



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
NOVEMBER 13, 2012

MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE MARVIN PEIXOTO
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARK SALINAS
COUNCIL MEMBER GREG JONES
COUNCIL MEMBER AL MENDALL

Table of Contents

Agenda	3
Overview of the 2012 Resident Satisfaction Survey Results (Report from Assistant City Manager McAdoo)	
Staff Report	9
Attachment I	11
Approval of Minutes of the Special City Council Meeting on October 16, 2012	
Dra Minutes	28
Approval of Minutes of the Special Joint City Council/Redevelopment Successor Agency/Housing Authority Meeting on October 23, 2012	
Draft Minutes	29
Authorization for the City Manager to Execute a Professional Services Agreement for Evaluation of the Cathodic Protection System	
Staff Report	42
Attachment I Resolution.	45
Authorization for City Manager to Execute a Master Lease Purchase Agreement for the Purchase of Police Department Vehicles	
Staff Report	46
Attachment I Resolution.	49
Attachment II Schedule of bids received	50
Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2013 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act	
Staff Report	51
Attachment I.	53
Authorization of Payment for Legal Consulting Services Provided by Wulfsberg Reese Colvig & Firstman in Relation to Negotiation of Contracts with WM Lyles Group and FuelCell Energy for the New Cogeneration Power System at the Water Pollution Control Facility	
Staff Report	55
Attachment I Resolution.	57
Resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force	
Staff Report	59
Attachment I Resolution	60
Attachment II Letter.	61

Request to Amend the General Plan Land Use Designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the park expansion and future development lots; and Approve a related Development Agreement for the property at the northeast corner of Eden and Denton Avenues - General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237, Parcel Map Application No. PL-2010-0431, and Development Agreement Application No. PL-2010-0235 – Westlake Development LLC (Applicant)/ Chang Income Partnership L.P. (Owner) (Report from Development Services Director Rizk)

Staff Report	62
Attachment I Resolution.	74
Attachment II Draft Ordinance	81
Attachment III DA Draft Ordinance	85
Attachment IV Location Map	89
Attachment V Conditions of Approval.	91
Attachment VI Mitigated Neg Dec and Initial Study	105
Attachment VII MMRP	128
Attachment VIII Draft Development Agreement.	130
Attachment IX Plans	176
Attachment X Planning Commission Report minus Attachments.	183
Attachment XI Planning Commission meeting minutes	193

Adoption of an Ordinance Adding Section 5-7.25, Regarding Unlawful Nuisance on Public Property, to Article 7 of Chapter 5 of the Hayward Municipal Code (Report from Director of Maintenance Services McGrath)

Staff Report	203
Attachment I.	208
Attachment II	210

Introduction of an Ordinance Amending Building Abatement Code, Chapter 9 - Article 3 of the Hayward Municipal Code (Report from City Attorney Lawson and Development Services Director Rizk)

Staff Report	212
Attachment I.	216
Attachment II	229

Introduction of Two Ordinances Adding Sections 11-2.48 through 11-2.52 and Sections 11-3.461 through 11-3.465 to the Hayward Municipal Code to Authorize Collection of Delinquent Water and Sewer Charges by Placement on the County Tax Rolls, and Amending Section 11-2.42 to Clarify Responsibility for Payment of Water Charges (Report from Public Works - Utilities and Environmental Services Director Ameri and Director of Finance Vesely)

Staff Report	240
Attachment I Ordinance Delinquent Sewer Bills.	246
Attachment II Ordinance Delinquent Water Bills	248
Attachment III Letter from RHOA	251



CITY COUNCIL MEETING FOR NOVEMBER 13, 2012
777 B STREET, HAYWARD CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 4:00 PM

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

➤ Performance Evaluation

City Manager

3. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Pending Litigation

Guzman, et al. v. Sangha, et al., Alameda County Superior Court No. HG12640596

4. Conference with Property Negotiators

Pursuant to Government Code 54956.8

➤ Property Transaction

Under Negotiation:

APN 428-0066-024-00

APN 428-0066-039-00

APN 428-0066-038-02

APN 428-0066-038-01

APN 428-0066-037-00

Property Negotiators: City Manager David, Assistant City Manager McAdoo, Development Services Director Rizk, Finance Director Vesely, City Attorney Lawson, Assistant City Attorney Conneely, Assistant City Attorney Alvarado, Assistant City Attorney Vigilia, Deputy City Attorney Brick, Deputy City Attorney Vashi; and Polly Marshall, Esq., and Rafael Yaquian, Esq., of Goldfarb & Lipman

5. Conference with Property Negotiators

Pursuant to Government Code 54956.8

➤ Property Transaction

Under Negotiation:

APN 415-0240-041-00

Property Negotiators: City Manager David, Assistant City Manager McAdoo, Economic Development Manager Brooks, City Attorney Lawson, Assistant City Attorney Conneely, Assistant City Attorney Alvarado, Assistant City Attorney Vigilia, Deputy City Attorney Brick, and Deputy City Attorney Vashi

6. Conference with Labor Negotiators
Pursuant to Government Code 54957.6
 - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager McAdoo, Human Resources Director Robustelli, Finance Director Vesely, Deputy City Attorney Vashi, and Director of Maintenance Services McGrathUnder Negotiation: All Groups
 7. Adjourn to Special City Council Meeting
-

**SPECIAL CITY COUNCIL MEETING
Council Chambers – 7:00 PM**

CALL TO ORDER Pledge of Allegiance Council Member Salinas

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Business Recognition Award: Siemens Infrastructure & Cities

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.

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. Overview of the 2012 Resident Satisfaction Survey Results (Report from Assistant City Manager McAdoo)

[Staff Report](#)
[Attachment I](#)



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

2. Approval of Minutes of the Special City Council Meeting on October 16, 2012
[Drat Minutes](#)
3. Approval of Minutes of the Special Joint City Council/Redevelopment Successor Agency/Housing Authority Meeting on October 23, 2012
[Draft Minutes](#)
4. Authorization for the City Manager to Execute a Professional Services Agreement for Evaluation of the Cathodic Protection System
[Staff Report](#)
[Attachment I Resolution](#)
5. Authorization for City Manager to Execute a Master Lease Purchase Agreement for the Purchase of Police Department Vehicles
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[Attachment II Schedule of bids received](#)
6. Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2013 pursuant to California Government Code 22892 of the Public Employees Medical and Hospital Care Act
[Staff Report](#)
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7. Authorization of Payment for Legal Consulting Services Provided by Wulfsberg Reese Colvig & Firstman in Relation to Negotiation of Contracts with WM Lyles Group and FuelCell Energy for the New Cogeneration Power System at the Water Pollution Control Facility
[Staff Report](#)
[Attachment I Resolution](#)
8. Resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Letter](#)



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

9. Request to Amend the General Plan Land Use Designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the park expansion and future development lots; and Approve a related Development Agreement for the property at the northeast corner of Eden and Denton Avenues - General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237, Parcel Map Application No. PL-2010-0431, and Development Agreement Application No. PL-2010-0235 – Westlake Development LLC (Applicant)/ Chang Income Partnership L.P. (Owner) (Report from Development Services Director Rizk)

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[Attachment V Conditions of Approval](#)

[Attachment VI Mitigated Neg Dec and Initial Study](#)

[Attachment VII MMRP](#)

[Attachment VIII Draft Development Agreement](#)

[Attachment IX Plans](#)

[Attachment X Planning Commission Report minus Attachments](#)

[Attachment XI Planning Commission meeting minutes](#)

LEGISLATIVE BUSINESS

10. Adoption of an Ordinance Adding Section 5-7.25, Regarding Unlawful Nuisance on Public Property, to Article 7 of Chapter 5 of the Hayward Municipal Code (Report from Director of Maintenance Services McGrath)

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

11. Introduction of an Ordinance Amending Building Abatement Code, Chapter 9 - Article 3 of the Hayward Municipal Code (Report from City Attorney Lawson and Development Services Director Rizk)

[Staff Report](#)

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November 13, 2012



12. Introduction of Two Ordinances Adding Sections 11-2.48 through 11-2.52 and Sections 11-3.461 through 11-3.465 to the Hayward Municipal Code to Authorize Collection of Delinquent Water and Sewer Charges by Placement on the County Tax Rolls, and Amending Section 11-2.42 to Clarify Responsibility for Payment of Water Charges (Report from Public Works - Utilities and Environmental Services Director Ameri and Director of Finance Vesely)

[Staff Report](#)

[Attachment I Ordinance Delinquent Sewer Bills](#)

[Attachment II Ordinance Delinquent Water Bills](#)

[Attachment III Letter from RHOA](#)

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

NOVEMBER 20, 2012 MEETING CANCELED – HOLIDAY/BUSINESS CLOSURE

NEXT MEETING, TUESDAY, NOVEMBER 27, 2012

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 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. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. *****

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.



Please visit us on:



November 13, 2012



DATE: November 13, 2012
TO: Mayor and City Council
FROM: Assistant City Manager
SUBJECT: Overview of the 2012 Resident Satisfaction Survey Results

RECOMMENDATION

That the City Council receives and provides comments on this report and the associated presentation.

BACKGROUND

Beginning in 2008, the City has completed a Resident Satisfaction Survey (survey) every other Fall. Council approved a third survey as part of its FY 2013 budget. The City contracted with Godbe Research (Godbe) to complete this year's survey. Mr. Bryan Godbe, President of Godbe Research, also conducted the two previous surveys.

In August, staff worked with Godbe to draft a survey instrument based on the questions used in the past. Several of the draft questions were presented to the Council Economic Development Committee on September 17 for review and comment. The draft was then revised and presented in its entirety to the Council Budget and Finance Committee on September 26 for final review and approval.

Godbe conducted the 2012 survey from October 5 through 14. On October 26, Mr. Godbe presented the attached Topline Report to the Budget and Finance Committee, which summarizes preliminary findings from the survey.

DISCUSSION

Mr. Godbe will present final survey results and comparisons to the 2008 and 2010 survey results at the November 13 Work Session. He will be available to answer Council's questions about the survey methodology and the results.

Page two of the Topline Report (Attachment I) summarizes the survey methodology. Godbe Research conducted 406 phone interviews with Hayward residents with the option for residents to take the survey in English or Spanish. Each survey ran approximately twenty-one minutes in length.

Once collected, the sample of residents that took the survey was compared with Hayward's demographics. If there were differences between the sample and the actual universe of residents, the survey data were weighted to correct the difference so that the results presented are representative of Hayward's adult resident characteristics in terms of gender, age, and ethnicity.

Questions one through seventeen are categorized under six themes: Living in Hayward; Satisfaction with City Services; Public Safety and Police Services; Public Facilities, Shopping Behaviors, and Business Needs; Contacting the City and Customer Service; and Communication and Public Information. Questions seven through eleven and sixteen are new this year and questions four and fourteen include additional categories. All other questions are the same as those asked in the previous survey.

Questions A through K collect demographic information about the respondents. Questions F, G and H are new or revised this year. All other demographic questions are the same.

FISCAL IMPACT

The total cost of completing the 2012 survey came to \$28,910. There are no anticipated additional financial impacts as a result of this survey.

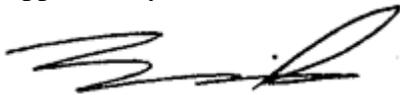
NEXT STEPS

Staff will incorporate the information gathered in this survey into existing strategic planning efforts, such as the Economic Development Strategic Planning process and the General Plan update. Staff will include a 2014 Resident Satisfaction Survey for Council's consideration as part of the FY 2015 budget.

Prepared by: Mary Thomas, Management Fellow

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Topline Report



GODBE RESEARCH
Gain Insight

CITY OF HAYWARD

2012 Resident Satisfaction Survey

Topline Report

n=408

21-minutes

RDD + Voter File Cell Phones Sample

October 21, 2012

www.godberesearch.com

Northern California and Corporate Offices
1660 South Amphlett Blvd., Suite 205
San Mateo, CA 94402

Southern California/Southwest
4695 MacArthur Court, 11th Floor
Newport Beach, CA 92660

Nevada
59 Damonte Ranch Parkway, Suite B309
Reno, NV 89521

Pacific Northwest
601 108th Avenue NE, Suite 1900
Bellevue, WA 98004

SURVEY METHODOLOGY

The City of Hayward commissioned Godbe Research to conduct a survey of its residents to learn their overall perceptions of living in Hayward and to gauge their satisfaction with the job the City is doing to provide resident services and programs. The survey also focused on gathering resident feedback on (a) satisfaction with City services; (b) public safety and police services; (c) public facilities, shopping behavior and business needs; (d) contacting the City and customer service; and (e) communication and public information.

Survey Methodology

Overall, 408 adult residents ages 18 and older in the City of Hayward completed the survey, representing a total universe of approximately 112,097 adult residents in the City (based on the 2010 Census population estimates). The study parameters resulted in a margin of error of plus or minus 4.8 percent. Interviews were conducted from October 5 through October 14, 2012. The average interview length was approximately 21 minutes.

Once collected, the sample of residents was compared with the estimated adult resident population in the City of Hayward to examine possible differences between the demographics of the sample of respondents and the actual universe of residents. The data were weighted to correct these differences, and the results presented are representative of the adult resident characteristics of the City of Hayward in terms of gender, age, and ethnicity.

Questionnaire Methodology

To avoid the problem of systematic position bias, where the order in which a series of questions is asked systematically influences the answers, several questions in the survey were randomized such that the respondents were not consistently asked the questions in the same order. The series of items in Questions 4, 6, 10, 13 and 14 were randomized to avoid such position bias.

Questions 5, 8, 9, 11, 13, and 16 allowed the respondents surveyed to mention multiple responses. For this reason, the response percentages may sum to more than 100, and these represent the percent of the respondents that mentioned a particular response, rather than the percent of total responses.

Mean Scores And Rounding

In addition to the percentage breakdown of responses to each question, results for the questions relating to resident satisfaction with City services (Q4), police services (Q6), and customer service (Q14) include a mean score. For example, to derive respondents' overall satisfaction with a given City service (Q4), a number value is first assigned to each response category (in this case, "Very Satisfied" = +2, "Somewhat Satisfied" = +1, "Somewhat Dissatisfied" = -1, and "Very Dissatisfied" = -2). The individual answer of each respondent is then assigned the corresponding number – from +2 to -2 in this example. Finally, all respondents' answers are averaged to produce a final score that reflects overall satisfaction. The resulting mean score makes the interpretation of the data considerably easier. Responses of "Don't Know" (DK/NA) were not included in the calculations of the means for any question.

Conventional rounding rules apply to the percentages shown in this report, .5 or above is rounded up to the next number, and .4 or below is rounded down to the previous number. As a result, the percentages may not add up to 100 percent.

LIVING IN HAYWARD

Now, I'd like to get your overall opinion of living in the City of Hayward.

1. Generally speaking, are you satisfied or dissatisfied with the overall quality of life in Hayward? Is that very [satisfied/dissatisfied] or somewhat [satisfied/dissatisfied]?

Very satisfied	41.6%
Somewhat satisfied	38.0%
Somewhat dissatisfied	11.9%
Very dissatisfied	7.6%
DK/NA	.9%

2. Now, please think about the sense of neighborhood that you feel where you live. Many consider a sense of neighborhood as knowing your neighbors and getting together with them, belonging to community groups, and a feeling like you have a shared identity as residents of the same area.

Given this, would you say that you feel a very strong sense of neighborhood, a somewhat strong sense of neighborhood, a somewhat weak sense of neighborhood, or a very weak sense of neighborhood where you live?

Very strong	18.0%
Somewhat strong	43.7%
Somewhat weak	22.8%
Very weak	13.3%
DK/NA	2.1%

SATISFACTION WITH CITY SERVICES

3. Overall, are you satisfied or dissatisfied with the job the City of Hayward is doing to provide resident services? Is that very [satisfied/dissatisfied] or somewhat [satisfied/dissatisfied]?

Very satisfied	32.8%
Somewhat satisfied	37.4%
Somewhat dissatisfied	14.8%
Very dissatisfied	6.8%
DK/NA	8.1%

4. Now, I'm going to read you a list of services provided by the City of Hayward. For each one, please tell me if you are satisfied or dissatisfied with the job the City is doing to provide the service.

Here is the [first/next] one: _____. Are you satisfied or dissatisfied with the City's performance in this area? Is that very [satisfied/dissatisfied] or somewhat [satisfied/dissatisfied]?

	Mean Score	Very Satisfied	Smwt. Satisfied	Smwt. Dissat.	Very Dissat.	DK/NA
A. Police protection	.88	40.7%	34.2%	12.0%	9.3%	3.8%
B. Traffic circulation	.20	20.4%	38.6%	18.9%	20.4%	1.8%
C. Fire protection and emergency services	1.46	55.4%	32.8%	4.3%	1.2%	6.2%
D. Street and sidewalk maintenance	.86	41.9%	33.0%	14.0%	9.3%	1.8%
E. Street lighting	.90	43.2%	33.9%	13.5%	8.7%	.7%
F. Providing parking throughout the City	1.01	41.6%	36.7%	9.5%	7.4%	4.8%
G. Enforcing building codes and guidelines for quality and safe development in Hayward	.96	27.7%	37.3%	7.3%	5.3%	22.5%
H. Graffiti removal	.70	35.2%	34.2%	11.0%	13.8%	5.9%
I. Protecting open space	.95	30.1%	39.1%	7.9%	6.2%	16.7%
J. Attracting new businesses to the City	.23	19.7%	32.3%	21.1%	15.1%	11.9%
K. Increasing the availability of local jobs	.15	18.6%	26.7%	20.6%	15.6%	18.5%
L. Maintaining a strong financial base to fund City programs and services	.56	23.8%	31.0%	13.9%	10.3%	21.0%
M. Revitalizing older neighborhoods and business districts	.58	26.8%	37.0%	16.1%	11.1%	9.1%
N. Revitalizing the downtown area	.95	36.5%	38.7%	9.0%	7.6%	8.3%

Continued	Mean Score	Very Satisfied	Smwt. Satisfied	Smwt. Dissat.	Very Dissat.	DK/NA
O. Increasing the availability of affordable housing	.51	24.1%	32.9%	12.7%	13.2%	17.1%
P. Library services	1.36	45.2%	30.0%	4.3%	2.3%	18.3%
Q. Garbage, yard waste, and curb-side recycling	1.23	55.3%	29.7%	7.0%	6.3%	1.6%
R. Animal services, such as stray animal catching or animal licensing	.88	35.9%	28.4%	9.1%	9.3%	17.3%
S. Retaining existing businesses	.54	20.3%	42.6%	14.8%	10.5%	11.8%
T. The cleanliness of Hayward	.68	34.9%	35.6%	16.2%	11.1%	2.1%
U. Public art in Hayward	1.09	39.6%	31.5%	7.3%	5.8%	15.8%
V. Landscaping and medians in Hayward	.91	38.6%	37.9%	11.5%	8.2%	3.9%

Computation of Mean Scores:

"Very Satisfied" = +2, "Somewhat Satisfied" = +1, "Somewhat Dissatisfied" = -1, and "Very Dissatisfied" = -2.

PUBLIC SAFETY AND POLICE SERVICES

Next, I'd like to get your feedback on public safety and police services in the City of Hayward.

5. In your opinion, what is the most serious public safety problem in your neighborhood?
[Open-end, multiple responses allowed.]

Robbery/muggings/burglary	13.9%
Gangs	11.5%
More police patrols/better response times	10.7%
Crime in general	9.1%
Speeding/unsafe driving	6.7%
Loitering/trespassing	4.3%
Drugs/drug abuse	3.9%
Youth issues [truancy, curfew]	3.4%
Graffiti/vandalism	3.3%
Car theft	2.9%
Poor street lighting	2.7%
Shootings/gun violence	2.7%
Homeless	2.2%
Homicide/murder	.8%
Stray dogs/animals	.8%
Domestic violence	.7%
Nothing	20.1%
Other	3.6%
DK/NA	8.4%

6. Are you satisfied or dissatisfied with the Hayward Police in: _____. Is that very [satisfied/dissatisfied] or somewhat [satisfied/dissatisfied]?

	Mean Score	Very Satisfied	Smwt. Satisfied	Smwt. Dissat.	Very Dissat.	DK/NA
A. Fighting crime committed against people	.90	40.0%	27.4%	10.8%	9.0%	12.8%
B. Fighting crime involving property damage or theft	.62	31.2%	29.0%	13.6%	12.4%	13.9%
C. Maintaining traffic safety	.98	42.0%	35.3%	11.0%	7.3%	4.4%
D. Working with an ethnically diverse population	1.21	43.8%	29.4%	6.9%	4.1%	15.8%
E. Officers being courteous to the public	1.22	46.2%	32.3%	5.2%	5.4%	10.9%
F. 911 operators being courteous to the public	1.49	50.3%	19.5%	3.1%	2.3%	24.7%
G. Maintaining adequate neighborhood patrolling	.57	36.9%	27.5%	17.6%	14.2%	3.7%
H. Timeliness of response to police calls	.91	41.0%	21.5%	12.2%	7.9%	17.4%

Computation of Mean Scores:

"Very Satisfied" = +2, "Somewhat Satisfied" = +1, "Somewhat Dissatisfied" = -1, and "Very Dissatisfied" = -2.

PUBLIC FACILITIES, SHOPPING BEHAVIOR & BUSINESS NEEDS

7. In general, would you say your image of Hayward is very positive, somewhat positive, somewhat negative, or very negative?

Very Positive	29.9%
Somewhat Positive	49.8%
Somewhat Negative	14.4%
Very Negative	5.6%
DK/NA	.3%

8. [If Q7 = Very Positive or Somewhat Positive ask:] What are the things that give you a positive image of Hayward? [Multiple responses allowed.]

Clean-up efforts/beautification	17.6%
Downtown renovation/development	11.5%
Nice/friendly people	10.3%
No crime/feel safe	9.8%
Police/fire departments	7.6%
Born here/friends & family here	7.1%
General positive	6.3%
Nice neighborhood/area	5.8%
Location/everything is close by	5.6%
Diverse population	5.5%
Sense of community	5.4%
Quiet/peaceful/calm	5.3%
Street/road maintenance	4.4%
Shopping/restaurants	4.1%
Artwork	4.1%
Variety of things to do	4.0%
Jobs/business growth/economy	3.6%
Schools/university	3.0%
Parks/recreation	3.0%
Cost of living/affordable	2.9%

Weather/climate	2.2%
Small town atmosphere	1.8%
Government is responsive to residents	1.4%
Libraries	1.0%
Public transportation	.5%
Public services	.3%
Other	2.9%
DK/NA/Refused	4.1%

9. [If Q7 = Somewhat Negative or Very Negative ask:] What are the things that give you a negative image of Hayward? [Multiple responses allowed.]

Crime/drugs/gangs	46.2%
Poor condition of the city/dirty	22.5%
People are disrespectful/rude	10.7%
Homeless/poverty	8.4%
Lack of things to do	7.8%
Poor schools	7.3%
General negative	3.5%
Lack of business	3.1%
Not enough restaurants	1.2%
Traffic	1.0%
Other	13.8%
DK/NA/Refused	3.5%

10. Now I'm going to read a list of different things we all shop for. As I read each one please tell me where you do most of your shopping. Here's the (first / next) one, do you do most of your shopping for _____ in Hayward, other communities, or online?

	Hayward	Other Communities	Online	Other	DK/NA
A. Groceries	84.5%	14.6%	.0%	.6%	.3%
B. Clothing	62.6%	31.0%	4.1%	1.8%	.5%
C. Electronics	42.0%	44.0%	10.1%	1.0%	2.8%
D. Furniture	47.5%	40.3%	3.1%	2.6%	6.5%
E. Autos	44.5%	40.1%	3.2%	2.9%	9.3%
F. Housewares	64.7%	27.5%	3.3%	2.0%	2.6%
G. Children's toys	55.4%	16.1%	5.6%	6.2%	16.7%

11. [If any Q10A to G = Other Communities, Online or Other ask:] What would make you shop in Hayward more often? [Multiple responses allowed.]

More selection/variety	34.2%
Convenience/ location	12.4%
Lower prices/discount shops	9.9%
Availability of products	7.3%
Safer	6.4%
Restaurants	4.3%
Malls	4.3%
Grocery stores (Trader Joe's, Whole Foods)	4.2%
Better quality	3.1%
Electronic stores (Fry's, Best Buy)	2.9%
Clothing	2.1%
Parking	1.8%
Furniture	1.0%
Children's stores	.8%
Transportation	.7%
Auto	.2%
Other	5.3%
DK/NA/Refused	17.0%

CONTACTING THE CITY AND CUSTOMER SERVICE

12. In the last 12 months, did you contact a City of Hayward department for any reason other than an emergency?

Yes	20.2%
No	79.6%
DK/NA	.2%

13. [Ask if Q12 = Yes] Which of the following methods did you use to contact the City of Hayward? [Multiple responses allowed.]

Making a phone call to a specific City department	63.1%
Visiting a City office in person	17.6%
Using the City website www.hayward-ca.gov	17.5%
Sending an email	5.5%
Using 'Access Hayward' on the City website	2.7%
Sending a letter	2.3%
Using a smart phone app	1.7%
Text messaging	.5%
Other	.7%
DK/NA	.6%

14. [Ask if Q12 = Yes] Overall, are you satisfied or dissatisfied with your contact with the City of Hayward in terms of _____? Is that very [satisfied/dissatisfied] or somewhat [satisfied/dissatisfied]?

	Mean Score	Very Satisfied	Smwt. Satisfied	Smwt. Dissat.	Very Dissat.	DK/NA
A. Getting your problem resolved or question answered	.96	52.7%	23.5%	8.7%	13.2%	1.9%
B. The customer service you received	1.06	59.2%	17.4%	5.0%	14.5%	4.0%
C. Courtesy of the City staff	1.38	63.6%	24.2%	2.4%	7.1%	2.7%
D. Timeliness of the response	.91	48.2%	25.8%	11.4%	11.4%	3.2%
E. Voicing your concerns on major community issues	.98	38.1%	24.2%	11.2%	5.8%	20.7%

Computation of Mean Scores:

"Very Satisfied" = +2, "Somewhat Satisfied" = +1, "Somewhat Dissatisfied" = -1, and "Very Dissatisfied" = -2.

15. Are you aware of the community or City Council meetings that are held in your neighborhood?

Yes	51.5%
No	48.3%
DK/NA	.2%

COMMUNICATION AND PUBLIC INFORMATION

16. From what sources do you get information about the local community, local events, and the City government? [Open end, multiple responses allowed.]

Newsletters	22.5%
TV station	19.0%
Newspaper	18.2%
Word of mouth - family/friends/colleagues/neighbors	16.2%
Internet	14.5%
City website	12.0%
Community meetings	6.2%
Social media	6.2%
Don't ever hear about community/events/city	4.6%
Water bill	2.2%
Radio station	2.2%
City departments or agencies	1.3%
Local community blogs	1.3%
City council or commission meetings	1.1%
Other	3.5%
DK/NA	3.9%

17. Are you aware of the feature, "Access Hayward," on the City website?

Yes	30.0%
No	68.0%
DK/NA	2.0%

And now, just a few background questions for comparison purposes.

DEMOGRAPHICS

A. Respondent's Gender [Recorded from voice.]

Male	48.4%
Female	51.6%

B. To begin, how long have you lived in the City of Hayward?

Less than one year	4.7%
One to five years	26.7%
Six to ten years	20.0%
Eleven to fifteen years	12.3%
More than fifteen years	35.8%
DK/NA	.5%

C. How many members, including yourself, live in your household?

1	11.7%
2	19.0%
3	18.7%
4	23.0%
5	12.2%
6	6.2%
7	2.5%
8	.7%
9	.3%
10	.5%
11	.6%
12	.1%
19	.0%
DK/NA	4.3%

D. What is your age?

18 to 24	15.2%
25 to 29	5.7%
30 to 34	13.7%
35 to 39	9.2%
40 to 44	7.6%
45 to 49	7.3%
50 to 54	10.3%
55 to 59	8.2%
60 to 64	6.8%
65 to 69	3.8%
70 to 74	4.1%
75 and older	3.9%
DK/NA	4.2%

E. Do you own or rent your place of residence?

Owner	48.8%
Renter	47.8%
Other	2.2%
DK/NA	1.2%

F. What city do you work in or go to school in?

Alameda	1.5%
Belmont	.7%
Fremont	4.2%
Hayward	33.1%
Menlo Park	1.4%
Newark	1.0%
Oakland	6.9%
Redwood City	1.0%
San Francisco	5.4%
San Jose	2.3%

San Leandro	2.4%
San Mateo	2.2%
Union City	2.6%
Don't work	16.5%
Other	14.1%
DK/NA	4.6%

G. Do you have access to the Internet?

Yes	87.5%
No	12.2%
DK/NA	.2%

H. What type of computer or device do you use to access the Internet and where is it located?

Home desktop computer	53.6%
Home notebook/laptop computer	24.9%
Smart phone	12.3%
Tablet	2.3%
Work Desktop computer	2.3%
Work notebook/laptop computer	1.7%
Public library desktop computer	1.4%
TV	.3%
DK/NA	1.3%

I. Typically, how often do you vote in local elections? Would you say almost always, most of the time, some of the time, never, or are you not registered to vote?

Almost always	51.0%
Most of the time	15.7%
Some of the time	18.1%
Never	8.1%
Not registered to vote	5.6%
DK/NA	1.5%

J. What ethnic group do you consider yourself a part of or feel closest to?

Latino[a]/Hispanic	39.3%
Asian-American	22.1%
Caucasian/White	18.0%
African-American/Black	10.5%
Native Hawaiian/Pacific Islander	4.1%
American-Indian/Alaska Native	.2%
Two or more races	3.5%
Other	.3%
DK/NA	2.2%

K. To wrap things up, can you please tell me if your total household income before taxes in 2011 was more or less than \$60,000 per year?

K1. [If QK = Less] Please stop me when I reach the category that best describes your total household income before taxes in 2011.

K2. [If QK = More] Please stop me when I reach the category that best describes your total household income before taxes in 2011.

Less than \$20,000	13.5%
\$20,000 to less than \$30,000	10.7%
\$30,000 to less than \$40,000	12.5%
\$40,000 to less than \$50,000	11.0%
\$50,000 to less than \$60,000	5.5%
Less than \$60,000 (unspecified)	2.8%
More than \$60,000 (unspecified)	1.9%
\$60,000 to less than \$75,000	9.4%
\$75,000 to less than \$100,000	11.5%
\$100,000 to less than \$150,000	6.6%
\$150,000 to less than \$200,000	3.7%
\$200,000 or more	.7%
DK/NA	10.3%

Those are all the questions that I have for you. Thank you very much for your participation.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 16, 2012, 7:00 p.m.**

MEETING

The Special Meeting of the City Council was called to order by Mayor Sweeney at 1:00 p.m., in Room 2B.

PUBLIC COMMENTS

There were no public comments. The City Clerk and the City Council discussed the logistics for the interviews.

GENERAL PLAN UPDATE TASK FORCE INTERVIEWS

The Council interviewed forty qualified General Plan Update Task Force applicants from a pool of forty-three qualified applications received by the City Clerk. Three applicants withdrew their applications and one applicant requested a telephone interview. The Council considered, accepted, and conducted a telephone interview.

At the conclusion of the interviews, the Council identified fifteen individuals for formal appointment and swearing-in at the Council meeting on Tuesday, October 23, 2012.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 8:42 p.m.

APPROVED:

Michael Sweeney, Mayor City of Hayward

ATTEST:

Miriam Lens, City Clerk, City of Hayward



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

The City Council meeting was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council/RSA/HA Member Peixoto.

ROLL CALL

Present: COUNCIL/RSA/HA MEMBERS Zermeño, Jones, Halliday, Peixoto,
Salinas, Mendall
MAYOR/CHAIR Sweeney
Absent: None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney noted that the closed session was canceled.

PRESENTATION

The October 2012 Business Recognition Award was presented to Cyclepath. Cyclepath has been in business in Hayward since the early 1970s and it is currently the only bicycle shop in Hayward. The award was presented to Cyclepath in recognition of contributions made by: opening in Hayward over forty years ago; operating the largest bicycle showroom in the Bay Area; becoming involved as an active member of the Downtown Business Improvement Area Advisory Board; and contributing to the overall economic well-being of the City. Cyclepath Manager, Ben Schweng, and his parents and owners, Patricia and Charles Schweng, accepted the award. Mr. Ben Schweng thanked the Council for such a special recognition.

PUBLIC COMMENTS

Ms. Sherry Blair, Alice Street resident, requested that item No. 19, Illegal Dumping, be removed from the agenda because the notice did not provide sufficient information for property owners.

Mr. Jim Drake, Franklin Avenue resident, was concerned that storm drains on Foothill Boulevard were not functioning and could cause flooding and cars to hydroplane.

BOARDS, COMMISSIONS, COMMITTEES, AND TASK FORCES

1. Appointment of Members of the General Plan Update Task Force and Swearing-In Ceremony of Members

Staff report submitted by City Clerk Lens, dated October 23, 2012, was filed.

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

Resolution 12-155, “Resolution Confirming the Appointment of Members of the General Plan Update Task Force”

City Clerk Lens administered the Oath of Office to the members of the General Plan Update Task Force.

CONSENT

Consent items four and six were pulled for discussion.

2. Approval of Minutes of the City Council Meeting on September 25, 2012

It was moved by Council Member Jones, seconded by Council Member Zermeño, and unanimously carried to approve the minutes of the City Council Meeting of September 25, 2012.

3. Approval of Minutes of the City Council Meeting on October 2, 2012

It was moved by Council Member Jones, seconded by Council Member Zermeño, and unanimously carried to approve the minutes of the City Council Meeting of October 2, 2012.

4. Water System Master Plan Update: Authorization for the City Manager to Execute a Professional Services Agreement

Staff report submitted by Senior Utilities Engineer Louie, dated October 23, 2012, was filed.

In response to Council Member Halliday’s inquiry about the lack of public contact planned for the Water System Master Plan Update, Director of Public Works Ameri explained that the update was highly technical and would not impact customers.

Mr. Jim Drake, Franklin Avenue resident, inquired about the estimated project cost. Director of Public Works Ameri noted \$380,000 was appropriated in the Water System Capital Improvement Fund.

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

Resolution 12-170, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with West Yost Associates, Inc. for the Water System Master Plan Update, Project No. 7120”

5. Revisions to the City’s Conflict-of-Interest Code



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

Staff report submitted by City Clerk Lens, dated October 23, 2012, was filed.

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

Resolution 12-156, “Resolution Accepting the Additions and Revisions to the Conflict of Interest Code”

6. I-880/SR 92 Landscaping Project: Authorization for the City Manager to Execute a Cooperative Agreement with Caltrans for Use of Federal Demonstration Funds

Staff report submitted by Transportation Manager Frascinella, dated October 23, 2012, was filed.

Council Member Halliday noted she attended the September 26, 2012, public information meeting in the Southgate neighborhood and thanked staff for holding the meeting and continuing to work with Caltrans regarding the residents’ concerns.

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

Resolution 12-171, “Resolution Authorizing the City Manager to Execute a Cooperative Agreement with Caltrans for Use of Federal Transportation Demonstration Funds”

7. Industrial Parkway Landscaping Improvement Project: Approving Addenda No. 1 and 2, Award of Contract, and Appropriate Additional Funds

Staff report submitted by Assistant City Engineer Owusu, dated October 23, 2012, was filed.

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

Resolution 12-157, “Resolution Approving Addenda 1 and 2 and Awarding the Contract to Green Growth Industries, Inc. for the Industrial Parkway Landscaping Improvement Project, Project No. 5184”

8. Authorization for the City Manager to Execute a Professional Services Agreement for Evaluation, Design, and Construction Administration Services for the Centex Sewer Lift Station Upgrade Project

Staff report submitted by Associate Civil Engineer Lam, dated October 23, 2012, was filed.

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

Resolution 12-158, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with A T.E.E.M. Electrical Engineering, Inc., for Design and Construction Administration Services for the Centex Sewer Lift Station Upgrade Project, Project No. 7549”

9. Construction of Shoring for Future 72-Inch Effluent Pipeline at the Water Pollution Control Facility: Authorization for City Manager to Execute Professional Services Agreement for Engineering Services

Staff report submitted by Senior Utilities Engineer Clark, dated October 23, 2012, was filed.

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

Resolution 12-159, “Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with Brown and Caldwell, for Engineering Services Related to Construction of Shoring for Future 72-Inch Effluent Pipeline at the Water Pollution Control Facility”

10. Authorization to Negotiate a Professional Services Agreement with Data Ticket for Parking Citation Processing and Collections; Appropriate Funding; and Amend the Master Fee Schedule

Staff report submitted by Administrative Analyst II Blohm, dated October 23, 2012, was filed.

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

Resolution 12-160, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Data Ticket for Parking Citation Processing and Collection”



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

Resolution 12-161, “Resolution Amending Resolution 12-119, as Amended, the Operating Budget Resolution for Fiscal Year 2013 Relating to an Appropriation of Funds from the General Fund, Fund 100”

Resolution 12-162, “Resolution Amending Resolution 12-062, Amending the Master Fee Schedule, Including a Revision to the Fine and Bail Schedule, Relating to Hayward Traffic Code Section 8.20.4 No Parking – Street Sweeping Zone”

11. Acceptance of the COPS Hiring Grant Award

Staff report submitted by Administrative Analyst III Davis, dated October 23, 2012, was filed.

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

Resolution 12-163, “Resolution Authorizing the City Manager to Execute an Agreement with the United States Department of Justice to Implement the 2012 COPS Hiring Program Grant Award”

12. Adoption of Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2013

Staff report submitted by Human Resources Analyst II Collins, dated October 23, 2012, was filed.

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

Resolution 12-164, “Resolution Approving the Amended Fiscal Year 2013 Salary Plan Designating Positions of Employment in the City Government of the City of Hayward and Salary Range; and Superseding Resolution No. 12-109 and All Amendments Thereto”

13. Authorization to Negotiate and Execute the Documents Necessary to Accept Prepayment of Principal and to Forgive Interest on CDBG Loan for Park Manor Apartments

Staff report submitted by Housing Development Specialist Cortez, dated October 23, 2012, was filed.

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

Resolution 12-165, “Resolution of the City Council of the City of Hayward Approving the Prepayment of Specified City Financing and Forgiveness of Accrued Interest Associated Therewith and Authorizing the Negotiation and Execution of Implementing Documents”

14. Revisions to the Council Member Handbook

Staff report submitted by City Clerk Lens, dated October 23, 2012, was filed.

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

Resolution 12-166, “Resolution Accepting the Additions and Revisions to the Council Member Handbook”

15. New Cogeneration Power System at the Water Pollution Control Facility: Authorization for the City Manager to Negotiate and Execute a Professional Services Agreement for Design

Staff report submitted by Senior Utilities Engineer Clark, dated October 23, 2012, was filed.

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

Resolution 12-167, “Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with Carollo Engineers, for Professional Services Related to Design of Water Pollution Control Facility Cogeneration System”

16. Approval of Use of the Agency-Controlled Operating Reserve to Fund Additional Improvements at Tennyson Gardens

Staff report submitted by Housing Development Specialist Cortez, dated October 23, 2012, was filed.

It was moved by Council/HA Member Jones, seconded by Council/HA Member Zermeño, and unanimously carried, to adopt the following:

Housing Authority Resolution 12-04, “Resolution Approving Use of Agency-Controlled Operating Reserve for Improvements at Tennyson Gardens Apartments”



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

17. Approval of Transfer of Specified Properties from the City of Hayward to the Hayward Successor Agency and Approval of Fund Balance Transfer from the Housing Authority to the Hayward Successor Agency

Staff report submitted by Assistant City Manager McAdoo and Director of Finance Vesely, dated October 23, 2012, was filed.

It was moved by Council/RSA/HA Member Jones, seconded by Council/RSA/HA Member Zermeño, and unanimously carried, to adopt the following:

Resolution 12-168, “Resolution of the City Council of the City of Hayward Approving the Transfer of Specified Property to the Successor Agency for the Redevelopment Agency of the City of Hayward”

Redevelopment Successor Agency Resolution 12-09, “Resolution of the City Council of the City of Hayward, Acting as the Governing Board of the Successor Agency for the Redevelopment Agency of the City of Hayward, A Separate Legal Entity, Approving the Transfer of Specified Property from the City of Hayward to the Successor Agency”

Housing Authority Resolution 12-05, “Resolution Confirming Return of Excess Low and Moderate Income Housing Funds from the Housing Authority to the Hayward Successor Agency Pursuant to the Requirements of AB X1 26 and AB 1484”

18. Approval of Contract Amendment with Godbe Research for Completion of the Biannual Resident Satisfaction Survey

Staff report submitted by Management Fellow Thomas, dated October 23, 2012, was filed.

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

Resolution 12-169, “Resolution Authorizing the City Manager to Negotiate and Execute a Contract Amendment with Godbe Research to Increase the 2012 Resident Satisfaction Survey from 16 to 21 Minutes which will Increase the Original Budget for the Survey by \$3,950 to a Total Budget of \$28,910”

LEGISLATIVE BUSINESS

19. Amendment of Hayward Municipal Code, Chapter 5, Article 7, Section 5-7.25, Relating to Nuisance Abatement on Public Property - Illegal Dumping

Staff report submitted by Administrative Analyst II Blohm, dated October 23, 2012, was filed.

City Manager David announced the item and introduced Maintenance Services Director McGrath who provided a synopsis of the report.

In response to Council Member Peixoto's questions, Director of Maintenance Services McGrath noted that the increase in illegal dumping was also attributed to foreclosures; the proposed ordinance would give staff the tools to locate property owners and hold them responsible; staff would be diligent not to penalize innocent victims; community members were both in support and against the proposed ordinance; and the proposed endeavor was cost neutral for the City.

Council Member Halliday noted the proposed language "... maintain or to allow to be maintained ..." in Section 5-7.25 – Unlawful Nuisance on Public Property, was somewhat confusing. In response to Council Member Halliday's inquiry regarding the notice, City Attorney Lawson noted that the public hearing notice of the proposed ordinance complied with Government Code publication requirements.

In response to Council Member Zermeño's question regarding selective enforcement, City Manager David noted that in order for the ordinance to be effective it needs to apply to all groups and its implementation needs to exercise care and common sense. It was noted that motion sensor cameras are used in isolated areas. Director of Maintenance Services McGrath clarified the property owner would be responsible for any unlawful nuisance, and not the renter.

Council Member Jones received confirmation that the proposed ordinance did not address bank-owned properties and received clarification that the ordinance's reference to "person" also applied to "institution." Director of Maintenance Services McGrath noted that Milpitas Neighborhood Beautification Ordinance was utilized as a template for the proposed ordinance. Mr. Jones was concerned that the language "...existence of any condition or use..." in Section 5-7.25 (d) was broad and not focused on illegal dumping. Mr. McGrath noted that Waste Management of Alameda County provides the City with additional tools to abate illegal dumping but with shortcomings.

Council Member Salinas noted receiving messages from the community and agreed that the City had an illegal dumping problem, but was concerned there could be unintended consequences for law-abiding residents. Mr. Salinas stated that the proposed ordinance had to be unbiased for all and staff must use care and common sense during the enforcement process. Director of Maintenance Services McGrath noted Milpitas was pleased with the enforcement of the Neighborhood Beautification Ordinance.



