p>	<p>Traf-2: (LOS at Mission Boulevard/Industrial Parkway) For the westbound right turn lane, provide an overlapping signal with the southbound left</p>	

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
hour. This would be a potentially significant impact.	protected phase.	
<p>Traf-3: (LOS at Mission Boulevard/Tennyson Road) Mission Boulevard at Tennyson Road is projected to operate at LOS E in the AM peak-hour under the current Project. This is considered a potentially significant impact.</p>	<p>Traf-3: (LOS at Mission Boulevard/Tennyson Road) Split phasing signal timing in the eastbound and westbound directions is already being constructed as part of the Route 238 Corridor Improvement Project. However, in addition to the split phasing, the following would need to be accomplished: (a) convert the eastbound through lane to an eastbound shared through-left lane, and (b) stripe the westbound approach to a shared left-through lane and an exclusive right turn lane, and (c) provide overlap phasing for westbound and eastbound right turns; and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.</p>	
<p>Traf-4: (LOS at Mission Boulevard/Harder Road) Adding Project-generated traffic to the Year 2025 Baseline would cause the Mission Boulevard/Harder Road intersection to operate at LOS E in the PM peak-hour. This would be considered a potentially significant impact.</p>	<p>Traf-4: (LOS at Mission Boulevard/Harder Road) Convert the signal phasing of this intersection to split phasing with right-turn overlap phasing in the eastbound and westbound directions during the northbound and southbound protected left-turn phase. In conjunction with the signal phasing changes, accomplish the following: (a) convert one eastbound exclusive left turn lane into a shared left and through; (b) convert one eastbound through lane into an exclusive right; and (c) provide overlap phasing for the westbound right turns and for the eastbound right turns, and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.</p>	
Less than Significant Impacts with No Mitigation Required		
<p>Aes-1: The Project would increase building heights at locations that may, depending upon the vantage point, impact scenic vistas of the Hayward</p>	<p>Replace Concept Design Plan EIR Mitigation Measure 4.1-2 with Form-Based Code's Site Plan Review process (Zoning Ordinance §10-1.3000).</p>	<p>LTS</p>

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
<p>Hills. However, the Project would require Site Plan Review for all proposed new developments and additions or alterations to existing development and, therefore, result in a less than significant impact.</p>		
<p>Air-1: Conflict with Clean Air Plan. Development anticipated as a result of the Project would increase development intensity beyond that assumed in the CAP, but would support the goals of the CAP, including applicable control measures. This would be a less-than-significant impact.</p>	<p>No mitigation warranted.</p>	<p>LTS</p>
<p>Traf-5: (Design Feature Hazard) The Project includes planned new thoroughfares connecting to existing thoroughfares. Detailed engineering safety studies of each planned new thoroughfare, including their intersection with existing thoroughfares, has not been accomplished to date. However, the Project would require a detailed examination of new thoroughfares through an existing "Precise Plan Lines for Streets" review process. Implementation of this review process would ensure that the design of these new roads does not result in a roadway design hazard. Thus, a less than significant would result under this criterion.</p>	<p>No mitigation warranted</p>	<p>LTS</p>
<p>GHG-1: Generation of Long-Term Operational GHG Emissions. The Project would generate long-term operational GHG emissions over its lifetime. However, the Project's GHG efficiency, which accounts for the population and employment of the Project area, would be below the</p>	<p>No mitigation warranted</p>	<p>LTS</p>

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
<p>BAAQMD’s GHG efficiency-based threshold. Therefore, the Project would not generate a level of GHG emissions that would have a significant impact on global climate change. As a result, this impact would be less than cumulatively considerable and less than significant.</p>		
<p>GHG-2: GHG reductions are addressed statewide by the AB 32 Scoping Plan, regionally by the Bay Area 2010 CAP, and locally through the Hayward Climate Action Plan (CAP) The proposed Project is consistent with the reduction strategies presented in these documents and therefore would result in no impact related to GHG reduction plan consistency.</p>	<p>No mitigation warranted</p>	<p>LTS</p>

DATE: April 26, 2011

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: New Sidewalk – Bellina Street: Approval of Plans and Specifications and Call for Bids

RECOMMENDATION

That Council adopts the attached resolution approving the plans and specifications for the New Sidewalk - Bellina Street project and calling for bids to be received on May 24, 2011.

BACKGROUND

The project consists of installing sidewalk, curb, and gutter with pavement and driveway conforms on both sides of Bellina Street. New four-foot wide concrete sidewalk with an adjacent planter strip will be installed to tie into the existing sidewalk. The proposed improvements will provide safe and continuous pedestrian access.

Bellina Street was selected because it is one of the few remaining residential streets that do not have sidewalks in the vicinity of Markham Elementary School, All Saints Catholic Church and School, Bret Harte Intermediate School, and Hayward High School. In addition, the City has received several requests from the neighborhood for sidewalk improvements in that location.

A location map that graphically depicts the limits of work is attached (see Attachment II). In order to satisfy the requirements of the Americans with Disabilities Act (ADA), accessible ramps will be installed at the curb returns located within the limits of the project.

DISCUSSION

This project will construct curb, gutter, and sidewalk on both sides of Bellina Street, from Second Street to Third Street. Temporary construction easements and right-of-entry authorizations must be acquired to grant the City permission to allow the contractor to enter the property to install driveway and frontage conforms.

Staff has been in contact with all the affected property owners and has received positive responses from residents. All necessary easements and right-of-entry authorizations will be secured prior to

the award of contract. The project is categorically exempt under Sections 15301 (b) and (c) of the California Environmental Quality Act Guidelines for the operation, repair, maintenance, or minor alteration of existing facilities.

FISCAL IMPACT

The estimated project costs are as follows:

Construction Contract	\$265,000
Right-of-Way (Right-of-Entry and Easements)	13,000
Design and Administration	42,000
Inspection and Testing	<u>30,000</u>
Total:	\$350,000

The FY11 Capital Improvement Program includes \$350,000 in the Measure B Tax Fund (Pedestrian and Bicycle) for the New Sidewalk - Bellina Street project.

PUBLIC CONTACT

As discussed above, staff has been in contact with all the affected property owners. After the project is awarded, staff will send notification letters to all affected residents regarding the project schedule.