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

In response to Council Member Mendall, Director of Maintenance Services McGrath noted that, based on statistical data, staff was able to determine individuals who were illegally dumping garbage and habitual offenders. It was noted that installing surveillance cameras, as opposed to motion detector cameras, would be more effective at monitoring illegal activity city-wide, but it would be costly. Mr. McGrath noted that for FY 2012, between the City and the Keep Hayward Clean and Green Task Force, it cost approximately \$400,000 to clean up the city. In response to Mr. Mendall, Director of Public Works Ameri explained that bulky garbage service was not available for multi-family complexes.

Director of Maintenance Services McGrath confirmed for Council Member Peixoto that the \$51 administrative hearing fee, required to dispute the facts of a violation, was not refundable.

Mayor Sweeney opened the public hearing at 8:26 p.m.

Ms. Sherry Blair, Alice Street resident, noted that at Neighborhood Partnership meetings residents were informed that the City would take care of illegal dumping and perhaps that message needs to be clarified to be in line with the proposed ordinance. Ms. Blair asked for consideration of a waiver for individuals who cannot afford to pay the administrative hearing fee.

Mr. Rich LaPlante, Jane Court resident, mentioned participating as a Keep Hayward Clean and Green Task Force member in various clean up events since 2007 and acknowledged the City has an illegal dumping problem. Mr. LaPlante suggested the City partner with Waste Management of Alameda County to reinstate a larger pick up service for single-family dwellings and multi-family complexes. He expressed support for the proposed ordinance.

Mr. Tom Silva, Second Street resident and rental housing owner, submitted a document for the record and spoke about the high cost of self-hauling items and noted that lower income neighborhoods were most impacted. Mr. Silva suggested addressing the problem from a public health perspective and contracting with a franchised hauler for multiple bulky item pickups each year.

Mr. Tim May, Executive Director of the Rental Housing Association, submitted a document for the record that provided a list of alternative approaches to reduce illegal dumping and noted the Association was willing to partner with the City to address issues with rental properties. Mr. May said the problem would still persist with habitual dumpers even if the proposed ordinance passed.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, was in agreement to address illegal dumping, but was concerned the proposed ordinance could unduly penalize a property owner who happens to be a victim of the crime of illegal dumping. Mr. Huggett was pleased there was an administrative hearing process for those wishing to contest a citation. He noted illegal dumping is a crime and suggested developing approaches that send that message, educate residents, and enforce the law by charging culprits.

Mr. Greg Galati, Turlock Way resident and coordinator of the Glassbrook Neighborhood Cleanup Team, indicated his neighborhood has the densest area of multi-family apartment units and the highest number of illegal dumping incidences in the City and noted he reports repeat illegal dumping at multi-family complexes weekly. Mr. Galati mentioned the majority of landlords were irresponsible and the proposed ordinance would hold landlords accountable and would encourage them to work with tenants.

Ms. Theresa Mitchell, Clawiter Road resident, expressed concern that the proposed ordinance was placing the burden of policing illegal dumping on private property owners; was worried that hazardous materials could be left in the trash and property owners would be harmed during clean up; and indicated the City's diverse population needed to be educated about resources available through Waste Management of Alameda County. Ms. Mitchell noted the proposed ordinance needed more study.

Mr. Peter Mitchell, Clawiter Road resident, commended the Council for addressing illegal dumping and noted a reasonable ordinance that protects all residents from liability needed to be approved.

Mr. David Stark, Public Affairs Director for the Bay East Association of Realtors, suggested making Hayward a "dump-free zone" by allocating the Hayward Police resources to penalize illegal dumpers and utilizing technology as a preventative tool. Mr. Stark expressed that the broad language in the proposed ordinance could be subject to interpretation while implementing the proposal and would increase the City's liability by giving private citizens the responsibility to maintain public resources with possible unintended consequences. Mr. Stark offered the Association's assistance while addressing and finding a solution to the problem.

Mr. Al Parso, Prospect Street resident, thanked staff for the presentation and relayed his experience with illegal dumping on his street and Simon Street. Mr. Parso noted that holding property owners responsible for activity they did not initiate was unfair, and giving the arbitrary responsibility to fine certain individuals could be construed as discriminatory. Mr. Parso suggested surveillance cameras at Simon Street and Main Street to deter illegal activity and also recommended a tax on rental properties to offset the cost of collecting dumped items.

Mr. Jim Drake, Franklin Avenue resident, noted it was important to educate rental property residents that they were entitled to yearly pickup services from Waste Management of Alameda County.

Ms. Kathy Super, Keep Hayward Clean and Green Task Force member, noted landlords receive sufficient funds to cleanup vacated rental units. Ms. Super supported the proposed ordinance noting that property owners should be held responsible to keep the public right-of-way adjacent to their properties free of trash.

Mayor Sweeney closed the public hearing at 9:17 p.m.

Discussion ensued related to the importance of educating rental property owners and it was noted that the proposed ordinance contained adequate equal protection and due process considerations.



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

Mayor Sweeney offered a motion per the staff recommendation and introduced the ordinance with amendments as follows: that an annual review of the Illegal Dumping Ordinance be conducted to measure performance; that the review be conducted by the Keep Hayward Clean and Green Task Force and City Council; that during the first annual review staff explore alternatives to improve the program by engaging various stakeholders and considering effective alternatives.

Council Member Peixoto seconded the motion.

Mayor Sweeney commented that City staff and the Keep Hayward Clean and Green Task Force volunteers presented a convincing case about a costly problem that needed to be addressed and noted the progress of abating illegal dumping would be evaluated one year after implementation.

Council Member Peixoto noted that in order to fully understand the problem of illegal dumping one needed to attend a Keep Hayward Clean and Green Task Force clean-up event. Mr. Peixoto appreciated the Keep Hayward Clean and Green Task Force and Community Preservation efforts, but he felt that the behavioral issues of perpetrators needed to be addressed through the implementation of the proposed ordinance and shared responsibility needed to be in place.

Council Member Zermeño wanted to ensure some of the speakers' ideas, such as police involvement and outreach education to residents, be considered during the initial year of implementation and to continue the search for long-term solutions by engaging various stakeholders. Mr. Zermeño added that the proposed ordinance was in line with the Council priorities.

Council Member Salinas noted he shared the views of Mayor Sweeney and Council Member Peixoto, but was concerned about innocent residents being penalized. Mr. Salinas suggested that during the yearly evaluation period all interested groups attend a Keep Hayward Clean and Green Task Force meeting and work together to perfect the ordinance. City Manager David acknowledged it was important to allow the ordinance an opportunity to address illegal dumping issues and that staff was committed to meeting with stakeholders, researching alternatives, improving communication, and conducting outreach education during the first year of implementation.

Council Member Jones noted he supported the goal of cleaning up Hayward, but could not support the proposed ordinance as it overstretched making private property owners responsible for public property. Mr. Jones noted that illegal dumping was a criminal activity and staff needed to partner with law enforcement personnel to raise it as a priority for the Police Department and enforce the Criminal Code related to dumping. Mr. Jones noted it was not right to place the burden on property owners and that he did not support the proposal as effective public policy. He noted that the fundamental problem was that there was too much rubbish and a high cost to haul items to a transfer station, and he believed that other alternatives needed to be explored to address the causes of the problem.

Council Member Mendall supported the annual reviews and noted the importance of continuing to explore other preventative measures such as video camera installation on Simon Street to ensure the correct individuals were cited. Mr. Mendall emphasized that staff needed to be diligent to not penalize property owners who were not illegally dumping. Mr. Mendall said it was crucial to negotiate a franchise agreement that could support the proposed ordinance and consider reducing the cost of dumping garbage. Mr. Mendall said the proposed ordinance was part of the solution and the city needed to be serious about considering other alternatives.

Council Member Halliday agreed there was a problem with illegal dumping, and while she found some language in the proposed ordinance confusing, she had faith that staff would enforce the proposed ordinance judiciously. Ms. Halliday noted the annual review needed to be evaluated carefully to ensure there were positive results and property owners were not penalized unfairly. Ms. Halliday agreed with Council Member Jones that illegal dumping needed to be legally enforced. Ms. Halliday supported the motion on the floor with all safeguards because she supported the work done by all the volunteers. Ms. Halliday emphasized that illegal dumping needed to be enforced and perpetrators subject to criminal prosecution.

Mayor Sweeney noted that staff understood Council's direction that illegal dumping should be enforced and culprits who were caught would be criminally prosecuted.

It was moved by Mayor Sweeney, seconded by Council Member Peixoto, and carried with Council Member Jones voting against, per staff recommendation with amendments as follows: that an annual review of the Illegal Dumping Ordinance be conducted to measure performance; that the review be conducted by the Keep Hayward Clean and Green Task Force and City Council; that during the first annual review staff explore alternatives to improve the program by engaging various stakeholders and considering effective alternatives.

Introduction of Ordinance 12-__, "Ordinance of the City of Hayward, California, Adding Section 5-7.25 Regarding Unlawful Nuisance on Public Property to Article 7 of Chapter 5 of the Hayward Municipal Code"

Resolution 12-172, "Resolution Adopting a Revision to the Master Fee Schedule Relating to Fees and Charges for Abatement of Public Nuisances"

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced that the Keep Hayward Clean and Green Task Force had two clean-up events scheduled for October 27, 2012: "Make A Difference Day," at West Palma Ceia Neighborhood and another at California State University East Bay.

Council Member Salinas shared he attended a birthday party at Julian's BBQ Beer and Wine and commented positively about the new restaurant on Foothill Boulevard.



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/
REDEVELOPMENT SUCCESSOR AGENCY/HOUSING AUTHORITY
MEETING OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 23, 2012, 7:00 p.m.**

Council Member Halliday reported participating in a Domestic Violence Prevention Month event that the City of Hayward, in partnership with the Emergency Shelter Program, Inc., organized on October 19, 2012, at City Hall. The event included a free screening of the documentary “MissRepresentation,” written and directed by actress Jennifer Siebel Newson, regarding factors contributing to domestic violence.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 9:59 p.m., in memory of Associate Planner Tim Koonze. Mr. Koonze was a thirty-four-year employee of the City who suddenly passed away on October 21, 2012. Mr. Koonze started as a student-draftsman in 1977 and rose through a variety of positions to become an Associate Planner in 2007. Mayor Sweeney noted that Mr. Koonze approached his job with a good heart and a great attitude and would be missed by all. Mayor Sweeney asked that condolences be passed to his wife, Karen, and two children, Travis and Alyssa.

APPROVED:

Michael Sweeney
Mayor, City of Hayward
Chair, Redevelopment Successor Agency/ Housing Authority

ATTEST:

Miriam Lens
City Clerk, City of Hayward
Secretary, Redevelopment Successor Agency/ Housing Authority



DATE: November 13, 2012

TO: Mayor and City Council

FROM: Director of Public Works - Utilities & Environmental Services

SUBJECT: Authorization for the City Manager to Execute a Professional Services Agreement for Evaluation of the Cathodic Protection System

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to execute a Professional Services Agreement with Corpro Companies, Inc. for consultant services for the Cathodic Protection System Evaluation Project in an amount not to exceed \$45,000.

BACKGROUND

The City's Cathodic Protection System (CPS) was constructed to control and reduce corrosion to the steel reservoirs, and water and sewer mains. The CPS currently protects five of the City's steel reservoirs and approximately 15 miles of pipelines, including the City's two water transmission aqueducts.

The method of applying cathodic protection entails placement of anodes adjacent to the metal to be protected. The anode is made of metallic material with higher negative electrical potential. It is designed to corrode at a greater rate than the metal being protected. As a result, it sacrifices itself and prevents the steel reservoir and pipeline from corroding. (This is somewhat similar to the role of an anode rod in a residential water heater.) These anodes will eventually be consumed and need to be replaced. Moreover, due to normal usage, the CPS equipment requires regular maintenance and repair to keep the system functioning properly. The CPS is essential to protecting the City network of pipelines and reservoirs. Periodic evaluation to determine the condition of the equipment and development of a schedule to perform the necessary maintenance, rehabilitation and repair are necessary to maintain operation of the CPS at its optimum level.

A Cathodic Protection System Survey was last completed by Corpro Companies, Inc. in 2009; all critical repair and rehabilitation recommendations from the report have been implemented. The 2009 report also recommended a general overall system survey should be performed annually. However, this is not practical due to limited Utilities maintenance staff and budget constraints. Therefore, after almost four years since the last detailed evaluation, staff has determined that another evaluation is now needed to assess the current CPS condition.

The objective of this project is to perform a detailed evaluation that will identify deficient, damaged, or non-operating components of the CPS. The report from the evaluation will also make

recommendations for: 1) a CPS management plan; 2) maintenance procedures for the CPS equipment; 3) improvement plans for the overall system; and 4) provide a cost estimate for each recommendation. After the survey and evaluation, the Consultant will input all the Cathodic Protection System assets and relevant data into a GIS map and tables. The GIS map and tables will allow City staff to readily access important information related to each asset, such as location, conditions, and maintenance history.

DISCUSSION

On September 14, 2012, staff sent a Request for Proposals to three engineering consultants to provide consultant services for the Cathodic Protection System Evaluation Project. On October 5, 2012, staff received proposals from Corpro Companies, Inc., JDH Corrosion Consultants, and V&A Consulting Engineers. The proposed costs from these three firms ranged from \$32,010 to \$73,563. Although Corpro Companies, Inc. proposal cost of \$38,320 was not the lowest, their total hours in completing all the required tasks were more realistic when compared to the low bidder, JDH Corrosion Consultants. After reviewing all the proposals, staff finds Corpro Companies, Inc. the best qualified firm to perform the work based on their comprehensive approach in evaluation of the City's CPS, extensive experiences with similar corrosion projects, strong understanding of the City's CPS from past evaluations, and the reasonable overall cost.

Therefore, staff recommends that the City Manager execute a professional services agreement with Corpro Companies, Inc. for consultant services for the Cathodic Protection System Evaluation Project. A detailed scope of work and a proposal fee of \$45,000 have been negotiated with Corpro Companies, Inc. The not-to-exceed amount of \$45,000 for the professional services agreement will allow \$6,680 for additional services that may be needed during various phases of the project.

FISCAL AND ECONOMIC IMPACT

The estimated project costs are as follows:

Consultant Services	\$45,000
Contract Administration	\$15,000
Total	<u>\$ 60,000</u>

The FY 2013 Capital Improvement Program (CIP) includes \$100,000 for the Cathodic Protection System Evaluation Project in the Water System Replacement Fund

PUBLIC CONTACT

Not applicable.

SCHEDULE

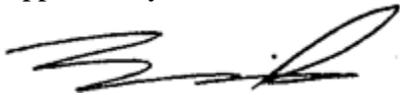
The estimated schedule for this project is summarized as follows:

Begin Evaluation	January 2013
Complete Evaluation	May 2013
Complete Evaluation Final Report	June 2013
Complete GIS Maps and Table	June 2013

Prepared by: Thomas Lam, Associate Civil Engineer

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I - Draft Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CORRPRO COMPANIES, INC., FOR CONSULTANT SERVICES FOR THE CATHODIC PROTECTION SYSTEM EVALUATION PROJECT, PROJECT NO. 7041

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed negotiate and execute a Professional Services Agreement with Corrpro Companies, Inc. for consultant services for Cathodic Protection System Evaluation Project, Project No. 7041, in an amount not to exceed \$45,000 in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Authorization for City Manager to Execute a Master Lease Purchase Agreement for the Purchase of Police Department Vehicles

RECOMMENDATION

That City Council approves the attached resolution authorizing the City Manager to execute 1) a Master Lease with Equipment Lease Purchase Agreement for Police Department Vehicles, and 2) other documents necessary to procure equipment lease financing for \$535,305 from Zions First National Bank.

BACKGROUND

The City Fleet Management Division manages a fleet of over 360 vehicles. Each year certain vehicles are due for scheduled replacement. The City has extended the useful lives of many vehicles beyond best practices due to funding constraints. The vehicles to be financed represent thirteen (13) planned vehicle replacements for the Police Department: seven (7) for Patrol, five (5) for Investigations and one (1) for Administration.

Over the past several years, the City has taken advantage of low-interest rate leases to spread the cost of equipment purchases over a portion of their useful lives. Staff recommends using lease financing for the current year equipment acquisitions identified below.

DISCUSSION

Staff is requesting approval for a Master Lease Agreement Purchase Agreement to finance thirteen motor vehicles for a total estimated cost of \$535,305 as described below. All equipment scheduled for replacement has exceeded its useful life. The vehicles due to be replaced will be taken out of service as soon as the new vehicles have been placed into service, and will be scheduled for auction by the Fleet Management Division. Police service vehicles are rotated out of service at 100,000 miles due to age, condition, mileage, and maintenance expense; and vehicles reach the end of their useful service life between four and seven years (four years for patrol vehicles, up to seven years for investigation and other administrative police service vehicles).

Capital Lease Financing - A Request for Proposals was sent to ten (10) providers of municipal lease financing. Four (4) proposals were received in addition to one (1) "No Bid". The detailed listing of all bidders and rates are provided in Attachment II.

The four-year lease purchase agreement for thirteen (13) police vehicles is for planned replacements, with no additions to the fleet. The net effective interest rates offered by the bidders ranged from 1.30% to 2.38%. The lowest cost proposal was submitted by Zions First National Bank. The equipment will be financed over a four-year term; this equates to eight semi-annual payments of \$66,913.22 to finance the \$535,305.76 total acquisition cost.

ECONOMIC IMPACT

While the acquiring of the lease/purchase financing does not have a direct economic impact – the ultimate purchase of the fleet vehicles will. Once the lease/purchase agreement is finalized, City staff will issue a Request for Proposal for vehicle purchases – which will include solicitation from local vendors.

All vehicles being purchased this year will have significantly cleaner burning engines and will be more fuel efficient as compared to the vehicles they are replacing. The patrol cars will have the latest engine management system on the V-8 engines. This latest technology will shut the engine down to run on either 4 or 6 cylinders when the vehicle requires less load. This cylinder shut-down technology will greatly increase fuel economy while also and emit ting fewer tail pipe emissions into the environment, while maintaining vehicle capacity for police operations.

FISCAL IMPACT

These City vehicle purchases are appropriated in the Fleet Capital Fund (731) – which is the fund for all General Fund fleet purchases. The FY 2012 amount in Fund 731 for the replacement of police vehicles is \$550,000. This fund does not currently have adequate capital resources to purchase fleet vehicles out-right. Recognizing that cash purchase is the preferable mechanism for fleet replacement, the General Fund Ten-Year Plan includes increased allocations to Fund 731, with the intent to fully fund future outright vehicle purchases by FY 2016.

Payments on existing and future leases are budgeted in the Fleet Operating Fund (730). This fund has \$955,833 budgeted for debt service payments in FY 2013, which will cover the costs for the existing and new leases. These ongoing debt service payments are mainly funded by vehicle maintenance fees. Lease payments for vehicle acquisitions over the coming years, including the new leases are listed below.

Table 1: Uses of Debt Service Payments

Type of Obligation	Vehicles	Issue Date	Interest Rate	Total Lease Purchase					
					FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
4-year Lease/purchase	13 vehicles	Oct-12	1.30%	\$ 535,306	\$ 66,913	\$ 133,826	\$ 133,826	\$ 133,826	\$ 66,913
4-year Lease/purchase	23 vehicles	10/2011	2.05%	\$ 851,992	\$212,998	\$212,998	\$212,998	\$106,499	\$106,499
10-year Lease/purchase	3 fire apparatus	9/2011	3.24%	\$ 1,991,524	\$234,749	\$234,749	\$234,749	\$234,749	\$234,749
7-year Lease/purchase	6 vehicles	9/2010	2.88%	\$ 818,558	\$129,957	\$129,957	\$129,957	\$129,957	\$129,957
4-year Lease/purchase	4 vehicles	9/2010	2.28%	\$ 360,000	\$ 94,678	\$ 94,678	\$ 46,870	\$ -	\$ -
7-year Loan from Sewer Fund	utility vehicles	10/2009	2.00%	\$ 1,000,000	\$154,405	\$151,548	\$148,690	\$148,690	\$ -
6-year Lease/Purchase	36 vehicles	7/2007	4.06%	\$ 1,290,863	\$ 56,738	\$ -	\$ -	\$ -	\$ -
TOTAL				\$ 6,312,937	\$950,438	\$957,757	\$907,091	\$753,721	\$538,118

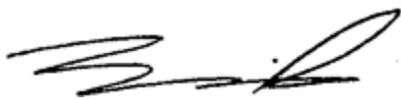
PUBLIC CONTACT

The Lease Financing RFP was opened on October 5, 2012. The lease documents are on file and available for review with the City Clerk and Finance Department.

Prepared by: Jasmine R. Gacusan, Purchasing Manager

Recommended by: Tracy Vesely, Director of Finance
 Matt McGrath, Director of Maintenance Services

Approved by:



 Fran David, City Manager

Attachments: I - Resolution
 II - Schedule of bids received

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN EQUIPMENT LEASE-PURCHASE AGREEMENT AND AN ESCROW AGREEMENT FOR THE ACQUISITION OF NEW POLICE VEHICLES.

WHEREAS, the City of Hayward (the "City"), is authorized by the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, it is necessary for the City to acquire thirteen (13) new vehicles for the Police Department to replace vehicles that have been extended beyond their useful life; and

WHEREAS, in order to acquire such equipment, the City proposes to enter into an Equipment Lease-Purchase Agreement (the "Agreement") with Zion First National Bank (the "Lessor") and an Escrow Agreement with the Lessor and California Bank and Trust, as escrow agent;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, that the City Manager is hereby directed to negotiate and execute an Equipment Lease-Purchase Agreement with Zion's First National Bank and an Escrow Agreement with Zion's First National Bank and California Bank and Trust, and any other documents necessary to complete the transaction, in an form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

FINANCE LEASING 2012-13

LEASE AMOUNT: \$520,000.00	Zions	Pinnacle	Holman Capital	Cal-First National	Comerica
8 equal payments	\$ 66,913.22	\$ 67,719.75	\$ 68,348.57	\$ 68,528.78	NO BID
Total dollar value of payments	\$ 535,305.76	\$ 541,758.00	\$ 546,788.56	\$ 548,230.24	
APR	1.30%	1.84%	2.26%	2.38%	
Rates Firm	60	45	45	45	
Interest rate of escrow bank account:	0.1% *	TBD	TBD	0.00%	
*depending on selection of escrow					

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Director of Human Resources

SUBJECT: Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2013 pursuant to California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act.

RECOMMENDATION

That the City Council approves the attached resolution authorizing the implementation of the mandatory minimum employer contributions to active and retiree medical premiums for calendar year 2013.

BACKGROUND

The City contracts with CalPERS to provide competitive health benefits to its active and retired employees. California Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA) establishes the minimum employer health contribution. As of January 1, 2009, the employer contribution is adjusted annually by the CalPERS Board to reflect any change in the Medical Care Component of the Consumer Price Index, rounded to the nearest dollar. The table below shows the minimum employer contribution required by CalPERS for the last five years, and the 2013 rate:

Calendar Year	Employer Contribution
2008	\$97.00
2009	\$101.00
2010	\$105.00
2011	\$108.00
2012	\$112.00
2013	\$115.00

DISCUSSION

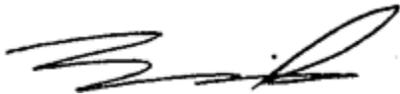
This action is necessary to meet the requirement that the governing body adopts a resolution agreeing to the minimum contribution amount established by CalPERS. The City currently contributes to medical premiums in accordance with the terms of the existing agreements between each of the bargaining units, based on the health plan and family status the employee elects and for which they are eligible. For both retirees and active employees, the total amount the City contributes towards medical benefit premiums meets (and in some cases, exceeds) the statutory minimum contribution required by CalPERS.

FISCAL AND ECONOMIC IMPACT

This action is for administrative purposes only. There is no fiscal or economic impact associated with this report because the City's current contribution toward employee medical premiums as provided for in applicable Memoranda of Understanding has already been established and included in the adopted budget, and since the City's current contributions meet or exceed the mandatory minimum contribution, this action does not provide an increase to the current total City contribution towards medical premiums.

Prepared and Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachment I: Resolution Establishing the City Contribution for Active and Retiree Medical Premiums for CY 2013

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION AGREEING TO MEET THE MINIMUM EMPLOYER CONTRIBUTION TOWARD MEDICAL COST AS SET BY CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM IN THE AMOUNT OF ONE HUNDRED FIFTEEN DOLLARS (\$115) PER MONTH FOR CALENDAR YEAR 2013

WHEREAS, the City of Hayward provides medical coverage for its employees and their eligible dependents, and to qualified retirees; and

WHEREAS, Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA) provides that a local agency governing body must adopt a resolution agreeing to the minimum contribution amount established by the California Public Employees Retirement System (CalPERS); and

WHEREAS, the California Public Employees Retirement System Board adjusts the minimum contribution rate annually based on changes to the Medical Care Component of the Consumer Price Index.

NOW, THEREFORE, BE IT RESOLVED, that that effective January 1, 2013, the employer’s contribution towards the cost of employee and retiree cost of health benefits shall be a minimum of \$115 per month as required by CalPERS.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: November 13, 2012

TO: Mayor and City Council

FROM: City Attorney
Director of Public Works - Utilities and Environmental Services

SUBJECT: Authorization of Payment for Legal Consulting Services Provided by Wulfsberg Reese Colvig & Firstman in relation to Negotiation of Contracts with WM Lyles Group and Fuel Cell Energy for the New Cogeneration Power System at the Water Pollution Control Facility

RECOMMENDATION

That Council approves payment for legal consulting services provided by Wulfsberg Reese Colvig & Firstman, in relation to negotiating contracts on behalf of the City of Hayward for the Cogeneration Power System at the Water Pollution Control Facility with WM Lyles Group and FuelCell Energy.

BACKGROUND

On March 20, 2012, the Council authorized the City Manager to negotiate and execute a contract for design, construction, and maintenance of the new Cogeneration Power System at the Water Pollution Control Facility with the WM Lyles Group in an amount not to exceed \$12.75 million for design and construction and \$700,000 per year for maintenance for ten years. Due to the complex and specialized nature of the design-build agreement with WM Lyles and maintenance agreement with FuelCell Energy, the City Attorney engaged the services of the law firm of Wulfsberg Reese Colvig & Firstman (WRCF) to assist the City with the contract negotiation process. The legal services agreement with WRCF was executed by the City Manager on May 22, 2012.

DISCUSSION

Wulfsberg Reese Colvig & Firstman has represented clients in matters related to construction law, business and commercial law, insurance law, and environmental law for over forty years. WRCF also has significant experience representing public entities with regard to public works projects. Additionally, Eric Firstman, the lead attorney assigned to assist the City with this project, has represented the City of Hayward in the past with other construction related issues.

Mr. Firstman's scope of work for this project included review and revision of draft contract documents, conferences with City staff, conferences with legal counsel for WM Lyles and FuelCell Energy (FCE), and participation in formal negotiation sessions involving the parties. Negotiations

proved to be very complex and lasted longer than anticipated. Ultimately, the parties were not able to reach agreement on mutually acceptable business terms and negotiations were eventually terminated. Upon providing a final briefing to the Mayor and Council regarding the negotiation process, Mr. Firstman's engagement was complete.

The City has received invoices for WRCF's legal services from May through August 2012 in the amount of \$34,726.75. A payment of \$4,981 was made on July 27, 2012. The current outstanding balance is \$29,745.75. Staff is seeking authorization to pay this outstanding balance.

In order to complete the cogeneration project, the City Council has subsequently authorized staff to proceed with an alternative design for the cogeneration power system using internal combustion engines. This action was authorized during the October 23, 2012 Council meeting.

ECONOMIC IMPACT

Approval of payment for legal services will have no economic impact on the community.

FISCAL IMPACT

Payment of legal consulting fees will come from the Cogeneration System Project in the Sewer Capital Improvement Fund.

PUBLIC CONTACT

None.

NEXT STEPS

Upon approval by the Council payment will be made to the consultant.

Prepared by: Michael G. Vigilia, Assistant City Attorney

Recommended by: Michael S. Lawson, City Attorney
Alex Ameri, Director of Public Works-Utilities and Environmental Services

Approved by:



Frances David, City Manager

Attachments:

Attachment I Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. ____

Introduced by Council Member _____

RESOLUTION AUTHORIZING PAYMENT FOR LEGAL CONSULTING SERVICES PROVIDED BY WULFSBERG REESE COLVIG & FIRSTMAN IN RELATION TO NEGOTIATION OF CONTRACTS WITH WM LYLES GROUP AND FUELCELL ENERGY FOR THE NEW COGENERATION POWER SYSTEM AT THE WATER POLLUTION CONTROL FACILITY

WHEREAS, On March 20, 2012, the Council authorized the City Manager to negotiate and execute a contract for design, construction and maintenance of the new Cogeneration Power System at the Water Pollution Control Facility (“the project”) with the WM Lyles Group in an amount not to exceed \$12.75 million for design and construction and \$700,000 per year for maintenance for ten (10) years; and

WHEREAS, the complex and specialized nature of the design-build agreement with WM Lyles and maintenance agreement with FuelCell Energy required the assistance of outside legal counsel; and

WHEREAS, a legal services agreement with Wulfsberg Reese Colvig & Firstman (“WRCF”) was executed by the City Manager on May 22, 2012.; and

WHEREAS, WRCF provided legal consulting services in the form of review and revision of draft contract documents, conferences with City staff, conferences with legal counsel for WM Lyles and FuelCell Energy, and participation in formal negotiation sessions involving the parties; and

WHEREAS, the total fee for legal consulting services provided by WRCF in relation to the project is \$34,726.75; and

WHEREAS, payment in the amount of \$4,981 was made on July 27, 2012, leaving a balance of \$29,745.75;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized and directed to provide payment for legal consulting services in the amount of \$29,745.75 to the law firm of Wulfsberg Reese Colvig & Firstman.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: November 13, 2012
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force

RECOMMENDATION

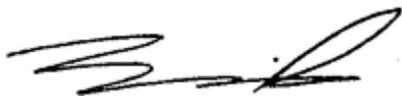
That the City Council accepts the resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force.

BACKGROUND

Mr. Muhammad Irfan was appointed to the Keep Hayward Clean and Green Task Force on September 11, 2012. Mr. Irfan's resignation is effective November 5, 2012. His position will be filled as part of the annual appointment process for the City's Appointed Officials to Boards and Commissions in 2013.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution Accepting the Resignation
- Attachment II Resignation Letter

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE WRITTEN RESIGNATION OF MUHAMMAD IRFAN FROM THE KEEP HAYWARD CLEAN AND GREEN TASK FORCE;

WHEREAS, Mr. Muhammad Irfan was appointed to the Keep Hayward Clean and Green Task Force on September 11, 2012;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby accepts the resignation of Muhammad Irfan; and commends him for his civic service to the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012.

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

Dear Marian,

I would like to resign from Task Force due to change in my personal and business situation. I would love to work with the task force in future

I operate Tax business soon tax season will start I am busy in setup and my old employee had to leave now i have to train a new person which will pull my extra time to the office, we are planning to expend this year and not have expert will put extra pressure on me.

I also have two kids from my first Marriage it was joint custody. My kids started staying with me most of the time since my X Spouses job requires her to spend more time because of end of the year and she is also in Accounting.

Please accept my Resignation. I will be more than happy to join Force next year.

Irfan

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Request to Amend the General Plan land use designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the park expansion and future development lots; and Approve a related Development Agreement for the property at the northeast corner of Eden and Denton Avenues - General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237, Parcel Map Application No. PL-2010-0431, and Development Agreement Application No. PL-2010-0235 – Westlake Development LLC (Applicant)/ Chang Income Partnership L.P. (Owner)

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) adopting the attached Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP), approving the General Plan Amendment, approving the Parcel Map to create a park expansion lot and a parcel for future development lots; introduces the attached ordinance (Attachment II) related to the zone change to Open Space and Planned Development districts; and introduces the attached ordinance (Attachment III) approving a Development Agreement identifying the allowable density of future development in exchange for dedicating a fee interest in land for the expansion of Greenwood Park.

SUMMARY

The applicant is proposing to enter into a Development Agreement (Attachment VIII) with the City to provide a vested right to develop the eastern portion of the site with thirty-six, two-story single-family homes during the ten-year term of the Development Agreement in exchange for dedicating a fee interest in exchange for development fee credits (or offer for purchase at below market cost) a one-acre portion of the property at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park. Staff supports the project because without the Planned Development Zone Change and associated Development Agreement, the potential amount of park land dedication for the future project would only be 0.6 acres, as opposed to the one-acre proposed for the Greenwood Park Expansion, which is more consistent with the approximately 1.25 acre park expansion envisioned in the Mt Eden Neighborhood Plan. In addition, the City is being offered the

land for purchase at a value of almost forty percent less than the applicant has recently been offered by developers, or the land will be dedicated in exchange for development fee credits. Finally, the project would be built to standards that exceed Hayward's current local green building ordinance.

BACKGROUND

Prior to discussing the elements of the subject development application, there are some key pieces of background information that will inform the Council's consideration of this item. The KB Home Development of 149 single-family attached and detached homes in the Mt. Eden area, located just west of the project site and bounded by Eden Avenue, Saklan Road and Middle Lane, was approved in 2006. At that time, to help mitigate the lack of on-site group open space for that project, KB Home attempted to purchase the designated land for the park expansion. These attempts were unsuccessful and, instead, KB Home paid park in-lieu fees, which have remained earmarked for use by the City to purchase land for an expansion of Greenwood Park and to allow for improvements within the existing and newly-expanded portions of the park.

The applicant for this project has shown interest in developing the subject property with thirty-six single-family homes and would dedicate a fee interest in the one acre of land for the expansion of Greenwood Park, or the City would acquire such land, as part of the proposed development. Such expansion is in accordance with the adopted 1990 Mt. Eden Neighborhood Plan, which indicates a 1.25-acre expansion. Negotiations with the project applicant began in August 2011 and this resulted in a draft Development Agreement (Attachment VIII), to allow future development of a portion of the site in exchange for a one-acre expansion of Greenwood Park.

September 20, 2012 Planning Commission Public Hearing – The Planning Commission reviewed this item at their September 20, 2012 meeting. As reflected in the attached meeting minutes (Attachment XI), the Commission was supportive (6-1 vote) of the proposal and indicated the project would be a good addition to the Hayward community, especially with the one-acre park expansion for Greenwood Park and the future construction of residential homes similar in density to what is already in the neighborhood just west of the project site.

A property owner who lives on Denton Avenue across from the project attended the meeting and submitted a petition raising two concerns: (1) elimination of the Denton Avenue road closure just east of the project site; and (2) a request to add an entrance to the future development from Eden Avenue thus eliminating one point of egress from Denton Avenue. The Denton Avenue road closure is not proposed to be eliminated as part of this development and will remain in place. With regards to an entrance off Eden Avenue for the future residential development, this would result in the park area being bisected by a road. This would be inconsistent with the Mt. Eden Neighborhood Plan, which calls for an extension of Greenwood Park along Eden Avenue to Denton Avenue and was not supported by Hayward Recreation and Park District staff, also in attendance at the Planning Commission meeting.

Juanita Gutierrez, former chair of the Mt. Eden Neighborhood Plan Task Force, was also in attendance. She indicated her disappointment with the proposed layout indicating the entire property should be utilized for park rather than the portion along Eden Avenue given the needs of the community. While a park enlargement utilizing the entire property would be a wonderful asset

to both the neighborhood and the City, it is just not feasible, due to costs associated with acquiring the property from an owner that desires to develop the property. The Mt. Eden Neighborhood Plan calls for the extension of Greenwood Park along Eden Avenue to Denton Avenue in approximately the location being proposed. The neighborhood plan calls for a 1.25 acre expansion and the proposal is for approximately one acre. The Commission felt this was a compromise they were willing to support given any portion of land for a park expansion would be a benefit to the community, especially with the requirement in the Development Agreement to transfer the property within 90 days of the Development Agreement execution.

The Planning Commission recommended that the City Council approve the project including: the adoption of the attached Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Program; approval of the General Plan Amendment, Zone Change, and a Parcel Map to create a park expansion lot and a parcel for future development lots; and a Development Agreement to identify the allowable density of future development in exchange for dedicating a fee interest in land for the expansion of Greenwood Park. At staff's recommendation, the Commission added one condition of approval (Condition # 14) requiring that tree protection measures be installed to protect the large oak tree located within the public right of way near the western entrance to the development site off Denton Avenue during the future construction of the residential units.

The Planning Commission staff report is attached to this report as Attachment X and the full report with attachments can be viewed at [http://www.ci.hayward.ca.us/CITY-
GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-
COMMISSION/2012/PCA12PDF/pca092012full.pdf](http://www.ci.hayward.ca.us/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2012/PCA12PDF/pca092012full.pdf) (meeting agenda item number 3).

DISCUSSION

Project Description - The project requires:

- a. A General Plan Amendment to modify the designation of the site from Low Density Residential to Medium Density Residential (the western portion of the property where the park expansion is envisioned has a General Plan Land Use designation of Open Space – Parks and Recreation);
- b. A Zone Change from RS (Single-Family Residential) to OS (Open Space) and PD (Planned Development) (the entire site is currently zoned RS);
- c. A Parcel Map to reconfigure the existing five lots that comprise the property into two lots: a park expansion lot and a future development lot that will be proposed for further subdivision for residential lots in the future; and
- d. A Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

The project site is located at the corner of Eden and Denton Avenues within an existing single-family residential neighborhood that includes a mix of one-, two-, and three-story single-family residential homes. The western portion of the project site is adjacent to and south of Greenwood Park (see Location Map, Attachment IV).

The applicant will ultimately pursue a Vesting Tentative Tract Map, Precise Plan and Site Plan Review to develop thirty-six, two-story, single-family homes on the future development site. The final design review of the homes will occur during that entitlement process. Through approval of the Development Agreement, the developer will secure rights to develop thirty-six, two-story single-family homes and will have ten years to pursue the necessary entitlements to develop those homes; however, the one-acre park expansion land will be transferred (purchased or dedicated) within 90 days of the Development Agreement execution, allowing for the park to be expanded and improved sooner.

General Plan Amendment - The applicant has requested to modify the General Plan land use designation for the eastern portion of the site from Low Density Residential to Medium Density Residential. This modification will allow for additional density on the 2.52-acre residential portion of the property of up to approximately 14 additional homes, in exchange for transferring land for the expansion of Greenwood Park. Future development of this site, under a Medium Density land use designation, would allow a maximum of 17.4 dwelling units per net acre. The resultant density for the proposed residential development would be 17.1 dwelling units per net acre. Staff is supportive of the request to modify the General Plan land use designation from Low Density to Medium Density, as this is the designation of properties located just south and west of the project site.

A masonry wall/fence separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment IV). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this parcel, from the established residential neighborhood to the east. In addition, the City will gain approximately one acre of land at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park as was envisioned in the Mt. Eden Neighborhood Plan, adopted in 1990.

Findings for General Plan Amendment Application - In order to support the changes proposed to the General Plan, the City Council must make the following findings. Staff's responses to the findings are indicated below, and reflected in the attached resolution.

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

The increase in land use density for the site will allow the development of additional two-story, single-family homes, consistent with density located west of the site and massing south and east of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community.

(2) The proposed change is in conformance with the purposes of the General Plan and all applicable, officially adopted policies and plans.

The General Plan modification will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site, and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with the proposed General Plan Land Use designation and

General Plan policies, including those promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

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

The project site is located at the corner of Eden and Denton Avenues and has adequate public facilities to serve the proposed use. Infrastructure improvements, including upgrades to the streets in the area, were done fairly recently as part of the Mt. Eden Annexation area improvement project. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute, which is considered less than significant. Therefore, the existing streets and intersections will be adequate to serve the future development.

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

The proposed uses are single-family residences and a park, which are compatible with surrounding uses. In exchange for the General Plan land use designation modification for the future residential development, the City will obtain a one-acre portion of the property for the expansion of Greenwood Park. The benefit to the City is that the City typically cannot require dedication of parkland (only payment of in-lieu park fees) for projects of this size (less than fifty residential units). Also, if the City could require parkland dedication for a project of this size, the dedicated size of the land is approximately 16,000 square feet larger than what otherwise would be required for a thirty-six-unit development. In addition, the City is being offered an option to purchase the land at a value of almost forty percent less than the applicant has been offered by developers.

Rezoning to Open Space and Planned Development District - The proposal also involves a modification of the current zoning designation from Single Family Residential to Open Space and Planned Development. Under the current designation, the project would not be feasible without modifications to some of the development standards. The purpose of the Open Space designation is to support the future use of the one-acre portion at the corner of Eden and Denton Avenues for the Greenwood Park expansion. The purpose of the Planned Development designation is to encourage development through efficient and attractive space utilization that might not be achieved through strict application of the development standards.

The future single-family residential development proposed for the balance of the property consists of single-family homes on smaller lots with reduced setbacks, compared with traditional single-family home developments. The product type is a hybrid between traditional single-family

detached homes and multi-family developments. For instance, the conceptual plan layout for the development shows a reduction in typical rear yard area of single-family homes from 20 feet to 10 feet. Also, the minimum group open space area of 3,600 square feet is being provided as well as allowing for approximately 350 square feet of private open space for each residential unit, which is consistent with open space requirements for multi-family projects and not required for single-family homes. The conceptual plan also shows nineteen on-site guest parking spaces, in addition to each unit providing two covered parking spaces. An additional fourteen parking spaces can be provided on the project side of Denton Avenue. The parking provided meets the City's standards for multi-family projects and is consistent with similarly designed small lot single family developments approved by the City. Future development approvals will be required for the residential development, including Vesting Tentative Tract Map and Site Plan Review applications.

Findings for Zone Change Application - In order for a Zone Change to be approved, certain findings must be made as shown below. Staff's responses to the findings follows, which are incorporated in the attached resolution.

(1) The development is in substantial harmony with the surrounding area and conforms to the General Plan and applicable City policies.

The Zone Change will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lot sizes similar to what would be constructed on the future development parcel, though some of those units are attached units at three stories in height.

The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood. A masonry wall/fence separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment IV). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this property, from the established residential neighborhood to the east.

(2) Streets and utilities, existing or proposed, are adequate to serve the development.

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development. Utilities are underground in this area and any new connections to serve the future development would also be required to be placed underground.

- (3) The development creates a residential environment of sustained desirability and stability, that sites proposed for public facilities, such as playgrounds and parks, are adequate to serve the anticipated population and are acceptable to the public authorities having jurisdiction thereon, and the development will have no substantial adverse effect upon surrounding development.**

The future development of thirty-six two-story homes is a residential development that will be sustainable over time, especially located adjacent to an existing park that will be expanded and improved as a result of this project. In addition, the future development of the homes will be required to incorporate additional green features such that each home achieves a minimum seventy-five points on the GreenPoint Rated checklist (versus the normally required fifty points minimum) to ensure additional sustainability over time.