SCHEDULE

Open Bids	May 24, 2011
Award Contract	June 21, 2011
Begin Work	July 11, 2011
Complete Work	August 26, 2011

Prepared by: Morad Fakhrai, Deputy Director of Public Works

Recommended by: Robert A. Bauman, Director of Public Works

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: Project Location Map

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-_____

Introduced by Council Member _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE NEW SIDEWALK - BELLINA STREET PROJECT, PROJECT NO. 5163, AND CALL FOR BIDS

BE IT RESOLVED by the City Council of the City of Hayward as follows:

WHEREAS, those certain plans and specifications for the New Sidewalk – Bellina Street Project, Project No. 5163, on file in the office of the City Clerk, are hereby adopted as the plans and specifications for the project;

WHEREAS, the City Clerk is hereby directed to cause a notice calling for bids for the required work and material to be made in the form and manner provided by law;

WHEREAS, sealed bids therefor will be received by the City Clerk’s office at City Hall, 777 B Street, 4th Floor, Hayward, California 94541, up to the hour of 2:00 p.m. on Tuesday, May 24, 2011, and immediately thereafter publicly opened and declared by the City Clerk in the Public Works Conference Room, 4D, located on the 4th Floor of City Hall, Hayward, California;

NOW, THEREFORE, BE IT FURTHER RESOLVED, the City Council will consider a report on the bids at a regular meeting following the aforesaid opening and declaration of same.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the project is categorically exempt under section 15301(c) of the California Environmental Quality Act Guidelines for the operation, repair, maintenance, or minor alteration of existing facilities.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

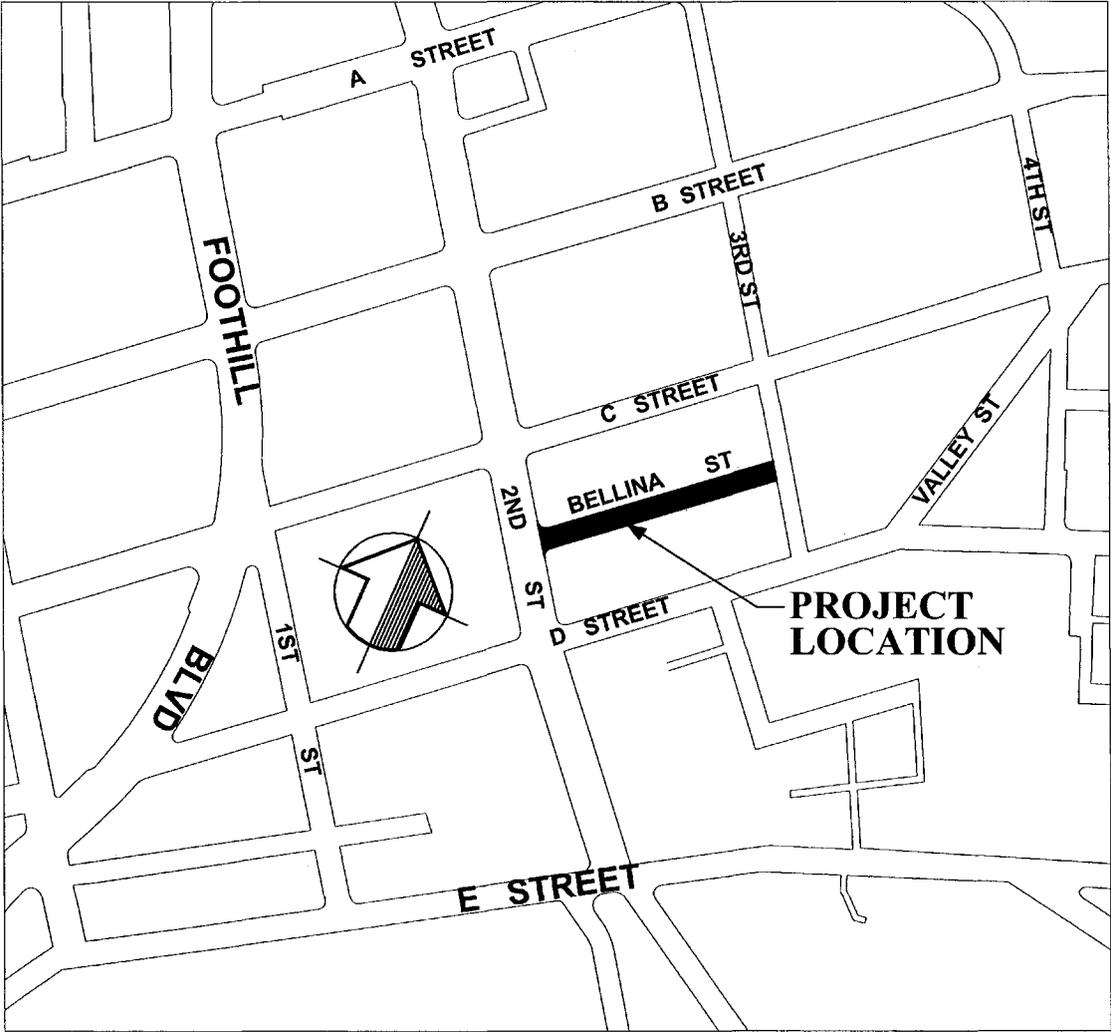
ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



**PROJECT LOCATION MAP
NEW SIDEWALK - BELLINA STREET**

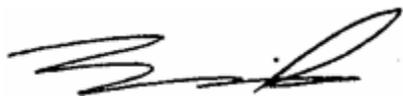
DATE: April 26, 2011
TO: Mayor and City Council
FROM: Interim Director of Finance
SUBJECT: Master Fee Schedule Update/Fine and Bail Update
***** To Be Continued to May 3, 2011 *****

RECOMMENDATION

Staff recommends that this item be continued to May 3, 2011 to allow additional public notice time. A complete and detailed listing of fees is reflected in the Fiscal Year 2012 Master Fee Schedule, and in the Fine and Bail Schedule. Both of these schedules can be reviewed at the Office of the City Clerk, on the City of Hayward's website at www.hayward-ca.gov, or, by request to the Office of the City Clerk, it can be provided in cd-rom format.

Recommended by: Susan M. Stark, Interim Director of Finance

Approved by:



Fran David, City Manager

Attachment: Staff Report and Attachments



DATE: May 3, 2011
TO: Mayor and City Council
FROM: Interim Director of Finance
SUBJECT: Master Fee Schedule /Fine and Bail Update

RECOMMENDATION

That Council approves the attached resolution authorizing changes to the City's Master Fee Schedule and the Fine and Bail Schedule.

SUMMARY

City staff completed the annual review of the Master Fee Schedule to determine what adjustments, if any, are necessary for the fees charged for services provided. User fees are charged for special services provided by the City that are not fully funded by general tax revenue. Some of these services include but are not limited to: copies of documents; development services including building and fire inspection services; animal control services; false alarm fees; and rental of City property. The City also charges for the use of the City water and sewer systems, which are reviewed bi-annually, and are only partially discussed in this report. The Fine and Bail Schedule has also been updated due to SB857. Alameda County will be collecting an extra \$3 surcharge from cities for every parking ticket collected.