- (4) Any latitude or exception(s) to development regulations or policies is adequately offset or compensated for by providing functional facilities or amenities not otherwise required or exceeding other required development standards.**

The development is seeking a zone change to Open Space and Planned Development to allow for the one-acre park expansion and modified lot sizes and setbacks for the future residential development. Staff is supportive of the request as the one-acre portion of the property located along Eden Avenue and Denton Avenue will be acquired by the City for the purposes of expanding Greenwood Park, consistent with the Mt. Eden Neighborhood Plan adopted in July 1990. A development of thirty-six homes (less than fifty homes) would not normally be required to dedicate park land to meet the developer's park obligations (only payment of in-lieu fees). Also, and acknowledging that applicants for projects of this size would not typically be required to dedicate parkland, the amount of land proposed for dedication exceeds the development's requirement under the City's regulations by over 16,000 square feet.

Parcel Map - The project involves a Parcel Map to reconfigure the property, which currently consists of five separate parcels, into two separate parcels. The two parcels that will be created with the Parcel Map are a one-acre park parcel, which will be transferred to the City for expanding Greenwood Park, and a future residential development parcel. Prior to developing on the residential parcel, a Tentative Tract Map and Site Plan Review application will be required.

Findings for a Parcel Map Application - In order for a Parcel Map to be approved, certain findings must be made as shown below. Staff believes the findings can be made, as indicated below.

- (1) The proposed subdivision is not in conflict with the General Plan and applicable specific plans and neighborhood plans.**

The proposed Parcel Map is consistent with both the General Plan and Mt. Eden Neighborhood Plan, which call for residential development and for the expansion of Greenwood Park to Denton Avenue.

(2) The proposed subdivision meets the requirements of the City Zoning Ordinance.

The Parcel Map meets all requirements of the City Zoning Ordinance in that the resultant parcels meet the minimum lot size requirements and each parcel has adequate access and utilities are available to serve the future development.

(3) No approval of variances or other exceptions are required for the approval of the subdivision.

No variances or exceptions are required for the Parcel Map.

Development Agreement - The applicant is also seeking approval of a Development Agreement. Development Agreements are typically used for large multi-phase developments or developments involving the installation of public facilities or improvements. Development Agreements have an initial term of ten years with a potential for a five-year extension in unusual circumstances. In this particular case, the proposed Development Agreement will provide the developer some time flexibility and assurances regarding density of future development of single-family homes, and the public will realize the benefits of expansion and development of Greenwood Park at a price that is almost forty percent less than the applicant has been offered by other developers. The parkland dedication will occur within ninety days of the Development Agreement execution.

Key components of the Development Agreement (Attachment VIII) are as follows:

- (1) A one-acre portion of property at the corner of Eden Avenue and Denton Avenue will be transferred to the City within 90 days following the effective date of the Development Agreement. The property will be delivered to the City in a “clean” condition meeting health and environmental standards as determined by the City of Hayward Hazardous Materials Section of the Fire Department, State of California Department of Toxic Substances Control and Regional Water Quality Control Board. Initial hazardous materials analyses indicate the site is relatively clean and minor clean up would be needed. City staff, including staff of the Hazardous Materials Section of the Hayward Fire Department, is not concerned with the minor clean-up required of the site.
- (2) The acquisition of the Park Expansion property may occur in a number of ways, including (a) dedication by the property owner and associated credit for that value given toward future development fees, including the park obligation; (b) purchase of the land outright by the City based upon the agreed upon price of \$15.00 per square feet for the land; or (c) a combination of dedication/development fee credit and purchase by the City.
- (3) The Developer is provided a vested right to proceed with the future development of thirty-six single family homes for the ten-year term of the Development Agreement, subject to review of future Vesting Tentative Tract Map and Site Plan Review applications.

Findings for a Development Agreement Application - In order for a Development Agreement to be approved, certain findings must be made as shown below. Staff’s response to each finding follows.

- (1) The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.**

The development proposed will be consistent with the proposed General Plan Land Use designation, and with policies of the General Plan, including those promoting infill development that is compatible with the overall character of the surrounding neighborhood. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

- (2) The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.**

The Development Agreement will allow for the future construction of new homes in an area already developed with residential uses and simultaneously allow for the expansion of Greenwood Park.

- (3) The proposed development agreement is in conformity with public convenience, general welfare and good land use practice.**

The Development Agreement will allow the future development of additional two-story single family homes, consistent with density and massing of development located in the KB Home development just west of the site, as well as allow for a one-acre expansion of Greenwood Park. This will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize.

- (4) Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.**

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.

- (5) The public health, safety, and general welfare will be promoted and advanced by the proposed development.**

The one-acre expansion of Greenwood Park outlined in the Development Agreement will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District, should the future development generate a need for additional public safety services.

(6) The orderly development of property or the preservation of property values will be promoted and advanced by the proposed development.

With the future development of the single-family homes as well as the expanded park, property values will be promoted in the area. In addition, the future development of the homes, as conditioned, will be required to incorporate additional green features such that each home achieves a minimum seventy-five points on the GreenPoint Rated checklist to ensure additional sustainability over time.

ECONOMIC IMPACT

The project would contribute to the neighborhood by allowing for development of two-story homes at a density and massing that would be similar to homes in the surrounding areas, and would result in expansion and improvements to the Greenwood Neighborhood Park. Such development and park expansion would contribute to the character of the neighborhood.

FISCAL IMPACT

The following provides a general fiscal impact analysis for the proposed residential project. The information provided earlier in this report relates to the park expansion aspects of the project, which entail a park area expansion acquisition at a size above and cost below what would typically be required/paid. As the Development Agreement indicates, the City could outright purchase the one-acre area for the Greenwood Park expansion at a rate of \$15 per square foot (which is forty percent below offers recently received by the owner from developers). The owner could dedicate the future park area in exchange for reduction/credit of development impact fees equal in value to the dedicated park area. Or, a combination of both could occur. City staff is recommending that the City outright purchase the land (there are sufficient funds in the Park In-Lieu Fee Fund account for this zone to do so), which would eliminate any liability in the future in “crediting” the owner if the development does not occur.

Roughly calculated, and assuming the homes would sell at a price between \$327,000 and \$436,000 per unit as the project proponent indicates as preliminary pricing, and based on fiscal year 2010 budget totals, the proposed residential development would result in annual revenues to the City’s General Fund of \$29,240 and annual expenditures of \$65,308. Therefore, the roughly estimated annual fiscal impact to the City’s General Fund would be a negative \$36,000, which does not include a community facilities district (CFD) assessment fee. The CFD annual assessment per home would likely need to be approximately \$1,000 for the project to be fiscally neutral to the City’s General Fund. The specific future CFD assessment will be calculated as the development proposal for the single family homes moves forward.

PUBLIC CONTACT

Initial notice of the proposed project was sent to property owners within a 300-foot radius as well as interested parties in the neighborhood on August 19, 2011. Subsequently, the applicant held a community meeting at Chabot College on September 28, 2011. Most of the comments raised at that community meeting were related to whether parking would be allowed on the internal streets,

whether there would be guest parking provided, and whether or not Denton Avenue would remain blocked. Notice of the Planning Commission hearing and availability of the Mitigated Negative Declaration was sent on August 17, 2012 to all property owners within a 300-foot radius as well as those who have expressed an interest in the project, and notice was published in *The Daily Review* on August 18, 2012. Subsequently, notice of this City Council public hearing was sent on November 2 to all property owners within a 300-foot radius as well as those who have expressed an interest in the project, and was published in *The Daily Review* on November 3.

Since the Planning Commission hearing, staff has received additional inquiries from Ms. Gutierrez and the resident along Denton Avenue (Mr. Samuil). Staff has met with both residents on site since the Commission hearing. Both have expressed concerns with the development and reiterated their desire to have the entire project site developed as a park. Staff has provided additional information to Ms. Gutierrez regarding City and HARD neighborhood park standards (five acres per 1,000 people) and why the proposed one-acre park expansion would meet such standard for the neighborhood.

Specifically, per the 2010 Census, the population of the Mt. Eden Neighborhood Plan area was 6,755 people, meaning a minimum of 6.76 acres of parkland in the neighborhood would be needed to comply with HARD's standard. With Rancho Arroyo Park (4.07 acres) by Ochoa Middle School, that would mean Greenwood Park would need to be 2.69 acres, or just 0.24 acres bigger than it is. Therefore, the proposed one-acre size of the park expansion area would allow Rancho Arroyo Park and Greenwood Park to meet HARD's minimum neighborhood park size standard for the Mt. Eden neighborhood. In summary, the Planning Commission and City staff support the proposed one-acre park expansion and the project as proposed.

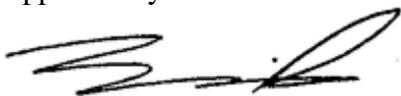
NEXT STEPS

Should the Council approve the project and ultimately adopt the ordinance related to the zone change application, the Development Agreement would be signed and recorded, followed by the recordation of the Parcel Map, creating the park parcel and future development parcel. The transfer of the one-acre portion of the property to the City for the expansion of Greenwood Park would then be done. Once the park expansion property has been transferred to the City, the Hayward Area Recreation and Park District would then follow its process for design and construction of the park improvements. At some point during the term of the Development Agreement, the applicant would submit a Vesting Tentative Tract Map, Precise Plan, and Site Plan Review applications for the development of the residential homes.

Prepared by: Sara Buizer, AICP, Senior Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Draft Resolution
Attachment II	Draft Zone Change Ordinance
Attachment III	Draft Development Agreement Ordinance
Attachment IV	Location Map
Attachment V	Recommended Conditions of Approval
Attachment VI	Mitigated Negative Declaration and Initial Study
Attachment VII	Mitigation Monitoring and Reporting Program
Attachment VIII	Draft Development Agreement
Attachment IX	Plans
Attachment X	September 20, 2012 Planning Commission Staff Report minus Attachments
Attachment XI	September 20, 2012 Planning Commission Meeting Minutes

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION ADOPTING THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING THE GENERAL PLAN AMENDMENT, ZONE CHANGE, PARCEL MAP AND DEVELOPMENT AGREEMENT PERTAINING TO CREATION OF A PARK EXPANSION LOT AND A FUTURE DEVELOPMENT LOT OF THIRTY-SIX SINGLE FAMILY HOMES AT THE NORTHEAST CORNER OF EDEN AND DENTON AVENUES

WHEREAS, on August 11, 2010, Westlake Development LLC (Applicant) submitted the following applications for the property located at the northeast corner of Eden Avenue and Denton Avenue, in Hayward, California: Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431, which concern a request to amend the General Plan designation from Low Density Residential to Medium Density Residential; rezone the property from Single-Family Residential to Open Space and Planned Development; approve a Parcel Map for the park expansion and future development lots; and approve a related Development Agreement entitling Applicant to develop the property with thirty-six single family homes in exchange for dedicating a fee interest in, or offering for sale to the City, a one-acre portion of the property for the expansion of Greenwood Park (the “Project”); and

WHEREAS, an Initial Study and Mitigated Negative Declaration has been prepared to assess the potential environmental impacts of the proposed Project; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 20, 2012, and has recommended that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, and approve applications PL-2010-0236GPA, PL-2010-0237ZC, PL2010-0431PM, and PL-2010-0235DA; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on November 13, 2012.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. The proposed Project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed Project. The Initial Study has determined that the proposed Project, with the recommended mitigation measures, could not result in significant effects on the environment.
2. The Project will not adversely affect any scenic resources. A lighting plan will be required to ensure that light and glare do not affect area views. In addition, compliance with the City's Design Guidelines will ensure visual impacts are minimized. Landscape plans will also be required to ensure that structures are appropriately screened.
3. The Project will not have an adverse effect on agricultural land, since the subject site is not used for such purposes and does not contain prime, unique or statewide important farmland.
4. The Project will not result in significant impacts related to changes in air quality. When the property is developed, the City will require the developer to submit a construction Best Management Practice (BMP) program prior to the issuance of any grading or building permits.
5. The Project, proposed on properties surrounded by other residential development and within an urbanized area, will not result in significant impacts to biological resources, including protected trees.
6. The Project will not result in significant impacts to known cultural resources, including historical resources, archaeological resources, paleontological resources, unique topography, or disturb human remains.
7. The Project will not result in significant impacts to geology and soils. The Project is located west of the Hayward fault, which poses potential risk to any development in the City of Hayward. Recommendations of the Project's geotechnical engineer will be required to be incorporated into Project design and implemented throughout construction, to address such items as seismic shaking. Construction will also be required to comply with the California Building Code standards to minimize seismic risk due to ground shaking.
8. The Project will not lead to the exposure of people to hazardous materials, as any arsenic, lead or pesticides found on the site were considered below California Human Health Screening Levels (CHHSL). In addition, prior to issuance of a grading permit, the

installation of park improvements and development of any single family homes, the property must meet all health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.

9. The Project will be required to meet all water quality standards as part of the normal development review and construction process, to be addressed in a Stormwater Pollution Prevention Plan and Erosion Control Plan that utilize best management practices. Drainage improvements will be required to accommodate stormwater runoff, so as not to negatively impact the existing downstream drainage system of the Alameda County Flood Control and Water Conservation District.
10. The Project proposes amendments to the Hayward zoning designation and General Plan designation for the site, but does not significantly increase allowable density. In exchange, the applicant will be dedicating land to be used for the expansion of Greenwood Park, a community resource.
11. The Project will not result in any long-term noise impacts. Construction noise will be mitigated through restriction on construction hours, mufflers, etc., to be approved as part of the future building permits for the homes.
12. The Project will not result in significant impacts related to population and housing, in that the amount of development proposed is within the range of development contemplated by the Hayward General Plan.
13. The Project will not result in a significant impact to public services, in that development at least as intensive as that proposed was analyzed in the Hayward General Plan EIR and found to have less-than-significant impacts.

GENERAL PLAN AMENDMENT

14. The increase in land use density for the site will allow the development of additional two-story, single-family homes, consistent with density and massing of development located west of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community.
15. The General Plan modification will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed, and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home

development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

16. The Project site is located at the corner of Eden and Denton Avenues and has adequate public facilities to serve the proposed use. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute, which is considered less than significant so the existing streets will be adequate to serve the future development.
17. The proposed uses are single-family residences and a park, which are compatible with surrounding uses. In exchange for the General Plan land use designation modification for the future residential development, the City will obtain a one-acre portion of the property for the expansion of Greenwood Park. The benefit to the City is that the City typically cannot require dedication of parkland (only payment of in-lieu park fees) for projects of this size (less than fifty residential units). In addition, even if parkland could be required to be dedicated for a project of this size, the dedicated size of the land is approximately 16,000 square feet larger than what otherwise would be required for a 36-unit development. Finally, the City is being offered the land at a value of almost forty percent less than the applicant has been offered by developers.

ZONE CHANGE

18. The Zone Change will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies, including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood. A masonry wall/fence separates the Low Density residential neighborhood to the north and east of the Project site. In addition, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this property, from the established residential neighborhood to the east.
19. The Project site is surrounded by existing streets, and there are utilities available to the site with adequate capacity to serve the proposed development. Utilities are underground in this area and any new connections to serve the future development would also be required to be placed underground.

20. The future development of thirty-six two-story homes is a residential development that will be sustainable over time, especially located adjacent to an existing park that will be expanded and improved as a result of this Project. In addition, the future development of the homes will be required to incorporate additional green features such that each home achieves a minimum seventy-five points on the GreenPoint Rated checklist (fifty points minimum normally required) to ensure additional sustainability over time.
21. The development is seeking a zone change to Open Space and Planned Development to allow for the one-acre park expansion and modified lot sizes and setbacks for the future residential development. The Council is supportive of the request as the one-acre portion of the property located along Eden Avenue and Denton Avenue will be transferred to the City for the purposes of expanding Greenwood Park, consistent with the Mt. Eden Neighborhood Plan adopted in July 1990. A development of thirty-six homes (less than fifty homes) would not normally be required to dedicate park land to meet the developer's park obligations (only payment of in-lieu fees). Acknowledging that projects of this size would not be required to dedicate parkland, the amount of land proposed for dedication exceeds the development's requirement under the City's regulations by over 16,000 square feet.

PARCEL MAP

22. The proposed Parcel Map is consistent with the both the General Plan and Mt. Eden Neighborhood Plan, which call for residential development and for the expansion of Greenwood Park to Denton Avenue.
23. The Parcel Map meets all requirements of the City's Zoning Ordinance, in that the resultant parcels meet the minimum lot size requirements and each parcel has adequate access and utilities are available to serve the future development.
24. No variances or exceptions are required for the Parcel Map.

DEVELOPMENT AGREEMENT

25. The proposed Project will be consistent with the proposed General Plan Land Use designation, and with policies of the General Plan, including those promoting infill development that is compatible with the overall character of the surrounding neighborhood. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.
26. The Development Agreement will allow for the future construction of new homes in an area already developed with residential uses and simultaneously allow for the expansion of Greenwood Park.

- 27. The Development Agreement will allow the future development of additional two-story single family homes, consistent with density and massing of development located in the KB Home development just west of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize.
- 28. The Project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.
- 29. The one-acre expansion of Greenwood Park outlined in the Development Agreement will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District, should the future development generate a need for additional public safety services.
- 30. With the future development of the single-family homes as well as the expanded park, property values will be promoted in the area. In addition, the future development of the homes, as conditioned, will be required to incorporate additional green features such that each home achieves a minimum seventy-five points on the GreenPoint Rated checklist to ensure additional sustainability over time.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, based on the foregoing findings, that the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program is hereby adopted and Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431 are approved, subject to the adoption of the companion ordinances rezoning the properties located at the northeast corner of Eden and Denton Avenues from Single Family Residential to Open Space and Planned Development District and approving the Development Agreement, and subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE HAYWARD MUNICIPAL CODE BY REZONING CERTAIN PROPERTY AT THE NORTHEAST CORNER OF EDEN AND DENTON AVENUES IN CONNECTION WITH ZONE CHANGE APPLICATION NO. PL-2010-0237 RELATING TO A DEVELOPMENT AGREEMENT FOR PROPOSED ONE-ACRE PARK EXPANSION AND 36 SINGLE-FAMILY HOMES

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

Section 1. Rezoning.

Article 1 of Chapter 10 of the Hayward Municipal Code is hereby amended to rezone the property at the northeast corner of Eden and Denton Avenues (APNs 441-0083-006-01, 441-0083-006-04, 441-0083-007-02, 441-0083-008-02, and 441-0083-009-00) from Single Family Residential to Open Space and Planned Development Districts.

Section 2. Severance.

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

Section 3. Effective Date.

This ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held on the _____ day of November, 2012, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of December, 2012, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

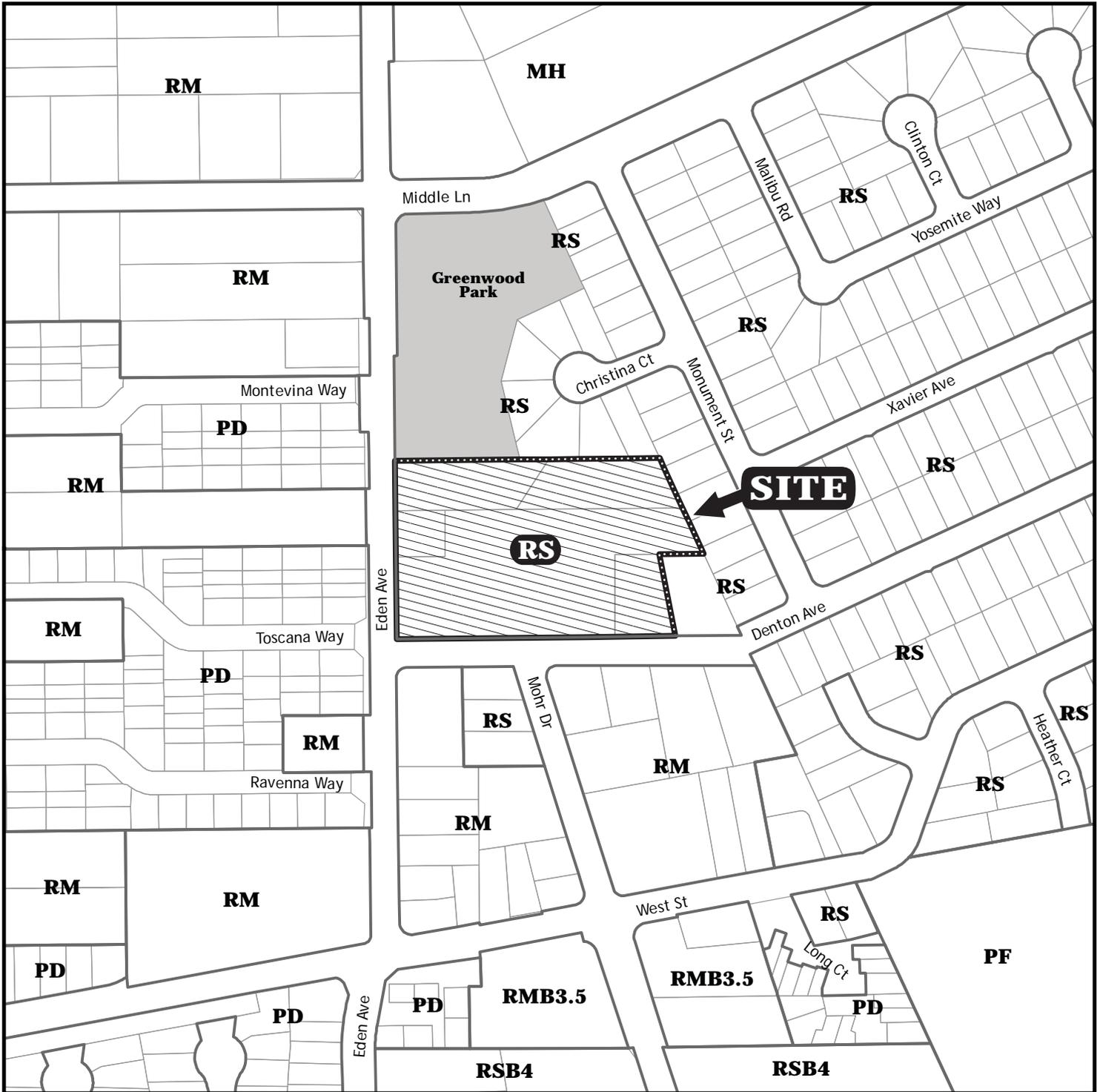
ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



Area & Zoning Map



PL-2010-0235 DA
 PL-2010-0236 GPA
 PL-2010-0237 ZC
 PL-2010-0431 PM

Address:
 Eden & Denton Avenues

Applicant:
 Sunny Tong

Owner:
 Chang Income Property Partnership L.P.

Zoning Classifications

RESIDENTIAL

- MH Mobile Home Park
- RM Medium Density Residential, min lot size 2500 sqft
- RMB3.5 Medium Density Residential, min lot size 3500 sqft
- RS Single Family Residential, min lot size 5000 sqft
- RSB4 Single Family Residential, min lot size 4000 sqft

Zoning Classifications

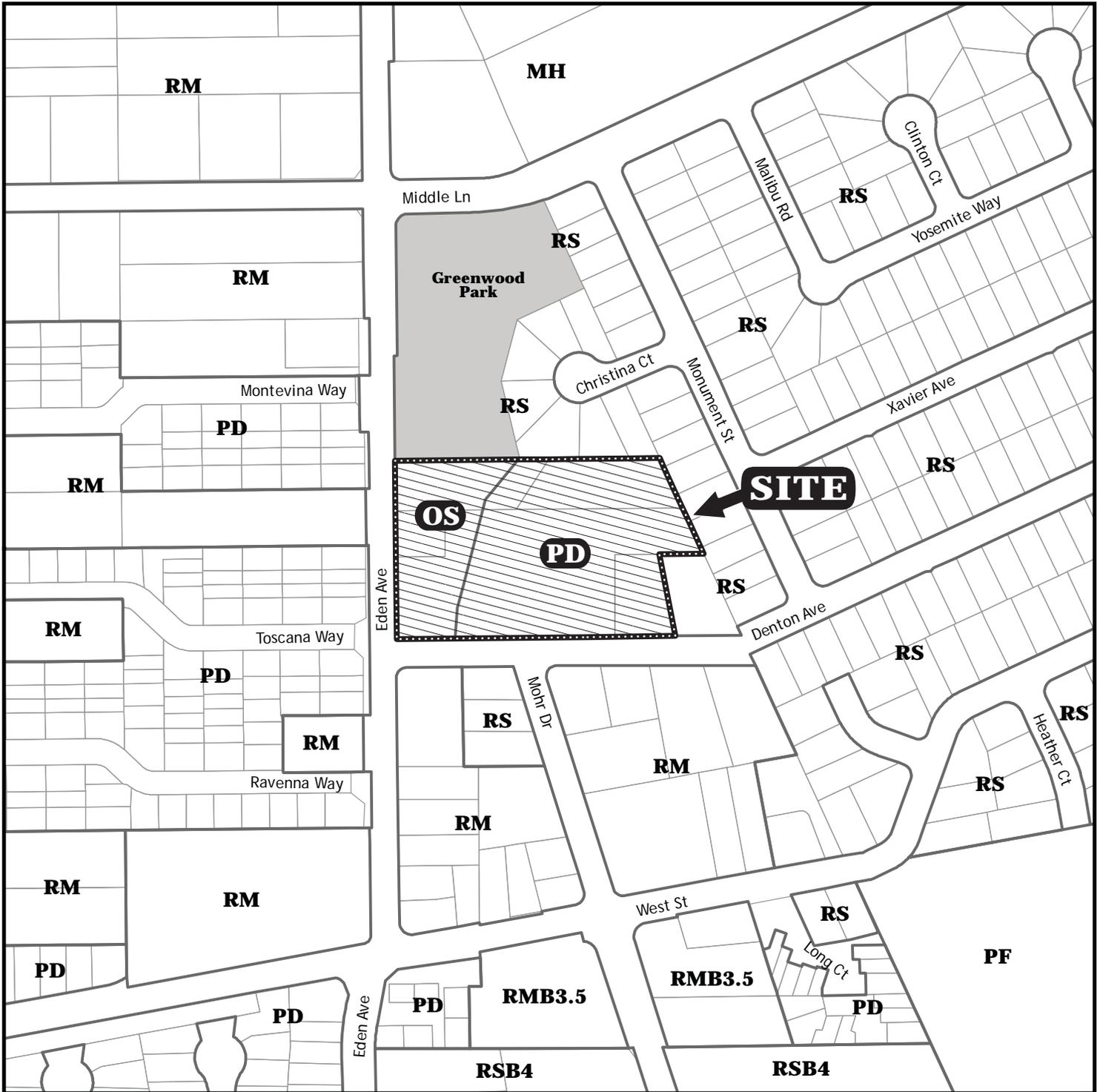
OTHER

- PD Planned Development
- PF Public Facilities





Proposed Zoning Map



PL-2010-0235 DA
PL-2010-0236 GPA
PL-2010-0237 ZC
PL-2010-0431 PM

Address:
Eden & Denton Avenues

Applicant:
Sunny Tong

Owner:
Chang Income Property Partnership L.P.

Zoning Classifications

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- RM Medium Density Residential, min lot size 2500 sqft
- RMB3.5 Medium Density Residential, min lot size 3500 sqft
- RS Single Family Residential, min lot size 5000 sqft
- RSB4 Single Family Residential, min lot size 4000 sqft

Zoning Classifications

OPEN SPACE

- OS Open Space

OTHER

- PD Planned Development
- PF Public Facilities



ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING EXECUTION OF A
DEVELOPMENT AGREEMENT WITH CHANG INCOME
PROPERTY PARTNERSHIP, L.P., BARRETT COMMUNITY
HOSPITAL SERIES (R14), FOR DEVELOPMENT OF THE
GREENWOOD PARK HOMES PROJECT

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

Section 1. Findings. This ordinance authorizes the execution of a development agreement with Chang Income Property Partnership, L.P., Barrett Community Hospital Series (R14) for the Greenwood Park Homes Project (“Greenwood Park Homes Project Development Agreement”), comprising a one acre park and thirty-six single-family homes, to be developed on an approximately 3.5-acre site located at the corner of Eden and Denton Avenues, Hayward, California (the “Property”). The findings and determinations contained in the following resolution are incorporated by this reference: Resolution No. _____, which approves General Plan Amendment PL 2010-0236, changing the land use designation for the Property from Low Density Residential to Medium Density Residential; Zone Change Application PL 2010-0237, reclassifying the Property from Single Family Residential (RS) District to Planned Development (PD) District and Open Space/Parks and Recreation (OS) District; and Parcel Map Application PL 2010-0431. The following additional findings also support the adoption of this ordinance authorizing the execution of a Development Agreement with Chang Income Property Partnership, L.P., Barrett Community Hospital Series (R14).

- A. This ordinance is adopted pursuant to the enabling provisions of Article 9, Chapter 10 of the Hayward Municipal Code, the City's Development Agreement Ordinance, and the provisions of state law which authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of their property, contained in Government Code sections 65864 through 65869.5.
- B. The proposed Greenwood Park Homes Project Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the City's General Plan and the 1990 Mt. Eden Neighborhood Plan, in that the Development Agreement requires the dedication of one-acre of the Property for the expansion of Greenwood Park.

- C. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located in that the General Plan, as amended, allows for Medium Density Residential development at a maximum of 17.4 dwelling units per net acre and the development is proposed to have 17.1 dwelling units per net acre.
- D. The proposed Development Agreement is in conformity with public convenience, general welfare, and good land use practice in that it will provide new housing opportunities and one acre of land for the expansion of Greenwood Park.
- E. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development in that infrastructure improvements, including upgrades to the streets in the area, were done fairly recently as part of the Mt. Eden Annexation area improvement project. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute, which is considered less than significant, so the existing streets and intersections will be adequate to serve the proposed development.
- F. The public health, safety, and general welfare will be promoted and advanced by the proposed development in that the developer will dedicate one acre for the expansion of Greenwood Park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District, should the future development generate a need for additional public safety services.
- G. The orderly development of property or the preservation of the property values will be promoted and advanced by the proposed development in that high-quality single-family housing will be constructed in an area that is currently vacant and the developer will dedicate land for the expansion of Greenwood Park, resulting in a development compatible with the surrounding area.

Section 2. Authorization of Greenwood Park Project Development Agreement. Based on the findings set forth in this ordinance and in Resolution No. _____, as well as a review of the proposed Greenwood Park Project Development Agreement submitted to the City Council at the November 13, 2012, meeting, the City Council hereby takes the following actions:

- A. The City Manager is authorized to execute a Development Agreement with Chang Income Property Partnership, L.P., Barrett Community Hospital Series (R14), regarding the Greenwood Park Project development proposal substantially in the form of the proposed development agreement presented to the City Council on November 13, 2012, together with such minor clarifying changes as may be necessary upon approval by the City Manager after consultation with the City Attorney.
- B. The City Manager is also authorized to take such further actions which she deems necessary and proper to carry out and or monitor performance of the terms of the executed Greenwood Park Homes Project Development Agreement pursuant to

applicable law and regulation. This authority includes but is not limited to execution of any further agreement which the City Manager deems necessary to implement the Greenwood Park Homes Development Agreement ("Implementation Agreement").

Section 3. Effective Date. This ordinance shall become effective thirty days after adoption.

Section 4. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2012, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2012, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

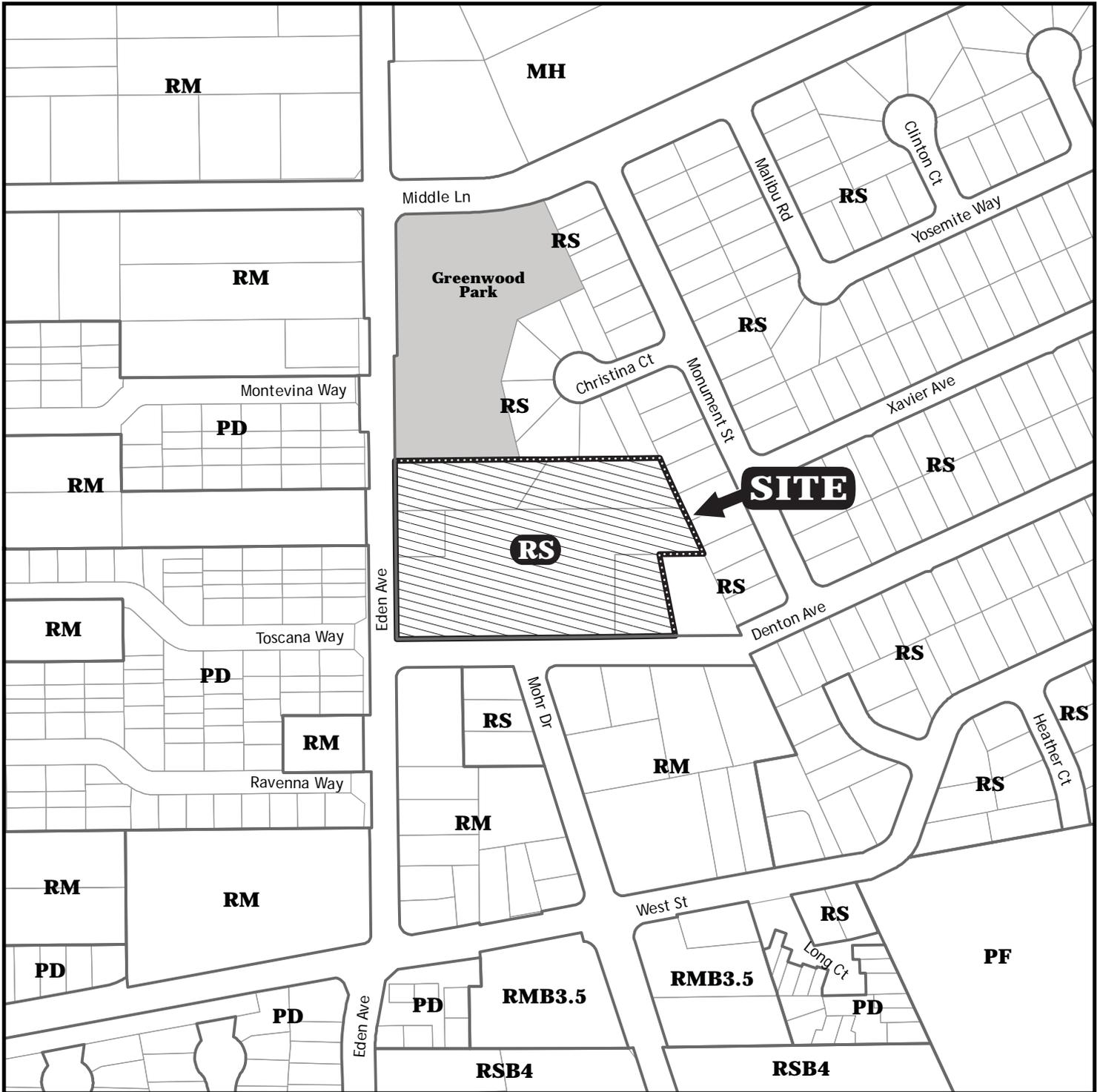
ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



Area & Zoning Map



PL-2010-0235 DA
PL-2010-0236 GPA
PL-2010-0237 ZC
PL-2010-0431 PM

Address:
Eden & Denton Avenues

Applicant:
Sunny Tong

Owner:
Chang Income Property Partnership L.P.

Zoning Classifications

RESIDENTIAL

- MH Mobile Home Park
- RM Medium Density Residential, min lot size 2500 sqft
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- RS Single Family Residential, min lot size 5000 sqft
- RSB4 Single Family Residential, min lot size 4000 sqft

Zoning Classifications

OTHER

- PD Planned Development
- PF Public Facilities





General Plan Map



PL-2010-0235 DA
 PL-2010-0236 GPA
 PL-2010-0237 ZC
 PL-2010-0431 PM

Address:
 Edén & Denton Avenues

Applicant:
 Sunny Tong

Owner:
 Chang Income Property Partnership L.P.

General Plan Land Use Designations

Residential

- Rural Estate Density 0.2-1.0 units/net acre
- Suburban Density 1.0-4.3 units/net acre
- Low Density 4.3-8.7 units/net acre
- Mobile Home Park 8.7-12.0 units/net acre
- Limited Medium Density 8.7-12.0 units/net acre
- Medium Density 8.7-17.4 units/net acre
- High Density 17.4-34.8 units/net acre
- Sustainable Mixed Use 17.4-100.0 units/acre

Commercial

- Retail and Office
- General Commercial
- Commercial/High Density Residential
- High Density Residential
- Retail and Office Commercial

Industrial

- Industrial Corridor
- Mixed Industrial

Open Space

- Parks and Recreation
- Limited Open Space
- Baylands

Public & Quasi-Public

- Public and Quasi Public



CONDITIONS OF APPROVAL**Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236,
Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431****Sunny Tong for Westlake Development LLC (Applicant)**Planning Division

1. Development Agreement Application No. PL-2010-0235, General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237, and Parcel Map Application No. PL-2010-0431 is approved subject to the preliminary plans labeled Exhibit "A" and the conditions listed below. The Development Agreement and Preliminary Development Plan Approval becomes void ten years after the effective date of approval, unless prior to that time a Precise Development Plan, Site Plan Review Application and Tentative Tract Map Application has been submitted for review and processing in accordance with all conditions of the Preliminary Development Plan approval. A request for a five-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 45 days prior to the expiration date.
2. The applicant shall submit for annual review of the Development Agreement and pay the applicable Development Agreement Annual Review Fee. This review shall occur every 12 months from the effective date of the agreement. The applicant shall provide proof of compliance with the terms and conditions of the Development Agreement with each review. Failure to comply with the terms and conditions of the Development Agreement will result in the matter being scheduled before the Planning Commission at a noticed public hearing.
3. If a building permit is issued for construction of improvements authorized by the Development Agreement, General Plan Amendment and Zone Change approvals, said approvals shall be void two years after issuance of the building permit, or three years after approval of the Precise Development Plan Approval, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the Precise Plan approval.
4. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
5. Per the approved Development Agreement, the dedication to the City a fee interest in the Park Expansion Property shall occur within 90 days following the effective date of the agreement.

6. Prior to the dedication and the City's acceptance of the park expansion parcel, the applicant shall demonstrate to the satisfaction of the Hayward Fire Department that the property meets all health and environmental standards for park use as determined by the State of California Department of Toxic Substances Control and the Regional Water Quality Control Board.
7. Prior to application for a Building Permit or a Grading Permit for the future development parcel, Precise Development Plan, Site Plan Review and Tentative Tract Map Applications shall be submitted for review and approval.
8. The Precise Plan shall be submitted for approval by the Planning Director and shall include detailed landscaping and irrigation plans, detailed plans for all site amenities, details for decorative paving, decorative lighting, details for fencing, walls, architectural plans, sign details (if applicable), samples of exterior colors and building materials, and screening of all above-ground utilities, transformers and utility meters. The precise plan shall also reflect the design of other public improvements.
9. The Precise Plan shall also include provisions for project staging, designated areas for construction employee parking (on- and off-site), construction office, sales office (if any), hours of construction, provisions for noise and dust control, and common area landscaping.
10. The Precise Plans shall include/incorporate the following:
 - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
 - b) The plan should incorporate more architectural variety at the Precise Plan stage.
 - c) Details of address numbers shall be provided. Address number shall be decorative. Building addresses shall be minimum 4-inch self-illuminated or 6-inch on contrasting background. Address numbers shall be installed so as to be visible from the street.
 - d) Details and locations of any fencing, decorative walls and any retaining walls shall be included and approved by the Planning Director.
 - e) Show an exterior hose bib for each patio, or porch area.
 - f) The pavement at the private driveway entries of the development shall be enhanced by the use of decorative pavement materials such as colored, stamped concrete (bomanite or equal), brick, concrete interlocking pavers or other approved materials. The location, design and materials shall be approved by the Planning Director.
 - g) Pedestrian walkways fronting the building(s) shall be enhanced with decorative materials such as inset brick, exposed aggregate, bomanite stamped concrete or other approved material.
 - h) Grouped mailbox design and locations, subject to Post Office approval, shall be approved by the Planning Director.
 - i) A lighting plan prepared by a qualified illumination engineer shall be included to show exterior lighting design. Exterior lighting shall be erected and maintained so

that adequate lighting is provided in all common areas. The Planning Director shall approve the design and location of lighting fixtures, which shall reflect the architectural style of the building(s). Exterior lighting shall be shielded and deflected away from neighboring properties and from windows of houses within the project.

- j) All air conditioners and utility connections for air conditioners shall be located such that all external equipment is located behind solid board fences or stuccoed walls not to exceed the height of the air conditioner unless otherwise approved by the Planning Director. Infrastructure for air conditioning systems is required to be installed as a standard feature.
- k) All parking spaces are to meet minimum City of Hayward on-street and off-street parking standards.
- l) Each unit shall have and maintain a minimum of 90 cubic feet of dedicated storage area, above standard closets and bedroom wardrobes, accessible from the exterior of the unit. Any area of a garage, in excess of the required 11 feet by 19 feet or 20 feet by 20 feet parking area, can be counted toward the minimum requirement.
- m) An area within each garage for individual garbage and recycling receptacles, an area measuring 3' by 9', shall be provided and shall be clear of the required area for two cars. Alternatively the garbage and recycling can be located behind a solid fence in a side yard.
- n) A color and materials board shall be submitted to the Planning Director for review and approval. No changes to colors shall be made after construction unless approved by the Planning Director.
- o) All above-ground utility meters, mechanical equipment and water meters shall be enclosed within the buildings or shall be screened with shrubs and/or an architectural screen, to be approved by the Planning Director.
- p) No mechanical equipment, other than solar panels, shall be placed on the roof unless it is completely screened from view by the proposed roof structure. All roof vents shall be shown on roof plans and elevations. Vent piping shall not extend higher than required by building Code. Roof apparatus, such as vents, shall be painted to match the roof color.
- q) One identification sign per development shall be permitted. The signs shall conform to Section 10-7.403(b)(2) of the Sign Ordinance regulations, with the location to be approved by the Planning Director. Sign design, colors, and materials shall reflect the architectural style of the project and shall be approved by the Planning Director.
- r) Rooflines shall be articulated to break up bulky facades. Dormer elements are acceptable. Large expanses of blank wall are not allowed. Articulate such expanses to avoid bulkiness.
- u) All decorative window treatments shall be extended to all elevations.
- v) All rear and side entries shall be protected by roofs with rooflines to match the pitch of roof of the front porch.

- w) All parking stall dimensions shall conform to the City's Off-street Parking Ordinance. All tandem two car garages shall have the minimum interior dimension of 11 feet by 38 feet. All two car garages shall have the interior dimensions of 20-foot width by 19-foot depth. The dimensions shall be shown on plans. No doors, stairs, landings, laundry facilities, trash/recycle containers or HVAC shall project within the required interior parking areas.
11. Prior to the sale of any lot to an individual owner (and not another developer or builder) or prior to the acceptance of site improvements on the future development parcel, whichever first occurs, a homeowners' association shall be created to maintain the private streets, common area landscaping and open space amenities. The developer shall prepare the CC&R's prepared for the project and the CC&R's shall be reviewed and approved by the Planning Director. The CC&R's shall include the following conditions:
- a) Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses.
 - b) The pocket parks, interior "paseos," and the driveways shall be maintained by the HOA.
 - c) A statement regarding all HOA fees shall be provided to homeowners on bright paper.
 - d) A reserve fund shall be maintained to cover the costs of replacement and repair of the private streets, driveways and private common area landscaping including the "paseos."
 - e) The association shall be managed and maintained by a professional property management company.
 - f) The homeowners' association shall be responsible for maintaining all private streets and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing all stormwater BMPs associated with improvements and landscaping. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.
 - g) The private streets, driveways entries, and common landscaped areas shall be maintained in good repair, and free of debris at all times.
 - h) A requirement that the building exteriors, fences, and walls shall be maintained free of graffiti. The owner's representative shall inspect the premises on a weekly basis and any graffiti shall be removed within 72 hours of inspection or within 72 hours of notification by the City's Community Preservation Officer.
 - i) The homeowners' association shall maintain the common area irrigation system and maintain the common area landscaping in a healthy, weed-free condition at all times. The homeowner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30 percent dieback) shall be replaced within 10 days.

- j) Landscaping and irrigation shall be maintained in all common areas or the City shall have the right to enter upon the property to maintain the exterior portions of the common area at the expense of the homeowners association pursuant to and to the extent authorized by Section 10-3.385 of the Subdivision Ordinance.
- k) Trees shall not be severely pruned, topped, or pollarded and any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the Landscape Architect, within the timeframe established by the City and pursuant to the Municipal code.
- l) Pursuant to and to the extent authorized by Section 10-3.385 of the Subdivision Ordinance, a provision that if the homeowners' association fails to maintain the common area or private streets, so that owners, their families, tenants, guests or adjacent owners suffer or will suffer substantial diminution in the enjoyment, use or property value of the project, the City of Hayward shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets, after reasonable notice, and lien the properties for their proportionate share of the costs.
- m) The garage of each unit shall be maintained for off-street parking and shall not be converted to living or storage areas. An automatic garage door opening mechanism shall be provided for all garage doors.
- n) The homeowners association shall maintain in good repair all fencing, parking and street surfaces, common landscaping, lighting, trash enclosures, drainage facilities, project signs, etc. The homeowners' association shall maintain in good repair the building exteriors. The CC&Rs shall include provisions as to a reasonable time period that a unit shall be repainted, the limitations of work (modifications) allowed on the exterior of the building, the formation of a design review committee and its power to review changes proposed on a building exterior and its color scheme, and the right of the homeowners association to have necessary work done and to place a lien upon the property if maintenance and repair of the unit is not executed within a specified time frame. The premises shall be kept clean.
- o) The open parking spaces within parking bays or on the street shall be provided for and maintained as visitors' spaces and shall not be used for recreational vehicles, camper shells, boats or trailers. These spaces shall be clearly marked and monitored by the homeowners association. Parking stalls shall be used only for vehicles in operating condition. The on-street parking shall be limited to 24 hour parking. The homeowners association shall remove vehicles parked contrary to this provision. The developer shall include in the CC&Rs authority to tow illegally-parked vehicles.
- p) Utility meters, when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen, allowing sufficient access for reading.
- q) Future additions to units are prohibited.
- t) The CC&Rs shall specify the outdoor collection locations of trash and recycle containers. In addition, trash and recycle containers shall not be moved to the collection location more than 24 hours prior to collection and shall be removed within 24 hours after collection.

12. The developer shall pay the cost of providing public safety services to the property through formation of, or annexation to, a Community Facilities District, should the property generate the need for additional public safety services. The Developer shall post an initial deposit of \$20,000 with the City prior to or concurrently with the submittal of the final subdivision map and improvement plans, to offset the City's cost of analyzing the property's need for additional public safety services. If the analysis determines that the property creates a need for additional public safety services warranting the formation of, or annexation to, a Community Facilities District, the Developer shall pay all costs of formation or, or annexation to, the district, which costs may be paid from the Developer's deposit to the extent that funds remain after payment of the City's costs of analysis as described above.
13. The applicant shall ensure that all homes constructed on the future development parcel achieve a minimum 75 points on the GreenPoint rated checklist to ensure their long-term sustainability.
14. During the future construction of the residential homes, tree protection measures shall be installed to protect the large oak tree located within the public right of way near the western entrance to the development site off Denton Avenue.

Development Services

15. A Benefit District Fee in the amount of \$10,008.00 per unit shall be paid prior to the recordation of the Final Map, or prior to the issuance of any building permit.
16. All necessary easements shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward.
17. The applicant/developer's Professional Engineers registered to practice in the State of California shall perform all design work shown on the Civil Engineer's Improvement Plans.
18. Prior to commencing grading and construction, the Civil Engineer's Improvement Plans including drainage water quality treatment plans shall be approved by the City Engineer, and the Landscape plans shall be approved by the City Landscape Architect.
19. If a tentative map is filed and approved, the Final Map shall be approved by the City Council and the Improvement Plan shall be approved by the City Engineer. The developer shall execute a subdivision agreement and post bonds with the City that shall secure the construction of the public improvements per Section 10-3.332 of the Municipal Code: Security for Installation of Improvements. Insurance shall be provided per the terms of the subdivision agreement.
20. The project is subject to the new Municipal Regional Stormwater Permit (MRP) became effective Dec. 1, 2009. The drainage system, water quality treatment system and landscape plan shall be designed to those new requirements stipulated in the MRP.

21. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with a design to reduce discharge of pollutants and sediments into the downstream storm drain system for review and approval of the City Engineer.

Landscape Division

22. Prior to the approval of improvement plans or issuance of grading permit, detailed landscape and irrigation plans shall be approved by the City and shall be a part of approved improvement plans and the building permit submittal. The plans shall be prepared by a licensed landscape architect, wet stamped and signed, on an accurately surveyed base plan and shall comply with the City's Bay-Friendly Water Efficient Landscape Ordinance, Hayward Environmentally Friendly Landscape Guidelines and Checklist for the landscape professional, and Municipal Codes. Dripline of the existing trees to be saved shall be shown on the plan.
23. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the commencement of clearing and grading operations, all trees to be preserved or removed shall be indicated on the grading, site and landscape plans, and trees to remain in place shall be noted and provided with tree protection measures in compliance with City codes. A tree removal permit is required prior to the removal of any tree trunk diameter is 10 inches or larger measured at 24 inches from the ground unless the trees are identified as "Heritage Trees" in the Tree Preservation Ordinance.
24. Mylar of the approved landscape and irrigation improvement plans, wet stamped and signed, shall be submitted to the City's Engineering Department. The size of Mylar shall be 22" x 34" without an exception. Upon completion of installation, As-built/Record Mylar shall be submitted to the Engineering Department by the developer.
25. Project information including total square footage of the irrigated landscape area, turf and non-turf areas, and open space calculation shall be provided on the title/cover sheet.
26. A separate irrigation meter shall be required for the common landscape areas.
27. Provide a comprehensive arborists report by a licensed arborist on all existing trees within the limit of project area including health, species, caliper, approximate height, canopy diameter, and value using the latest edition of "Guide for Plant Appraisal" by the International Society of Arboriculture. Provide ISA worksheet per each trees are subjected for valuation. The arborists report and valuation shall be reviewed and approved by the City.
28. A bond will be required for all trees that are to remain. If any trees that are designated as saved are removed or damaged during construction shall be replaced with trees of equal size and equal value.
29. Provide a tree mitigation summary chart on the landscape plan listing trees to be removed, value of trees to be removed, trees with assigned identification numbers in the arborists

report, total value of mitigation, and proposed tree sizes and their value equaling the mitigation value.

30. Street Trees. Provide one 24-inch box street tree per 20 to 40 lineal feet in the front and side landscape setback areas or fraction thereof. All trees shall be planted a minimum of 5-foot away from any underground utilities, a minimum of 15 feet from a light pole, and a minimum 30 feet from the face of a traffic signal, or as otherwise specified by the city. Trees shall be planted according to the City Standard Detail SD-122 and the detail shall be included in the landscape plans.
31. If parkway strip exists between the curb and sidewalk in city right-of-way, the landscape and irrigation must be provided in the parkway strip. The landscape in the parkway strip includes Street Tree planting in addition to the trees planted in the front landscape setback areas.
32. All areas that are not utilized for structure, permitted driveways and walkways shall be landscaped with water-efficient trees, shrubs, turf grass and groundcovers, or a combination thereof.
33. Landscaped areas adjoining driveways and/or parking areas shall be separated by a 6" high class "B" Portland Cement concrete curb.
34. If any setback area would be used for bio-swale to meet the Alameda County Clean Water Program requirements; do not plant trees or shrubs on the bottom of the swale, 2 feet of flow area, that will impede drainage flow. Tree planting requirements shall not be compromised because of implementing storm water treatment areas. Provide wider landscape areas, if need to be, to accommodate both bio-swale and required tree planting.
35. There shall be minimum 12 inches of flat and leveled area adjacent to all hardscape before side slopes of bio-swale begins, and finished grade for mulch shall be flushed with the grades at hardscape.
36. Root barriers shall be installed linearly against the paving edge in all instances where a tree is planted within 7' of pavement or buildings, and as directed by the landscape architect.
37. Required common open spaces shall not be located in the required setback/sideyard areas; must meet noise level of not exceeding 65 decibels; must be centrally located for all residents; must not exceed 5 percent slope to all directions; shall have no dimension less than 20 feet to all directions; and must provide amenities.
38. Required private open space shall have no dimension less than 10 feet.
39. Masonry walls, solid building walls, trash enclosures, and/or fences facing a street or driveway shall be buffered with continuous shrubs or vines. Minimum plant size shall be 5 gallon.

40. The portion that the project property abuts existing single family residential neighboring properties shall be screened with 15 gallon evergreen trees at 20 feet on center, or equivalent to the total quantity with variable spacing upon approval by the City Landscape Architect.
41. The minimum dimension for all planting areas in all directions shall be minimum 5 feet measured from edge to edge of paving or back of curb.
42. All above ground utilities and mechanical equipment shall be screened from the street with 5 gallon shrubs.
43. Prior to the issuance of Certificate of Occupancy, all landscape and irrigation shall be completed in accordance to the approved plan and accepted by the project landscape architect prior to completing Appendix C. Certificate of Completion in the Bay-Friendly Water Efficient Landscape Ordinance. Completed Certificate of Completion package must be submitted in prior to requesting an inspection to the City Landscape Architect.
44. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution. The owner's representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected by, and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Municipal Code.

Public Works – Engineering Division

45. The Project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit the entry of pollutants into storm water runoff to the maximum extent practicable. It is highly recommended that grassy swale be installed to intercept the surface runoff and using an engineered soil fill with a minimum infiltration rate of 5" per hour.
46. The proposed BMPs shall be designed to comply with the hydraulic sizing criteria listed in Provision C.3 of the Alameda County Clean Water Program (ACCWP) NPDES permit (page 22). In addition, the California Stormwater Quality Association's Subsection 5.5 on pages 5-12 has a section titled "BMP Design Criteria for Flow and Volume." These materials are available on the internet at www.cabmphandbooks.com.
47. Prior to the issuance of a grading permit and/or the beginning of any construction activity on-site, the Developer's Engineer shall complete a Development Building Application Form Information comprising of: 1) Impervious Material Form, and 2) Operation and Maintenance Information Form.

48. The owner/developer shall execute a Storm Treatment Measures Maintenance Agreement (as prepared by the City of Hayward and is available in the Engineering and Transportation Division); the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
49. The storm drain shall be a private system. All storm drain inlets shall be labeled with "No Dumping – Drains to Bay" or equivalent, using methods approved by the City.
50. A property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately-owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining stormwater BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association.
51. The water main shall be a public system owned and maintained by the City. All proposed water mains shall be a looped system and located 5' from the face of curb. The water main shall have a 4 foot minimum cover.
52. All sanitary sewer mains shall be 8 inches and a public system. All sanitary sewer mains shall be installed with a straight grade and alignment between manholes.
53. The minimum separation distances for water main and sewer main shall be 10 feet horizontally and one foot vertically measured from the outside edge of each pipe barrel.
54. The minimum separation distances for water main and storm drainage shall be 4 feet horizontally and one foot vertically measured from the outside edge of each pipe barrel.
55. Interior streets shall be private.
56. Dedicate the private streets as Public Utility Easement, Emergency Vehicle Access Easement, Water Main Easement and Sanitary Sewer Easement.
57. The interior streets shall have decorative lighting.

Public Works – Utilities Division

58. The development's water mains shall be public, owned and maintained by the City. The water mains shall be configured in a looped system and located 5 feet from the face of curb.
59. All public water mains shall be constructed in accordance with the City's "Specifications for the Construction of Water Mains (12" Diameter or Less) and Fire Hydrants," latest revision at the time of permit approval.

60. All water mains must be looped. Dead end water mains will not be allowed. They create future water quality problems. They must be connected to other water mains.
61. Where a public water main is in an unpaved easement or under decorative, stamped, or colored concrete (including turf-blocks), the water main shall be constructed of ductile iron. Shut-off valves are required where a water main transitions from a paved area to an unpaved easement.
62. Each dwelling unit shall have its own domestic water meter. Based on the submitted plans, the number of fixture units in each unit range from 27 to 30, which will require a minimum $\frac{3}{4}$ " water meter.
63. Each structure shall have its own fire service, sized per the requirements of the Fire Department. Fire services shall have an above ground Double Check Valve Assembly, per City Standards SD-201 and SD-204.
64. Residential combined domestic and fire services are allowed, per City Standard SD-216. The minimum size for a residential fire service connection is 1".
65. Separate irrigation water meters shall be installed for landscaping purposes.
66. The applicant/developer shall install a Reduced Pressure Backflow Prevention Assembly on each irrigation water meter, per City Standard SD-202.
67. All water meters shall be radio-read type.
68. Water meters shall be located a minimum of two feet from top of driveway flare as per City Standard Details SD-213 thru SD-218.
69. Water mains and services, including the meters, must be located at least 10 feet horizontally from and one-foot vertically above any parallel pipeline conveying untreated sewage (including sanitary sewer laterals), and at least four feet from and on foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade piping materials, with the City's approval.
70. All water services from existing water mains shall be installed by City Water Distribution Personnel at the applicant's/developer's expense. The developer may only construct new services in conjunction with their construction of new water mains.
71. Provide keys/access code/automatic gate opener to utilities for all meters enclosed by a fence/gate as per Hayward Municipal Code 11-2.02.1.
72. Only Water Distribution Personnel shall perform operation of valves on the Hayward Water System.

73. Water service available and subject to standard conditions and fees in effect at time of application and payment.
74. For all meters enclosed by a locked fence/gate, the needed keys/access code/automatic gate opener shall be provided to Water Distribution at the developer's expense, per Hayward Municipal Code 11-2.02.1.
75. The development's sanitary sewer mains and manholes shall be public, owned and maintained by the City.
76. All public sewer mains and appurtenances shall be constructed in accordance to the City's "Specifications for the Construction of Sewer Mains and Appurtenances (12" Diameter or Less)," latest revision at the time of permit approval.
77. Each dwelling unit shall have an individual sanitary sewer lateral. The sanitary sewer laterals shall have cleanouts and be constructed per City Standard Detail SD-312.
78. Sewer service is available and subject to the standard conditions and fees in effect at time of application and payment. The current Sanitary Sewer Connection fee for a single-family residential unit is \$7,255 per unit. Please note that this fee will increase on October 1, 2011 to \$7,700. Sewer Connection fees are due and payable prior to final inspection.

Public Works – Solid Waste Division

79. The total space required for the standard service for one dwelling unit is approximately 3 feet x 9 feet. Trash and recycle containers should be stored out of public view on non-pickup days.
80. Future Residents are required to place their garbage, recycling, and organics carts in the enclosures for weekly collection service by contracted service providers.
81. If side-yard service (any distance greater than five feet from the curb) is planned rather than curbside service, then the resident must pay Waste Management of Alameda County (WMAC) an additional fee per month for that service unless the resident is disabled, or 65 years of age or older, and has no able-bodied adults living in their home. Service from the enclosure is not considered side-yard service.
82. The applicant must ensure that any gates and paved pathways allow a resident to easily move a 96-gallon cart to their back or side yard to allow use of their carts for weekend projects, for example.
83. The applicant must ensure that there is adequate space for collection vehicles to service each enclosure. A 40-foot turning radius is sufficient for collection vehicles, and is in accordance with the requirements of the City's Public Works Department.
84. The applicant must ensure that there is adequate access into, on, and out of the property to allow collection of garbage, recyclables and yard trimmings. For safety reasons, a turnaround that will accommodate vehicle size must be provided for any street that would otherwise require the collection vehicle to back up a distance greater than 150 feet. Site

plans received March 14, 2011 show sufficient turnaround space if the two parking spaces on the left-hand curb of the road are vacant during collection hours.

85. If collection vehicles must enter under a building or gate, the height of the entrance must be 14 feet minimum. If a collection vehicle must travel on a private drive to service the containers, then the applicant must construct the driveway to accommodate a 52,000 pound truck on a weekly basis. The truck width is 8.5 feet.
86. If gates with locks are planned to limit access to the property, then the applicant must provide keys or cards to the service providers: WMAC (510-537-5500) for garbage and yard trimmings and Tri-CED (510-537-9963) for recycling. If keys or cards are not provided, then the applicant must ensure that all secured gates are open from 6:00 a.m. to 6:00 p.m. for collection.
87. For all projects with a valuation of \$75,000 or more (valuation as determined by the City Building Official), the applicant must submit for review by Solid Waste Program staff a *Construction and Demolition Debris Recycling Statement*, a *Construction and Demolition Debris Recycling Summary Report*, and weight tags for all materials disposed during the entire term of the project.
88. The applicant shall provide an estimate of debris that the project will generate (in tons or cubic yards) and to be either recycled, salvaged, or landfilled. Please note that City regulations require 100% of concrete and asphalt and 50% of all other materials be recycled at approved facilities.
89. Please indicate the facility that you *plan* to send the materials to. It is important to send the materials to the approved sites, which are listed in the Builder's Guide or page 2 of the C&D Packet. Please note that mixed construction & demolition should only be sent to the facilities listed in the C&D Packet.

Fire Department

90. Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire access apparatus access road shall extend to within 150 feet of all portion of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. Identify fire apparatus road on the site plan.
91. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches.
92. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet.
93. When buildings or portion of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access, fire apparatus roads shall have unobstructed

width of 26 feet in the immediate vicinity of the building. At least one of the required access routes shall be located within a minimum of 15 feet and a maximum of 30 feet from the building and shall be positioned parallel to one entire side of the building.

94. Fire apparatus access roads shall be designed and maintained to support the imposed load of fire apparatus 75,000 lbs and shall be surfaced so as to provide all-weather driving capability.
95. Fire apparatus access roads 20 to 26 feet wide shall be posted on both sides as a fire lane, 26 feet to 32 feet shall be posted on one side of the road as a fire lane. "No Parking" sign shall meet the City of Hayward Fire Department fire lane requirements.
96. According to the Ordinance Table C105.1, in High Density Residential area, the fire flow requirement is 4,500gpm. A reduction in required fire flow of up to 50 percent, as approved by the fire chief, is allowed when the building is provided with an approved automatic sprinkler system. The resulting fire flow shall not be less than 1,500gpm.
97. The minimum number of hydrants is 5 and average spacing between hydrants is 300 feet. Any portion of the building or facility shall be within 400 feet of a fire hydrant.
98. Fire hydrants shall be placed at least 50 feet from the building to be protected. Where it is not feasible to place them at that distance, they may be in closer proximity in approved locations
99. Identify the location of fire department connection. Fire department connection shall be so located that fire apparatus and hose connected to supply the system will not obstruct access to the building for other fire apparatus. It shall be located on the street side of buildings, fully visible and recognizable from the street or nearest point of fire department vehicle access.
100. Buildings shall be constructed in accordance with the 2007 California Building Code and California Fire Code.
101. Automatic sprinkler systems are required in all residential units in accordance with NFPA 13 or NFPA 13D, depending on fire separation construction between dwelling units in the buildings.
102. Submit for proper building permits for the construction of the buildings to the Building Department. Separate submittals and additional permits are required for the installation of fire protection systems.



**CITY OF HAYWARD
MITIGATED NEGATIVE DECLARATION**

Notice is hereby given that the City of Hayward finds that the proposed project could not have a significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended.

I. PROJECT DESCRIPTION:

Project title: Greenwood Homes; Development Agreement Application No. PL-2010-0235, General Plan Amendment Application No. PL-2010-0236, Zone Change Application No. PL-2010-0237 and Parcel Map Application No. PL-2010-0431.

Description of project: The project involves a General Plan Amendment to modify the General Plan designation of the site from Low Density Residential to Medium Density Residential; a Zone Change from RS (Single Family Residential) to OS (Open Space) and PD (Planned Development); a parcel map to reconfigure the lots into a park expansion lot and a future development lot; and a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

The site is currently a vacant lot that was previously developed with a nursing home. The site is surrounded by residential developments east, west and south of the project site and is bounded by Greenwood Park to the north.

II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:

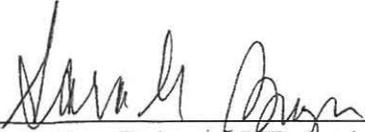
The proposed project, with the mitigation measures identified in the attached initial study checklist, will not have a significant effect on the environment.

FINDINGS SUPPORTING DECLARATION:

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment.
2. The project will not adversely affect any scenic resources. A lighting plan will be required to ensure that light and glare do not affect area views. Also, compliance with the City's Design Guidelines will ensure visual impacts are minimized. Landscape plans will also be required to ensure that structures are appropriately screened.
3. The project will not have an adverse effect on agricultural land since the subject site is not used for such purposes, does not contain prime, unique or Statewide important farmland.

4. The project will not result in significant impacts related to changes in air quality. When the property is developed the City will require the developer to submit a construction Best Management Practice (BMP) program prior to the issuance of any grading or building permit.
5. The project, proposed on properties surrounded by other residential development and within an urbanized area, will not result in significant impacts to biological resources, including protected trees.
6. The project will not result in significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The project will not result in significant impacts to geology and soils. The project is located west of the Hayward fault, which poses potential risk to any development in the City of Hayward. Recommendations of the project geotechnical engineer will be required to be incorporated into project design and implemented throughout construction, to address such items as seismic shaking. Construction will also be required to comply with the California Building Code standards to minimize seismic risk due to ground shaking.
8. The project will not lead to the exposure of people to hazardous materials as any arsenic, lead or pesticides found on the site were considered below California Human Health Screening Levels (CHHSL). In addition, prior to issuance of a grading permit, the installation of park improvements and development of any single family homes, the property must meet all health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.
9. The project will be required to meet all water quality standards as part of the normal development review and construction process, to be addressed in a Stormwater Pollution Prevention Plan and Erosion Control Plan that utilize best management practices. Drainage improvements will be required to accommodate stormwater runoff, so as not to negatively impact the existing downstream drainage system of the Alameda County Flood Control and Water Conservation District.
10. The project proposes amendments to the Hayward zoning designation and General Plan designation for the site, but overall is not a significant increase in allowable density. In exchange, the applicant will be dedicating land to be used for the expansion of Greenwood Park, a community resource.
11. The project will not result in any long-term noise impacts. Construction noise will be mitigated through restriction on construction hours, mufflers, etc., to be approved as part of the future building permits for the homes.
12. The project will not result in significant impacts related to population and housing in that the amount of development proposed is within the range of development contemplated by the Hayward General Plan.
13. The project will not result in a significant impact to public services in that development is at least as intensive as that proposed was analyzed in the Hayward General Plan EIR and found to have less-than-significant impacts.

III. PERSON WHO PREPARED INITIAL STUDY:



Sara Buizer, AICP, Senior Planner
Dated: July 31, 2012

I. COPY OF ENVIRONMENTAL CHECKLIST IS ATTACHED

For additional information, please contact the City of Hayward, Planning Division, 777 B Street, Hayward, CA 94541-5007, telephone (510) 583-4200



**DEPARTMENT OF DEVELOPMENT SERVICES
Planning Division**

INITIAL STUDY CHECKLIST

Project Title: Greenwood Homes

Lead agency name/address: City of Hayward / 777 B Street

Contact person: Sara Buizer, AICP, Senior Planner

Project location: Northeast corner of Eden Avenue and Denton Avenue, adjacent to Greenwood Park

Project sponsors

Name and Address: Chang Income Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership c/o Westlake Development Partners; 520 South El Camino Real, 9th Floor, San Mateo, CA 94402

Existing General Plan Designation: Parks and Recreation and Low Density Residential

Existing Zoning: RS (Single Family Residential)

Project description: The project involves a General Plan Amendment to modify the General Plan designation of the site from Low Density Residential to Medium Density Residential; a Zone Change from RS (Single Family Residential) to OS (Open Space) and PD (Planned Development); a parcel map to reconfigure the lots into a park expansion lot and a future development lot; and a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

Surrounding land uses

and setting: The site is currently a vacant lot that was previously developed with a nursing home. The site is surrounded by residential developments east, west and south of the project site and is bounded by Greenwood Park to the north.

Other public agencies whose approval is required: None

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

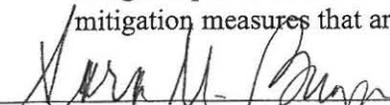
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

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

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

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


 Sara Buizer, AICP, Senior Planner

7/31/12
 Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? Comment <i>There are no designated scenic vistas in the vicinity of the project; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? Comment <i>The project is not located within a state scenic highway; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings? Comment <i>The existing site is currently undeveloped, but had previously been developed with a nursing home. The proposed single family homes and the land for park expansion will improve the visual character of the area; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? Comment <i>The new residential units will add some additional light to this area, but the amount is considered less than significant given the surrounding developed area; no mitigation is required.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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II. AGRICULTURE AND FOREST

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

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|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? Comment <i>The project does not involve any Prime Farmland, Unique Farmland or Farmland of Statewide Importance; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? Comment <i>The project site is not zoned for agricultural uses nor under a Williamson Act contract; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? Comment <i>The project does not involve the rezoning of forest land or timberland; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>d) Result in the loss of forest land or conversion of forest land to non-forest use? Comment <i>The project does not involve the loss of forest land or involve conversion of forest land; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? Comment <i>The project does not involve changes to the environment that could result in conversion of Farmland or forest land; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan? Comment <i>The project is a residential in-fill project and will not conflict with the goals of the air quality plan; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? Comment <i>The Bay Area Air Quality Management District (BAAQMD) has established screening criteria as part of their CEQA guidance to assist in determining if a proposed project could result in potentially significant air quality impacts. Based on the District's criteria, the anticipated future project screens below what would require additional evaluation; thus the proposed project will not violate any air quality standard and the impact is less than significant.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? Comment <i>The anticipated future project meets the screening criteria in Table 3-1 of the Air District's CEQA Guidelines; thus, it can be determined that the project would result in a less-than-significant cumulative impact to air quality from criteria air pollutants and precursor emissions.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations? Comment <i>The project is an in-fill development located in an already developed area that will not involve exposing sensitive receptors to substantial pollutant concentrations; thus the impact is less than significant.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Create objectionable odors affecting a substantial number of people? <u>Comment</u> <i>The project is an in-fill residential development that will not create any objectionable odors; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? <u>Comment</u> <i>The project site is located in an area that is largely developed and does not contain plant or wildlife special-status species; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? <u>Comment</u> <i>The project area is largely developed and does not contain any riparian habitat or sensitive natural communities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? <u>Comment</u> <i>The project site, located in an urban setting, contains no wetlands; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? <u>Comment</u> <i>The project site, located in an urban setting, and will not interfere with the movement of any migratory fish or wildlife species; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? Comment <i>The project site does not contain any significant stands of trees; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? Comment <i>The project site is not located in an area covered by an adopted Habitat Conservation Plan or Natural Community Conservation Plan; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5? Comment: <i>There are no known historical resources in the vicinity of the project; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? Comment <i>There are no known archaeological resources in the vicinity; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? Comment <i>There are no known paleontological resources or unique geological features on or near the site; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Disturb any human remains, including those interred outside of formal cemeteries? Comment <i>There are no known human remains nor cemeteries nearby the project site; however, standard procedures for grading operations would be followed during the future development, which require that if any such remains or resources are discovered, grading operations are halted and the resources/remains are evaluated by a qualified professional and, if necessary, mitigation plans are formulated and implemented. These standard measures would be conditions of approval should the project be approved.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. **Comment:** *The project site is not within the State's Earthquake Fault Zone. Therefore, impacts related to fault rupture are not anticipated.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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ii) Strong seismic ground shaking? **Comment:** *An earthquake of moderate to high magnitude could cause considerable ground shaking at the site; however, all future structures will be designed using sound engineering judgment and adhere to the latest California Building Code (CBC) requirements, thus the impact is considered less than significant.*

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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iii) Seismic-related ground failure, including liquefaction? **Comment:** *The site is located within an area that may be susceptible to liquefaction. A design level geotechnical evaluation shall be conducted and submitted for review and approval prior to issuance of building permits for the future homes and if liquefaction is determined to be probable, measures as recommended by the project geotechnical consultant shall be implemented. Such measures, such as special foundation construction, will reduce the significance of liquefaction-related impacts to a level of insignificance.*

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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iv) Landslides? **Comment:** *Due to the relatively flat site topography, landslides are not likely; thus no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Result in substantial soil erosion or the loss of topsoil? **Comment:** *Although the project would result in an increase in impervious surface, the project site is relatively flat and erosion control measures that are typically required for such projects, including but not limited to graveling construction entrances and protecting drain inlets will address such impacts. Therefore, the potential for substantial erosion or loss of topsoil is considered insignificant.*

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? Comment: <i>The site is relatively flat and such impacts are not anticipated.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? Comment: <i>There are expansive clay soils in the area which may have impacts on the construction of future homes on the project site. Prior to development of the single family homes, the applicant will be required to have a site specific geotechnical investigation performed which will identify mitigation measures should expansive soils be found on the site. Implementation of the recommendations into the project design will reduce impacts to a less than significant level.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? Comment: <i>The project will be connected to an existing sewer system with sufficient capacity and does not involve septic tanks or other alternative wastewater; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VII. GREENHOUSE GAS EMISSIONS --

Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? Comment: <i>The Bay Area Air Quality Management District (BAAQMD) has established screening criteria as part of their CEQA guidance to assist in determining if a proposed project could generate greenhouse gas emissions that would have a significant impact. Based on the District's criteria, the anticipated future project screens below what would require additional evaluation; thus the proposed project will not exceed established levels and the impact is less than significant.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? Comment <i>As discussed in VIIa above, the project screens below the threshold for operation greenhouse gases. In addition, the project will be in compliance with the City of Hayward Green Building Ordinance; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? Comment <i>The project is an in-fill residential project that does not involve the transport or use of hazardous materials; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? Comment <i>The project site has been evaluated with a Phase I Environmental Analysis by Protech and a summary report by the Source Group Inc., which has determined that arsenic and lead was detected in six each of the six samples collected, but at concentrations below regional background levels. Pesticides were detected in two of the six samples located on the development portion of the property, but at concentrations below residential California Human Health Screening Levels (CHHSL). In order to off-set any potential impacts, the applicant must coordinate with the Hayward Fire Department, the California Regional Water Quality Control Board and the California Department of Toxic Substances Control to be sure the property meets all health and environmental standards for both the park expansion property and the future development site.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Mitigation Measure 1: *Prior to issuance of a grading permit, the installation of park improvements and the development of the single family homes site, the applicant shall provide documentation that the property is in a condition that meets health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? Comment: <i>The project is an in-fill residential project that does not involve the use of hazardous materials; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? Comment: <i>The project site is not on a list of hazardous materials sites; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? Comment: <i>Although the site is located within two miles of the Hayward Executive Airport, development is proposed that is consistent with the Hayward General Plan and the Airport Land Use Compatibility Plan, consisting of two-story residential units. Therefore, impacts related to the airport as a result of the project are considered to be less than significant.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? Comment: <i>The site is not located within the vicinity of a private air strip and therefore, no such impacts would occur as a result of the project.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? Comment: <i>The project would not interfere with an adopted emergency response plan or emergency evacuation plan. In fact, the project would result in extension of the City's public water system to the area, thereby improving fire-fighting capabilities in the area.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? Comment: <i>The project site is located within a suburban setting, away from areas with wildland fire potential. Therefore, no such impacts related to wildland fires are anticipated.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IX. HYDROLOGY AND WATER QUALITY

-- Would the project:

a) Violate any water quality standards or waste discharge requirements? Comment: <i>The project will comply with all water quality and wastewater discharge requirements of the city; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? Comment: <i>The project will be connected to the existing water supply and will not involve the use of water wells and will not deplete groundwater supplies or interfere with groundwater recharge; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? Comment: <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and managed such that post-development run-off rates do not exceed pre-development run-off rates; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? Comment <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and managed such that post-development run-off rates do not exceed pre-development run-off rates; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? Comment <i>The project site is an infill site. All drainage from the site is required to be treated before it enters the storm drain system and there is sufficient capacity to handle any drainage from the property; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality? Comment <i>The project site is an infill. All drainage from the site is required to be treated before it enters the storm drain system; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? Comment <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? Comment <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? Comment <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow? Comment <i>The project site is not located within a 100-year flood hazard area; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
X. LAND USE AND PLANNING -- Would the project:				
a) Physically divide an established community? <u>Comment:</u> <i>The development is proposed in a developed suburban setting and would not divide an established community.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? <u>Comment:</u> <i>The project does involve a modification of the General Plan designation to allow for a higher density; however, the increase is relatively minimal and the project involves land dedication to expand Greenwood Park which is consistent with the adopted Mt. Eden neighborhood plan; thus the impact is considered less than significant.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? <u>Comment:</u> <i>The project site is not covered by any habitat conservation plan or natural community conservation plan; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? <u>Comment:</u> <i>There are no known mineral resources on the project site; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? <u>Comment:</u> <i>There are no known mineral resources on the project site; thus no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XII. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? **Comment** *The project site is located within an already developed neighborhood and will not generate any noise levels in excess of standards established in the General Plan; thus, no impact.*

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? **Comment** *The project site is not located in an area where people will be exposed to groundborne vibrations nor will the project generate any groundborne vibrations; thus no impact.*

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? **Comment** *The project is a residential development and will not involve an increase in the ambient noise levels in the area; thus, no impact.*

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? **Comment** *Existing residential development will experience a slight increase in ambient noise levels during the construction of the proposed project; construction is limited to the allowable hours per the City's Noise Ordinance; thus the impact is considered less-than-significant and no mitigation is required.*

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? **Comment:** *As indicated in the Mt. Eden Annexation Final EIR, based on Figure 7.3 in the General Plan EIR, the Project area is not impacted by significant noise levels from Oakland International Airport or Hayward Executive Airport. Concerns with nuisance issues associated with touch and go aircraft flights will be addressed with project conditions of approval, which will require that aviation easements be recorded that would ensure disclosure and notification to future property owners of touch and go aircraft operations in the vicinity.*

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? **Comment** *The project is not located within the vicinity of a private air strip; thus, no impact*

XIII. POPULATION AND HOUSING --
Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? **Comment** *The future project involves the construction of thirty-six new residential units and while the application involves a modification to the General Plan designation to increase the density, the increase is minimal. In exchange, the project proposes land dedication for the enlargement of Greenwood Park; thus the impact is considered less than significant.*

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? **Comment** *The project involves the development of additional housing on a vacant lot and no housing will be displaced as a result of this project; thus, no impact.*

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? **Comment** *The project involves the development of additional housing on a vacant lot and no housing will be displaced as a result of this project; thus, no impact.*

XIV. PUBLIC SERVICES --

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection? **Comment:** *No such facilities are required and therefore, no such impacts are expected to occur.*

Police protection? **Comment:** *No such facilities are required and therefore, no such impacts are expected to occur.*

Schools? **Comment:** *The project site is within the Eden Gardens Elementary School, Ochoa Middle School and Mt. Eden High School attendance areas of the Hayward Unified School District. The developer will be required to pay school impact mitigation fees, which, per State law, is considered full mitigation.*

Parks? **Comment:** *The applicant proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park as envisioned in the Mt. Eden Neighborhood Plan; thus no impact.*

Other public facilities? **Comment** *Approval of the project may impact long-term maintenance of roads, streetlights and other public facilities; however, the future project density increase is minimal as compared with the existing General Plan designation; thus, the impact is considered less than significant.*

XV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? **Comment:** *The project proposes thirty-six new residential units and the proposal does include community open space within the developed area; however, the project also proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park; which will provide additional community parkland; thus no impact.*

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? **Comment:** *The project proposes thirty-six new residential units and the proposal does include community open space within the developed area; however, the project also proposes to dedicate approximately one acre to allow for the expansion of Greenwood Park; which will provide additional community parkland; thus no impact.*

XVI. TRANSPORTATION/TRAFFIC --

Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <p>a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? Comment <i>The project will not conflict with any plan regarding effective performance of the circulation system. The project is an in-fill residential project located near services; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? Comment: <i>The project involves the future construction of thirty-six single family homes and would not generate more than 100 peak hour trips, and therefore, would not be expected to generate such impacts.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? Comment <i>The project involves no change to air traffic patterns; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? Comment <i>The project has been designed to meet all City requirements, including site distance and will not increase any hazards; thus no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>e) Result in inadequate emergency access? Comment <i>The project is on an in-fill site completely accessible and will not result in inadequate emergency access; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? Comment <i>The project does not involve any conflicts or changes to policies, plans or programs related to public transit, bicycle or pedestrian facilities; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

XVII. UTILITIES AND SERVICE SYSTEMS

-- Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| <p>a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? Comment <i>The project will not exceed wastewater treatment requirements; thus no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <p>g) Comply with federal, state, and local statutes and regulations related to solid waste? Comment <i>There is sufficient capacity to accommodate the proposed project; thus, no impact.</i></p> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

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

Comment: *The project will not have any impacts on wildlife or fish habitat nor eliminate a plant or animal community; thus, no impact.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Comment: *The future project involves the construction of thirty-six new residential units and while the application involves a modification to the General Plan designation to increase the density, the increase is minimal. In exchange, the project proposes land dedication for the enlargement of Greenwood Park; thus the impact is considered less than significant.*

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Comment: *Based on the checklist above, it has been determined that the project has the potential to have an impact on Hazardous Materials due to the presence of arsenic, lead and pesticides. Mitigation Measures have been identified to reduce such impacts to levels of insignificance.*

Greenwood Homes – Westlake Development Mitigation Monitoring and Reporting Program

**General Plan Amendment Application No. PL-2010-0236;
Zone Change Application No. PL-2010-0237 PD;
Parcel Map Application No. PL2010-0431 (PM 10014);
Development Agreement Application No. PL-2010-0235
Westlake Development Partners (Applicant)
Chang Income Property Partnership L.P., Barrett Community Hospital Series (R 14), a
Delaware limited partnership (Owner)**

July 31, 2012

Significant Environmental Impact	Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Timing
<p><u>Impact VIII-b (Hazards and Hazardous Materials):</u> <i>The project site has been evaluated with a Phase I Environmental Analysis by Protech and a summary report by the Source Group Inc., which has determined that arsenic and lead was detected in six each of the six samples collected, but at concentrations below regional background levels. Pesticides were detected in two of the six samples located on the development portion of the property, but at concentrations below residential California Human Health Screening Levels (CHHSL). In order to off-set any potential impacts, the applicant must coordinate with the California Regional Water Quality Control Board and the California Department of Toxic Substances Control to be sure the property meets all health and environmental standards for both the park expansion property and the future development site.</i></p>	<p><u>Mitigation Measure 1:</u> <i>Prior to issuance of a Grading permit, the installation of park improvements and the development of the single family homes site, the applicant shall provide documentation that the property is in a condition that meets health and environmental standards as determined by the State of California Department of Toxic Substances Control and the California Regional Water Quality Control Board.</i></p>	<p>Project developers, including project contractor.</p>	<p>City of Hayward Planning Division, Hazardous Materials Section of the Hayward Fire Department and DTSC and RWQCB.</p>	<p>Prior to issuance of a Grading Permit, installation of park improvements, and development of the single-family homes</p>

Development Agreement

By and Between

Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14),

a Delaware limited partnership

and the City of Hayward.

	<u>Page</u>
1. SECTIONS, DEFINITIONS, AND EXHIBITS.....	5
2. MUTUAL BENEFITS AND ASSURANCES.....	10
3. DEVELOPER’S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.....	11
4. VESTED RIGHT TO DEVELOP AND OTHER CITY OBLIGATIONS.....	14
5. PERIODIC REVIEWS.....	19
6. TRANSFERS AND ASSIGNMENTS.....	20
7. TERM OF AGREEMENT.....	22
8. AMENDMENT.....	23
9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS.....	24
10. DEFAULT AND REMEDIES.....	25
11. THIRD PARTY LITIGATION.....	26
12. EFFECT OF AGREEMENT ON TITLE.....	28
13. HOLD HARMLESS.....	29
14. MISCELLANEOUS PROVISIONS.....	30

GREENWOOD PARK HOMES PROJECT

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into this _____ day of _____, 2012 (the “Effective Date”) by and between Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership (“DEVELOPER”), and the City of Hayward, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California (“CITY”).

RECITALS

This Agreement is entered into based upon the following facts:

- A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.
- B. Government Code Sections 65864-65869.5 authorize CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: strengthen the planning process; encourage and provide for the development of public facilities in order to support the development of new housing; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer; encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and, to provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval.
- C. DEVELOPER is the holder of a legal or equitable interest in the “Property” as described below. DEVELOPER desires and intends to dedicate to the CITY a

portion of the Property for extension of the existing Greenwood Park and DEVELOPER intends to develop the remainder of the Property as a planned development, medium density residential project comprised of thirty-six (36) single family detached homes with associated infrastructure and public facilities. Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of infrastructure and facilities, both on-site and off-site, including, without limitation, street, utility and drainage infrastructure and facilities. The development of the thirty-six (36) single family detached homes along with all associated infrastructure, site improvements, and public facilities, including the dedication of the Park Expansion Property, is referred to as the "Project." The Project is proposed to serve existing and/or anticipated residents of the CITY as anticipated by the General Plan, as amended; the Existing Development Approvals (as defined in recital paragraph F and listed in Exhibit B hereto); and this Agreement.

D. CITY has determined that the Project implements the goals and policies of CITY's General Plan (as referenced in Government Code Sections 65450 et seq.) applicable to the Project, as amended, and implements land uses and development standards appropriate to the Property so as to maintain the overall quality of life and of the environment within CITY.

E. Pursuant to Government Code Section 65865, CITY has adopted the CITY Development Agreement Ordinance, establishing procedures and requirements for the consideration of proposed development agreements.

F. DEVELOPER has applied for, and CITY has approved, certain development entitlements listed on Exhibit B, including General Plan Amendment No. _____ (amending the designation for the Project Site from Low Density Residential to Medium Density Residential); approval of Planned Development (PD) District zoning pursuant to Zone Change No. _____ with an associated Preliminary Development Plan (hereafter "Existing Development

Approvals”); and Greenwood Park Parcel Map (adjusting lot lines to allow for dedication of the Park Expansion Property to CITY pursuant to this Agreement). In addition to the Existing Development Approvals, the Project will require several additional discretionary and ministerial approvals from the CITY, including but not limited to those listed in Exhibit C to this Agreement (the “Future Development Approvals”).