A complete and detailed listing of fees are reflected in the Fiscal Year 2012 Master Fee Schedule, along with the Fine and Bail Schedule which both can be reviewed at the Office of the City Clerk; on the City of Hayward's website at www.hayward-ca.gov; or, by request to the Office of the City Clerk, it can be provided in cd-rom format.

BACKGROUND

As part of the FY 09 and FY 10 budget process, staff identified the need to perform a comprehensive user-fee study. The fee study, prepared by Maximus, was completed and presented to Council in July 2008. In general, the result of that study showed that in order to recover the total cost of providing services, fee increases were necessary. Many of the fees in the City's fee schedule had not been reviewed for a number of years and it became clear that implementing the study's recommended full-cost recovery would create significant increases in fees. Therefore, based on concerns regarding the community's response to the fee increases, the recommended full-cost

recovery fees were scheduled as a phase-in process over two fiscal years; 80% in FY09 and 100% in FY10. Other fees were and still are highly subsidized either because of the public benefit that is received by charging a reduced fee, or by government regulations.

A component of the City's fee setting policy requires that fees be reviewed and adjusted annually as part of the budget process in order to avoid large increases in a single year. Fee increases based on "CPI," are based on the percentage increase taken from the San Francisco-Oakland-San Jose Consumer Price Index- All Urban Consumers.

For FY11, staff analyzed the Master Fee Schedule and the CPI as of December 2009, which reflected a 2.6% increase over the prior year. Certain fees were adjusted accordingly by a 2.6% increase unless staff requested to keep fees the same as the previous year (FY10) for public benefit or if mandated by a government regulation.

For the proposed FY12 Master Fee Schedule, the CPI as of December 2010 reflects a 1.5% increase. However, due to the economic climate affecting our community and surrounding areas, staff has attempted to postpone any increases based solely on a CPI increase. Staff has adjusted fees only where the cost of service delivery to the public has increased, for example labor or materials or for corrections and rounding differences to the existing Master Fee Schedule itself.

Proposition 26 Review and Compliance

In November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes are not disguised as fees: taxes must be approved by the voters whereas fees can be approved by legislative bodies, such as a city council. The proposed Master Fee Schedule has been reviewed for compliance with Proposition 26 and, in the City Attorney's opinion, is compliant.

DISCUSSION

Summary of Changes in Fees for FY 2012 Master Fee Schedule:

All City Departments:

- Staff proposes reducing the Administrative Hearing Fee from the existing \$51 to \$50 in order for ease in quoting to citizens over the phone. The CD-ROM/ DVD fee is being rounded from \$5.15 to \$5.00 for administrative ease in charging the public.

City Attorney:

- Staff proposes increasing the rent stabilization administration fee to equal 50% of full cost recovery. Currently, it is set at a level to recover approximately 40% of the actual costs of this program.

City Clerk:

- Staff proposes to increase passport fees from \$75.00 to \$110.00 (age 16 and over) and from \$60.00 to \$80.00 (under age 16) as mandated by the U.S. Dept of State. Staff is also rounding other fees for various reproduction, certificates, and publications to the nearest dollar for ease in providing service to the general public.

City Manager:

- Staff proposes no fee changes; but needs to add clarification to Community Preservation lien and hearing fees to include special assessments.

Development Services Department:

Staff recommendations for Building fees are categorized into three general areas:

1. Reformatted to be more user-friendly: The fee schedule has been reformatted to be much more user-friendly and understandable. Such changes do not entail substantive changes to fees, but involve the following:
 - a. Condensed the schedule down from thirty-five pages into a more useable eighteen-page format by reducing the sixty sub-occupancy classification groups into fifteen primary occupancy groups with both new construction plan check and new construction inspection fees shown on the same pages. The existing schedule has fees within sub-occupancy classification groups that are either the same or vary only slightly, and has plan check and inspection fees in different sections of the schedule.
 - b. Added a page at the rear of the schedule to clearly show all of the additional State mandated and non-permit service fees.
 - c. Cleaned up the Mechanical, Electrical, and Plumbing fee schedule sections by removing fees listed for inspection requests (e.g., underground inspection, rough inspection and final inspection), versus fees for specific scopes of work (wall heaters, electrical service upgrades, water heater replacements, etc.). The fees associated with these inspection requests should never have appeared in the fee schedule as listed, since inspection charges are captured by the administrative and miscellaneous charge for each type of permit. Also, staff is recommending adding a sign permit fee to the electrical schedule to cover review and inspection of such projects.
2. Changed the Fee Schedule Structure for Commercial Tenant Improvements and Residential Remodel Projects to a Valuation-Based Structure:

- a. Consistent with discussion at the January 25, 2011 City Council Work Session, in response to customer feedback, and to address shortcomings of the current Building Division fee schedule, staff is recommending that the fees only for commercial tenant improvements (TIs) and residential remodels be based on project valuation. Hayward's schedule prior to FY09, as well as most jurisdictions throughout the State, rely on a valuation-based fee schedule. The current fee schedule for such projects is based on square footage that makes calculating fees for TIs and residential remodels cumbersome and time-consuming, and which results in inconsistent assessment of fees, because the scope of such projects within the same square footage and costs to process such projects can vary widely. The City moved away from the valuation-based approach in 2009, based on recommendations from its consultant and desire to achieve greater cost recovery. However, for TIs and remodels, the current schedule often results in fees that are inconsistent with the costs of reviewing and inspecting projects. Generally, larger, more complicated TIs and remodels that require more plan review and inspections will appropriately result in higher fees with the proposed changes, compared with the existing fees; however, the reverse is often true for smaller, simpler projects. Staff is recommending the changes to better align costs for processing TIs and remodels with fees.
- b. The schedule retains the equipment installation fee in the miscellaneous schedule to avoid the possibility of overcharging on tenant improvement projects with high valuation pieces of equipment.
- c. Re-established inclusive residential remodel type permits where the valuation based permit will be issued as a single permit and will include all of the sub permits. Such action will eliminate the need for multiple permits for more complex residential remodels.

3. Other Miscellaneous Changes:

- a. The miscellaneous items fee schedule for large commercial solar photovoltaic systems has been adjusted to more closely reflect the cost of plan check review and inspection of such systems. Such adjustment results in fees more in line with those of other cities and in line with the Sierra Club's Bay Area impact fee study findings.
- b. The miscellaneous items fee schedule was amended to clarify that the fee for roof top units, such as HVAC units, includes all the trades permits.

In summary, the proposed revisions will allow staff to more quickly and consistently provide project fee estimates to developers and contractors and will better align fees with the true costs of processing permits based on project-specific scopes of work.

Staff recommendations for Planning fee changes:

- Pre-Application Meetings: This is an existing fee and no increase is recommended, though the Fire Department fee of \$843 that is normally paid to the Fire Department is now shown in the Pre-Application fee total. There has been concern that this fee may dissuade potential applicants from applying for a Pre-Application meeting, which greatly benefits potential applicants proposing complex projects with multiple issues. Consistent with the discussion at the January 25, 2011 City Council work session, staff recommends allowing the pre-application fee to be credited towards the Development Review Application initial deposit for the corresponding project. While this credit will lessen the initial financial outlay for an application submittal, there will be no loss of revenue as the billing will remain on a time & materials basis.
- Building Permit Application Review: The Building Permit Review process requires City planners to review building permit applications for compliance with the Zoning Ordinance and conditions of approval imposed by discretionary permits. Currently, Planners review building permit applications with no direct cost recovery coming from fees associated with permit applications being reviewed. Building Permit Review fees for Planning were included in the Master Fee Schedule prior to the 2008 Master Fee Study by Maximus. However, the Maximus study, rather than resetting these fees, aggregated time spent by the Planning Division into support to the Building Division for such reviews. Unfortunately, this approach does not provide an accurate recapture of costs associated with time actually spent by Planning Division staff on review of building permit applications, nor is Building Division cost recovery sufficient if an amount were deducted from the Building revenues to support Planning reviews. Reinstatement of these fees would allow for direct cost recovery and therefore, staff is recommending reinstatement of these fees equal to those in the 2008 Master Fee Schedule, with an average annual increase based on CPI beginning FY 2013 (i.e., there will be no overall increase for FY12.)
- Planning and Landscape Inspections: City planners are often required to inspect properties to review compliance of new development projects with the Zoning Ordinance and conditions of approval imposed by discretionary permits. Currently, Planners inspect properties/projects with no cost recovery coming directly from the project being reviewed. Inspection fees were included in the Master Fee Schedule prior to the 2008 Master Fee Study by Maximus. However, the Maximus Study, rather than resetting these fees, aggregated time spent by the Planning Division into support to the Building Division. For the same reasons noted above for Building Permit Application review, reinstatement of these fees would allow for direct cost recovery. Staff is recommending reinstatement of these fees equal to those in the 2008 Master Fee Schedule, with an average annual increase based on CPI beginning FY 2013 (i.e., there will be no overall increase for FY12.)
- Research: Written verifications of zoning designations currently require a fee of \$216. Often a customer request requires research beyond that related to a simple Zoning Verification request. The fee would be imposed if the request required more than fifteen minutes of staff research, consistent with other research fees charged in the Fee Schedule.

The recommended fee would be the same fee imposed by the City Clerk's office for this same service, and would allow for fuller cost recovery.

- Encroachment Permits – Street Events: This is an existing fee and no increase is recommended. However, the City Manager receives a number of requests for permit fee waivers for such events and there are no guidelines contained in the fee schedule. Therefore, staff recommends amending the Planning fee schedule by inserting language that indicates the City Manager may waive permit fees for such events that are sponsored by the City or by City of Hayward educational institutions. Given the number of past requests, which are typically fewer than five per year, it is not anticipated that such amendment would result in the loss of substantial revenue. Also, such waivers would promote partnership between the City and local educational institutions. Staff will monitor the number of waivers granted annually and may reconsider these waivers in the future, depending on the costs involved.

Finance Department:

- Staff proposes no fee changes to the existing schedule.

Fire Department:

- Staff proposes no fee changes to the existing schedule.

Library and Community Services:

- Staff proposes no change to library fees and that said fees remain highly subsidized due to the public benefit.

Maintenance Services:

- Staff proposes no fee changes to the existing schedule.

Police Department:

Staff proposes new fees, a revised bail and fine schedule, and clarification of fee descriptions.

- Due to the overwhelming costs to maintain the use and effectiveness of the Hayward Police Department's range, a Firearms Range Maintenance Fee is proposed for other law enforcement agencies. The fee will be based on the number of times a department or agency utilizes the HPD range during a calendar year. The proposed fee is: one or two days per calendar year-\$250; three or four days per calendar year-\$500; five or more days per calendar year-\$750. This maintenance fee does not alleviate the need for those utilizing the HPD range from performing a clean-up detail at the end of each range day. This includes the removal of all casings discarded during training and the removal of all trash from the range.

- Staff proposes to add a new fee and increase another fee in the Animal Services licensing and adoption program. The new fee is an administrative processing fee for the return of animals adopted from the shelter. The new fee is a nominal \$10, not intended for full cost recovery, but will offset the staff time involved in taking in the returned animal along with updating microchip information. Another fee proposed for increase is the Sterilized License Renewal from \$11 to \$17 to make it equal with initial licensing fees because the amount of staff time involved is equivalent.
- Due to SB857, Alameda County will be collecting an extra \$3 surcharge from cities for every parking ticket collected. Laws enacted prior to SB857 currently require the County to collect \$9.50 from issuing agencies for each parking penalty or fine paid. Most of these surcharges are a pass-through from the County to the State for court facilities construction funds. The City passes the surcharges to the parking violators with the revised ticket fines. The attached FY12 Fine and Bail schedule reflects the increased fines.

Public Works:

Airport:

- Staff added a Hanger Office Space rental fee for renting office space on a month to month basis which was inadvertently removed from the last master fee schedule and proposes increasing the existing Hanger Space and Hanger Storage fees by the CPI of 1.5% across the board.

Engineering Services:

- Staff proposes adding new Engineering fees and correcting existing fees to reflect a full cost recovery rate. Due to an oversight, the phase-in from 80% to 100% recovery rate per the fee study in FY10 did not occur for Engineering & Transportation fees. The proposed fee increases in the FY12 fee schedule include the remaining 20% correction to get to full cost recovery rate.
- Staff proposes a new fee for Development Plan Review; which would be \$730 for industrial/commercial projects and \$360 for residential projects. This new fee is to recover the costs of Engineering & Transportation (E&T) review of development plans that are not covered under a time and materials fee. Typically, E&T reviews plans for various types of facilities to ensure that adequate clean water monitoring programs are included, and reviews grading and drainage plans associated with building permit projects. The proposed fees reflect the typical level of effort required for most industrial, commercial and residential projects.

Utility Services:

- Sanitary sewer service and water rates are adjusted biannually effective in October and will be covered in a separate report to Council later this spring. However, staff proposes

certain utility services fees to be increased due to increased labor and materials costs. Those fees include: Wastewater Discharge Permit Fees; Water Service Charges and Installation fees; and various Account Establishment, Meter Lock, Removal, and Testing fees. Staff also proposes a new Solid Waste Development Plan Review fee for industrial/commercial or residential projects to cover the review for solid waste and recycling requirements. These reviews have been done in the past without a fee, similar to plan review requirements mentioned above in Engineering Services.