G. As part of the process of approving the Existing Development Approvals and this Agreement, the CITY has analyzed the environmental effects of this Project, adopted a Mitigated Negative Declaration on _____, 2012, and made the necessary findings required by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (“CEQA”) and adopted a mitigation monitoring and reporting program (“MMRP”) pursuant to Resolution No. _____.

H. The CITY’s staff has reviewed this Agreement, has deemed it to be complete, and has prepared a report to the Planning Commission pursuant to CITY Municipal Code Section 10-9.05. The Hayward Planning Commission held a noticed public hearing on _____, 2012; made the findings required by the CITY’s Municipal Code Section 10-9.08; and recommended that the Hayward City Council authorize execution of a Development Agreement. The Hayward City Council held a noticed public hearing on _____, 2012 and subsequently found and determined that this Agreement: (i) is consistent with CITY’s General Plan, as amended; (ii) is consistent with the Mt. Eden Neighborhood Plan; (iii) is in the best interests of the health, safety and general welfare of CITY, its residents and the public; (iv) is entered into pursuant to and constitutes a present exercise of the police power by CITY; and (v) is entered into pursuant to and complies with the requirements of both Section 65867 of the Development Agreement Statute and the CITY’s Development Agreement Ordinance.

I. The Hayward City Council introduced Ordinance No. _____ approving this Agreement and its execution in accordance with the provisions of the Development Agreement Statute and the Development Agreement Ordinance on _____, 2012, and adopted it on _____, 2012.

J. Based on the foregoing, DEVELOPER and CITY desire to enter into this Agreement on the terms set forth below.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. SECTIONS, DEFINITIONS, AND EXHIBITS.

1.1 Sections and Subsections. Any reference in this Agreement to a “Section” is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a “subsection” is a reference to the indicated subsection of a Section.

1.2 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.2.1 “Building and Improvement Standards” means City Regulations which are of general application and which establish building code standards for structures and associated improvements and shall include, without limitation, CITY’s building, plumbing, mechanical, fire, green building (for private development), recycling and water conservation regulations.

1.2.2 “CITY” means the City of Hayward, a charter city located within the County of Alameda, State of California.

1.2.3 “City Regulations” means the laws, statutes, ordinances, codes, resolutions, rules, regulations, orders, or approvals adopted or to be adopted by CITY which govern permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications otherwise applicable to the Property, including, but not limited to, green building regulations; zoning ordinances and zoning reclassifications, development moratoria, ordinances implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, establishment of a Communities Facilities District (CFD), and any other similar or related codes and Building and Improvement Standards. City Regulations do not include, however, regulations relating to the conduct of business, professions and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

1.2.4 “DEVELOPER” means Chang Income Property Partnership L.P., Barrett Community Hospital Series (R14), a Delaware limited partnership.

1.2.5 “DEVELOPER’s Obligations” means the obligations of DEVELOPER to pay sums, convey property, build and construct improvements, dedicate lands and improvements and undertake and perform the other actions as described in Section 3.

1.2.6 “Development” means the improvement of the Property for purposes of building the residential structures, improvements and facilities comprising the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings, the dedication of the Park Expansion Property to become part of Greenwood Park; the installation of landscaping; and the payment of

fees, including, but not limited to, development impact fees and in lieu fees satisfying DEVELOPER's obligations (all of which fees are collectively referred to herein as "Development Fees"), including any below market rate housing obligation; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof, except as otherwise specifically provided herein.

1.2.7 "Development Agreement Ordinance" means Ordinance 84-015 C.S. (CITY Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984, establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.2.8 "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.9 "Effective Date" means _____, 2012.

1.2.10 "Existing City Regulations" means those certain City Regulations in effect on the Effective Date, including but not limited to the Existing Development Approvals.

1.2.11 "Existing Development Approvals" means those certain approvals in effect on the Effective Date necessary for Development of the Project, specifically the General Plan Amendment No. _____ (redesignating the Property from Low Density Residential to Medium Density Residential); Zone Change No. _____ (reclassifying the Property as a Planned Development District) along with the related approval of the associated Preliminary Development Plan; and Greenwood Park Parcel Map (adjusting lot lines to enable dedication of land to CITY pursuant to this Agreement). The Existing Development Approvals are attached hereto as Exhibit B.

1.2.12 "Future Development Approvals" include site specific plans, maps, permits and other entitlements to use of every kind and nature required to be approved or granted by CITY for the Development of the Property, excluding the Existing Development Approvals, and including but not limited to: any required amendments to specific plan(s), precise development plans, vesting tentative and final subdivision tract maps and related agreements, development and building permits, road improvements, water system upgrades, recreational amenities, development allotments, and grading, building and other similar permits. Future Development Approvals, include, but are not limited to those listed in Exhibit C to this Agreement.

1.2.13 "General Plan" means the Hayward General Plan adopted by the CITY, as amended by Resolution No. _____.

1.2.14 "Greenwood Park Parcel Map" means the parcel map required for creation of the Park Expansion Property as a legal parcel to be dedicated by DEVELOPER to CITY pursuant to the Terms of this Agreement.

1.2.15 "Park Expansion Property" means those portions of the Property depicted on Exhibit E which are proposed to be conveyed to CITY for CITY's expansion and improvement of Greenwood Park as provided in this Agreement. The Park Expansion Property consists of a 1.003 acre portion of the Property, as shown on Exhibit E.

1.2.16 "Project" means development of thirty-six (36) single family detached homes on approximately 2.52 acres of the Property along with all associated on-site and off-site improvements, infrastructure, and facilities, including but not limited to internal roadways; water, sewer, and drainage systems; and open space areas, consistent with the Development Approvals.

1.2.17 “Property” means the 3.52 acres within the CITY in which DEVELOPER has a legal or equitable interest on the Effective Date, as more particularly described in the legal description attached as Exhibit A, which, upon dedication of the Park Expansion Property, will be comprised of the remaining 2.52 acres of land.

1.2.18 “Public Facilities” means those certain lands and facilities to be improved, constructed and dedicated or conveyed to the public in conjunction with or prior to Development of the Project.

1.2.19 “Reservations of Authority” means that the Agreement shall not prevent the CITY, in subsequent actions applicable to the Project, from applying new rules, regulations, and policies applicable to the Property as permitted in Section 4 and allowed by applicable law, nor prevent the CITY from denying or conditionally approving any subsequent application that is consistent with the Project on the basis of Existing Land Use Regulations.

1.3 **Exhibits**. The reference to a specified “Exhibit” in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

<u>Exhibit</u>	<u>Description</u>
A	Legal Description of Property
B	List of Existing Development Approvals
C	List of Future Development Approvals
D	Development Impact Fees and Assessments to Be Applied to Project
E	Park Expansion Property

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of Development of the Project on the Property in a manner that will: (a) ensure certain anticipated benefits to both CITY (including, without limitation, the existing and future residents of CITY) and DEVELOPER as described in the RECITALS; (b) result in conveyance to CITY of property required for expansion of Greenwood Park; and (c) provide to DEVELOPER assurances regarding the City Regulations that will be applicable to the Development of the Project on the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of DEVELOPER described above and the substantial and early investment in major on-site and off-site infrastructure needed for the Project.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of CITY and DEVELOPER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, the effective and efficient development of infrastructure and facilities supporting development and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Statute.

2.3 Bargained For; Reliance by Parties. The assurances provided to DEVELOPER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Statute and are bargained for and in consideration of the undertakings of DEVELOPER set forth in Section 3 of this Agreement.

3. **DEVELOPER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.**

3.1 In General. DEVELOPER shall be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the General Plan, the Existing Development Approvals, and the conditions of approval attached thereto, and this Agreement in connection with the Development of the Property; provided, however, notwithstanding any contrary provision of this Agreement, DEVELOPER shall have no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project; provided, further, however, whether or not DEVELOPER proceeds with development of the Project, DEVELOPER shall be required to convey to CITY its interest in the Park Expansion Property as provided in this Agreement.

3.2 Dedication of Land for Greenwood Park Expansion. DEVELOPER hereby agrees to dedicate to CITY a fee interest in the Park Expansion Property, free of all liens and encumbrances other than those shown as exceptions to title in Schedule B of that certain Preliminary Report for such property, as issued by First American Title Insurance Company, dated June 27, 2012, Order No. NCS-5052556-SM, such dedication to occur within ninety (90) days following the Effective Date of this Agreement. It is understood and agreed that DEVELOPER shall be required, as a condition of the CITY's acceptance of dedication of the Park Expansion Property, to deliver such property in a condition that meets health and environmental standards for park use as determined by the State of California Department of Toxic Substances Control and California Regional Water Quality Control Board (herein "***Environmental Standards***"). DEVELOPER has previously provided to CITY the following written reports on the environmental condition of the Property (collectively the "***Environmental***");

Reports”): (i) Phase I Environmental Site Assessment, prepared by ProTech Consulting and Engineering (“**ProTech**”), dated May, 2007; (ii) reports of Soil Sampling and Analysis, Interpretation and Documentation, prepared by ProTech, dated May, 2007, and May 16, 2012, respectively; and (iii) Summary Report, Shallow Soil Characterization, prepared by The Source Group, Inc., dated August 9, 2012, which Environmental Reports confirm that the Park Expansion Property currently satisfies Environmental Standards. Should DEVELOPER be unable to dedicate the Park Expansion Property in a condition that satisfies Environmental Standards, CITY reserves the right to refuse dedication of the Park Expansion Property and to terminate this Agreement. In consideration for DEVELOPER’s dedication of the Park Expansion Property, CITY shall, at its election, as provided in Section 4.9 hereof, either provide to DEVELOPER a credit toward Development Fees otherwise payable by DEVELOPER in connection with the Project or pay for the Park Expansion Property in cash or cash equivalent.

3.3 Dedication, Construction, and Conveyance of Public Facilities. Any Public Facilities to be dedicated (in the case of lands) and/or constructed by DEVELOPER and dedicated or conveyed to CITY shall be completed in accordance with the Existing City Regulations and Existing Development Approvals and shall be dedicated and conveyed to CITY in fee, free of all liens and encumbrances other than as specified in Section 3.2. In order to effectuate the purposes of this Agreement, DEVELOPER and CITY may enter into one or more agreements (hereinafter jointly “Implementation Agreement(s)”) prior to the filing and recording of a final subdivision map on the Property. Such Implementation Agreement(s) may include, but not be limited to a Subdivision Improvement Agreement. Implementation Agreement(s)

provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to CITY as provided for in this Agreement, transfer of the Park Expansion Property and/or construction of privately owned infrastructure and common facilities necessary for Development of the Project.

3.4 Relationship of Parties. In performing its obligations, DEVELOPER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of CITY nor shall anything in this Agreement be construed as creating between DEVELOPER and CITY a partnership or joint venture for any purpose.

3.5 Public Works. If DEVELOPER is required by this Agreement, Existing Development Approvals, or Future Development Approvals to finance and either design or construct any public works facilities which will be dedicated or conveyed to CITY or any other public agency upon completion, and if required by applicable laws to do so, DEVELOPER shall perform such design or construction work in accordance with Existing City Regulations.

3.6 Obligations Regarding Public Facilities. In any instance where DEVELOPER is required to construct any Public Facilities on lands within City not owned by DEVELOPER, DEVELOPER agrees to use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which CITY reasonably determines to be necessary for such Public Facilities. In the event that DEVELOPER is unable to acquire any such property right or interest, CITY shall utilize its power of eminent domain, as appropriate and to the extent consistent with law, to acquire any real property rights or interests necessary for the construction of such Public Facilities. DEVELOPER shall be obligated to pay for the costs of acquiring such

rights or interests, including but not limited to relocation costs, costs of suit and attorney's fees.

3.7 Benefit Assessment District/Reimbursement Agreement. Upon DEVELOPER's request and payment of all of CITY's processing charges (which may be offset by the Dedication Credit as provided in Section 4.9), the CITY shall initiate proceedings to establish a benefit assessment district or a reimbursement agreement to the extent that the off-site system improvements constructed or financed by DEVELOPER benefit other properties which are hereafter developed, and DEVELOPER has not been reimbursed for such costs.

3.8 Community Facilities District. DEVELOPER shall pay the cost of providing public safety services to the Property through formation of, or annexation to, a Community Facilities District, should the Property generate the need for additional public safety services. DEVELOPER shall post an initial deposit of \$20,000 with the City prior to or concurrently with the submittal of the final subdivision map and improvement plans, to offset the CITY's cost of analyzing the Property's need for additional public safety services. If the analysis determines that the Property creates a need for additional public safety services warranting the formation of, or annexation to, a Community Facilities District, DEVELOPER shall pay all costs of formation of, or annexation to, the district, which costs may be paid from the DEVELOPER's deposit to the extent that funds remain after payment of the CITY's costs of analysis as described above.

4. VESTED RIGHT TO DEVELOP AND OTHER CITY OBLIGATIONS.

4.1 Vested Right to Develop the Project. DEVELOPER shall have the vested right for the Term of this Agreement to proceed with Development of the Project pursuant to the Existing City Regulations, including but not limited to the Existing

Development Approvals. Notwithstanding any future action of CITY, whether by ordinance, resolution, initiative or otherwise, the City Regulations applicable to and governing the Development of the Property during the term hereof shall be the Existing City Regulations, subject only to CITY's Reservations of Authority as set forth in Section 4.2, the limitations set forth in Section 4.3, and the terms of this Agreement. The subsections below further define, without limitation, those features and characteristics of the Project into which this Agreement vests DEVELOPER's rights to develop.

(a) Permitted Uses. The uses permitted on the Property shall be those allowed under the Existing Development Approvals, including but not limited to residential, open space, public and private recreation facilities, as more specifically described in and subject to the limitations of the General Plan, as amended by Resolution No. ____; Zone Change No. ____ and the accompanying approved Preliminary Development Plan, per Ordinance No. _____.

(b) Number of Dwelling Units, Density, and Intensity. DEVELOPER may develop thirty-six (36) single family detached homes on the Property, consistent with the Existing City Regulations and any variances therefrom approved by CITY as described in the Existing Development Approvals. At DEVELOPER's option, DEVELOPER may develop fewer units than the number identified in this subsection.

(c) Maximum Height and Size of Buildings. Maximum height and size of Project buildings are as permitted in accordance with the Existing City Regulations, including the Existing Development Approvals.

(d) Moratoria. Phasing of Development. No moratorium, ordinance, resolution, or other land use regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the Term of this Agreement whether

affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by CITY. In the event of any such action, whether initiated by ordinance, resolution, initiative, or some other process, DEVELOPER shall continue to be entitled to apply for and receive Future Development Approvals and to proceed with Development of the Project in accordance with the Existing City Regulations, subject only to CITY's Reservation of Authority set forth in Section 4.2, limitations described in Section 4.3, and the terms of this Agreement.

(e) Development Fees and Assessments. Subject to the provisions of Section 3.3 hereof, CITY may impose upon DEVELOPER in connection with the Project only those Development Fees and assessments provided for by Existing City Regulations, as identified in Exhibit D, not to exceed the amounts applicable as of the Effective Date of this Agreement, as reflected in Exhibit D, subject to the credit to be provided DEVELOPER as described in Section 4.9 hereof, except as provided for in Section 3.8, herein.

4.2 Reservation of Authority. Notwithstanding anything to the contrary set forth in Section 4.1 above, in addition to the Existing City Regulations, only the following new City Regulations adopted or amended by CITY after the Effective Date may be applied to the Project. The contents of this Section 4.2 are referred to as the CITY's "Reservations of Authority".

(a) Public Health and Safety. City Regulations adopted after the Effective Date of this Agreement that are necessary in order to prevent a condition dangerous to the health or safety of the residents of the Project or adjoining properties may be applied to the Project.

(b) Building and Improvement Standards. Current and future Building and Improvement Standards may be applied to the Project, except that any future amendment thereto which reduces the amount of land within the Property which can be utilized for structures and improvements or increases the amount of open space within the Project beyond what is shown in the Existing Development Approvals, including the Preliminary Development Plan, shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this subsection 4.2(b) and shall not apply to the Project unless it complies with another exception under this Section 4.2.

(c) Processing Fees and Charges. Legally allowed processing fees and charges of every kind and nature imposed or required by CITY to cover the actual costs to CITY of (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of DEVELOPER hereunder; may be imposed on the Project, even if adopted or increased after the Effective Date, provided such fees are applied consistently to all comparable applications or projects Citywide.

(d) Voter-Approved Taxes. Voter-approved taxes may be imposed on the Project, in accordance with the provisions of any such tax.

4.3 State and Federal Laws; Regulation by Other Public Agencies.

4.3.1 State and Federal Laws. Existing and future state and federal laws and regulations may be applied to the Project. In the event that state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to

comply with such state and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that the Agreement, as modified, is not inconsistent with such laws and regulations and performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement.

4.3.2 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the Development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

4.4 CITY Cooperation and Grant of Future Development Approvals. CITY will cooperate with DEVELOPER and take such additional actions as may be reasonably requested by DEVELOPER to implement this Agreement, including but not limited to consideration and approval of all Future Development Approvals required for Development of the Project and formation of a special benefit assessment district(s) for the financing of the construction, improvement, or acquisition of any component of the Project. CITY shall perform any and all of its obligations under this Agreement in a timely manner and CITY's failure to carry out any of its obligation under this Agreement in a timely manner shall relieve DEVELOPER from compliance with any reasonably related requirement or obligation under this Agreement.

4.5 Sewer and Water Capacity. DEVELOPER shall design, construct and fund, or, alternatively, if permitted by the CITY, contribute 100% of the cost of constructing the water system improvements to serve the Project. For any off-site water system improvements that the DEVELOPER is obligated to design and fund and CITY is obligated to construct, CITY shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy. Any failure by CITY to construct or complete any

such Public Facility necessary for operation of the Project, or any phase thereof that makes it impossible for DEVELOPER to comply with the Existing Development Approvals and Future Development Approvals, to comply with this Agreement, or to develop the Project, shall not constitute a breach or default by DEVELOPER under this Agreement. CITY acknowledges that, provided those water and sewer improvements to be constructed by DEVELOPER are developed, there is adequate water and sewer capacity to serve the Project.

4.6 Acceptance of Dedications. CITY shall accept in a timely manner all dedications and conveyances of Public Facilities by DEVELOPER.

4.7 Credit and Reimbursement Generally. At the time of filing of a final subdivision map for any portion of the Project, CITY shall reimburse DEVELOPER, to the extent that CITY has received contributions defraying the cost of such improvements from other benefited property owners, or consider establishment of a benefit assessment district or reimbursement agreement, or grant a credit for, all funds expended, costs incurred or improvements made by DEVELOPER to the extent that DEVELOPER'S contributions or improvements directly benefit other development.

4.8 Credit for Infrastructure. City agrees to condition approval of any project that would rely on DEVELOPER-funded or DEVELOPER-constructed Public Facilities upon payment of such other project's fair share of the cost of such Public Facilities improvements to be calculated on a per-unit basis.

4.9 Payment for Park Expansion Property.

4.9.1 Calculation of Dedication Credit. CITY and DEVELOPER agree that in consideration of DEVELOPER's dedication of the Park Expansion Property, as provided in Section 3.2 hereof, DEVELOPER shall receive a credit

toward any and all Development Fees in an amount equal to the “Fair Market Value” (as specified below) of the Park Expansion Property (1.003 acres or 43,691 sq.ft.), reduced by the square footage of the land the Project is required to dedicate for park and recreational facilities pursuant to Municipal Code § 10-16.21 (36 x 748 sq.ft./unit = 26,928 sq.ft.). The Fair Market Value of the net square footage of the Park Expansion Property as described in the preceding sentence (i.e., 16,763 sq.ft.) is referred to herein as the “Dedication Credit;” provided, however, the foregoing notwithstanding, DEVELOPER shall have the right, at its election, to pay in cash the in-lieu fees for park and recreational facilities that the Project is required to pay under Municipal Code § 10-16.30, at the current rates as specified in Exhibit D, and if such fees are so paid or agreed to be paid the Dedication Credit shall be calculated on the basis of the Fair Market Value of the entire Park Expansion Property (i.e., 1.003 acres or 43,691 sq.ft.).

4.9.2 Fair Market Value. The “Fair Market Value” is Fifteen and no/100 Dollars (\$15.00) per square foot of land area.

4.9.3 Affordable Unit In Lieu Fee. Based on findings by the City Council included in the recitals to this Agreement, the CITY has determined that the City Council finds and determines pursuant to Municipal Code § 10-17.500 that application of the Affordable Unit in Lieu Fee (“AUIL Fee”) is appropriate for the Project; provided, however, notwithstanding any contrary provision of this Agreement, the AUIL Fee shall not be included as part of the Development Fees to which the Dedication Credit may be applied; provided, further, however, DEVELOPER shall have the right, at its election, in lieu of paying the AUIL Fee in cash, to construct and offer for sale as part of the Project the number of Affordable Units required pursuant to Municipal Code § 10-17.205.

4.9.4 Payment in Cash. Notwithstanding any contrary provision of Section 4.9.1, CITY shall have the right, at its election, in lieu of providing to DEVELOPER a credit toward Development Fees, to pay DEVELOPER in cash or cash equivalent for the Park Expansion Property an amount equal to the Dedication Credit. If CITY elects to pay in cash, it shall so notify DEVELOPER of such election in writing within one hundred twenty (120) days following the dedication (the "Cash Payment Notice"). If CITY does not give the Cash Payment Notice before the end of said 120-day period, CITY shall be deemed to have waived its right to pay in cash and DEVELOPER shall thereafter be entitled to the credit toward Development Fees in the amount of the Dedication Credit. If CITY gives the Cash Payment Notice in a timely manner, DEVELOPER shall be required within ten (10) days of receipt of such notice to notify CITY in writing whether it will pay the in-lieu fees for park and recreational facilities for the Project in cash, and the amount of the Dedication Credit shall then be calculated as described in Section 4.9.1. Within thirty (30) days following DEVELOPER's receipt of the Cash Payment Notice, CITY shall pay to DEVELOPER in cash an amount equal to the Dedication Credit. Irrespective of the CITY's decision to provide the Dedication Credit or pay for the Park Expansion Property in cash, CITY shall pay the recording fees for the dedication deed and the Greenwood Park Parcel Map and all other costs associated with the closing of such transaction.

5. PERIODIC REVIEWS.

5.1 Annual Review. CITY and DEVELOPER shall review the performance of this Agreement, and the Development of the Project, once each year on the anniversary of the Effective Date. The CITY's reasonable costs of monitoring this Agreement shall be

paid by DEVELOPER. As part of such annual monitoring review, within thirty (30) days after each anniversary of this Agreement: (1) DEVELOPER shall deliver to CITY: (a) a then current build-out phasing plan for the Project; and (b) all information reasonably requested by CITY regarding DEVELOPER's performance under this Agreement demonstrating that DEVELOPER has complied in good faith with terms of this Agreement; and (2) DEVELOPER shall deliver to CITY: (a) all information reasonably requested by CITY regarding DEVELOPER's performance under this Agreement demonstrating that DEVELOPER has complied in good faith with the terms of this Agreement. If as a result of such periodic review, CITY finds and determines, on the basis of substantial evidence, that DEVELOPER has not complied in good faith with any of the terms or conditions of this Agreement, CITY may terminate this Agreement as provided in Section 10.1.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfers and Assignments of Rights and Interests.

6.1.1 General. Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement to a third party without the written consent of the other, which consent shall not be unreasonably withheld. The CITY shall promptly consent to any proposed assignment provided that: (1) assigning party is not in default of this Agreement; and (2) the purchaser or assignee has executed any document reasonably requested by the CITY with respect to the assumption of the assigning party's obligations under this Agreement. In the event DEVELOPER assigns or transfers its interest in the Project, the assigning party shall ensure that any such assignment or transfer includes an assignment or transfer of the assigning party's obligations under this Agreement. DEVELOPER shall also provide CITY with sufficient documentation of such assignment or transfer of the assigning party's duties and obligations. The term "assignment" as used in

this Agreement shall include successors-in-interest to the CITY and DEVELOPER that may be created by operation of law. Notwithstanding the foregoing, CITY shall have the right to sell, assign or transfer to another public agency CITY's interest in the Park Expansion Property provided such property continues to be used for public park purposes. Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect.

6.1.2 Subject to Terms of Agreement. Following any assignment or transfer of any of the rights and interests of DEVELOPER under this Agreement pursuant to this Section, all exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the DEVELOPER.

6.1.3 Release of DEVELOPER. Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, DEVELOPER shall each continue to be obligated under this Agreement unless released or partially released by CITY pursuant to this Section 6.1.(c), which release or partial release shall be provided by CITY upon the full satisfaction of the following conditions by the party to be released:

(a) The party to be released is not then in default under this Agreement;

(b) The party to be released has obtained the consent of CITY to the assignment as provided in Section 6.1.1; and

(c) The assignee or transferee has assumed those duties and obligations as to which the party to be released is requesting to be released and such assignee or transferee has provided CITY with any security or assurances equivalent to

those provided by the party to be released designed to ensure the duties and obligations of the party to be released will be fully and strictly performed as provided in this Agreement.

7. TERM OF AGREEMENT.

7.1 Initial Term. This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for ten (10) years (“Term”).

7.2 Discretionary Extension of Term. In addition to the Initial Term, in the event that the parties determine that a longer period is necessary to achieve the purposes of this Agreement, the term of the Agreement may be extended an additional five (5) years in the discretion of the City Council and upon agreement by DEVELOPER, its successors or assigns.

7.3 Rights and Duties Following Termination or Expiration. Upon the termination or expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations to have been performed prior to said termination or which survive such termination pursuant to the Existing Development Approvals, Implementation Agreement(s) or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

8. AMENDMENT.

8.1 Amendment. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or canceled only by the mutual agreement of the parties in accordance with Government Code § 65868 and the Development Agreement Ordinance in a writing executed by the parties and recorded in the official records of the County of Alameda.

8.2 Amendment of Existing Development Approvals. Except as otherwise expressly provided, the Project shall proceed in accordance with the Existing Development Approvals, which may be amended by the City Council only upon application by DEVELOPER or an approved assignee. Additionally, Existing Development Approvals and Future Development Approvals may be amended or modified only in the following manners:

(a) Solely upon application by DEVELOPER or an approved assignee, in which case the Planning Director may administratively amend or modify the Preliminary Development Plan if the Director determines that the requested amendment or modification is substantially consistent with this Agreement.

(b) Except as provided herein, amendment to or modification of any Existing Development Approval shall comply with the procedural provisions of the Existing City Regulations. Any amendment to or modification of any Future Development Approval, once granted, shall comply with the procedural provisions of the City Regulations in effect on the date of application for such amendment or modification.

9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS.

9.1 Processing. Upon approval and execution of this Agreement, DEVELOPER and CITY shall promptly commence and diligently proceed, respectively, to complete all required steps necessary for the implementation of this Agreement, consideration and approval of Future Development Approvals, and Development of the Project, including but not limited to the following: processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications and environmental assessments and reports and holding all required public hearings for permits, entitlements or approvals relating to the

development of the Project, including, but not limited to, all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits and related matters as necessary for the completion of development of all lots comprising the Project. DEVELOPER shall provide to CITY, in a timely manner, all documents, applications, plans and other information necessary for the CITY to carry out its obligations hereunder. DEVELOPER shall cause its planners, engineers and all other consultants to similarly provide such materials in a timely manner. It is the express intent of this Agreement that the parties cooperate and diligently work to secure approval of all Future Development Approvals and to implement Development of the Project in accordance with the Existing Development Approvals and Future Development Approvals. DEVELOPER and CITY each shall use their best efforts to effectuate the purposes of this Agreement.

9.2 Other Governmental Permits. DEVELOPER shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for Development of, or provision of services to, the Project. CITY shall cooperate with DEVELOPER in its endeavors to obtain such permits and approvals.

10. DEFAULT AND REMEDIES.

10.1 Termination of Agreement for Default of DEVELOPER. CITY in its reasonable discretion may terminate this Agreement for any failure by DEVELOPER either to perform any material duty or obligation hereunder or to comply in good faith with the material terms of this Agreement (hereinafter referred to as “default”); provided, however, CITY may terminate this Agreement pursuant to this Section only: (1) after providing written notice to DEVELOPER setting forth the nature of the default and the actions, if any,

required by the defaulting party to cure such default; and (2) (a) where the default can be cured, the defaulting party has failed to take such actions and cure such default within ninety (90) days after the date of such notice; or (b) where the default cannot be cured within such ninety (90) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

10.2 Default by CITY. CITY shall be “in default” in performance of its obligations hereunder only: (1) after DEVELOPER has provided written notice to CITY setting forth the nature of the default and the actions, if any, required by CITY to cure such default; and (2) (a) where the default can be cured, CITY has failed to take such actions and cure such default within ninety (90) days after the date of such notice; or (b) where the default cannot be cured within such ninety (90) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

10.3 Remedies. In any proceeding relating to any issue arising under this Agreement, the parties may mutually agree to mediation or non-binding arbitration of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity institute an action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto, after exhaustion of administrative remedies.

11. THIRD PARTY LITIGATION.

11.1 Limitation. As set forth above, CITY has determined that this Agreement is consistent with the Existing City Regulations (including the General Plan) and all legal requirements of State law. The parties acknowledge that:

(a) in the future there may be challenges to legality, validity and adequacy of the Existing City Regulations; and

(b) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 11, CITY shall have no liability under this Agreement for any failure of CITY to perform under this Agreement or the inability of DEVELOPER to develop the Property as contemplated by this Agreement which results from a judicial determination that, on the Effective Date, or at any time thereafter, the City Regulations, or portions thereof, are invalid or inadequate or not in compliance with law.

11.2 Future Amendments to General Plan. If for any reason the City Regulations or any part thereof is hereafter judicially determined as provided above to be out of compliance with the state or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect. Upon the adoption or amendment of any City Regulations which are necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments to the Existing Development Approvals which are necessary in order to comply with such new or revised City Regulations, the reference in Section 4 to the General Plan shall thereafter mean and refer to such new or amended General Plan, Existing Development Approvals, and such new or revised City Regulations.

11.3 Suspension of Obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the City Regulations referred to above and the subsequent proceedings with respect thereto referred to in subsection (b) of this

Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 14.12.

11.4 Opportunity to Intervene. In the event of a challenge to the General Plan or other City Regulation that would affect the Development of the Property, CITY shall provide notice of such action to DEVELOPER and DEVELOPER may elect to intervene in such action as a real party in interest. CITY agrees not to oppose such intervention.

11.5 Contingent Payment for Park Expansion Property. Any provision of this Agreement to the contrary notwithstanding, if as a result of any judicial determination CITY is unable to perform its obligations hereunder relating to the Project, and if as a consequence of such judicial determination the number of residential units DEVELOPER may construct is reduced, or if there is any material alteration of the timing or sequencing of phasing of development of the Project, or if for any other reason DEVELOPER is unable to develop the Property as contemplated by this Agreement, Developer shall notify CITY of such problem. If within ninety (90) days of CITY's receipt of such notice DEVELOPER and CITY are unable to reach agreement on modifications of the Project that conform to the requirements of such judicial determination or on an alternative project involving other property elsewhere in the CITY to which the Dedication Credit may be applied that are/is satisfactory to DEVELOPER in its sole and absolute discretion, CITY shall be required to pay to DEVELOPER in cash an amount equal to the Dedication Credit, which payment shall be made within thirty (30) days following the end of said 90-day period.

12. EFFECT OF AGREEMENT ON TITLE.

12.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 14:

(a) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

(b) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(c) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

12.2 No Dedication or Lien. Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the

title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

13. HOLD HARMLESS

13.1 Hold Harmless: DEVELOPER's Activities. DEVELOPER hereby agrees to, and shall defend, indemnify and hold harmless CITY and its elected and appointed boards, commissions, officers, agents, and employees from any and all claims, costs and liability for any damages personal injury or death, which may arise, directly or indirectly, from DEVELOPER's or DEVELOPER's contractors', subcontractors', agents', or employees' operations under this Agreement, whether such operations be by DEVELOPER or by any of DEVELOPER's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for DEVELOPER or any of DEVELOPER's contractors or subcontractors.

13.2 Hold Harmless: Challenge of Agreement. DEVELOPER further agrees to indemnify, hold harmless, pay all costs, including costs of suit and attorneys' fees, and provide a defense for CITY, upon CITY's tender, in any action challenging the validity of this Agreement or relating to any of the Existing Development Approvals, including, but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property.

14. MISCELLANEOUS PROVISIONS.

14.1 CITY Acceptance of Mitigation. CITY acknowledges and agrees that the dedication of the Park Expansion Property and Development of the Project consistent with the Existing Development Approvals shall constitute full and complete satisfaction of required mitigation of impacts on recreational facilities and parkland, and public open space and meets all CITY requirements regarding same.

14.2 Recordation of Agreement. The City Clerk of City shall cause this Agreement to be recorded within ten (10) business days after the execution of this Agreement by DEVELOPER and by CITY's City Manager pursuant to Ordinance No. ___ in the Official Records of the County of Alameda. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

14.3 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14.4 Severability. If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of, this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

14.5 Integration and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

14.6 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.7 Singular and Plural. As used herein, the singular of any word includes the plural.

14.8 Joint and Several Obligations. If any obligation of DEVELOPER to CITY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

14.9 Time of Essence. Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(b) The resolution of any dispute which may arise concerning the obligations of DEVELOPER and CITY as set forth in this Agreement.

14.10 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14.11 No Third Party Beneficiaries. The only parties to this Agreement are DEVELOPER and CITY. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

14.12 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than

CITY's, litigation (including challenges to this Agreement, the Existing Development Approvals, or the Future Development Approvals) or other causes beyond such party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

14.13 Attorneys' Fees. In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, the prevailing party in such action shall be entitled to recover from the losing party its attorneys' fees and costs of suit.

14.14 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

14.15 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to CITY: **[CITY NOTICE ADDRESS?]**

With a copy to:

Michael Lawson
City Attorney
City of Hay ward
777 "B" Street Hayward, CA 94541-5007

If to
DEVELOPER: Sunny Tong
Chang Income Property Partnership LP,

Barrett Community Hospital Series (R14), a
Delaware limited partnership
520 South El Camino Real, 9th Floor
San Mateo, CA 94402-1722

With a copy to: J. David Shields, Esq.
974 Rolling Woods Way
Concord, CA 94521-5403

Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

14.16 Successors and Assigns. Subject to the provisions of Section 6, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

14.17 Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

DEVELOPER:

Chang Income Property Partnership LP, Barrett Community Hospital Series (R14), a Delaware limited partnership

By: _____

Its: _____

CITY:

City of Hayward

By: _____

Its: _____

City Manager

Approved as to Form:

By: _____

Its: _____

City Attorney

- Exhibits:
- A Legal Description of Property
 - B Existing Development Approvals
 - C List of Future Development Approvals
 - D Development Impact Fees and Assessments to Be Applied to Project
 - E. Park Expansion Property

**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

PARCEL 1:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERN LINE OF DENTON AVENUE, AS SAID LINE WAS ESTABLISHED BY DEED FROM F.J. LYMAN CO., A CORPORATION, ET AL., TO THE COUNTY OF ALAMEDA, DATED NOVEMBER 28, 1933, RECORDED DECEMBER 06, 1933, IN BOOK 2986, OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 225, WITH THE EASTERN LINE OF EDEN AVENUE, AS SAID EASTERN LINE WAS ESTABLISHED IN THE DEED FROM F.J. LYMAN CO., A CORPORATION, ET AL., TO THE COUNTY OF ALAMEDA, DATED DECEMBER 08, 1933, RECORDED JANUARY 25, 1934, IN BOOK 2998 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 321,

RUNNING THENCE NORTH 2° 24' WEST ALONG SAID LINE OF EDEN AVENUE 145 FEET TO THE NORTHERN LINE OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP HEREIN REFERRED TO; THENCE NORTH 87° 36' EAST 140.20 FEET, THENCE SOUTH 2° 24' EAST 145 FEET TO SAID NORTHERN LINE OF DENTON AVENUE; THENCE ALONG SAID LINE OF DENTON AVENUE SOUTH 87° 36' WEST 140.20 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM THAT PORTION THEREOF SET FORTH IN THE GRANT TO THE COUNTY OF ALAMEDA, RECORDED AUGUST 21, 1964, IN BOOK 1292, PAGE, INSTRUMENT NO. AW-135514.

BEING A PORTION OF A.P.N. 441-0083-008-02

PARCEL 2:

PORTION OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF COUNTY ROAD NO. 7745, KNOWN AS DENTON AVENUE, DISTANT THEREON NORTH 87° 36' EAST 140.20 FEET FROM THE EASTERN LINE OF COUNTY ROAD NO. 7757, KNOWN AS EDEN AVENUE, AS SAID COUNTY ROAD NOW EXISTS;

RUNNING THENCE ALONG SAID LINE OF DENTON AVENUE NORTH 87° 36' EAST 42.68 FEET; THENCE NORTH 2° 24' WEST 145 FEET TO THE NORTHERN LINE OF SAID LOT 52; THENCE ALONG THE LAST NAMED LINE SOUTH 87° 36' WEST 42.68 FEET TO A LINE DRAWN NORTH 2° 24' WEST FROM THE POINT OF BEGINNING;

AND THENCE SOUTH 2° 24' EAST 145 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF A.P.N. 441-0083-008-02

PARCEL 3:

PORTION OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF COUNTY ROAD NO. 7745, KNOWN AS DENTON AVENUE, DISTANT THEREON NORTH 87° 36' EAST 182.88 FEET FROM THE EASTERN LINE OF COUNTY ROAD NO. 7757, KNOWN AS EDEN AVENUE, AS SAID COUNTY ROADS NOW

EXISTS;

RUNNING THENCE ALONG SAID LINE OF DENTON AVENUE, NORTH 87° 36' EAST 102.54 FEET;
 THENCE NORTH 2° 24' WEST 145.00 FEET TO THE NORTHERN LINE OF SAID LOT 52;
 THENCE ALONG THE LAST NAMED LINE SOUTH 87° 36' WEST 102.54 FEET TO A LINE DRAWN
 NORTH 2° 24' WEST FROM THE POINT OF BEGINNING;
 AND THENCE SOUTH 2° 24' EAST 145 FEET TO THE POINT OF BEGINNING.
 BEING A PORTION OF A.P.N. 441-0083-008-02

PARCEL 4:

PORTION OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF SAID LOT 52, DISTANT THEREON NORTH 87° 36' EAST 290.40 FEET FROM THE EASTERN LINE OF EDEN AVENUE, OR COUNTY ROAD NO. 7757, AS SAID AVENUE IS SHOWN ON SAID MAP;

RUNNING THENCE ALONG THE NORTHERN LINE OF SAID LOT 52 NORTH 87° 36' EAST 110 FEET;

THENCE SOUTH 2° 24' EAST 150 FEET;

THENCE SOUTH 87° 36' WEST 110 FEET;

THENCE NORTH 2° 24' WEST 150 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF SET FORTH IN THE GRANT TO THE COUNTY OF ALAMEDA, RECORDED NOVEMBER 19, 1948, BOOK 5660, PAGE 155, OFFICIAL RECORDS, INSTRUMENT NO. AC-88230.

BEING A PORTION OF A.P.N. 441-0083-008-02

PARCEL 5:

LOT 51-E, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM THE WESTERN 100 FEET THEREOF.

BEING A PORTION OF A.P.N. 441-0083-008-02

PARCEL 6:

PORTION OF LOT 52, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF SAID LOT, DISTANT THEREON NORTH 87° 36' EAST 225.52 FEET FROM THE EASTERN LINE OF EDEN AVENUE, AS SHOWN ON SAID MAP;

RUNNING THENCE ALONG SAID SOUTHERN LINE OF SAID LOT NORTH 87° 36' EAST 293.19 FEET TO THE NORTHEASTERN LINE OF SAID LOT;

THENCE ALONG THE LAST NAMED LINE NORTH 26° 14' WEST 95.35 FEET TO THE NORTHERN LINE OF SAID LOT;

THENCE ALONG THE LAST NAMED LINE SOUTH 87° 36' WEST 211.18 FEET;

AND THENCE IN A DIRECT LINE SOUTHWESTERLY 95.35 FEET TO THE POINT OF BEGINNING.

BEING A.P.N. 441-0083-006-01

PARCEL 7:

THE WESTERN 100 FEET RIGHT ANGLE MEASUREMENT OF LOT 51-E, AS SAID LOT IS SHOWN ON THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY

RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM THAT PORTION THEREOF SET FORTH IN THE GRANT TO THE COUNTY OF ALAMEDA, RECORDED AUGUST 21, 1964, IN BOOK 1292, PAGE 753, INSTRUMENT NO. AW-135514.

BEING A.P.N. 441-0083-007-02

PARCEL 8:

PORTION OF LOT 51-D, OF THE MAP OF "GARDEN OF EDEN, EDEN TOWNSHIP, ALAMEDA COUNTY, CALIFORNIA", FILED MAY 22, 1926, IN BOOK 3 OF MAPS, PAGE 84, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF SAID LOT WITH THE EASTERN LINE OF EDEN AVENUE, AS SHOWN ON SAID MAP;

THENCE RUNNING ALONG THE SAID LINE OF EDEN AVENUE, NORTH 2° 24' WEST 87.22 FEET TO THE NORTHERN LINE OF SAID LOT;

THENCE ALONG THE LAST NAMED LINE, NORTH 87° 36' EAST 269 FEET TO THE WESTERN LINE OF THE LAND DESCRIBED IN THE DEED FROM ELVIN HIRAM RULE AND ELOISE RULE, HIS WIFE, TO BARRETT REST HOME, INC., A CORPORATION, DATED MAY 28, 1962, RECORDED MAY 31, 1962, ON REEL 596, IMAGE 337, INSTRUMENT NO. AT-72872, ALAMEDA COUNTY RECORDS;

THENCE ALONG THE LAST NAMED LINE, SOUTHWESTERLY 95.35 FEET TO SAID SOUTHERN LINE OF SAID LOT;

AND THENCE ALONG THE LAST NAMED LINE SOUTH 87° 36' EAST 225.52 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF SET FORTH IN THE GRANT TO THE COUNTY OF ALAMEDA, RECORDED AUGUST 21, 1964, IN BOOK 1292, PAGE 753, INSTRUMENT NO. AW-135514.