Technology Services:

- Staff proposes increases to various GIS mapping, copying, and paper fees to include a CPI increase of 1.5% as well as rounding to whole dollar increments.

ECONOMIC IMPACT

Approval of the attached resolution will have a minor economic impact on our community in that certain fees will be increased. The increases have been imposed gradually thereby negating possible hardship to the community.

FISCAL IMPACT

Approval of the attached resolution will increase the City's General Fund resources in FY12 by approximately \$220,000.

PUBLIC CONTACT

A public notice was published in The Daily Review on April 16 and April 21, 2011 announcing the date, time, location and subject matter of this public hearing.

NEXT STEPS

Upon approval of the attached resolution, the Schedules will be updated and the fees will be effective as of July 1, 2011, to allow for the required sixty-day notice period.

Prepared by: Henry Gudino, Accounting Manager

Recommended by: Susan M. Stark, Interim Director of Finance

Approved by:

Fran David, City Manager

Attachments: Attachment I: Resolution
Attachment II: Fine and Bail Schedule

HAYWARD CITY COUNCIL

RESOLUTION NO _____

Introduced by Council Member _____

RESOLUTION ADOPTING A REVISED MASTER FEE SCHEDULE, INCLUDING A REVISED FINE AND BAIL SCHEDULE, RELATING TO FEES AND CHARGES FOR DEPARTMENTS IN THE CITY OF HAYWARD AND RESCINDING RESOLUTIONS NO. 10-061 and NO. 09-085 AND ALL AMENDMENTS THERETO

WHEREAS, Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;
3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing service areas; or
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by city Charter; and

WHEREAS, the City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions.

WHEREAS, in November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed Master Fee Schedule (MFS), including the proposed Fine and Bail Schedule, is compliant.

NOT, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in both the Master Fee Schedule and the Fine and Bail Schedule relating to fees and charges for all departments of the City of Hayward, either on its face or as applied, the invalidity of such provision shall not affect the other provisions of this Master Fee Schedule and the Fine and Bail Schedule, and the applications thereof; and to that end the provisions of this Master Fee Schedule and the Fine and Bail Schedule shall be deemed severable.

BE IT FURTHER RESOLVED that Resolutions No. 10-061 and No. 09-085, and all amendments thereto are hereby rescinded.

BE IT FURTHER RESOLVED that this resolution shall become effective as of July 1, 2011.

IN COUNCIL, HAYWARD, CALIFORNIA APRIL 26, 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

City of Hayward Traffic Code

Fine and Bail Schedule

<u>Section</u>	<u>Offense</u>	<u>Current Bail</u>	<u>Recmd Bail</u>
	<u>Uniform Fire Code</u>		
9.01.4	Parked in Fire Lane	215.50	218.50
	<u>Hayward Traffic Code</u>		
5.02	Obediance to Traffic Control Devices	294.50	297.50
6.01.1	No Parking - Red Curb Zone	64.50	67.50
6.01.2	Yellow Curb, Loading Zone	64.50	67.50
6.01.3	White Curb, Passenger Loading Zone	64.50	67.50
6.01.4	Green Curb Zone - Over Time Limit	74.50	77.50
6.01.5	Blue Curb, Disabled Persons Zone	334.50	337.50
6.05	Parking in Alley	64.50	67.50
6.06	Bus Zone	284.50	287.50
6.23	Municipal Lot/City Property Special Restrictions	64.50	67.50
6.23h	Disabled Persons Stall	334.50	337.50
6.24	Selling on Street/City Property	239.50	242.50
6.30	Over Time Limit	74.50	77.50
6.32	Commercial Vehicle, Over Posted Time Limit	126.50	129.50
6.33	Commercial Vehicle in Residential Area	126.50	129.50
6.35	Not Parked within Designated Space	64.50	67.50
6.36(a)	Residential Permit Parking only	64.50	67.50
6.37	Driving Off Interstate Truck Route	60.50	63.50
6.38	Commercial Vehicle in Posted No Parking	126.50	129.50
6.39a	Parked off Pavement or Not Leading to Garage	104.50	107.50
8.10	Double Parked	64.50	67.50
8.11	No Parking in Parkways	64.50	67.50
8.12	Parked on Street over 72 Hours	74.50	77.50
8.13	Parking on Street for Sale or Repairs	104.50	107.50
8.14	Private Property Parking	104.50	107.50
8.15	Disabled Persons Stall, Private Property	334.50	337.50
8.17	Narrow Street Posted No Parking	64.50	67.50
8.18	Parked on Hill, Wheels not Curbed	64.50	67.50
8.20.3	Posted No Parking	64.50	67.50
8.20.4	No parking - Street Sweeping Zone	64.50	67.50
8.21	Not 18", not Parallel to Left Side One Way	64.50	67.50
8.22	Parked at Angle	64.50	67.50
8.30	Temporary No Parking Area	64.50	67.50
8.39	Leaving Attended Parking Lot without Paying	74.50	77.50
8.50	Blocking Crosswalk	64.50	67.50
	<u>California Vehicle Code</u>	4.50	7.50
21113a	Violate Restriction on School Grounds, etc.	64.50	67.50
22500a	No Parking in an Intersection	64.50	67.50
22500b	Parked Across Crosswalk	64.50	67.50
22500d	Parking W/I 15' of Fire Station Driveway	74.50	77.50
22500e	Parked Blocking Driveway	64.50	67.50
22500f	Parked on Sidewalk	64.50	67.50
22500g	Parked Adjacent To or Opposite Street Excavation	64.50	67.50
22500h	Double Parked	64.50	67.50
22500i	Bus Passenger Loading Zone w/Red Curb	284.50	287.50