BEING A.P.N. 441-0083-006-04

EXHIBIT B

LIST OF EXISTING DEVELOPMENT APPROVALS

1. General Plan Amendment
2. Zone Change (Planned Development District and associated Preliminary Development Plan)
3. Park Expansion Parcel Map

EXHIBIT C

LIST OF FUTURE DEVELOPMENT APPROVALS

1. Vesting Tentative Subdivision Map
2. Precise Development Plan
3. Improvement and Grading Plans
4. Final Subdivision Maps
5. Subdivision Agreements
6. Building Permits
7. Subdivision Improvements Acceptance
8. Certificates of Occupancy

Greenwood Park			
Total Units	Habitable SF	Non Habitable SF	Total SF
36	65,268	15,404	80,672
Development Impact Fees			
Type	Deposit	Fee	
Plan Check Fee - Includes MEP	\$0	\$8,260	Type V \$8260 for first 10,000 sf + \$83 per additional
Building Permit			
Valuation based		\$7,901	\$7,901 for first \$1,000,001 + \$4 per additional \$100 in value.
Mandatory Fee added to Building Permit			
Technology Fee		3%	3% of building permit
SMIP Fee		0.01%	.01% of valuation (total const costs)
Site Plan Review			
Multi Family Residential Hillside (including multiple SFRs - Planning Commission Referral)	\$15,000	T&M	
Planning & Site Plan Review			
Zone Change and Pre-Zoning			
Preliminary Plan	\$15,000	T&M	
Precise Plan	\$15,000	T&M	
General Plan Amendment	\$15,000	T&M	
General Plan Update Fee		12%	12% of the building permit
Final Map	\$15,000	T&M	
Parcel Map	\$6,000	T&M	
Tentative Tract Map	\$15,000	T&M	
Development Agreement			
Application Filing Fee		\$256	
Review and Processing	\$5,000	T&M	
Annual Review	\$1,000	T&M	
Amendment Processing	\$6,000	T&M	
Grading Permit Application	\$6,000	T&M	
Encroachment Permit major work	\$6,000	T&M	
Sewer Connection Fee		\$7,700	
Waste water discharge permit		\$2,210	
Water System Facilities Fee		\$8,106	
Rent Stabilization Fee		\$0.64	
School District Fee		\$2.97	per sf of livable space
School District Fee		\$0.42	per sf of NON livable space
Building Construction & Improvement Tax			
Multiple Family Dwelling (more than 800 sf)		\$450	per unit
Park Dedication In-Lieu Fee			
Single Family		\$11,953	per unit
Single Family, attached		\$11,395	per unit
Multiple Family		\$9,653	per unit
Inclusionary Housing			
BMR In-Lieu Fee		\$80,000	per unit - currently 10% requirement set to expire end of 2012(revert back to 20%)

Fire Dept. Fees

Building permit plan check includes MEP		\$2,047	\$2047 for first 10K sq ft + \$20.47 for each additional \$1489 for first 10K sq ft + \$14.89 for each additional 100 sq ft \$843 per mtg per unit per unit
Fire Inspection Fees		\$1,489	
Pre-application/GP Review/Code Assistance		\$843	
Inspection per unit		\$840	
New sprinkler system fee 1-29 heads		\$1,476	

Engineering Services

Survey/curb and gutter staking up to 100'		\$760
additional 50'		\$190
Grade Calculations and Cut sheets per location		\$342
Form Check up to 100'		\$760
additional 50'		\$190
Major Street Improvement Review	\$2,400	T&M

Public Works Encroachment Fees

Curb, Gutter and/or sidewalk (first 100')		\$403
Additional 100'		\$403
Driveway, handicap ramp, curb return		\$293
Planter Strip Fill		\$146
Drainage system and appurtenance (first 100')		\$512
Additional 100'		\$403
Drainage tie in to existing structures manholes, vaults, area drains, storm water inlets, other standard structures		\$512
Storm Water Interceptors		\$512
Street Cuts, trenches up to 100'		\$403
Additional 100'		\$293
Debris Box		
Sidewalk obstruction first week		\$578
additional week		\$108
Each new or replaced utility pole location		\$293
Each utility service connection in sidewalk or street (gas, electric, telephone, etc)		\$403

Sanitary Sewers

Sanitary Sewer Laterals		
From main in street or easement to building up to 100'		\$512
each additional 100' or fraction thereof		\$293
Add for monitoring structure if required		\$512
From existing stub at right-of-way to building up to 100'		\$403
each additional 100' or fraction thereof		\$293
Sanitary Sewer Court Mains		
Each building court main when plan, profile and cut sheet are required, initial 100' or less		\$512
each additional 100' or fraction thereof		\$293
Each building court main when plan only is required for initial 100 feet or less		\$457
each additional 100' or fraction thereof		\$293
Additional inspections		\$259
Development plan Review		\$360

EXHIBIT E



(N) PARK
43,704 SF (1.003 ACRES)

EDEN AVENUE

DENTON AVENUE

1 SITE PLAN
1/40" = 1'-0"

ILLUSTRATIVE SITE PLAN



GREENWOOD HOMES
24250 EDEN AVENUE, HAYWARD, CA

A-02
AUGUST 08, 2011



(N) PARK
43,704 SF (1.003 ACRES)

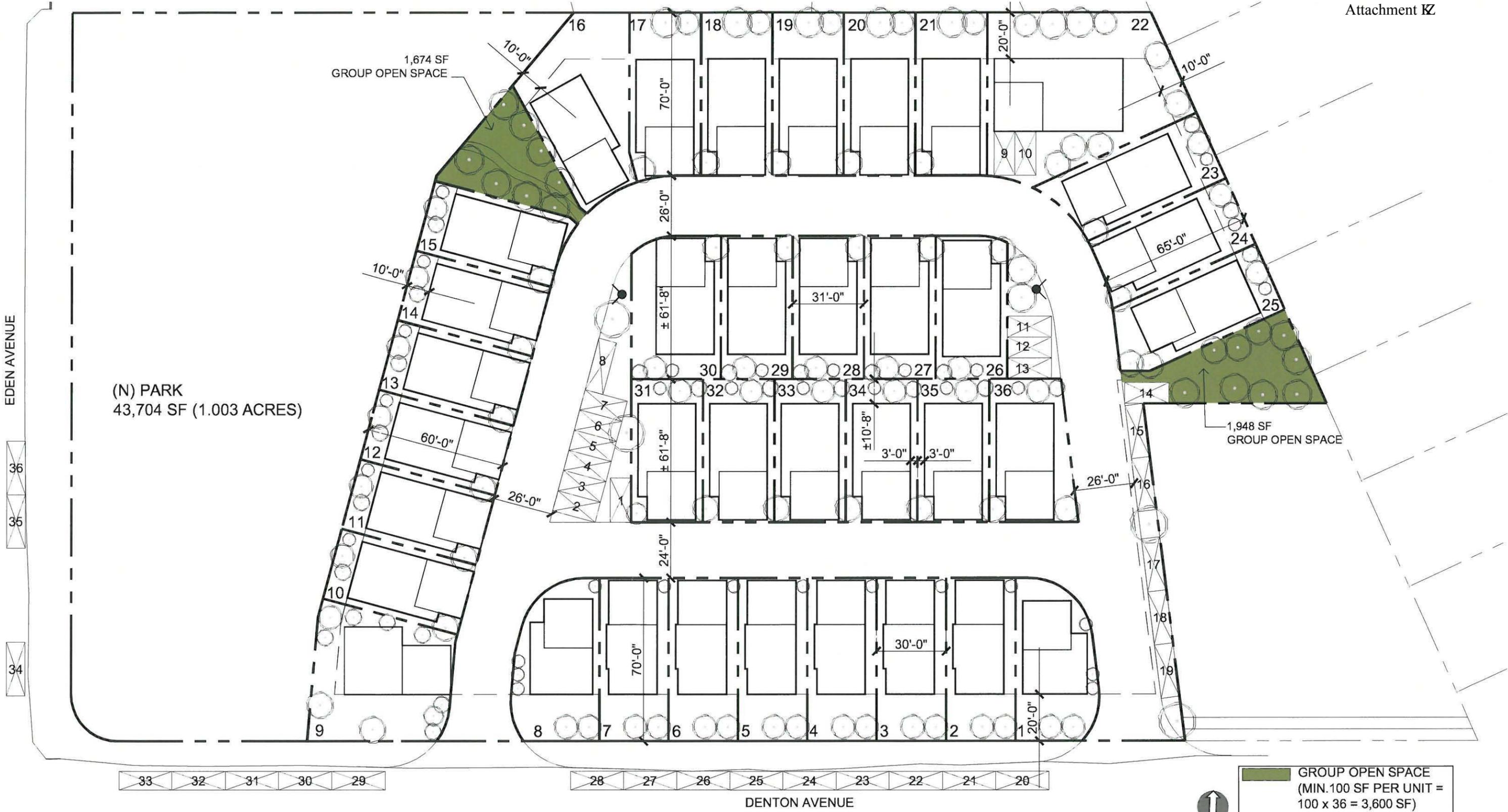
1 SITE PLAN
1/40" = 1'-0"

ILLUSTRATIVE SITE PLAN



GREENWOOD HOMES
24250 EDEN AVENUE, HAYWARD, CA

A-02
AUGUST 08, 2011
1



1 SITE PLAN
1/40" = 1'-0"

SITE PLAN ILLUSTRATING GROUP OPEN SPACE



1 SITE PLAN
1/40" = 1'-0"

SITE PLAN ILLUSTRATING PRIVATE OPEN SPACE



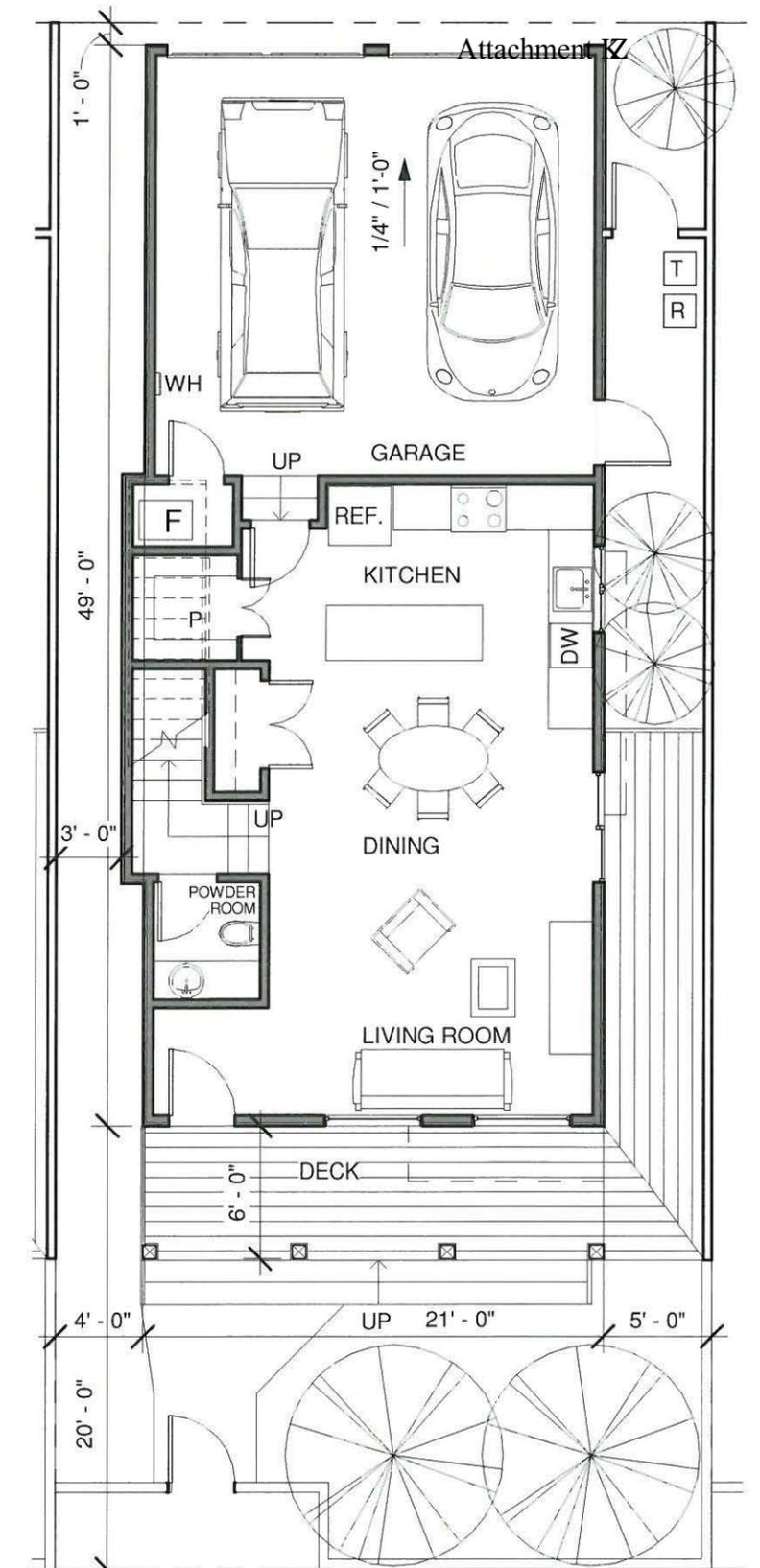
4 WEST ELEVATION
1/8" = 1'-0"



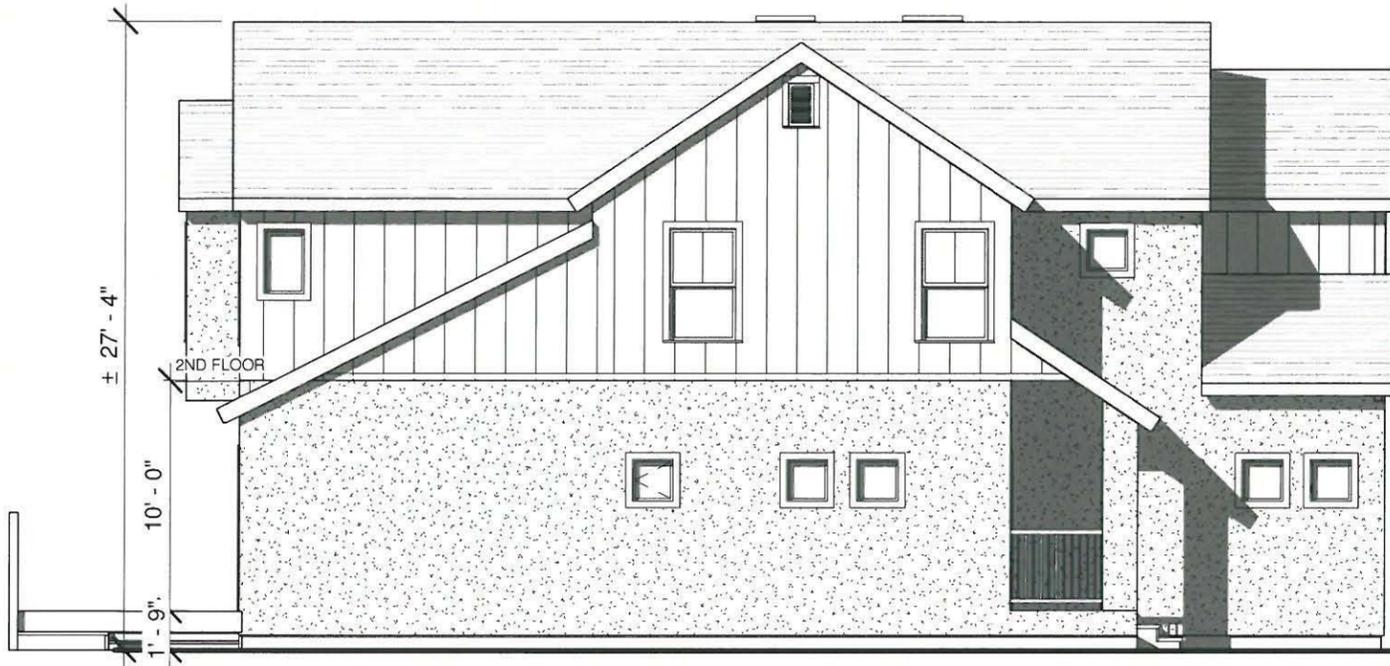
3 SOUTH ELEVATION
1/8" = 1'-0"



2 SECOND FLOOR
1/8" = 1'-0"



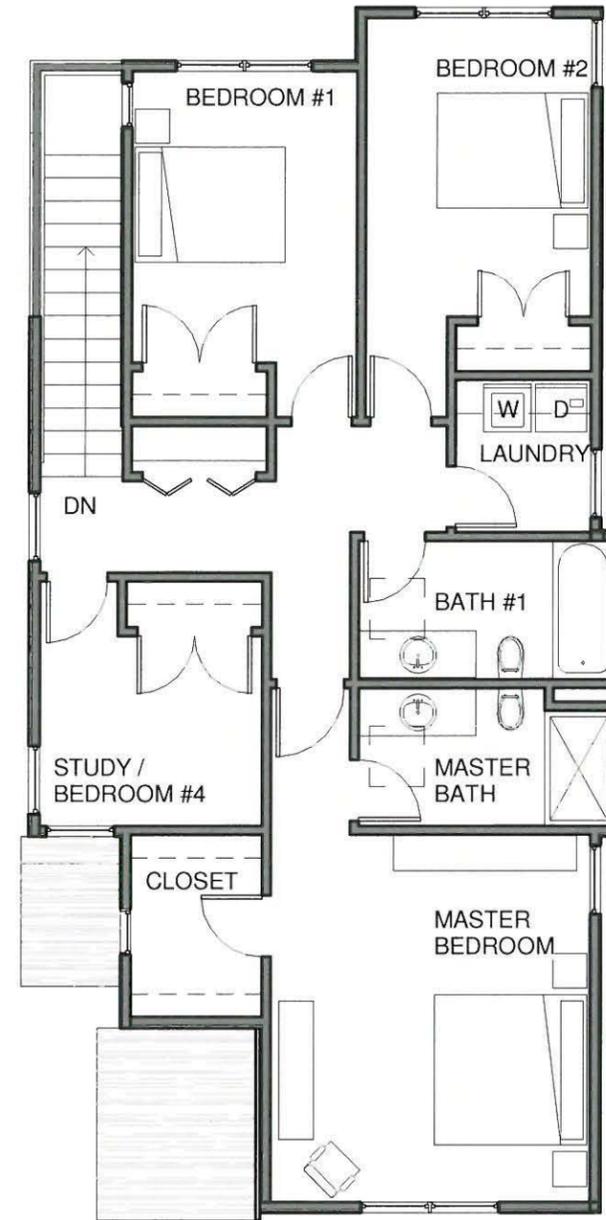
1 FIRST FLOOR
1/8" = 1'-0"
UNIT A - PLANS & ELEVATIONS



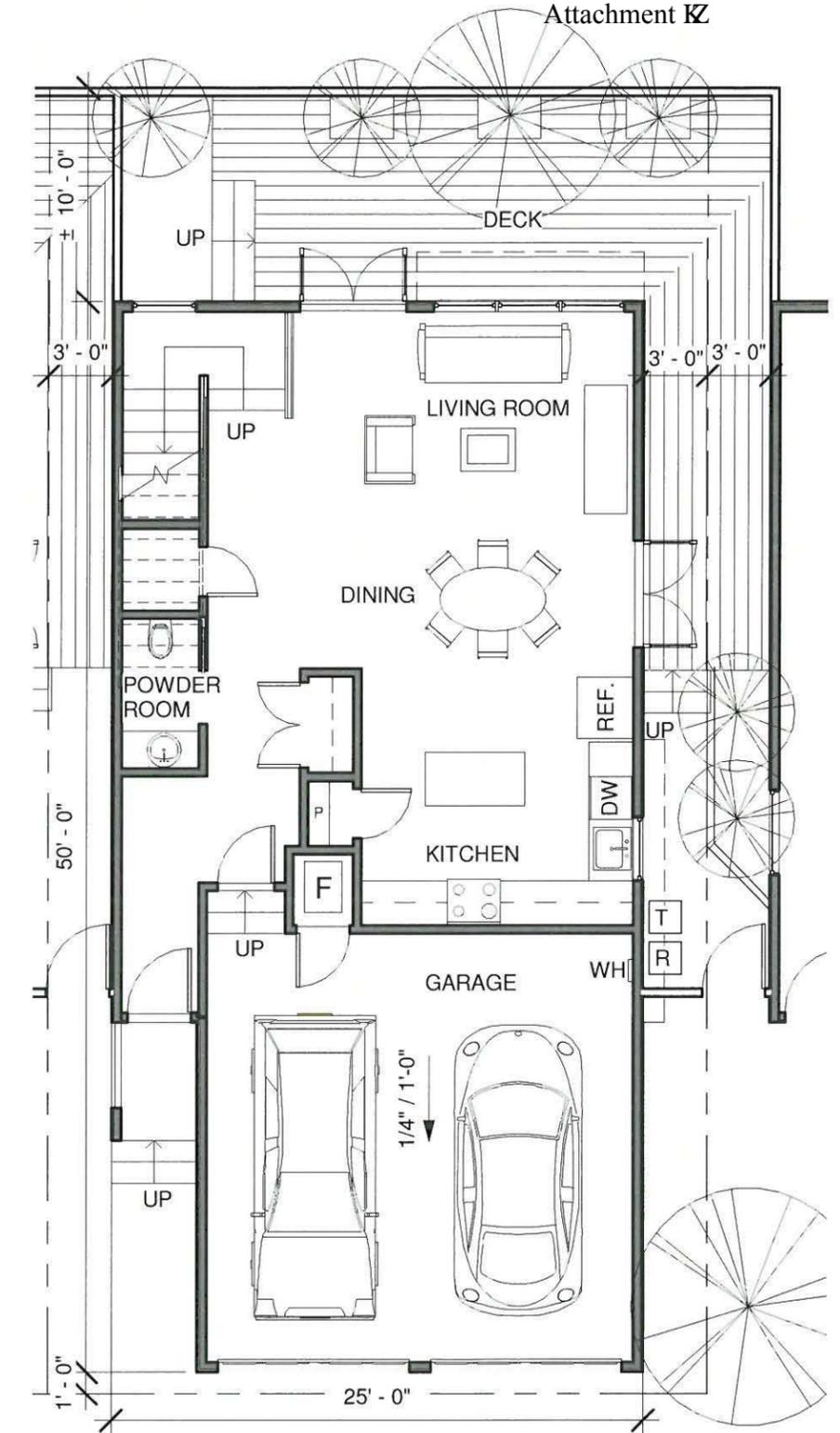
4 WEST ELEVATION
1/8" = 1'-0"



3 SOUTH ELEVATION
1/8" = 1'-0"

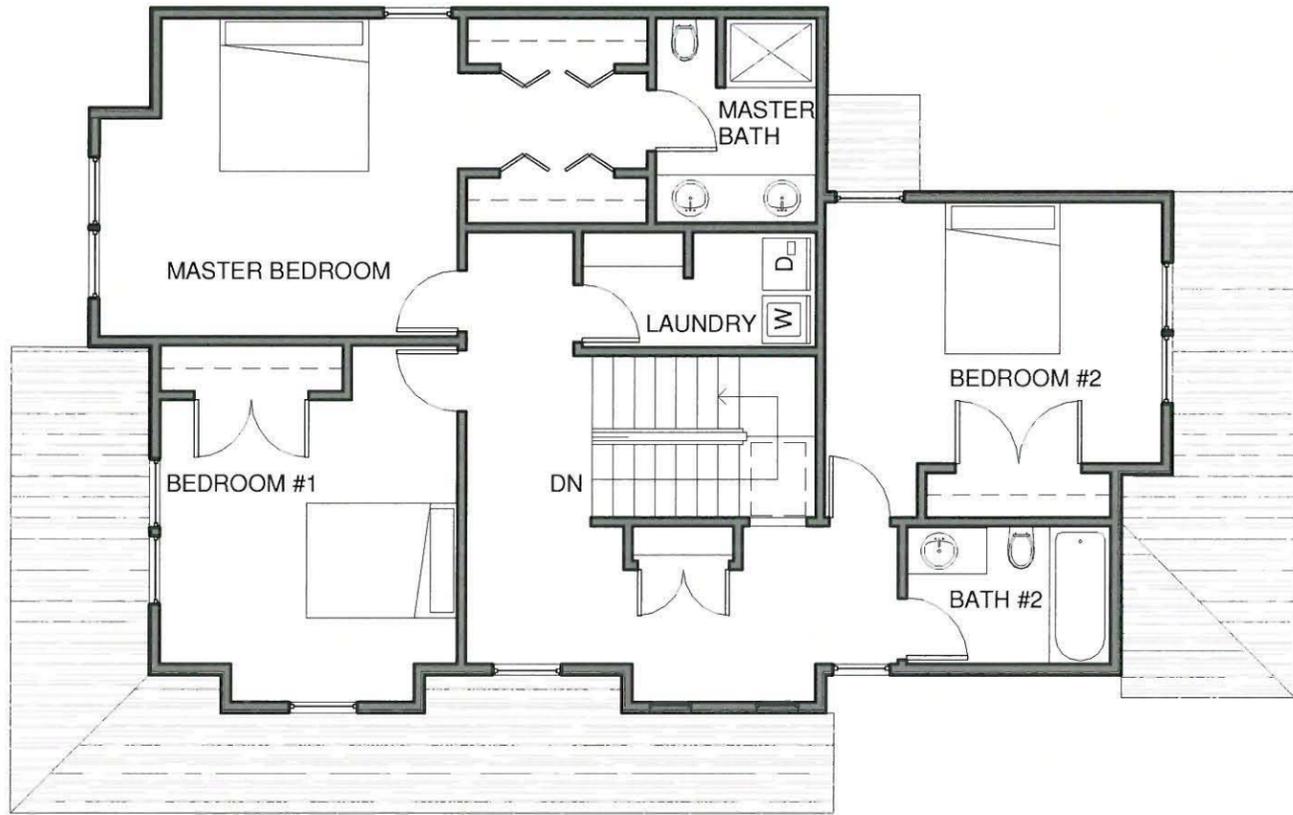


2 SECOND FLOOR
1/8" = 1'-0"

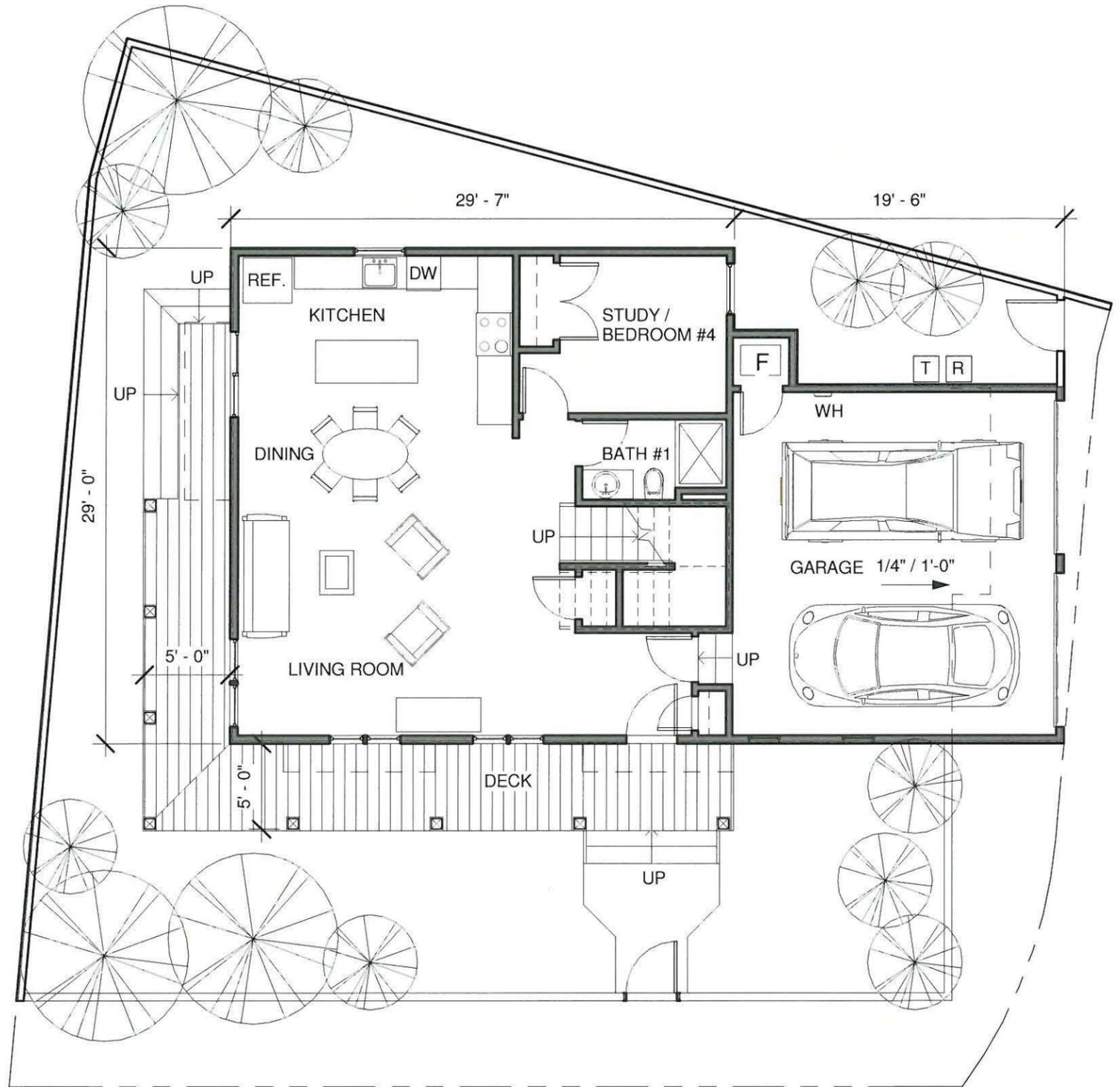


1 FIRST FLOOR
1/8" = 1'-0"

UNIT B - PLANS & ELEVATIONS



2 SECOND FLOOR
1/8" = 1'-0"



1 FIRST FLOOR
1/8" = 1'-0"

UNIT C - PLANS



② EAST ELEVATION
1/8" = 1'-0"



① SOUTH ELEVATION
1/8" = 1'-0"

UNIT C - ELEVATIONS



DATE: September 20, 2012

TO: Planning Commission

FROM: Sara Buizer, AICP, Senior Planner

SUBJECT: **Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237, and Parcel Map No. PL-2010-0431 – Westlake Development LLC (Applicant)/ Chang Income Partnership L.P. (Owner) - Amend the General Plan designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the park expansion and future development lots; and Approve a related Development Agreement.**

The property is located at the northeast corner of Eden and Denton Avenues.

RECOMMENDATION

That the Planning Commission recommends approval to the City Council of the proposed project, including the adoption of the attached Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Program; approval of the General Plan Amendment, Zone Change, and a Parcel Map to create a park expansion lot and a parcel for future development lots; and a Development Agreement to identify the allowable density of future development in exchange for dedicating a fee interest in land for the expansion of Greenwood Park.

SUMMARY

The applicant is proposing to enter into a Development Agreement (Attachment VI) with the City to provide a vested right to develop the eastern portion of the site with thirty-six single-family homes during the ten-year term of the Development Agreement in exchange for dedicating a fee interest in a one-acre portion of the property at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park. Staff supports the project because without the Planned Development Zone Change and associated Development Agreement, the potential amount of park land dedication for the future project would only be 0.6 acres, as opposed to the one-acre proposed for the Greenwood Park Expansion, which is more consistent with the approximately 1.25 acre park expansion envisioned in the Mt Eden Neighborhood Plan. In addition, the City is being offered the land at a value of almost 40% less than the applicant has been offered by other developers.

BACKGROUND

The KB Home Development of 149 single-family attached and detached homes in the Mt. Eden area, located just west of the project site and bounded by Eden Avenue, Saklan Road and Middle Lane, was approved in 2006. At that time, to help mitigate the lack of on-site group open space for that project, KB Home attempted to purchase the designated land for the park expansion. These attempts were unsuccessful and, instead, KB Home paid park in-lieu fees, which have remained earmarked for use by the City to purchase land for an expansion of Greenwood Park and allow for improvements within the existing and newly-expanded portions of the park. The applicant for this project has shown interest in developing the subject property with 36 single-family homes and would dedicate a fee interest in the one acre of land for the expansion of Greenwood Park, as part of the proposed development. Such expansion is in accordance with the adopted 1990 Mt. Eden Neighborhood Plan, which indicated a 1.25-acre expansion. Negotiations with the project applicant began in August 2011, which has resulted in a draft Development Agreement (Attachment VI), to allow future development of a portion of the site in exchange for a one-acre expansion of Greenwood Park.

DISCUSSION AND STAFF ANALYSIS

Project Description - The project requires:

- a. a General Plan Amendment to modify the designation of the site from Low Density Residential to Medium Density Residential (the western portion of the property where the park expansion is envisioned has a General Plan Land Use designation of Open Space – Parks and Recreation);
- b. a Zone Change from RS (Single-Family Residential) to OS (Open Space) and PD (Planned Development);
- c. a Parcel Map to reconfigure the existing five lots that comprise the property into a park expansion lot and a future development lot; and
- d. a Development Agreement to identify the allowable density of development in exchange for land for the expansion of Greenwood Park.

The project site is located at the corner of Eden and Denton Avenues within an existing single-family residential neighborhood that includes a mix of one-, two-, and three-story single-family residential homes. The western portion of the project site is adjacent to and south of Greenwood Park (see Location Map, Attachment I).

The applicant will ultimately pursue a Vesting Tentative Tract Map and Site Plan Review to develop thirty-six, two-story, single-family homes on the future development site. Through approval of the Development Agreement, the developer will have ten years to pursue the necessary entitlements to develop those homes; however, the one-acre park expansion land will be transferred within 90 days of the Development Agreement execution, allowing for the park to be expanded sooner.

General Plan Amendment - The applicant has requested to modify the General Plan land use designation for the eastern portion of the site from Low Density Residential to Medium Density

Residential. This modification will allow for additional density on the residential portion of the property, in exchange for transferring land for the expansion of Greenwood Park. Future development of this site, under a Medium Density land use designation, would be allowed a maximum of 17.4 dwelling units per net acre. The resultant density for the proposed residential development would be 17.1 dwelling units per net acre. Staff is supportive of the request to modify the General Plan land use designation from Low Density to Medium Density, as this is the designation of properties located just south and west of the project site. A masonry wall separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment I). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this parcel, from the established residential neighborhood to the east. In addition, the City will gain approximately one acre of land at the corner of Eden Avenue and Denton Avenue for the purposes of expanding Greenwood Park as was envisioned in the Mt. Eden Neighborhood Plan, adopted in 1990.

Findings for General Plan Amendment Application - In order to support the changes proposed to the General Plan, the Planning Commission must make the following findings. Staff's responses to the findings are indicated below.

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

The increase in land use density for the site will allow the development of additional two-story, single family homes, consistent with density and massing of development located just east and south of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of the surrounding community.

(2) The proposed change is in conformance with the purposes of the General Plan and all applicable, officially adopted policies and plans.

The General Plan modification will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site, and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

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

The project site is located at the corner of Eden and Denton Avenues and has adequate public facilities to serve the proposed use. The future development of thirty-six single family homes will generate thirty-six peak hour PM trips or the equivalent of less than one trip per minute,

which is considered less than significant so the existing streets will be adequate to serve the future development.

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

The proposed uses are single-family residences and a park, which are compatible with surrounding uses. In exchange for the General Plan land use designation modification for the future residential development, the City will obtain a one-acre portion of the property for the expansion of Greenwood Park. The benefit to the City is that the City typically cannot require dedication of parkland (only payment of in-lieu park fees) for projects of this size (less than 50 residential units). Also, even if parkland could typically be required to be dedicated for a project of this size, the dedicated size of the land is approximately 16,000 square feet larger than what otherwise would be required for a 36-unit development. In addition, the City is being offered the land at a value of almost 40 percent less than the applicant has been offered by developers.

Rezoning to Open Space and Planned Development District - The proposal involves a modification of the current zoning designation from Single Family Residential to Open Space and Planned Development. Under the current designation, the project would not be feasible without modifications to some of the development standards. The purpose of the Open Space designation is to support the future use of the one-acre portion at the corner of Eden and Denton Avenues for the Greenwood Park expansion. The purpose of the Planned Development designation is to encourage development through efficient and attractive space utilization that might not be achieved through strict application of the development standards. The future single-family residential development proposed for the balance of the property consists of single-family homes on smaller lots with reduced setbacks, compared with traditional single-family home developments. The product type is a hybrid between traditional single-family detached homes and multi-family developments. For instance, although the conceptual plan layout for the development shows a reduction in typical rear yard area of single-family homes from 20 feet to 10 feet, the minimum group open space area of 3,600 square feet is being provided as well as allowing for approximately 350 square feet of private open space for each residential unit, which is consistent with open space requirements for multi-family projects. The conceptual plan also shows 19 on-site guest parking spaces, in addition to each unit providing two covered parking spaces. An additional 14 parking spaces can be provided on the project side of Denton Avenue. The parking provided meets the City's standards for multi-family projects and is consistent with similarly designed small lot single family developments approved by the City. Future development approvals will be required for the residential development, including Vesting Tentative Tract Map and Site Plan Review applications.

Findings for Zone Change Application - In order for a Zone Change to be approved, certain findings must be made as shown below. Staff's responses to the findings follows.

(1) The development is in substantial harmony with the surrounding area and conforms to the General Plan and applicable City policies.

The Zone Change will allow for the future construction of new homes in an area already developed with single-family homes at a similar density and massing to what is proposed for this site and simultaneously allow for the expansion of Greenwood Park. The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The homes located just west of the site that were part of the KB Home development all have reduced setbacks and smaller lots sizes similar to what would be constructed on the future development parcel. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood. A masonry wall separates the residential neighborhood to the north and east of the project site that has a Low Density residential designation (see Attachment I). Also, a roadway barrier exists and will remain on Denton Avenue that further separates this neighborhood, including this property, from the established residential neighborhood to the east.

(2) Streets and utilities, existing or proposed, are adequate to serve the development.

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development. Utilities are underground in this area and any new connections to serve the future development would also be required to be placed underground.

(3) The development creates a residential environment of sustained desirability and stability, that sites proposed for public facilities, such as playgrounds and parks, are adequate to serve the anticipated population and are acceptable to the public authorities having jurisdiction thereon, and the development will have no substantial adverse effect upon surrounding development.

The future development of thirty-six two-story homes is a residential development that will be sustainable over time, especially located adjacent to an existing park that will be expanded and improved as a result of this project. In addition, the future development of the homes will be required to incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

(4) Any latitude or exception(s) to development regulations or policies is adequately offset or compensated for by providing functional facilities or amenities not otherwise required or exceeding other required development standards.

The development is seeking a zone change to Open Space and Planned Development to allow for the one-acre park expansion and modified lot sizes and setbacks for the future residential development. Staff is supportive of the request as the one-acre portion of the property located along Eden Avenue and Denton Avenue will be transferred to the City for the purposes of expanding Greenwood Park, consistent with the Mt. Eden Neighborhood Plan adopted in July 1990. A development of thirty-six homes (less than 50 homes) would not normally be required to dedicate park land to meet the developer's park obligations

(only payment of in-lieu fees). Also, and acknowledging proponents for projects of this size would not typically be required to dedicate parkland the amount of land proposed for dedication exceeds the development's requirement under the City's regulations by over 16,000 square feet.

Parcel Map - The project involves a Parcel Map to reconfigure the property, which currently consists of five separate parcels, into two separate parcels. The two parcels that will be created with the Parcel Map are a one-acre park parcel, which will be transferred to the City for expanding Greenwood Park, and a future residential development parcel. Prior to developing on the residential parcel, a Tentative Tract Map and Site Plan Review application will be required.

Findings for a Parcel Map Application - In order for a Parcel Map to be approved, certain findings must be made as shown below. Staff believes the findings can be made, as indicated below.

(1) The proposed subdivision is not in conflict with the General Plan and applicable specific plans and neighborhood plans.

The proposed Parcel Map is consistent with the both the General Plan and Mt. Eden Neighborhood Plan which call for residential development and for the expansion of Greenwood Park to Denton Avenue.

(2) The proposed subdivision meets the requirements of the City Zoning Ordinance.

The Parcel Map meets all requirements of the City Zoning Ordinance in that the resultant parcels meet the minimum lot size requirements and each parcel has adequate access and utilities are available to serve the future development.

(3) No approval of variances or other exceptions are required for the approval of the subdivision.

No variances or exceptions are required for the Parcel Map.

Development Agreement - The applicant is seeking approval of a Development Agreement. Development Agreements are typically used for large multi-phase developments or developments involving the installation of public facilities or improvements. Development Agreements have an initial term of ten years with a potential for a five-year extension in unusual circumstances. In this particular case, the proposed Development Agreement will provide the developer some time flexibility and assurances regarding density of future development of single-family homes, and the public will realize the benefits of expansion and development of Greenwood Park at a price that is almost 40% less than the applicant has been offered by other developers, within 90 days of the Development Agreement execution.

Key components of the Development Agreement are as follows:

- (1) A one-acre portion of property at the corner of Eden Avenue and Denton Avenue will be transferred to the City within 90 days following the effective date of the Development

Agreement. The property will be delivered to the City in a condition meeting health and environmental standards as determined by the City of Hayward Hazardous Materials Section of the Fire Department, State of California Department of Toxic Substances Control and Regional Water Quality Control Board.

- (2) The acquisition of the Park Expansion property may occur in a number of ways, including (a) dedication by the property owner and associated credit for that value given toward future development fees, including the park obligation; (b) purchase of the land outright by the City based upon the agreed upon price of \$15.00 per square feet for the land; or (c) a combination of dedication/development fee credit and purchase by the City.
- (3) The Developer is provided a vested right to proceed with the future development of thirty-six single family homes for the ten-year term of the Development Agreement, subject to review of future Vesting Tentative Tract Map and Site Plan Review applications.

Findings for a Development Agreement Application - In order for a Development Agreement to be approved, certain findings must be made as shown below. Staff's response to each finding follows.

- (1) The proposed development agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.**

The development proposed is consistent with General Plan policies including promoting infill development that is compatible with the overall character of the surrounding neighborhood. The expansion of Greenwood Park is consistent with policies established in the Mt. Eden Neighborhood Plan adopted in July 1990, which had envisioned the park extending to Denton Avenue to provide a park appropriate to an attractive residential neighborhood.

- (2) The proposed development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.**

The Development Agreement will allow for the future construction of new homes in an area already developed with residential uses and simultaneously allow for the expansion of Greenwood Park.

- (3) The proposed development agreement is in conformity with public convenience, general welfare and good land use practice**

The Development Agreement will allow the future development of additional two-story single family homes, consistent with density and massing of development located in the KB Home development just west of the site, as well as allow for a one-acre expansion of Greenwood Park, which will promote public health and contribute to the general welfare of

the surrounding community by providing an expanded park that the entire community can utilize.

(4) Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.

The project site is surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.

(5) The public health, safety, and general welfare will be promoted and advanced by the proposed development.

The one -acre expansion of Greenwood Park outlined in the Development Agreement will promote public health and contribute to the general welfare of the surrounding community by providing an expanded park that the entire community can utilize. The Development Agreement also requires the developer to pay the cost of providing public safety services to the property through formation of or annexation to a Community Facilities District, should the future development generate a need for additional public safety services.

(6) The orderly development of property or the preservation of property values will be promoted and advanced by the proposed development.

With the future development of the single-family homes as well as the expanded park, property values will be promoted in the area. In addition, the future development of the homes, as conditioned, will be required to incorporate additional green features such that each home achieves a minimum 75 points on the GreenPoint Rated checklist to ensure additional sustainability over time.

ENVIRONMENTAL REVIEW

This proposal is defined as a “project” under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. Staff has prepared a Mitigated Negative Declaration and Initial Study (Attachment IV), which indicates there will be no significant environmental impacts resulting from the project provided the mitigation measures are incorporated into the project, including coordination with the Hazardous Materials Division of the Hayward Fire Department, the State of California Department of Toxic Substances Control and Regional Water Quality Control Board to receive clearance that the site meets all health and environmental standards for future residential and park development. The environmental document also indicates there will not be any significant traffic impacts resulting from the future development of the thirty-six single family homes since this development would generate thirty-six peak hour PM trips, equivalent to less than one trip per minute, and is considered less than significant. Any mitigation measures have been incorporated into a Mitigation Monitoring and Reporting Program (Attachment V) and have been incorporated into Conditions of Approval (Attachment III). The environmental document was made available for public review from August 18, 2012 through September 17, 2012.