<u>Section</u>	<u>Offense</u>	<u>Current Bail</u>	<u>Recmd Bail</u>
22500j	No Parking in Tunnel or Tube	64.50	67.50
22500k	No Parking on a Bridge	64.50	67.50
22502a	Parked Wrong Side of Road/over 18" from Curb	64.50	67.50
22507.8a	Disabled Parking Space	334.50	337.50
22507.8c	Disabled Access Area	334.50	337.50
22507b	Disabled Parking - Obstruct or Block Access	334.50	337.50
22513	Tow Truck on Freeway	37.50	40.50
22514	Park w/in 15' of Fire Hydrant	74.50	77.50
22515	Unattended Vehicle with Motor Running	74.50	77.50
22516	Locked Vehicle Person Inside Can't Escape	107.50	110.50
22521	Parking on or w/in 7.5' of Railroad Track	64.50	67.50
22522	Block Sidewalk Ramp for Disabled Painted Red	334.50	337.50
22523a	Vehicle Abandoned on Highway or Street	454.50	457.50
22523b	Vehicle Abandoned on Private Property	454.50	457.50
25300e	Warning Device Parked Vehicle	80.50	83.50
26708	Tinted windshield	29.50	32.50
26710	Defective windshield	29.50	32.50
27155	No gas cap	29.50	32.50
27465b	Bald tire	29.50	32.50
4000a	No evidence of current registration	54.50	57.50
40226	Dismissal of Handicap Citation	29.50	32.50
4462b	Display false tab	29.50	32.50
5200	No plate	29.50	32.50
5204a	Expired tags	29.50	32.50

DATE: April 26, 2011

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Adoption of Interim Moratorium Ordinance Regarding Supermarkets of 20,000 Square Feet or More or Large Retail Stores Containing at least 10,000 Square Feet or Ten Percent of Area Devoted to Sale of Grocery or Non-Taxable Items

RECOMMENDATION

It is recommended that the City Council introduces and adopts the attached urgency ordinance establishing a 45-day moratorium on the approval of land use entitlements and building permits associated with supermarkets, defined in the Hayward Zoning Ordinance as establishments that do retail sales of food, beverages, drugs, variety items, and similar goods, totalling at least 20,000 square feet in area, as well as large retail establishments, including those requiring membership, exceeding 75,000 square feet where at least 10,000 square feet or 10 percent of the total retail space, whichever area is less, is devoted to the sale of grocery or non-taxable items.

BACKGROUND

During the February 1, 2011 Council meeting, the City Council directed the City Manager to review a draft ordinance that would require a conditional use permit and economic impact analysis for any new retail establishment totaling 20,000 square feet or more and having at least 10,000 square feet of area devoted to grocery sales, and report back to City Council. The City Manager is in the process of developing a response to City Council, based on initial preliminary research by City staff.

On March 23, 2011, the City received a building permit application for tenant improvements that would result in a new grocery store at the 35,000 square foot former Circuit City building along Whipple Road adjacent to Interstate 880 in the southern portion of Hayward. The application and plans, which show approximately 26,000 square feet of area for food/grocery sales, were routed for plan check review on April 4, after missing information was subsequently submitted to City staff by the project proponent. The plan check review is in process, and staff anticipates generating an initial punch list related to the first plan check review on April 27.

However, staff has received inquiries during the last several weeks/months related to potential larger grocers at various locations throughout the City. As shown in Attachment II,

supermarkets and related uses are allowed as primary uses in most commercial zoning districts. Traffic generation associated with larger supermarkets and discount superstores, especially when compared with other retail establishments, is typically large (see Attachment III).

DISCUSSION

The stated purpose of the Hayward Zoning Ordinance is to promote the public health, safety, and general welfare, and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner. The Zoning Ordinance further states that the City desires to achieve a pattern and distribution of land uses which generally:

- a. Retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities.
- b. Allow for the infill and reuse of areas at their prevailing scale and character.
- c. Accommodate expansion of development into vacant and under utilized lands within environmental and infrastructure constraints.
- d. Maintain and enhance significant environmental resources.
- e. Provide a diversity of areas characterized by differing land use activity, scale and intensity.
- f. Establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses.

As noted above, City staff has received inquiries for larger supermarkets in various locations in the City. Currently, supermarkets, regardless of size, are allowed as primary uses in applicable commercial zoning districts. Because they are allowed as primary uses, the City's ability to require studies associated with traffic and economic impacts in determining whether such uses are desirable and in line with the Zoning Ordinance purposes, is limited. Additionally, the current recession has negatively impacted the commercial property market in Hayward, resulting in an increase in vacant stores throughout the community (e.g., former Lucky's store at Southland Mall, reduced market size (new Fresh & Easy store) at the Fairway Park Shopping Center). Due to this trend, and related especially to the Zoning Ordinance's stated goal (a) above, it is even more critical for the City to assess the desirability of approving new supermarkets, especially in areas that are currently sufficiently served by existing markets, given they generate minimal sales tax revenue since grocery items are non-taxable.

Additional time is needed to allow staff to analyze the potential impacts of such new uses in Hayward and determine if modifications to the Zoning Ordinance regulations would be appropriate.

California Government Code Section 65858 states the City Council, without prior notice or a public hearing, "in order to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." The Government Code section further states that the Council shall not adopt an interim ordinance,

“unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.” The attached ordinance contains such findings. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), per CEQA Sections 15061(b)(3) and 15306.

ECONOMIC AND FISCAL IMPACTS

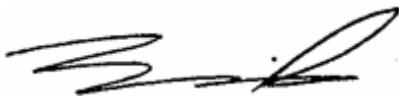
An interim moratorium of limited duration, although potentially negatively impacting some properties in the short run where such uses are proposed or contemplated, would have potential significant benefits to the community in the long run, ensuring that adequate analysis is conducted by staff and presented to Council that would identify the potential negative impacts and positive benefits to the City regarding the establishment of supermarkets/larger grocery stores. It is estimated that staff will need to spend a total of approximately 135 hours over a period of three to six months, with an estimated cost to the General Fund of approximately \$20,000, to fully research and analyze the impacts and benefits associated with such uses.

NEXT STEPS

Should the Council adopted the interim urgency ordinance by the required 4/5 vote (minimum six votes needed), staff will present an ordinance with findings to the Council within forty-five days to either extend the ordinance for an additional ten months and fifteen days to allow sufficient time for a more thorough analysis; or will provide the Council with an analysis and recommendations regarding whether any changes to the City’s Zoning Ordinance are warranted.

Prepared and Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Interim Urgency Ordinance
- Attachment II: Table Showing Types of Approvals Required for Supermarkets and Related Stores in Each Applicable Commercial Zoning District in Hayward
- Attachment III: Traffic Generation Information Associated with Various Retail Uses (Institute of Transportation Engineers Trip Generation Manual, 8th Edition)

ORDINANCE NO. ____

AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE PURSUANT TO GOVERNMENT CODE SECTION 65858 IMPOSING A MORATORIUM ON SUPERMARKETS TWENTY-THOUSAND SQUARE FEET OR GREATER IN SIZE AND LARGE SCALE RETAIL STORES OF SEVENTY-FIVE THOUSAND SQUARE FEET OF GREATER WITH TENTH THOUSAND SQUARE FEET OR TEN PERCENT OF SALES FLOOR AREA DEVOTED TO NON-TAXABLE MERCHANDISE

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

Section 1. This interim ordinance is adopted pursuant to the provisions set forth in Government Code Section 65858 and imposes a 45-day moratorium on the issuance of use permits, variances and building permits for supermarkets that are twenty thousand (20,000) square feet or greater in size and large scale retail stores that are seventy-five thousand square feet or greater with ten thousand (10,000) square feet or ten percent (10%) of sales floor area, whichever is less, devoted to non-taxable merchandise.