PUBLIC CONTACT

Initial notice of the proposed project was sent to property owners within a 300-foot radius as well as interested parties in the neighborhood on August 19, 2011. Subsequently, the applicant held a community meeting at Chabot College on September 28, 2011. Most of the comments raised at that community meeting were related to whether parking would be allowed on the internal streets and whether there would be guest parking provided and whether or not Denton Avenue would remain blocked. Notice of the Planning Commission hearing and availability of the Mitigated Negative Declaration was sent on August 17, 2012 to all property owners within a 300-foot radius as well as those who have expressed an interest in the project. No responses to that notice were received as of the writing of this staff report.

NEXT STEPS

Following the Planning Commission hearing and assuming the Commission recommends approval of the project, the City Council will hear the item along with the Planning Commission's recommendation and render a decision on the proposed Mitigated Negative Declaration, General Plan Amendment, Zone Change, Parcel Map, and Development Agreement applications. Should the Council approve the project, the Development Agreement would be signed and recorded, followed by the recordation of the Parcel Map, creating the park parcel and future development Parcel, and lastly the transfer of the one-acre portion of the property to the City for the expansion of Greenwood Park. Once the park expansion property has been transferred to the City, the Hayward Area Recreation and Park District would then follow its process for design and construction of the park enlargement. At some point during the term of the Development Agreement, the applicant would submit for Tentative Tract Map and Site Plan Review applications for the development of the residential homes.

Prepared by: Sara Buizer, AICP, Senior Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I** Location Map
- Attachment II** Findings for Approval
- Attachment III** Conditions of Approval
- Attachment IV** Mitigated Negative Declaration and Initial Study
- Attachment V** Mitigation Monitoring and Reporting Program
- Attachment VI** Draft Development Agreement
- Attachment VII** Plans

would contribute to the downtown entertainment area. Commissioner Trivedi encouraged Mr. Guillaume to put some thought and care into the design and finish of the business to accompany the high quality of his inventory.

Commissioner McDermott congratulated Mr. Guillaume and said that due to the unique nature of the business, marketing to people who would not expect or be aware of such a business being located in downtown Hayward would be critical. She also suggested he join, and talk with the Hayward Chamber of Commerce for assistance in promoting the business.

Chair Márquez said she would be also supporting the motion and she thanked Mr. Guillaume for his passion and commitment and for making this a high quality business.

Commissioner Lavelle said she supported everything said by the other Commissioners, noted she was a wine consumer, and said she looked forward to being a customer at the new shop. She asked if the motion maker and second would be willing to remove Condition of Approval number 14 commenting that she wasn't in favor of restricting the business owner from being able to sell chilled wine and beer. She noted those items were available across the street at the drug store or down the street at Safeway, and she said she did not want to restrict this business owner in that way. Commissioner Lamnin said she was amendable to the change, but questioned if the HPD representative or staff had any concerns. Planning Manager Patenaude said staff didn't have any particular concerns, and he noted that language contained in the preamble of the Conditions would prevent the application from morphing into an unwanted activity. Commissioner Loché said he also accepted the change.

Chair Márquez asked Commissioner Lamnin to reiterate the motion with the removal of Condition of Approval number 14.

The motion to find the project categorically exempt from review under CEQA, Section 15301, Existing Facilities, and approve the Conditional Use Permit, subject to the findings and conditions of approval, with an amendment to remove Condition of Approval number 14, was approved unanimously 7:0:0.

AYES: Commissioners Faria, Lamnin, Lavelle, Loché, McDermott, Trivedi
Chair Márquez

NOES:

ABSENT:

ABSTAINED:

3. Development Agreement No. PL-2010-0235, General Plan Amendment No. PL-2010-0236, Zone Change No. PL-2010-0237 and Parcel Map No. PL-2010-0431 – Westlake Development LLC (Applicant)/Chang Income Partnership L.P. (Owner) – Amend the General Plan Designation from Low Density Residential to Medium Density Residential; Rezone from Single-Family Residential to Open Space and Planned Development; Approve a Parcel Map for the Park Expansion and Future Development Lots; and Approve a Related Development Agreement. The Property is Located at the Northeast Corner of Eden and Denton Avenues

Senior Planner Sara Buizer gave a synopsis of the report noting a staff recommendation that a Condition of Approval be added requiring protective measures for an existing large oak tree (assuming the tree is in good health) located on the public right of way near the proposed entrance to the residential development.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 20, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Commissioner Lavelle said the City was fortunate to have a relationship with the local recreation district and she asked for more information about the “fee interest” that the applicant would dedicate for the expansion of Greenwood Park. Senior Planner Buizer explained that the applicant was dedicating an interest in the property and “fee interest” was language that gave some flexibility in how the property would be transferred to the City.

Commissioner Lavelle asked who would ultimately own the park if HARD (Hayward Area Recreation and Park District) was responsible for maintaining it. Assistant City Attorney Conneely explained that currently some parks were owned by the City and leased to HARD and others were owned and maintained by HARD. Commissioner Lavelle said this was a fine opportunity to expand a park that was already busy with activity noting the community would enjoy the expansion now as would the owners of the new homes later.

Commissioner McDermott agreed that the report was complex and asked the City’s preference to acquire the land; would they pay cash or would they give credit for the development. Senior Planner Buizer explained that while the City did not have a preference per se, because the development could happen at any time over the 10 year period, the City was hesitant about holding that much money in reserve. Because of that, Ms. Buizer said there may be a preference to purchase the land outright and hold the developer responsible for all fees when construction began. Senior Planner Buizer commented that a lot depended on how quickly the project moved forward.

Commissioner McDermott asked why HARD would spend funds to make improvements to the park if the City of Hayward owned the property. Assistant City Attorney Conneely explained that once the property was acquired and the park improvements were complete Council would be asked to amend the lease agreement to include this park. Ms. Conneely said this was typically how recent park acquisitions had been handled.

Commissioner McDermott asked how the fair market value of \$15 per square foot for the property was determined. Senior Planner Buizer said appraisals were done by both the City and the developer, the number was negotiated, and the developer’s board authorized acceptance of that price. Ms. Buizer commented that a lot went into the negotiation: the applicant was looking for amendments to General Plan Designations and a development agreement that determined a length of time to complete the project, and in exchange the City got a park expansion; something that it has wanted for a long time.

Commissioner McDermott asked about feedback from residents in the area and what concerns they had about the proposed park expansion and housing development. Senior Planner Buizer said there were a couple of concerns including the availability of guest parking on the property and whether the Denton road closure would be eliminated and traffic would cut through the existing neighborhood. Ms. Buizer said there was no plan to open Denton.

Commissioner McDermott asked if current residents would have any input regarding the park development. She said she saw a lot of people playing basketball and walking their dogs. Senior Planner Buizer deferred the question to HARD representative Larry Lepore.

Larry Lepore, Park Superintendent for HARD, introduced himself and said there was a community process each time HARD developed a new park, or renovated an existing park, that included noticing residence within 500 feet of the park site, posting information on HARD's website, and notifying stakeholders, organizations, and Home Owner Associations of the community meetings. He said input received at community meetings was received and brought back as part of the preliminary design, and then later as the Revised Master Plan. Mr. Lepore explained that public comments could also be made when the board considered the Revised Master Plan for approval.

Commissioner McDermott noted that public meetings were not always convenient and she suggested including a questionnaire with the notice that people could complete and return. Mr. Lepore said a phone number and email address for HARD was always included with the notice for any comments. Commissioner McDermott said listing options (such as dog park, volleyball court, etc.) on the questionnaire would allow residents to rank the options they would prefer.

Commissioner Lamnin asked if a large tree located in the middle of the property would be preserved and Senior Planner Buizer said staff would have to review the precise plans and the tract map to see if it could.

Commissioner Lamnin asked what would be done, or had been done, to mitigate toxins in the area. Ms. Buizer said the Hazardous Materials division of the Hayward Fire Department had been working with the applicant, as well as regional agencies, and based on the updated reports submitted by the developer on August 30, 2012, the Department of Toxic Substances Control and Bay Area Water Quality Control Board had accepted the report conclusion and deemed the property acceptable for residential and park use with no further action required.

Commissioner Lamnin asked if multi-units would be an option with the zone change and Senior Planner Buizer said no, the development agreement only allowed up to 36 two-story, single family detached homes. Commissioner Lamnin asked if street parking could be marked in some way and Ms. Buizer said not on Eden or Denton Avenues. Commissioner Lamnin said she thought the spots were allocated as part of the parking requirement and Ms. Buizer explained that the developer was showing what could be provided offsite. Ms. Buizer also noted that typical projects of this size were only providing the two covered parking spaces per unit and the garage; this project was unique because there were 19 designated guest parking spots onsite.

Commissioner Lamnin asked the Assistant City Attorney if the Development Agreement locked the City into any expedited approvals or if the normal process was still in place and Ms. Conneely responded that the normal review process was in place. Commissioner Lamnin asked if there were any concerns with the Development Agreement as it current stood and staff said no.

Commissioner Faria said she visited the site and commented that the change in density would fit with nearby properties. She also noted that current residents were parking within the existing developments freeing some parking on Eden Avenue. Commissioner Faria commented that according to the general map plan the size of the park was smaller. Senior Planner Buizer confirmed the park size would be a little smaller but the majority of what was envisioned was intact. Commissioner Faria asked if the park in-lieu fees paid by KB Development would be supporting the expansion and Ms. Buizer said yes, the fees paid by KB would be used for both acquisition and improvements.

Commissioner Loché said residents living adjacent to the development had expressed concern about having both the entrance and exit on Denton Avenue and he asked for confirmation that traffic would



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 20, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

not be impacted. Senior Planner Buizer said she spoke with Public Works Transportation staff and they reiterated that traffic impacts were considered less than significant or minimal.

Commissioner Loché asked if there was any plan to create a breezeway between the development and the park so residents could walk to the park and Senior Planner Buizer said most likely definitive barriers would separate the two parcels so everyone would know what is park and what is private, but that would be determined during the final design stage. Ms. Buizer noted that units facing the park would have direct access and that the developer wanted to integrate those units with the park. Commissioner Loché said he liked that.

Commissioner Trivedi said that as a matter of principle, he preferred that the development be integrated with the park and neighborhood rather than closed off and he also liked that homes would be facing the park. Commissioner Trivedi confirmed that regardless of the payment mechanism the City would acquire the park within 90 days and make all improvements, and Senior Planner Buizer said yes and also confirmed that the developer would have 10 years to develop the rest of the site.

Chair Márquez asked at what stage the analysis for the Community Facility District (CFD) would occur and Senior Planner Buizer said during the next stage of development. Ms. Buizer explained that if the analysis determined that additional public safety services were needed a new CFD could be formed or annexed to an existing CFD. Chair Márquez asked if number of calls for service and the nearest fire station were considerations and Senior Planner Buizer said yes, as well as if there was already a shortfall of services for the area.

Commissioner Faria asked if the 10-year time frame for development was typical. Senior Planner Buizer said yes, per the Hayward Municipal Code with an extension of 5 additional years.

Commissioner McDermott noted that the report said the developer would put a \$20,000 deposit for the CFD and she asked if the City had used deposits in the past and if the money could be used for other things. Assistant City Attorney Conneely said the intent of the deposit was to defray the costs of conducting the fiscal study of the impact the development would create on public safety services. Anything left over, she said, would be applied to the assessment of the CFD. Commissioner McDermott said she had several questions for the applicant.

Chair Márquez opened the Public Hearing at 9:13 p.m.

Jack Matthews, architect with business address in San Mateo, and Project Manager Sunny Tong, representing the applicant with business address in San Mateo, introduced themselves.

Commissioner McDermott asked if the developer had done similar projects in the area. Mr. Tong responded that he was currently working on a five acre Transit-Oriented Development in San Leandro near the downtown bus station consisting of office and residential units. Mr. Tong also mentioned a single family housing project located in Hayward on a two acre site that should come before the Planning Commission in the next six to nine months. Commissioner McDermott asked if developer was based in California and Mr. Tong said he was based in San Mateo.

Commissioner McDermott asked if solar panels were going to be offered as a purchase option and Mr. Tong said his design team wanted to be as green as possible, but he didn't know if the roof was designed for solar panels and he deferred the question to his architect. Mr. Matthews said the orientation of the roof was important for collecting solar energy and he said electrical generation could be possible on some units and solar hot water on most. Mr. Matthews said the goal was a Green point rating of around 100 (noting the City's standard was 75), noting it was the developer's philosophy and a good marketing tool. Commissioner McDermott confirmed that the community was very interested in Green construction.

Commissioner Lavelle asked if the developer had tried to acquire an occupied parcel located next to the southeast corner of the development. Mr. Tong said attempts were made to contact the home owner, and he believed the homeowner attended the community meeting, but said the owner didn't seem to have any desire to relocate. Commissioner Lavelle pointed out that may change over the 10 year development period.

Commissioner Trivedi asked if any consideration had been given to the site's proximity to the airport such as an easement for aircraft noise. Senior Planner Buizer said no, but said an easement was a typical requirement placed on deeds for such property, or improvement to windows if deemed necessary to mitigate some of the noise. She noted an evaluation would be made when the site plan was reviewed.

Commissioner McDermott said Commissioner Trivedi's concern would be addressed in the purchase contract as part of the disclosure to the potential home buyer.

Commissioner Lamnin said she appreciated their intent to be green and asked if multi-family units had been considered. Mr. Tong said the intention was always for single family homes.

"Citizen Sam" Samiul, with address on Denton Avenue, displayed a petition he had circulated with the signatures of residents who didn't like the current design of the development. Mr. Samiul said residents would prefer an entrance located on Eden Avenue and an exit on Denton Avenue and include a dog park at the south end of Eden to create two parks areas: one for people, one for animal lovers. He noted that having dual entry points would better facilitate emergency services and evacuations. Mr. Samiul pointed out that fire trucks would have a difficult time maneuvering in the small cul-de-sac located at the end of Denton. He asked that the Commission consider keeping the area low density with historic charm. Mr. Samiul concluded by saying neighbors were willing to work with the developer, they didn't like the current design, and would prefer if Westlake just donated the land to the City.

Juanita Gutierrez, with address on Occidental Road, identified herself as a retired real estate broker and the former chairperson for the Mt. Eden Task Force. Ms. Gutierrez expressed frustration with the proposed development indicating the park was a slice of the original plan. She asked that the Commission not rush to make a decision noting the park would serve all of the neighborhoods, not just the KB homes or new development. Ms. Gutierrez said Kennedy Park was not big enough and so crowded on Sundays that the people looked like ants. Now is the time to do the right thing, she said, and asked the Commission to create a grand park for children of all ages.

Mr. Lepore said he'd been involved in the Greenwood Park expansion process since he came to HARD more than seven years ago. He said HARD attempted to negotiate the entire parcel but KB was unable to purchase the entire parcel. From there other options were considered including the Mt. Eden plan from 1990 that called for an 1.25 acres extension. Mr. Lepore noted that the current proposal was slightly less than that. He said HARD's directive has always been to provide park and open space for residents and had been doing so since its formation in 1944. He noted that while HARD was a special district, separate



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 20, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

from the City, it did work closely with City staff. Mr. Lepore said whether through the Master Lease Agreement with the City or by acquiring the property itself, HARD would provide the improvements and the ongoing maintenance for the expansion. Mr. Lepore concluded by saying it had been a pleasure to work with City staff, especially Senior Planner Buizer, and that the District had spent years working through all the complexities now contained in the Development Agreement. He said HARD supported this latest proposal, acknowledged that, of course, they wanted the entire area, and emphasized that they were developing the best facility they could with the property that was available.

Chair Márquez stated for the record that the Commission was asking Mr. Lepore to comment on the proposal because of HARD's relationship to the project.

Commissioner McDermott extended her gratitude to Mr. Lepore noting that HARD did a fantastic job for the community with a multitude of activities for citizens of all ages. She noted it was difficult to please everyone but City staff and HARD had done their best. Mr. Lepore thanked her for the comments and said he would bring them back to staff.

Commissioner Loché asked staff to explain why, without the Planned Development Zone Change, the potential amount of park land dedication would only be 0.6 acres. Senior Planner Buizer explained that unless the development was over 50 units, the City couldn't require a land dedication. If the development was 50 units, she explained, per City ordinance the land dedication requirement was 748 square feet per unit and multiplying that by the proposed 36 units totaled 0.6 acres. Ms. Buizer said that was included in her report to show that the proposed one acre dedication exceeded that amount and wasn't even required by ordinance.

Commissioner Trivedi asked for confirmation that a park in-lieu fee could have been paid and Senior Planner Buizer said that was correct and brought up the first slide of her presentation that showed under the current designation, no park would be required if the fee was paid. Commissioner Trivedi said he wanted it make it clear to residents that the City could have had no park if the development had taken a different form. Commissioner Trivedi also pointed out that options like a dog park or community center were part of the community outreach process. Mr. Lepore said all input and park amenities would be considered, but noted the site wasn't big enough for a community center.

Regarding access for fire and safety vehicles, Commissioner Trivedi asked staff for confirmation that interior roadways had the required turning radius for emergency vehicles and Senior Planner Buizer said yes, the layout had been reviewed by the Hayward Fire Department and met all minimum requirements. Commissioner Trivedi also confirmed that Denton would not be opened for through traffic and impacts to traffic on Denton were negligible and Ms. Buizer said that was correct.

Chair Márquez closed the Public Hearing at 9:37 p.m.

Commissioner Lamnin said she appreciated efforts to bring open space to community but had several concerns with the proposal. Regarding the two-story design of the homes, she pointed out the population of Hayward was aging and the design of the homes was not universal and had no accessibility. She had asked about multi-family units earlier she said because she was a proponent for one unit within an owned space, but she didn't know if that would be allowed under the current agreement or design.

Commissioner Lamnin said her other concern was having the entrance and exit on Denton Avenue. She pointed out that looking at the map the street looked wide, but she visited the site and found it didn't feel wide and with cars parked on the street, she was concerned about traffic impacts and would like to see a design with an entrance or egress on Eden Avenue. Commissioner Lamnin said she understood that would require some reworking of the design, but it felt safer to her.

Commissioner Lavelle said this development was very exciting for Hayward and was an outstanding example of government working with the community for compromise. She acknowledged that the shape of the development was a little unusual and resulted in an uneven parcel of land for the park extension, but she pointed out that the City had been successful in securing a portion of land that would become part of Greenwood Park within 90 days. Commissioner Lavelle said that was an unusual and successful result from which everyone in the neighborhood would benefit. Regarding suggestions made by "Citizen Sam," Commissioner Lavelle said she wasn't sure if the proposed location of the dog park was a good idea because dogs bark a lot and the homes facing that area might not like it, but she encouraged residents to give comments to HARD so all the needs of homeowners could be considered in the design of the park. Commissioner Lavelle concluded by saying this was a great growth area for the City, the KB home development was very attractive, very modern, and to Commissioner Lamnin said there would be other opportunities to create universal design single story units.

Commissioner Lavelle made a motion per the staff recommendation and complimented the creative planning that went into the project. Commissioner Faria seconded the motion commented that based on all of the work that had been done and the proposed improvements, the development would be a benefit to the community.

Commissioner Loché said he would be supporting the motion, but expressed concern that while looking for parking on Denton the one way traffic would create problems. He said if the proposal was approved, he hoped Council would look into creating two-way traffic to help reduce congestion and added trips on Denton. Commission Loché said he wouldn't recommend a second egress on Eden Avenue because of the resulting reduction in open space. He said he appreciated all the work done and the amount of open space added to Greenwood Park.

Assistant City Attorney Conneely clarified that the motion included the added condition of approval recommended by staff to protect the oak tree and both Commissioner Lavelle and Faria were supportive of the amendment.

Commissioner McDermott said she would be supporting the motion noting the development would complement the area and the park extension would add value to the properties surrounding it. She pointed out that having a park was a luxury and assumed that neighboring areas would use it.

Chair Márquez thanked Commissioner Trivedi for pointing out that without Commission support there would be no park expansion or improvement. She said she shared Commissioner Lamnin's sentiments regarding universal design, but noted the size of the project size was not significant. She said she liked the green point rating the developer was trying to achieve and concluded that she would be supporting the motion.

The motion to recommend approval to the City Council of the proposed project, including the adoption of the Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Program; approval of the General Plan Amendment, Zone Change, and Parcel Map to create a park expansion lot and parcel for future development lots; and a Development Agreement to identify the allowable density of future development in exchange for dedicating a fee interest in land for the expansion of Greenwood



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 20, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Park; with an amendment to add a condition of approval for the protection of an existing large oak located near the proposed project entrance on Denton Avenue.

The motion passed 6:1:0 (NOES: Lamnin)

AYES: Commissioners Faria, Lavelle, Loché, McDermott, Trivedi
Chair Márquez
NOES: Commissioner Lamnin
ABSENT:
ABSTAINED:

Commissioner Lamnin suggested that the development CC&Rs include language that requires garages to be used for parking. She also thanked staff for the inclusion of the sewer connection fees in the report.

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude introduced Senior Planner Erik Pearson who gave a PowerPoint presentation of Association of Bay Area Governments' (ABAG) Regional Housing Needs Allocation (RHNA) and Priority Development Area Investment and Growth Strategy noting that ABAG's housing production count of very low housing units produced during the last cycle for Hayward was short by 77 units. Mr. Pearson said ABAG had been notified of the error and a revision request had been made, but the appeal process had to play out before the correction would be reflected.

Commissioner Lavelle asked if it was true that Hayward was not mandated to meet the RHNA numbers produced by ABAG. Senior Planner Pearson said that was correct, the City just had to show it had General Plan designations, zoning in place, and an inventory of available parcels. Commissioner Lavelle said she was glad the very low housing numbers listed by ABAG were being corrected. Mr. Pearson noted that the error took place when reporting changed from a fiscal year to a calendar year creating a six month period when counts were missed.

Commissioner Lamnin asked if the required number of housing units was based on census counts and Senior Planner Pearson said yes, but also current population, natural population growth, economic projections, and a number of other factors.

Commissioner Lamnin asked about recruitment for General Plan Task Force and Senior Planner Pearson gave an update noting the deadline to apply might be extended.

Chair Márquez asked about an upcoming training and Mr. Pearson said it would most likely be scheduled to replace a regular Planning Commission meeting.

Planning Manager Patenaude noted that Officer Elections would be placed on the next agenda and noted the next meeting was scheduled for October 4, 2012.

5. Commissioners' Announcements, Referrals

Commissioner Lamnin asked if a replacement Commissioner had been selected for the Sustainability Committee. Chair Márquez asked if anyone was interested and Mr. Trivedi said he was interested.

Commissioner Lamnin welcomed and congratulated new Commissioner Trivedi. She also reminded everyone to vote in the upcoming election and noted the deadline to register to vote was October 22.

Commissioner Lavelle commented that there were 11 statewide propositions on the ballot. She also noted that a new massage business opened on Jackson Street and she asked why these types of businesses didn't have to come before the Commission. Planning Manager Patenaude explained that in the past massage parlors typically required a Conditional Use Permit, however, about two years ago the state legislature passed a law that created a clearing house agency that certified massage technicians. He said that as long as all technicians were certified, then a massage parlor could locate in any zoning district that allowed professional services and wouldn't have to come before the Commission. Mr. Patenaude noted that the agency in charge was monitoring the certification of technicians and that he received frequent status emails. Depending on feedback from police, the new law sunsets in a couple of years and will either be renewed, revised or cut, he said.

Commissioner McDermott asked if the technician's certification was public information and Planning Manager Patenaude said yes noting that if the Commission ever had a question about a certain address he could check with Revenue to confirm the business had the appropriate permits. Commissioner McDermott said it will be interesting to see how many problems occur because of less oversight. Mr. Patenaude commented that he was sure the police departments would weigh in if there were problems.

Commissioner Trivedi thanked everyone for the warm welcome and said he appreciated staff and other Commissioners for getting him started.

APPROVAL OF MINUTES

6. July 26, 2012 minutes approved with Commissioners McDermott and Trivedi abstaining.

Chair Márquez asked for an update to a question she'd asked on the 26th regarding assistance provided to tenants currently living in homes owned by CalTrans. Senior Planner Buizer said any existing tenant in good standing would receive a stipend from CalTrans. Those tenants purchasing a CalTrans home would apply that stipend toward the purchase price, she said.

ADJOURNMENT

Chair Márquez adjourned the meeting at 10:17 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 20, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Director of Maintenance Services

SUBJECT: Adoption of an Ordinance Adding Section 5-7.25, Regarding Unlawful Nuisance on Public Property, to Article 7 of Chapter 5 of the Hayward Municipal Code

RECOMMENDATION

That the City Council adopts the Ordinance introduced on October 23, 2012.

SUMMARY

The City's existing Community Preservation and Improvement Ordinance, Chapter 5, Article 7, addresses unlawful nuisances on private property. The proposed amendment (the Ordinance) would add Section 5-7.25 to address unlawful nuisances on public property. This provision places responsibility on occupants, tenants, and private property owners to keep the public right-of-ways adjacent to their properties free of trash and debris in order to ensure safe travel for pedestrian and vehicular traffic, prevent blight, and otherwise protect and promote the public health, safety, and welfare. Staff would judiciously utilize the enforcement tools and remedies in the existing ordinance to address violations. Furthermore, the existing ordinance provides a mechanism for property owners to appeal any citation fees and penalties that may be issued.

BACKGROUND

The Ordinance was introduced by Mayor Sweeney at the October 23, 2012, meeting of the City Council¹ with the following vote:

AYES:	Council Members:	Zermeño, Halliday, Peixoto, Salinas, Mendall
	Mayor:	Sweeney
NOES:	Council Members:	Jones
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

¹ <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca102312full.pdf>

DISCUSSION

The proposed amendment to the Hayward Municipal Code, Community Preservation and Improvement Ordinance, is intended to keep the public right-of-ways safe by reducing the amount of trash and debris left on City streets and sidewalks as a result of being deposited there by the occupants, tenants, or owners of adjacent private property. The proposed amendment facilitates the City Council's top priorities to keep the City safe, clean, and green, along with responding to community groups, volunteer groups, and the Keep Hayward Clean and Green task force, which have been assisting City staff in removing items left on the City rights-of-ways.

The proposed amendment would enable the City to notice, abate, and recover costs associated with removing trash and debris from the public right-of-ways, should a property owner choose not to remove the trash and debris when noticed to do so. The intent of the proposed amendment is to reduce the amount of trash and debris left on the public right-of-ways, effectively improving the safety and cleanliness of the City.

The City's current ordinance states, "It is unlawful for any responsible party owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in a condition detrimental to public health, safety, or general welfare or in a condition which violates any code or ordinance adopted by the City."² The current ordinance, as written, does not specifically address nuisances on public property located adjacent, or contiguous to, private property.

While most property owners maintain their properties in good condition and keep the street and sidewalk areas free from trash and debris, it is necessary to require all occupants, tenants, and property owners, by way of ordinance, to maintain their properties in a manner that is consistent with preserving the safety and cleanliness of adjacent public right-of-ways. By amending the current ordinance, the City would be able to issue violation notices for trash and debris deposited on public property, and to recover the costs associated with the removal of such trash and debris, if and when it becomes necessary for the City to do so, specifically with respect to those property owners/managers who are not conscientious about maintaining their property and the adjacent areas.

The proposed amendment seeks to achieve the above in three principal ways:

1. By educating the community through outreach and abatement notification that it is illegal to discard any type of trash or debris on the public right-of-ways.
2. By partnering with property owners to identify and prosecute sources of illegal dumping, who may or may not be associated with that specific property.
3. By allowing the City to recover the expense associated with abating the trash and debris prevalent in certain areas throughout the City.

² <http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/MUNICIPAL-CODE/CommunityPreservation&Improvement.pdf>

Intent – The intent of the proposed ordinance amendment is to make Hayward a safe and clean City by providing staff with the necessary tools to actively partner with the community to reduce illegal dumping on the public right-of-ways and maintain a safe and attractive city. The intent of the ordinance is not to charge a fee or penalty to innocent parties who properly maintain their property and are victims of illegal dumping. Instead, the intent is to hold the perpetrators of the illegal dumping responsible and accountable for their actions.

Purpose – The purpose of reducing illegal dumping in the City is to:

1. Make the City a safe and clean community,
2. Preserve and enhance the beauty of our community and neighborhoods,
3. Make the City an inviting place for residents and guests,
4. Foster pride in our community and neighborhoods,
5. Promote a healthy and safe environment for residents and businesses,
6. Maintain and improve property values, and
7. Redirect City resources effectively and efficiently.

Program Implementation – Staff will implement the proposed amendment in a fair and judicious manner, and will take additional steps to identify perpetrators so that an innocent victim of illegal dumping is not held accountable. For each case, the property owner will be given an opportunity to communicate and work with City staff to abate the illegal dumping. All reports will be tracked and maintained in a computer database.

City staff will complete the following steps upon notification of illegal dumping:

1. Inspect and photograph the location, and complete a report.
2. Mail the resident/property manager, and/or property owner of record, a courtesy notice to advise of the violation and request removal of the items left in the right-of-way.

Upon receiving a courtesy notice, the notified party may:

1. Remove the items left in the right-of-way.
2. Notify the City that they are not the source of the illegal dumping.
3. Refuse to comply with the courtesy notice.

Except in the case of #2 above, City staff would return to the location seventy-two hours following notification to re-inspect the site. If the items have not been removed, the City would complete the following steps:

1. City staff would abate.
2. City staff would mail a violation notice to the property owner of record, to include a fee and penalty charge.

A property owner may appeal the issuance of a violation notice by submitting an Administrative Hearing Request. If a hearing is requested, the due date for the payment of fees and penalties would be postponed pending the outcome of the hearing.

In the case where a property owner has timely notified the City that they are not the source of the illegal dumping AND they state that they do not know who is AND City staff does not have evidence to the contrary, the City will abate the single instance of the illegal dumping without charging the property owner. If that property continues to be a location of illegal dumping, City staff will work with the property owner to understand property ownership responsibilities under the Ordinance and/or to identify the source of the illegal dumping and mechanisms to stop it.

Reimbursement of Administrative Hearing Fee – The Master Fee Schedule imposes an administrative fee for holding an administrative hearing. If an administrative hearing is conducted and the hearing officer finds in favor of the property owner, the administrative hearing fee would be fully reimbursed and no fee or penalty would be imposed.

*Low Income Waiver Available*³ – A low income waiver of the administrative hearing fee is available if the property owner meets the fee waiver criteria.

Local Example of Success– The City’s proposed amendment is modeled after a similar ordinance enacted by the City of Milpitas in 1999⁴. Milpitas reports success from implementation of their ordinance, which has now been in effect for thirteen years.

Program Progress Update– Staff will provide the City Council with a one year progress report to advise the Council regarding the effectiveness of implementation. Staff will consult with the Keep Hayward Clean and Green Task Force in preparing the report to council.

ECONOMIC IMPACT

Improving the overall appearance and health and safety of all properties in the City supports a better image of Hayward. This, in turn, improves property values and supports more positive development, both residential and commercial, which leads to an economically healthier community.

FISCAL IMPACT

Presently, there is a significant expense to the City for the removal of illegally dumped items from the public right-of-ways. The proposed amendment has the potential to reduce the amount of City resources associated with the removal of illegally dumped items, which would allow City staff to perform other maintenance functions with existing resources. Staff anticipates a substantial increase in the number of calls and/or other communications from property owners who may be impacted by the ordinance and required to pay the associated abatement fees. However, if the ordinance is successful in reducing illegal dumping, this call volume will eventually go down. In cases where a party has failed to pay the required abatement costs, delinquent costs will be assessed to the property tax rolls and collected with payment of property taxes.

³ http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/FINANCE/documents/2010/Low_Income_Discount-Waiver_Application.pdf

⁴ http://library.municode.com/HTML/16491/level3/TITVPUHESAWE_CH500NEBE_500-1.00DE.html

PUBLIC CONTACT

Community Comments - Residents and business owners have voiced both support and concern over implementation of the ordinance. The main concern heard at the October 23, 2012 Council meeting was that the ordinance would place an unfair burden on innocent property owners who do not deposit items on the public-right-of way adjacent to their own properties and are unaware of who the actual perpetrators might be. As identified in the implementation steps above, staff will work with property owners to address incidences of illegal dumping where they are not responsible for these actions. The use of a computer database will help staff track problem areas of illegal dumping in the City where additional strategies (e.g. video camera monitoring) may need to be implemented to protect innocent property owners.

Staff Communication with Community - Following the October 23, 2012 Council meeting, staff met with the Hayward Chamber of Commerce Government Relations Committee to listen to feedback and concerns from business owners regarding the proposed amendment. At the meeting, staff heard comments from those who were both for and against the ordinance. Staff has been in contact with the Southern Alameda County Rental Housing Association to discuss their concerns over the implementation of the proposed amendment.

Public Notice - The summary of the Ordinance was published in the Hayward Daily Review on Saturday, November 10, 2012.

Prepared by: Denise Blohm, Administrative Analyst II

Recommended by: Matt McGrath, Maintenance Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Ordinance: Amend Hayward Municipal Code, Chapter 5, Article 7, by adding Section 5-7.25
Attachment II	Public Notice: Summary of Ordinance Published on 11/10/12

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA
ADDING SECTION 5-7.25 REGARDING UNLAWFUL
NUISANCE ON PUBLIC PROPERTY TO ARTICLE 7 OF
CHAPTER 5 OF THE HAYWARD MUNICIPAL CODE

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

Section 1. Section 5-7.25 is added to Article 7 of Chapter 5 of the Hayward Municipal Code and is hereby enacted to read as follows:

SEC. 5-7.25 UNLAWFUL NUISANCE ON PUBLIC PROPERTY. It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any private property in the City to maintain or to allow to be maintained such property for any purposes so as to create any of the following conditions on adjacent or contiguous public property:

- (a) The discarding of furniture, appliances, containers of used motor oil, car batteries, tires and other household waste upon a public street, right-of-way or other public property;
- (b) The depositing or spilling of debris, including trash, paper, wood, plant cuttings and other vegetation onto the public right-of-way or other public property;
- (c) The depositing of mud, dirt, sand, gravel, or concrete onto the public right-of-way that is not associated with the construction or repair of any building or structure pursuant to section 3-5.02 of this code. In the event that such material is deposited in the public right-of-way the responsible party shall make every effort to ensure that the material does not flow into a public storm drain or watercourse and shall remove the material as quickly as is feasible;
- (d) The existence of any condition or use which unlawfully obstructs the free passage or use of any public right-of-way, street, or sidewalk.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 23rd day of October 2012, by Council Member _____ .

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

**PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

**ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING SECTION 5-7.25
REGARDING UNLAWFUL NUISANCE ON PUBLIC PROPERTY TO ARTICLE 7 OF
CHAPTER 5 OF THE HAYWARD MUNICIPAL CODE**

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- (a) The discarding of furniture, appliances, containers of used motor oil, car batteries, tires and other household waste upon a public street, right-of-way or other public property;
- (b) The depositing or spilling of debris, including trash, paper, wood, plant cuttings and other vegetation onto the public right-of-way or other public property;
- (c) The depositing of mud, dirt, sand, gravel, or concrete onto the public right-of-way that is not associated with the construction or repair of any building or structure pursuant to section 3-5.02 of this code. In the event that such material is deposited in the public right-of-way the responsible party shall make every effort to ensure that the material does not flow into a public storm drain or watercourse and shall remove the material as quickly as is feasible;
- (d) The existence of any condition or use which unlawfully obstructs the free passage or use of any public right-of-way, street, or sidewalk.

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

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

Introduced at the special meeting of the Hayward City Council held October 23, 2012, the above-entitled Ordinance was introduced by Mayor Sweeney.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on November 13, 2012, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward,

California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: November 10, 2012
Miriam Lens, City Clerk
City of Hayward

DATE: November 13, 2012

TO: Mayor and City Council

FROM: City Attorney
Development Services Director

SUBJECT: Introduction of an Ordinance Amending Building Abatement Code,
Chapter 9 - Article 3 of the Hayward Municipal Code

RECOMMENDATION

That the City Council introduces the attached Ordinance amending the Building Abatement Code.

SUMMARY

The proposed amendment to the Building Abatement Code (the “Code”) will change key features in the existing Code. The proposed Code would establish a three-person building abatement panel (versus a five-member board) to hear appeals when the City’s Building Official deems a building or structure substandard. The proposed Code also provides a procedure to appeal a lien/special assessment to this three-person hearing panel. These amendments will improve enforcement options to address substandard buildings in the City of Hayward.

BACKGROUND

Chapter 9, Article 3 of the Hayward Municipal Code (HMC), otherwise known as the Building Abatement Code (“Code”), makes it unlawful for a property owner to maintain a building or structure on a property in an unsafe, substandard, or dangerous condition. The purpose of the Code is to provide a method whereby buildings or structures that are deemed substandard can be repaired or demolished.

The Code establishes a process for abatement of substandard buildings. If the City’s Building Official deems a building or structure to be substandard, the Building Official is required to notify the property owner of the substandard condition and order its repair. If a property owner does not comply with the Building Official’s order to repair, the City may perform the abatement. Currently, a property owner may also appeal the Building Official’s order to a five-member appeal board.

The Code also establishes a procedure for recovery of the costs of abatement. If the City abates a substandard building condition after an owner fails to comply with an order to repair, the City may recover its costs. The Building Official must prepare a report specifying the abatement costs and present it to the City Council at a hearing. The property owner may object to the costs at the

hearing and the City Council may approve, deny, or modify any charge in the report. Any costs approved by the City Council are recovered through special assessments submitted to and collected by the Alameda County Tax Collector.

DISCUSSION

The Code is a robust code enforcement tool to abate unsafe, substandard, and dangerous buildings in the City of Hayward. However, it has remained underutilized in part due to the challenges in constituting an appeals board. Furthermore, the process for collection of unpaid code enforcement costs does not align with other City code enforcement ordinances. The proposed Code amendment addresses these issues.

The Building Abatement Appeals Board

In its current form, the Code establishes a five-member Building Abatement Appeals Board to hear a property owner's appeal of an order to repair a building. Members of the appeals board are appointed by the City Council and must be qualified by experience and training to review matters pertaining to building construction and maintenance. As the appeals board is a Council-appointed body, the City Charter also requires members of the board to be residents of the City.

The proposed Code would establish a three-member hearing panel; and since the panel makes determinations on technical issues concerning the safety of particular building structures and is not a policy-making body, the proposed Code allows for appointment of Board members by the City Manager. . The proposed amendment seeks to increase the pool of qualified candidates by changing the appointment process, reducing the number of members on the panel and, if necessary, allowing for the appointment of qualified candidates from outside of the City.

By authorizing the City Manager to appoint three hearing officers, the proposed Code enables the City to compose the expertise of the panel to address a specific situation and to address any vacancies in a timely and efficient manner. The proposed Code would also allow the City Manager to consider candidates who do not reside in the City but are otherwise qualified by experience and training concerning building construction and maintenance. Nonetheless, City staff will make every effort to locate City residents for appointment and only after this effort is exhausted will staff expand its search to candidates that live outside of the City.

The proposed Code provides the following specific qualifications for each panel member:

- California state license as a general engineering contractor or general building contractor or four years of building construction or inspection experience involving structural, housing, electrical and plumbing construction or inspection work; and
- Have no conflict of interest, pecuniary interest, or ethical barrier regarding the specific case the member will hear.

Staff anticipates being able to find qualified members for appointment without having to compensate them for their service. However, the proposed Code maintains flexibility in this regard and the City will have the ability to compensate applicants for their services, should the need arise.

The proposed appointment procedure for hearing officers closely resembles the appointment process in other City code enforcement ordinances, such as the Community Preservation and Inspection Ordinance and the Residential Rental Inspection Ordinance.

Recovery of Abatement Costs

Under the current Code, the Council is required to conduct an annual hearing to consider the City's unpaid costs of abating a substandard building. If the Council affirms the abatement costs, the unpaid amount becomes a special assessment against the property affected and collected as part of the property tax bill. A property owner may oppose the imposition of the abatement costs at the City Council hearing.

This process – in which Council conducts a hearing concerning unpaid abatement costs – has been modified in other City code enforcement ordinances. The Community Preservation and Inspection Ordinance and the Residential Rental Inspection Ordinance were both amended in 2009 to create a hearing process before a hearing officer on the technical merits of the abatement costs instead of a hearing before the Council. The Council then considers the determinations of the hearing officers by holding a hearing at which they confirm the special assessments for collection by the County on the tax bills. These 2009 amendments increased hearing opportunities for property owners and improved the City's ability to recover costs without denying due process to the property owner or Council's ability to review cases under appeal.

The proposed Code creates a similar hearing process before the three-member hearing panel. Under the proposed Code, a property owner could appeal an abatement cost to the three-member hearing panel. If the hearing panel approved the costs, the Council would still be involved in the process by confirming the special assessment for collection by the County, as it does for special assessments arising from other City code enforcement ordinances.

PUBLIC NOTICE

Public notice regarding this Council meeting was provided as required by law. If the Council introduces the Ordinance, the City Clerk will cause the proposed Ordinance to be published at least five (5) days prior to and fifteen (15) days after adoption by the Council and a certified copy will be posted in the City Clerk's Office, pursuant to Government Code 36933.

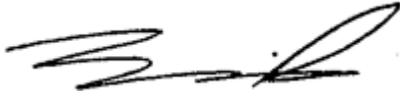
FISCAL IMPACT

None identified at this time, since all costs incurred by the City under the proposed Code would be recoverable through the special assessment process.

Prepared by: Rafael E. Alvarado Jr., Assistant City Attorney

Recommended by: Michael S. Lawson, City Attorney
David Rizk, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Proposed Ordinance Amending Chapter 9, Article 3 of the Hayward
Municipal Code

Attachment II: Building Abatement Code

ORDINANCE NO. _____

ORDINANCE AMENDING ARTICLE 3 OF CHAPTER 9,
SECTIONS 9-3.101 THROUGH 9-3.906, OF THE HAYWARD
MUNICIPAL CODE RELATING TO BUILDING ABATEMENT

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

Section 1. Finding. The City Council of the City of Hayward hereby finds and determines that the enactment of this Ordinance relating to Building Abatement is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Title 14 of the California Code of Regulations, Section 15301, in that the Ordinance requires the repair, abatement or demolition of unsafe, dangerous and/or substandard, existing facilities, which action will not have the potential of causing a significant, adverse environmental effect.