Section 2. Findings. The City Council hereby finds as follows:

- A. The stated purpose of the Hayward Zoning Ordinance is to promote the public health, safety, general welfare and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner. The Zoning Ordinance further states that the City desires to achieve a pattern and distribution of land uses that generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities; allow for the infill and reuse of areas at their prevailing scale and character; accommodate expansion of development into vacant and under-utilized lands within environmental and infrastructure constraints; maintain and enhance significant environmental resources; provide a diversity of areas characterized by differing land use activity, scale and intensity; and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- B. Supermarkets that are 20,000 square feet or greater in size and large scale retail stores that are 75,000 square feet or greater in size present unique challenges for local government in that they require a significant commitment of police, fire, and public safety resources; strain local streets and highways; and increase traffic congestion.
- C. City staff has received several inquiries in recent months related to potential supermarkets at various locations throughout the City. Supermarkets and related uses are allowed as primary uses in most commercial zoning districts. Large scale retail stores are not currently regulated by the City. Traffic generation associated with supermarkets and large scale retail stores is typically greater than other retail establishments.
- D. Because supermarkets are allowed as primary uses and large scale retail stores are not currently regulated, the City's authority to require traffic and economic impact analyses to study the effects of these uses is limited. Additional time is needed to allow staff to analyze the potential impacts of such new uses in Hayward and determine if modifications to the Zoning Ordinance regulations would be appropriate.
- E. The current recession has negatively impacted the commercial property market in Hayward, resulting in an increase in vacant stores throughout the community, including the former Lucky's store at Southland Mall and the reduced market size (new Fresh & Easy store) at the Fairway Park Shopping

Center. Due to this trend, and related especially to the Zoning Ordinance's goal as stated above, it is even more critical for the City to assess the desirability of approving new supermarkets, especially in areas that are currently sufficiently served by existing markets, given that supermarkets generate minimal sales tax revenue to offset the potential negative impacts they create.

- F. The City is considering modifications to the Zoning Ordinance to protect the public health, safety, and welfare from the negative effects of the establishment of supermarkets and large scale retail stores that offer general merchandise combined with full-service grocery sales.
- G. Until such time as the City institutes land use controls over supermarkets and large-scale retail stores, the community is at risk that supermarkets and large scale retail stores could be instituted, modified or expanded, prior to the adoption of measures necessary for the protection of public health, safety and welfare.
- H. The issuance or approval of any building, planning or other permit for supermarkets or large scale retail stores with full services grocery sales (newly instituted, modified or expanded) prior to the City's completion of its review of the need for modifications to the Zoning Ordinance would result in a current and immediate threat to the public health, safety and welfare.
- I. Pursuant to Government Code Section 65858, the City has the authority to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal.
- J. For the reasons set forth above, this Ordinance is necessary to preserve the public health, safety and welfare and to avoid a current and immediate threat to the health, safety and welfare of the community.
- K. The adoption of this Ordinance is exempt from CEQA, under Sections 15061(b)(3) and 15306 of the CEQA guidelines.

Section 3. The City of Hayward hereby declares a moratorium on the permitting or approval of any new, modified or expanded supermarket that is twenty-thousand (20,000) square feet or greater and any new, modified or expanded large-scale retail store that is seventy-five thousand (75,000) square feet or greater and that devotes ten thousand (10,000) square feet or ten percent (10%), whichever is less, of its total sales floor area to the sale of groceries or non-taxable items. Supermarket shall mean any establishment engaged in the retail sale of food, beverages, drugs, variety items, and similar goods. Large scale retail store shall mean a single establishment that sells goods or commodities for use by the ultimate consumer, including businesses that sell primarily bulk merchandise and charge membership dues or otherwise restrict sales to customers paying a periodic fee. Non-taxable items means products that are not subject to California state sales tax.

Section 4. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days immediately from the date of its adoption by the City Council by at least six affirmative votes. This 45-day period may be extended by the City Council in accordance with the provisions of Government Code Section 65858.

Section 5. The Planning Director is hereby authorized to administer and interpret the provisions of this urgency Ordinance, including but not limited to, review of specific use permits applications, variance requests, building permit applications, and other land use approvals, to determine whether the requested use permit, variance, building permit or other land use approval is subject to the terms of this Ordinance.

Section 6. The Planning Director shall review and consider options for the regulation of supermarkets and large scale retail stores in the City and provide the City Council a written report describing the measures which the City has taken to address the conditions which led to the adoption of this interim Ordinance.

Section 7. Constitutionality. If any section, subsection, sentence, clause or phrase of this Ordinance is for

any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 8. Publication. This interim, urgency Ordinance or a comprehensive summary thereof shall be published in newspaper of general circulation of the City within fifteen (15) days after its 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:

NOES:

ABSTAIN:

ABSENT:

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

Food Market Uses

P: Primary Uses **S:** Secondary Uses (requires Primary Use) **A:** Administrative Use Permit required **C:** Conditional Use Permit required

	CN	CN-R	CG	CO	CL	CB	CR	CC-C	CC-P	CC-R	SMU	I	AT-C	T4 T4-1 T4-2	T5
Convenience Market	A		A			A		C	C	A				P	P
Convenience Market with Service Station	A		A			A						A		C	C
Liquor Store	C	C	C			C		C	C					C	C
Supermarket	P	P	P			P	S	P	P	A	P			P	P
Retail Sales of Goods with Regional or Sub-regional Marketing base													A	P	P
Major Retail Anchor (Minimum 100,000 sf)							P								

CN – Neighborhood Commercial
CN-R – Neighborhood Commercial-Residential
CG – General Commercial
CO – Commercial Office
CL – Limited Access Commercial
CB – Central Business
CR – Regional Commercial
CC-C – Central City – Commercial
CC-P – Central City – Plaza
CC-R – Central City – Residential
SMU – Sustainable Mixed Use

I – Industrial
BP – Business Park
LM – Light Manufacturing/R&D
AT-AC – Air Terminal – Aviation Commercial
AT-C – Air Terminal – Commercial
T4 – South Hayward BART /Mission Boulevard
T4-1 – Mission Corridor Specific Plan
T4-2 – Mission Corridor Specific Plan
T5 – South Hayward BART /Mission Boulevard & Mission Corridor Specific Plan

Trip Generation Comparison

Land Use	Description	Avg size (ksf)	Trip Generation per 1,000 SF				Weekday
			AM peak	AM peak hr of generation	PM peak	PM peak hr of generation	
850	Supermarket	30-59	3.59	10.05	10.50	11.85	102.24
854	Discount Supermarket	74-106	2.74	7.32	8.90	9.84	96.82
863	Electronics Superstore	37	-	3.46	4.50	4.50	45.04
813	Free Standing Discount Superstore (w/grocery)	195-201	1.67	3.45	4.61	4.68	53.13
815	Free Standing Discount Superstore(w/out grocery)	92-114	1.06	5.48	5.00	5.57	57.24
857	Discount Club	112-114	0.56	3.68	4.24	4.76	41.8
814	Specialty Retail	25-75	-	6.84	2.71	5.02	44.32
820	Shopping Centre	328-479	1.00	-	3.73	-	42.94
875	Department Store	101-104	0.53	2.14	1.78	2.81	22.88
876	<i>Apparel Store</i>	5	1.00	4.80	3.83	4.20	66.40
879	<i>Arts and Crafts Store</i>	20	-	4.65	6.21	6.85	56.55
920	Copy and Print Store	4	2.78	8.10	7.41	12.27	-
931	Quality Restaurant	9	0.81	5.57	7.49	9.02	88.95
932	High Turnover Restaurant	5-7	11.52	13.53	11.15	18.49	127.15

italics represent very small sample sizes

Source : Institute of Transportation Engineers Trip Generation Manual (8th Edition)

DATE: April 26, 2011
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Opposition to AB 438 (Williams) County Free Libraries

RECOMMENDATION

That Council adopts the attached resolution opposing AB 438 and authorizing the Mayor and City Manager to send this resolution and consistent letters and correspondence to the appropriate State elected officials as needed to express the City's position on this and related matters.

BACKGROUND AND DISCUSSION

On February 13, 2011, Assemblymember Das Williams (D-Santa Barbara) introduced AB 438 in the State Assembly. Currently, county boards of supervisors may establish and maintain county free libraries within their respective jurisdictions. Any legislative body of any city may notify the county board of supervisors, on or before January 1 of any year, the city no longer wishes to part of the county free library system.

Under the proposed legislation, cities may still opt out of the county free library system unless they intend to operate the city's libraries with private contractors. In these instances, the proposed legislation makes it mandatory that the cities must submit the question of operating libraries with private contractors to the voters for approval.

The League of California Cities has expressed its opposition to this legislation primarily due to the legislation's usurpation of local control delegated to City Councils in their role as elected representatives of their communities. In a letter from the League to Assemblymember Williams, League staff highlighted concerns based on the following issues:

- *Requirement of voter referendum is unlawful.* The power of referendum, conferred by article II, Section 9 of the California Constitution, applies "only to acts which are legislative in character and not to administrative or executive acts" (*Southwest Diversified, Inc. v. City of Brisbane* 229 Cal.App.3d 1548 (1991); *Simpson v. Hite* 36 Cal.2d 125 (1950)). AB 438 requires voters to approve a city council's decision to provide library services through a private contractor. This type of council decision is considered "administrative" and is therefore not subject to referendum by the people.

- *Timing of decisions mandated in AB 438.* City council members routinely make administrative decisions on contracts, policies, and fiscal decisions that are essential to government functioning smoothly. Sometimes these decisions must take place in an expedited manner so as to balance the city's budget. Forcing a city to wait an extended period of time, until the *next regularly scheduled election* (which could be up to two years away), could exacerbate an already bad fiscal situation for the city.
- *Role of Council Members.* Administrative decisions, such as a city council decision to privatize library services, are exactly the type of decisions that councilmembers are elected to make.

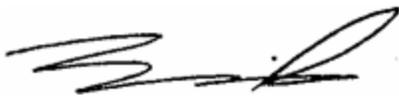
Additionally, while AB 438 only requires a referendum on a decision to withdraw from a county library system and privatize those services, this bill could set a precedent for referendums of any administrative contractual decisions made by a city council. City Council members routinely make administrative decisions on contracts, policies, and fiscal decisions that are essential to the smooth functioning of government. Also, cities are already required to hold public hearings if they are considering private management of City services. This legislation would impose costly restrictions on local agencies by forcing an election even if privatization is strongly favored in a particular community.

This legislation passed through Committee (Ayes 6, Noes 2) on April 14 and has been referred to the Assembly Appropriations Committee for consideration.

FISCAL AND ECONOMIC IMPACT

This legislation would potentially hinder the City Council's authority to make responsible and timely fiscal decisions on behalf of the City. The legislation has the effect of usurping local governing body authority to make the decisions that they were elected to make.

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution Opposing AB438 (Williams) County Free Libraries

HAYWARD CITY COUNCIL
RESOLUTION NO _____

Introduced by Council Member _____

A RESOLUTION OPPOSING AB438 (WILLIAMS) COUNTY FREE LIBRARIES

WHEREAS, the City of Hayward, as a Charter City in the State of California, strongly endorses the concept of local control; and

WHEREAS, AB 438 is a recent measure introduced in the State Assembly that would require voters to approve a City Council’s decision to provide library services through a private contractor; and

WHEREAS, this legislation was proposed in specific response to one community’s actions to contract out library services and is short-sighted in that it would have far reaching implications for the ability of local City Councils to make decisions in the best interest of their communities; and

WHEREAS, the power of referendum, conferred by article II, Section 9 of the California Constitution, applies “only to acts which are legislative in character and not to administrative or executive acts” and the type of council decision contemplated by AB 438 is considered “administrative” and is therefore not subject to referendum by the people; and

WHEREAS, cities are already required to hold public hearings if they are considering private management of City services and this legislation would impose costly restrictions on local agencies by forcing an election even if privatization is strongly favored in a particular community; and

WHEREAS, this legislation imposes unnecessary costs and impediments for elected officials, who have been trusted to make such decisions with taxpayer savings in mind; and

WHEREAS, City Council members routinely make administrative decisions on contracts, policies, and fiscal decisions that are essential to the smooth functioning of government and this legislation undermines the ability of a city to operate efficiently and effectively by forcing a city to put a contract to a public vote at the next regularly scheduled election, thereby potentially delaying the decision for as long as two years and exacerbating already bad local municipal fiscal situations; and

WHEREAS, the City Council of Hayward is strongly opposed to this apparent usurpation of local control by the State legislature.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hayward expresses its opposition to AB 438 (Williams) as currently authored, and

BE IT FURTHER RESOLVED that the City Council directs the City Manager to forward this Resolution to appropriate State elected officials.

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