Section 2. Upon the adoption of this Ordinance, Sections 9-3.101 through 9-3.906 of the Hayward Municipal Code are hereby repealed and, in substitution thereof, new Sections 9-3.101 through 9-3.901 of the Hayward Municipal Code are hereby enacted to read as follows:

ARTICLE 3

BUILDING ABATEMENT

Section	Subject Matter
9-3.101	TITLE
9-3.102	PURPOSE
9-3.103	SCOPE
9-3.104	ALTERATIONS, ADDITIONS, AND REPAIRS

ENFORCEMENT

9-3.201	CITY BUILDING OFFICIAL
9-3.202	ADMINISTRATION
9-3.203	INSPECTIONS
9-3.204	RIGHT OF ENTRY

9-3.205	ABATEMENT
9-3.206	INSPECTION OF WORK
	DEFINITIONS
9-3.301	GENERAL
9-3.302	UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING

NOTICES AND ORDERS OF BUILDING OFFICIAL

9-3.401	NOTICE AND ORDER
9-3.402	POSTING OF SIGNS
9-3.403	RECORDATION
9-3.404	STANDARDS TO BE FOLLOWED
Section	Subject Matter
9-3.405	DEMOLITION, AN ALTERNATIVE TO REPAIR

APPEAL OF BUILDING OFFICIAL'S NOTICE AND ORDER

9-3.501	BUILDING ABATEMENT HEARING PANEL
9-3.502	RIGHT TO APPEAL NOTICE AND ORDER
9-3.503	FAILURE TO APPEAL NOTICE AND ORDER
9-3.504	NOTICE OF HEARING
9-3.505	EFFECT OF APPEAL
9-3.506	DECISION OF HEARING PANEL

ENFORCEMENT OF ORDER

9-3.601	FAILURE TO COMPLY WITH ORDER
---------	------------------------------

9-3.602 BUILDING OFFICIAL AUTHORIZED TO DO
WORK

PERFORMANCE OF WORK

9-3.701 PLANS AND SPECIFICATIONS FOR WORK

9-3.702 FINANCING OF WORK

RECOVERY OF COSTS

9-3.801 NOTICE OF LIEN/SPECIAL ASSESSMENT

9-3.802 LIEN/SPECIAL ASSESSMENT HEARING

9-3.803 REPORT OF COSTS

9-3.804 NOTICE OF REPORT

9-3.805 COLLECTION ON TAX ROLL

Section Subject Matter

JUDICIAL REVIEW

9-3.901 JUDICIAL REVIEW OF HEARING PANEL
DECISION

ARTICLE 3

BUILDING ABATEMENT

(Added by Ord. No. 69-027 C.S., adopted October 21, 1969, Replaced in full by Ord. No. 97-11, adopted July 15, 1997)

SEC. 9-3.101 TITLE. These regulations shall be known as the Building Abatement Code of the City of Hayward, may be cited as such, and will be referred to herein as "this code."

SEC. 9-3.102 PURPOSE. It is the purpose of the provisions of this code to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy otherwise available at law or equity, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, may be required to be repaired, rehabilitated, vacated, removed, or demolished.

SEC. 9-3.103 SCOPE. The provisions of this code shall apply to all unsafe, substandard, and dangerous buildings, as herein defined, which are now in existence or which may hereafter be constructed in the City of Hayward.

SEC. 9-3.104 ALTERATIONS, ADDITIONS, AND REPAIRS. Any alterations, additions, or repairs to buildings or structures which are required to be repaired or rehabilitated under the provisions of this code shall be subject to the provisions of the Hayward Building Code.

ENFORCEMENT

SEC. 9-3.201 CITY BUILDING OFFICIAL. For the purposes of this code, Building Official shall be defined as the City Building Official of the City of Hayward or his or her designee.

SEC. 9-3.202 ADMINISTRATION. The Building Official is hereby authorized to enforce the provisions of this code. The Building Abatement Hearing Panel as established by section 9-3.500 of this article is empowered to hear appeals from notice and orders issued by the Building Official.

SEC. 9-3.203 INSPECTIONS. The Public Works Director, County Health Officer, Fire Marshal, Building Official, or their duly authorized representatives are hereby authorized to make such inspections and take such actions as may be required to enforce provisions of this code.

SEC. 9-3.204 RIGHT OF ENTRY.

- (a) Upon presentation of proper credentials, the Building Official, after having obtained the consent of the owner or occupant, may enter at reasonable times during daylight hours and for probable cause, any building, structure, or premises in the City to perform any duty imposed upon him by this code.
- (b) Except in emergency situations, the Building Official shall not enter any building, structure, or premises without the consent of the owner or occupant thereof, unless he possesses an inspection warrant obtained and issued in the manner provided by sections 1822.50 et seq. of the Code of Civil Procedure of the State of California or any amendments thereto to or replacements thereof.

- (c) Except as hereinabove permitted, no person shall hinder or prevent the Building Official while in the performance of the duties described above, from entering upon, and into any building, structure, or premises under his jurisdiction, at all reasonable hours during daylight hours and for probable cause, for the purpose of inspecting the same to determine whether or not the provisions of this code are observed therein.

SEC. 9-3.205 ABATEMENT. All buildings or portions thereof which are determined after inspection by the Building Official to be unsafe, substandard, and dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal as specified in this code.

SEC. 9-3.206 INSPECTION OF WORK. All buildings within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by the Hayward Building Code.

DEFINITIONS

SEC. 9-3.301 GENERAL. For the purpose of this code, certain words, phrases, and terms, and their derivatives shall be construed as specified herein. Words, phrases, and terms used in this code, but not specifically defined herein, shall have the meanings stated therefor in the Hayward Building Code or Hayward Housing Code. Where not defined in this code or in said Building Code or Housing Code, such words, phrases, and terms shall have the meanings generally prescribed by dictionary definition.

SEC. 9-3.302 UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a public nuisance and an unsafe, substandard, and dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

- (a) Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (b) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Hayward Building Code, for new buildings of similar structure, purpose, or location.
- (c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Hayward Building Code, for new buildings of similar structure, purpose, or location.
- (d) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

- (e) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in said Hayward Building Code, for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in said Hayward Building Code for such buildings.
- (f) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (g) Whenever the building or structure, or any portion thereof, because of:
 - (1) dilapidation, deterioration, or decay;
 - (2) faulty construction;
 - (3) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (4) the deterioration, decay, or inadequacy of its foundation; or
 - (5) any other cause

is likely to partially or completely collapse.
- (h) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (i) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (j) Whenever the building or structure, exclusive of the foundation shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
- (k) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become:
 - (1) an attractive nuisance to children;
 - (2) a harbor for vagrants, criminals, or immoral persons; or
 - (3) as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- (l) Whenever any building or structure has been constructed, or exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Hayward Building Code, or Hayward Housing Code, or of any law or ordinance of this state or the City of Hayward relating to the condition, location, or structure of buildings.

- (m) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion, less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
- (n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the County Health Officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- (o) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Marshal to be a fire hazard.
- (p) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- (q) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned for a period in excess of six months, so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

NOTICES AND ORDERS OF BUILDING OFFICIAL

SEC. 9-3.401 NOTICE AND ORDER. The Building Official shall examine or cause to be examined every building or structure or portion thereof to determine whether it is unsafe, substandard, and dangerous, and if such is found to be an unsafe, substandard, and dangerous building as herein defined, the Building Official shall notify or cause to have notified the owner of such building or structure and other persons having a beneficial or legal interest of record in the building or structure as hereinafter stated.

- (a) The notice shall contain the street address and a description sufficient for identification of the premises upon which the building is located. The notice shall state the conditions which render the building or structure an unsafe, substandard, and dangerous building. The notice shall order the correction or abatement thereof either by repair, rehabilitation, demolition, or removal within such time (not to exceed 30 calendar days from the date of the order) as the Building Official shall determine is reasonable under all of the circumstances. If in the opinion of the Building Official such conditions can be corrected or abated by repair or rehabilitation thereof, the notice shall state the repairs or rehabilitation which will be required. Such notice shall also state that if the repairs, rehabilitation, demolition, or removal are not completed within the time specified, or within such extension of time as may be granted by the Building Official, the work specified in the notice may be done or caused to be done by the Building Official and the cost thereof levied as a special assessment against the property.

If necessary, such notice may also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the Building Official. The notice shall also state that any person having any beneficial or legal interest of record in the building may appeal from the notice and order or any action of the Building Official to the Building Abatement Hearing Panel, provided the appeal is made in writing as provided in this code, and filed with the Building Official within 10 calendar days from the date of service of such notice and order, unless the Building Official determines that immediate action is necessary and must take action pursuant to chapter 1, section 102 of the Uniform Building Code. The notice shall further state that failure to appeal as provided in this code shall constitute a waiver of all right to an administrative hearing and determination of the matter and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

- (b) If such building is encumbered by a mortgage or a deed of trust, of record, and the owner of such building shall not have complied with the order of the Building Official on or before the expiration of time specified on such notice and order, the mortgagee or beneficiary under such deed of trust may, within the same period, comply with the requirements of the order of the Building Official. For good cause shown, the Building Official may extend the time within which to complete said repairs, rehabilitation, demolition, or removal.
- (c) The notice required hereinabove shall be given in the following manner:

The Building Official shall post or cause to be posted conspicuously at least one copy of the notice on the building and a copy of such notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located, as such person's name and address appear on the last equalized assessment roll of the County of Alameda. One copy of the notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to each of the following: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The notice shall be sent to such persons at their address as appears on the last equalized assessment roll of the County of Alameda or as is known to the Building Official. If the address of any known person entitled to service of the notice and order is unknown to the Building Official, then a copy shall be mailed, addressed to such person, at the address of the building involved in the proceedings.

A declaration of posting and mailing shall be made under penalty of perjury by the person or persons who posted and/or mailed said notice, certifying to the time and manner in which such notice was given, and such declaration shall be filed in the Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward. There shall also be filed therewith any receipt card which may have been returned in acknowledgment of receipt of such notice by registered mail. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceeding taken hereunder.

SEC. 9-3.402 POSTING OF SIGNS. In those cases in which the Building Official has determined that it is necessary that such building, structure, or portion thereof be vacated forthwith, he shall cause to be posted at each entrance to such building a notice to read: 'DO NOT ENTER. UNSAFE TO OCCUPY. Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward.' Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the Building Official and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building until the required repairs, demolition, or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Hayward Building Code.

SEC. 9-3.403 RECORDATION. If compliance with the Building Official's order is not achieved within the time specified therein, and no appeal has been properly and timely filed, or an appeal has been filed but determined by the Building Abatement Hearing Panel adversely to the appellant, the Building Official shall file in the office of the Recorder of the County of Alameda a certificate describing the property and certifying that the building is an unsafe, substandard, and dangerous building and that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as an unsafe, substandard, and dangerous building on the property described in the certificate, the Building Official shall file a new certificate with the Alameda County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer unsafe, substandard, and dangerous, whichever is appropriate.

SEC. 9-3.404 STANDARDS TO BE FOLLOWED. The following standards shall be followed by the Building Official (and by the Building Abatement Hearing Panel if an appeal is taken) in ordering the repair, vacation, or demolition of any dangerous building or structure:

- (a) If the building or structure reasonably can be repaired so that it will no longer exist as a dangerous building, it shall be ordered to be repaired; otherwise it shall be ordered to be demolished.
- (b) If the building or structure is in such condition as to make it immediately dangerous to life, limb, property, or safety of the public or its occupants, it shall be ordered to be vacated.

SEC. 9-3.405 DEMOLITION, AN ALTERNATIVE TO REPAIR. An order to demolish shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by demolition.

APPEAL OF BUILDING OFFICIAL'S NOTICE AND ORDER

SEC. 9-3.501 BUILDING ABATEMENT HEARING PANEL. In order to provide for appeals from the Building Official's notice and order, there is hereby established a Building Abatement Hearing Panel. The Building Abatement Hearing Panel shall consist of three members who are not employees of the City of Hayward, and who are qualified by experience and training to pass upon matters pertaining to building construction and maintenance. Each member shall have the following minimum qualifications:

- (a) California state license as a general engineering contractor or general building contractor or four years of building construction or inspection experience involving

structural, housing, electrical and plumbing construction or inspection work;

- (b) Have no conflict of interest, pecuniary interest or ethical barrier regarding the specific case the member will hear.

The Building Official shall act as secretary to said hearing panel. The City Manager shall appoint three persons to the hearing panel. The hearing panel shall render all decisions and findings in writing to the appellant with a copy to the Building Official. The hearing panel may reverse or affirm, wholly or partly, or modify any notice and order of the Building Official.

SEC. 9-3.502 RIGHT TO APPEAL NOTICE AND ORDER. Any person, firm, or corporation entitled to service under section 9-3.401 may appeal any notice and order or any action of the Building Official under this code by filing at the office of the Building Official within 10 calendar days from the date of the service of such notice and order, a written appeal to the Building Abatement Hearing Panel, except in cases where the Building Official must take immediate action pursuant to chapter 1, section 102 of the Uniform Building Code.

SEC. 9-3.503 FAILURE TO APPEAL NOTICE AND ORDER. Failure of any person, firm, or corporation to file an appeal with the Building Official within 10 calendar days from the date of service of the Building Official's notice and order shall constitute a waiver of all right to an administrative hearing and determination of the matter by the Building Abatement Hearing Panel and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

SEC. 9-3.504 NOTICE OF HEARING. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

SEC. 9-3.505 EFFECT OF APPEAL. Except for vacation orders made pursuant to section 9-3.402, enforcement of any notice and order of the Building Official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

SEC. 9-3.506 DECISION OF HEARING PANEL. The effective date of the decision of the Building Abatement Hearing Panel shall be as stated therein. The decision of the hearing panel is final. Any aggrieved party may bring an action in a court of competent jurisdiction to contest the validity of the proceedings or decision of the hearing panel as provided in Section. 9-3.901, otherwise all right to maintain any action, suit, or proceeding to set aside or modify the board's decision will be waived.

ENFORCEMENT OF ORDER

SEC. 9-3.601 FAILURE TO COMPLY WITH ORDER. After any order or decision of the Building Official or the Building Abatement Hearing Panel made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued, or permitted and, upon conviction of any violation, such person shall be punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both such fine

or imprisonment.

SEC. 9-3.602 BUILDING OFFICIAL AUTHORIZED TO DO WORK. If, after any order of the Building Official or Building Abatement Hearing Panel made pursuant to this code has become final, the person(s), firm(s), or corporation(s) to whom such order is directed shall fail, neglect, or refuse to obey such order, the Building Official may cause such person to be prosecuted under section 9-3.601 of this code, and institute any appropriate action to abate such building as a public nuisance. The Building Official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order, or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble, and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled thereto.

PERFORMANCE OF WORK

SEC. 9-3.701 PLANS AND SPECIFICATIONS FOR WORK. When any work of repair or demolition is to be done pursuant to section 9-3.602 of this code, the Building Official shall issue his order and the work shall be accomplished by City personnel or by private contract. Plans and specifications therefor may be prepared by said Building Official, or architectural and engineering personnel hired on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, Standard Public Works contractual procedures shall be followed.

SEC. 9-3.702 FINANCING OF WORK. The cost of such work shall be paid from a special revolving fund to be established for such purpose and entitled 'Repair and Demolition Fund' or as authorized by the Hayward City Council on a case-by-case basis. Said costs may be made a special assessment against the property involved, in accordance with the procedure set forth in sections 9-3.801 to 9-3.805.

RECOVERY OF COSTS

SEC. 9-3.801 NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid costs, fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

SEC. 9-3.802 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing by written request within 14 days of receipt of the notice of lien/special assessment. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by the owner liable to be charged for the work of abating cited code violations and related charges associated with their property. The Building Official shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the Building Abatement Hearing Panel may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the hearing panel,

including inspection charges and administrative expenses shall, after being confirmed by the city council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to judicial review shall be governed by Section 9-3.901.

SEC. 9-3.803 REPORT OF COSTS. The Building Official shall keep an itemized account of the expense incurred by the City of Hayward in the inspection, repair or demolition of any building done pursuant to the provisions of section 9-3.602 of this code. Upon the completion of the work of repair or demolition, said Building Official shall render an annual itemized report in writing to the City Council showing the cost of abatement. The City Council shall review and confirm the annual report and lien/special assessment list, amended as necessary, by way of resolution.

SEC. 9-3.804 NOTICE OF REPORT. The City Clerk shall post a copy of the report and lien/special assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for confirmation by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 9-3.805 COLLECTION ON TAX ROLL. After City Council confirmation of the annual report and lien/special assessment list, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid liens/special assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such liens or special assessments and this lien or special assessment shall have priority of the taxes with which it is collected.

JUDICIAL REVIEW

SEC. 9-3.901 JUDICIAL REVIEW OF HEARING PANEL DECISION.

- (a) Any person aggrieved by a decision of the hearing panel ordering the abatement of a nuisance or any associated administrative penalties or reimbursement for costs set forth in an order, may seek review of the administrative decision in the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure.
- (b) If the responsible party fails to so appeal the notice and order and/or the notice of lien/special assessment, no further administrative remedy will be provided and the failure to appeal shall preclude judicial review of the hearing panel's decision.
- (c) The filing of a request for judicial review shall not stay the operation or effect of an administrative decision or order unless a court of competent jurisdiction issues a specific stay order.

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

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective until thirty days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 13th day of November, 2012, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the 27th day of November, 2012, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: _____
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: _____

ABSTAIN: COUNCIL MEMBERS: _____

ABSENT: COUNCIL MEMBERS: _____

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ARTICLE 3

BUILDING ABATEMENT

Section	Subject Matter
9-3.101	TITLE
9-3.102	PURPOSE
9-3.103	SCOPE
9-3.104	ALTERATIONS, ADDITIONS, AND REPAIRS

ENFORCEMENT

9-3.201	CITY BUILDING OFFICIAL
9-3.202	ADMINISTRATION
9-3.203	INSPECTIONS
9-3.204	RIGHT OF ENTRY
9-3.205	ABATEMENT
9-3.206	INSPECTION OF WORK

DEFINITIONS

9-3.301	GENERAL
9-3.302	UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING

NOTICES AND ORDERS OF BUILDING OFFICIAL

9-3.401	NOTICE AND ORDER
9-3.402	POSTING OF SIGNS
9-3.403	RECORDATION

Section	Subject Matter
9-3.404	STANDARDS TO BE FOLLOWED
9-3.405	DEMOLITION, AN ALTERNATIVE TO REPAIR
	APPEAL
9-3.500	BUILDING ABATEMENT APPEALS BOARD
9-3.501	RIGHT TO APPEAL
9-3.502	FAILURE TO APPEAL
9-3.503	NOTICE OF HEARING
9-3.504	EFFECT OF APPEAL
9-3.505	DECISION OF BOARD
	ENFORCEMENT OF ORDER
9-3.701	FAILURE TO COMPLY WITH ORDER
9-3.702	BUILDING OFFICIAL AUTHORIZED TO DO WORK
	PERFORMANCE OF WORK
9-3.801	PLANS AND SPECIFICATIONS FOR WORK
9-3.802	FINANCING OF WORK
	RECOVERY OF COSTS
9-3.901	REPORT OF COSTS
9-3.902	HEARING ON REPORT
9-3.905	COLLECTION ON TAX ROLL
9-3.906	VALIDITY OF ASSESSMENT

ARTICLE 3

BUILDING ABATEMENT

(Added by Ord. No. 69-027 C.S., adopted October 21, 1969, Replaced in full by Ord. No. 97-11, adopted July 15, 1997)

SEC. 9-3.101 TITLE. These regulations shall be known as the Building Abatement Code of the City of Hayward, may be cited as such, and will be referred to herein as "this code."

SEC. 9-3.102 PURPOSE. It is the purpose of the provisions of this code to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy otherwise available at law or equity, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety, or welfare of the general public or their occupants, may be required to be repaired, rehabilitated, vacated, removed, or demolished.

SEC. 9-3.103 SCOPE. The provisions of this code shall apply to all unsafe, substandard, and dangerous buildings, as herein defined, which are now in existence or which may hereafter be constructed in the City of Hayward.

SEC. 9-3.104 ALTERATIONS, ADDITIONS, AND REPAIRS. Any alterations, additions, or repairs to buildings or structures which are required to be repaired or rehabilitated under the provisions of this code shall be subject to the provisions of the Hayward Building Code.

ENFORCEMENT

SEC. 9-3.201 CITY BUILDING OFFICIAL. For the purposes of this code, Building Official shall be defined as the City Building Official of the City of Hayward or his or her designee.

SEC. 9-3.202 ADMINISTRATION. The Building Official is hereby authorized to enforce the provisions of this code. The Building Advisory Committee as established by the Hayward Building Code and section 9-3.500 of this article is empowered to review the determinations made by the Building Official relative to the suitability of alternate materials and methods of construction, to make recommendations to the City Council concerning amendments to this code, and to act as the Building Abatement Appeals Board.

SEC. 9-3.203 INSPECTIONS. The Public Works Director, County Health Officer, Fire Marshal, Building Official, or their duly authorized representatives are hereby authorized to make such inspections and take such actions as may be required to enforce provisions of this code.

SEC. 9-3. 204 RIGHT OF ENTRY.

- (a) Upon presentation of proper credentials, the Building Official, after having obtained the consent of the owner or occupant, may enter at reasonable times during daylight hours and for probable cause, any building, structure, or premises in the City to perform any duty imposed upon him by this code.
- (b) Except in emergency situations, the Building Official shall not enter any building,

structure, or premises without the consent of the owner or occupant thereof, unless he possesses an inspection warrant obtained and issued in the manner provided by sections 1822.50 et seq. of the Code of Civil Procedure of the State of California or any amendments thereto to or replacements thereof.

- (c) Except as hereinabove permitted, no person shall hinder or prevent the Building Official while in the performance of the duties described above, from entering upon, and into any building, structure, or premises under his jurisdiction, at all reasonable hours during daylight hours and for probable cause, for the purpose of inspecting the same to determine whether or not the provisions of this code are observed therein.

SEC. 9-3.205 ABATEMENT. All buildings or portions thereof which are determined after inspection by the Building Official to be unsafe, substandard, and dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal as specified in this code.

SEC. 9-3.206 INSPECTION OF WORK. All buildings within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the Building Official in accordance with and in the manner provided by the Hayward Building Code.

DEFINITIONS

SEC. 9-3.301 GENERAL. For the purpose of this code, certain words, phrases, and terms, and their derivatives shall be construed as specified herein. Words, phrases, and terms used in this code, but not specifically defined herein, shall have the meanings stated therefor in the Hayward Building Code or Hayward Housing Code. Where not defined in this code or in said Building Code or Housing Code, such words, phrases, and terms shall have the meanings generally prescribed by dictionary definition.

SEC. 9-3.302 UNSAFE, SUBSTANDARD, AND DANGEROUS BUILDING. For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a public nuisance and an unsafe, substandard, and dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, or safety of the public or its occupants are endangered.

- (a) Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (b) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Hayward Building Code, for new buildings of similar structure, purpose, or location.
- (c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Hayward Building Code, for new buildings of similar structure, purpose, or location.

- (d) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (e) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in said Hayward Building Code, for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in said Hayward Building Code for such buildings.
- (f) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (g) Whenever the building or structure, or any portion thereof, because of:
 - (1) dilapidation, deterioration, or decay;
 - (2) faulty construction;
 - (3) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (4) the deterioration, decay, or inadequacy of its foundation; or
 - (5) any other cause
 is likely to partially or completely collapse.
- (h) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (i) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (j) Whenever the building or structure, exclusive of the foundation shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.
- (k) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated as to become:
 - (1) an attractive nuisance to children;
 - (2) a harbor for vagrants, criminals, or immoral persons; or
 - (3) as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
- (l) Whenever any building or structure has been constructed, or exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Hayward Building Code, or Hayward Housing Code, or of any law or ordinance of this state or the

City of Hayward relating to the condition, location, or structure of buildings.

- (m) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion, less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
- (n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the County Health Officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- (o) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Marshal to be a fire hazard.
- (p) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.
- (q) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned for a period in excess of six months, so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

NOTICES AND ORDERS OF BUILDING OFFICIAL

SEC. 9-3.401 NOTICE AND ORDER. The Building Official shall examine or cause to be examined every building or structure or portion thereof to determine whether it is unsafe, substandard, and dangerous, and if such is found to be an unsafe, substandard, and dangerous building as herein defined, the Building Official shall notify or cause to have notified the owner of such building or structure and other persons having a beneficial or legal interest of record in the building or structure as hereinafter stated.

- (a) The notice shall contain the street address and a description sufficient for identification of the premises upon which the building is located. The notice shall state the conditions which render the building or structure an unsafe, substandard, and dangerous building. The notice shall order the correction or abatement thereof either by repair, rehabilitation, demolition, or removal within such time (not to exceed 30 calendar days from the date of the order) as the Building Official shall determine is reasonable under all of the circumstances. . If in the opinion of the Building Official such conditions can be corrected or abated by repair or rehabilitation thereof, the notice shall state the repairs or rehabilitation which will be required. Such notice shall also state that if the repairs, rehabilitation, demolition, or removal are not completed within the time specified, or within such extension of time as may be granted by the Building Official, the work specified in the notice may be done or caused to be done by the Building Official and the cost thereof levied as a

special assessment against the property.

If necessary, such notice may also require the building, structure, or portion thereof to be vacated forthwith and not reoccupied until the required repairs and improvements are completed, inspected, and approved by the Building Official. The notice shall also state that any person having any beneficial or legal interest of record in the building may appeal from the notice and order or any action of the Building Official to the Building Abatement Appeals Board, provided the appeal is made in writing as provided in this code, and filed with the Building Official within 10 calendar days from the date of service of such notice and order, unless the Building Official determines that immediate action is necessary and must take action pursuant to chapter 1, section 102 of the Uniform Building Code. The notice shall further state that failure to appeal as provided in this code shall constitute a waiver of all right to an administrative hearing and determination of the matter and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

- (b) If such building is encumbered by a mortgage or a deed of trust, of record, and the owner of such building shall not have complied with the order of the Building Official on or before the expiration of time specified on such notice and order, the mortgagee or beneficiary under such deed of trust may, within the same period, comply with the requirements of the order of the Building Official. For good cause shown, the Building Official may extend the time within which to complete said repairs, rehabilitation, demolition, or removal.
- (c) The notice required hereinabove shall be given in the following manner:

The Building Official shall post or cause to be posted conspicuously at least one copy of the notice on the building and a copy of such notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located, as such person's name and address appear on the last equalized assessment roll of the County of Alameda. One copy of the notice shall be personally served upon, or sent by certified mail, postage prepaid, return receipt requested, to each of the following: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The notice shall be sent to such persons at their address as appears on the last equalized assessment roll of the County of Alameda or as is known to the Building Official. If the address of any known person entitled to service of the notice and order is unknown to the Building Official, then a copy shall be mailed, addressed to such person, at the address of the building involved in the proceedings.

A declaration of posting and mailing shall be made under penalty of perjury by the person or persons who posted and/or mailed said notice, certifying to the time and manner in which such notice was given, and such declaration shall be filed in the Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward. There shall also be filed therewith any receipt card which may have been returned in acknowledgment of receipt of such notice by registered mail. The failure of any owner or other person to receive such

notice shall not affect in any manner the validity of any proceeding taken hereunder.

SEC. 9-3.402 POSTING OF SIGNS. In those cases in which the Building Official has determined that it is necessary that such building, structure, or portion thereof be vacated forthwith, he shall cause to be posted at each entrance to such building a notice to read: 'DO NOT ENTER. UNSAFE TO OCCUPY. Development Inspection Services Division of the Department of Community and Economic Development of the City of Hayward.' Such notice shall remain posted until the required repairs, demolition, or removal are completed. Such notice shall not be removed without written permission of the Building Official and no person shall enter the building except for the purpose of making the required repairs or of demolishing the building until the required repairs, demolition, or removal have been completed and a Certificate of Occupancy issued pursuant to the provisions of the Hayward Building Code.

SEC. 9-3.403 RECORDATION. If compliance with the Building Official's order is not achieved within the time specified therein, and no appeal has been properly and timely filed, or an appeal has been filed but determined by the Building Abatement Appeals Board adversely to the appellant, the Building Official shall file in the office of the Recorder of the County of Alameda a certificate describing the property and certifying that the building is an unsafe, substandard, and dangerous building and that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as an unsafe, substandard, and dangerous building on the property described in the certificate, the Building Official shall file a new certificate with the Alameda County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer unsafe, substandard, and dangerous, whichever is appropriate.

SEC. 9-3.404 STANDARDS TO BE FOLLOWED. The following standards shall be followed by the Building Official (and by the Building Abatement Appeals Board if an appeal is taken) in ordering the repair, vacation, or demolition of any dangerous building or structure:

- (a) If the building or structure reasonably can be repaired so that it will no longer exist as a dangerous building, it shall be ordered to be repaired; otherwise it shall be ordered to be demolished.
- (b) If the building or structure is in such condition as to make it immediately dangerous to life, limb, property, or safety of the public or its occupants, it shall be ordered to be vacated.

SEC. 9-3.405 DEMOLITION, AN ALTERNATIVE TO REPAIR. An order to demolish shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by demolition.

APPEAL

SEC. 9-3.500 BUILDING ABATEMENT APPEALS BOARD. In order to provide for appeals from the Building Official's notice and order, there is hereby established a Building Abatement Appeals Board consisting of five members who are not employees of the City of Hayward, and who are qualified by experience and training to pass upon matters pertaining to building construction and maintenance. The Building Official shall act as secretary to said board. The City Manager shall recommend five persons to City Council for appointment. The board shall adopt reasonable rules and regulations regarding the conduct of its business, which are not in

conflict with the Charter of the City of Hayward, and shall render all decisions and findings in writing to the appellant with a copy to the Building Official. The board may reverse or affirm, wholly or partly, or modify any notice and order of the Building Official. Copies of all rules or regulations adopted by the board shall be delivered to the Building Official who shall make them freely accessible to the public.

SEC. 9-3.501 RIGHT TO APPEAL. Any person, firm, or corporation entitled to service under section 9-3.401 may appeal any notice and order or any action of the Building Official under this code by filing at the office of the Building Official within 10 calendar days from the date of the service of such notice and order, a written appeal to the Building Abatement Appeals Board, except in cases where the Building Official must take immediate action pursuant to chapter 1, section 102 of the Uniform Building Code.

SEC. 9-3.502 FAILURE TO APPEAL. Failure of any person, firm, or corporation to file an appeal with the Building Official within 10 calendar days from the date of service of the Building Official's notice and order shall constitute a waiver of all right to an administrative hearing and determination of the matter by the Building Abatement Appeals board and will waive all right to maintain any action, suit, or proceeding to set aside or modify the Building Official's notice, order, and action.

SEC. 9-3.503 NOTICE OF HEARING. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

SEC. 9-3.504 EFFECT OF APPEAL. Except for vacation orders made pursuant to section 9-3.402, enforcement of any notice and order of the Building Official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

SEC. 9-3.505 DECISION OF BOARD. The effective date of the decision of the Building Abatement Appeals Board shall be as stated therein. The decision of the board is final. Any aggrieved party shall have 30 calendar days from the effective date of the decision of the board to bring an action in a court of competent jurisdiction to contest the validity of the proceedings or decision of the board, otherwise all right to maintain any action, suit, or proceeding to set aside or modify the board's decision will be waived.

ENFORCEMENT OF ORDER

SEC. 9-3.701 FAILURE TO COMPLY WITH ORDER. After any order or decision of the Building Official or the Building Abatement Appeals Board made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued, or permitted and, upon conviction of any violation, such person shall be punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both such fine or imprisonment.

SEC. 9-3.702 BUILDING OFFICIAL AUTHORIZED TO DO WORK. If, after any order of the Building Official or Building Abatement Appeals Board made pursuant to this code has

become final, the person(s), firm(s), or corporation(s) to whom such order is directed shall fail, neglect, or refuse to obey such order, the Building Official may cause such person to be prosecuted under section 9-3.701 of this code, and institute any appropriate action to abate such building as a public nuisance. The Building Official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order, or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble, and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled thereto.

PERFORMANCE OF WORK

SEC. 9-3.801 PLANS AND SPECIFICATIONS FOR WORK. When any work of repair or demolition is to be done pursuant to section 9-3.702 of this code, the Building Official shall issue his order and the work shall be accomplished by City personnel or by private contract. Plans and specifications therefor may be prepared by said Building Official, or architectural and engineering personnel hired on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, Standard Public Works contractual procedures shall be followed.

SEC. 9-3.802 FINANCING OF WORK. The cost of such work shall be paid from a special revolving fund to be established for such purpose and entitled 'Repair and Demolition Fund' or as authorized by the Hayward City Council on a case-by-case basis. Said costs may be made a special assessment against the property involved.

RECOVERY OF COSTS

SEC. 9-3.901 REPORT OF COSTS. The Building Official shall keep an itemized account of the expense incurred by the City of Hayward in the repair or demolition of any building done pursuant to the provisions of section 9-3.702 of this code. Upon the completion of the work of repair or demolition, said Building Official shall prepare and file with the City Clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to section 9-3.401.

SEC. 9-3.902 HEARING ON REPORT. Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date, and place for hearing said report, and any protests or objections thereto. The City Clerk shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the City of Hayward, and served by certified mail, postage prepaid, addressed to the owner of the property as his name and address appears on the last equalized assessment roll of Alameda County, if such so appears, or as known to the Clerk. Notice shall also be given by certified or registered mail to any other person, corporation, or firm entitled thereto under section 9-3.401. Such notice shall be given at least 10 calendar days prior to the date set for hearing and shall specify the day, hour, and place when the City Council will hear and pass upon the Building Official's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

At the time and place of said hearing, the City Council shall hear and pass upon the report of the Building Official together with any such objections or protests. The Council may make such revision, correction, or modification in the report or the charge as it may deem just; and when the Council is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected, or modified) together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be final and conclusive.

SEC. 9-3.905 COLLECTION ON TAX ROLL. After confirmation of the charge, the same shall become a special assessment against the property affected. The City Council may provide for the collection of such assessment in not more than five annual installments. The payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the City Council, not to exceed 10 percent per annum.

A copy of the assessment shall be given to the City Finance Director, who may receive payment thereon until a list of unpaid assessments shall have been sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to the assessment hereby imposed, and the lien of said assessment shall have priority of the taxes with which it is collected.

SEC. 9-3.906 VALIDITY OF ASSESSMENT. The validity of any assessment made under the provisions of this article shall not be contested in any action or proceeding unless the same is commenced within 30 calendar days after the assessment is placed upon the assessment roll as provided herein. Such contest shall go only to the question of the validity of the total amount of the assessment and shall not involve any question of the validity of the City's imposition of an assessment, that question must be raised by a proper and timely appeal from the Building Abatement Appeals Board's decision as provided in section 9-3.505.

DATE: November 13, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services
Director of Finance

SUBJECT: Introduction of Two Ordinances Adding Sections 11-2.48 through 11-2.52 and Sections 11-3.461 through 11-3.465 to the Hayward Municipal Code to Authorize Collection of Delinquent Water and Sewer Charges by Placement on the County Tax Rolls; and Amending Section 11-2.42 to Clarify Responsibility for Payment of Water Charges

RECOMMENDATION

That Council introduces the attached Ordinances amending Chapter 11, Articles 2 and 3 of the Hayward Municipal Code by adding Sections 11-2.48 through 11-2.52 and Sections 11-3.461 through 11-3.465 to authorize the collection of delinquent water and sewer charges by placement on the County tax rolls; and by amending Section 11-2.42 to clarify responsibility for payment of water charges.

SUMMARY

The proposed ordinances grant authority to add delinquent water and sewer charges to property tax rolls in accordance with specific actions, including multiple notifications to affected customers and administrative hearing provisions. The ordinances apply to all customers, including single-family property owners and multi-family accounts, whether they receive water service from Hayward or only sewer service.

While shutting off water is the most effective way to collect on delinquent water and sewer bills, it is not a practical option for sewer-only and multi-family accounts. Properties with sewer-only accounts, by definition, do not receive water service from the City; the City has no ability to shut off water service. Water service to multi-family properties cannot be interrupted without impacting tenants who, oftentimes are not responsible for paying water and sewer charges. In both of these situations, the proposed assessment will be an effective tool to collect delinquent charges from the responsible property owner.

BACKGROUND

The City provides water and sewer services to almost all residents and businesses within the City limits. The exceptions are a small number of properties that receive water service from East Bay Municipal Utilities District (EBMUD) or sewer service from Oro Loma Sanitary District (OLSD). In addition to in-City customers, Hayward provides sewer service to just under nine-hundred “sewer-only” customers, mainly located in unincorporated Alameda County, as well as water or sewer service to a handful of other customers outside of the City limits.

Hayward issues bimonthly billings for water and sewer service, after the service has been provided. Consistent with Section 10009.6 of the California Public Utilities Code (CPUC), the Hayward Municipal Code (HMC) states that responsibility for water bills lies with the person or entity that requested the service (i.e., the account holder of record). If tenants are delinquent in paying their bills for service they initiated, the City does not hold the property owner responsible. While this is reasonable and works well in most cases, there are situations when a tenant leaves a single family property, but the owner does not change the account to his or her own name, presumably to save the account transfer fee, and continues to use water for irrigation and other purposes under the previous tenant’s account until the property is rented again. Although it is reasonable to hold property owners responsible for water use that occurs after a tenant has moved out and before a service transfer has been requested, the HMC is currently silent on this situation. Specific language in the HMC as is being proposed herein would clarify the owner’s responsibility for the water charges.

For sewer service charges, it is a reasonable and typical practice among sewer agencies to hold property owners responsible because, unlike water use charges, sewer service charges tend to be fixed and not subject to variation. In fact, most sewer agencies, including special districts, collect their service charges through the tax rolls, which are paid by owners. The HMC assigns responsibility for sewer-related charges to the account holder of record (the entity requesting service), which may be the property owner or a tenant. Since, in nearly all cases, the City provides both sewer and water service, responsibility for both services ends with the account holder. For sewer-only accounts, however, where water service is provided by EBMUD, payment responsibility is more complex. In such cases, tenants may request that sewer service accounts be set up in their names and the City will bill them directly. In the event that tenants do not set up an account or fail to pay sewer service charges, provisions in the HMC enable the City to hold property owners ultimately responsible for sewer charges.

Currently, the City uses several methods to collect from service recipients for accounts that are past due, including written late notices, late fees, payment arrangements and, ultimately, referral to a collection agency. The most effective mechanisms are water shut-off notices and discontinuance of water service. There are certain limitations associated with using water shut-offs as a collection method.

In the case of sewer-only accounts, Hayward is not the water service provider, cannot restrict water service, and it is not feasible to discontinue sewer service. In the case of a multi-family property where a master water meter serves all of the dwelling units, shutting off water leaves all tenants without water, in most cases through no fault of their own.. The same situation occurs in the non-residential sector. It may be that the responsible party who has not paid the bill does not live or

work at the property in question and, therefore, only tenants are inconvenienced or put at risk from potential water shut off.

DISCUSSION

Uncollected payments impact all customers because the water and sewer systems are self-supporting, and the lost revenue must be recovered from other customers through rate increases. The proposed ordinances to amend the Water and Sewer Chapters of the Hayward Municipal Code and authorize the placement of eligible delinquent charges on property tax bills would provide an additional strong collection tool. The proposed ordinances for implementation of special assessments are modeled directly on the ordinance that City Council adopted in February 2010 for delinquent solid waste collection and disposal services. The annual process for placing delinquent charges on the tax roll would be as follows:

- Notices to Property Owners - Beginning in early March, the City would issue three notices, about thirty days apart, to affected property owners with accounts that have been in arrears for at least sixty days. The notices would describe the delinquent charges and collection by assessment on the Alameda County property tax rolls, if not paid by a specific date, and inform recipients of their right to an administrative hearing to voice their objections. The hearing officer would be the City Manager or designee.
- Public Hearing – In mid-July, staff would submit a final updated list of property owners with delinquent accounts to the City Council for approval. A public notice would be published prior to the hearing.
- Final Date for Payment – Property owners would have until the last business day in July to pay outstanding charges and avoid placement of the charges on their property tax bill.
- Submittal to the Alameda County Tax Assessor’s Office – The final list of property owners and outstanding charges would be submitted to the Tax Assessor’s Office in August (current deadline for submittal is August 10).

It is important to note that, from the time an account is first delinquent and up to the point the last letter is sent in May, staff will have made every effort to collect the outstanding charges, using all of the tools available to them, including late notices and late fees. Staff would also continue its practice of working cooperatively with customers to allow for the payment of outstanding charges over time, recognizing that some individuals simply do not have the resources to pay in a lump sum.

The ordinance has been drafted to apply to all customers and could be an effective tool for any delinquent account when other collection efforts have been unsuccessful. The most common use of the ordinances is expected to be for sewer-only properties and, to a lesser extent, multi-family properties. These accounts represent the greatest collection challenge because either the City is not in a position to discontinue service or, in the case of multi-family accounts with shared water service; doing so would impact a large number of people who have limited control over payment of the outstanding charges.

If approved, the ordinance provisions would be implemented for the first time in Spring 2013 and applied to all affected property owners with delinquent charges that are at least sixty days in arrears as of March 1, 2013, and that date back to no earlier than July 1, 2010. The noticing procedures discussed earlier would be implemented, including providing the opportunity for an administrative hearing. The Fiscal Impact section of this report includes a discussion of the number of affected accounts and estimated amounts.

Some nearby water and sewer agencies have adopted similar ordinances that grant the agency authority to place delinquent charges on property tax rolls. For example, EBMUD adopted an ordinance in 2011 that authorizes such assessments for owners of multi-family residential properties. The City of Livermore uses property tax bills to collect delinquent sewer charges, and the City of Sunnyvale uses the process for delinquent water rolls. As Council is aware, water service is not provided by the cities of San Leandro, Union City, Fremont and Newark, or through the County in unincorporated areas (Castro Valley and San Lorenzo); hence, these entities do not have municipal code provisions for delinquent water accounts. Alameda County Water District, serving Union City, Fremont, and Newark, does not have a similar ordinance either.

In addition to the property tax assessment provisions, staff is recommending an addition to HMC Section 11-2.42, regarding responsibility for payment of water bills. As noted in the Background section, the responsible party is the person who requests service and, in the case of water bills, the responsibility cannot be assigned to the property owner. However, on occasion, water meters record consumption at a property after the tenant has closed the account and presumably vacated the premises, and before a new tenant has set up water service. Property owners typically put the water account in their name between tenants so that water is available for irrigation and cleaning purposes. However, occasionally owners do not set up service between tenants, usually to avoid the account establishment fee of \$40, and illegally tamper with the meter to turn the water back on. The proposed amendment clarifies that the property owners of record are responsible for all water use during periods when a property is unoccupied; unless they can document that the previous tenant still inhabited the property when the usage occurred.

ECONOMIC IMPACT

The amount placed on the tax bill for each affected customer would include the total delinquent amount since July 1, 2010, including late fees, a City administrative fee to cover the costs to process the assessment, and the County's fee of 1.7% on each assessment. Staff has proposed an initial administrative fee of \$50 in the draft ordinances, identical to the fee charged for delinquent garbage bills. If approved, the fee, which would cover all costs associated with preparing and providing the final list to Alameda County and depositing payments from the County, will be placed on the current Master Fee Schedule subject to annual approval by the Council. Consistent with other special assessment administrative hearings, a deposit of \$50 would be required for an administrative hearing. The deposit would be refunded if the charges are reversed; if not, the charge would be applied to reduce the outstanding assessment.

As mentioned earlier, improved recovery of outstanding charges benefits all Hayward utilities customers in that the revenue lost to bad debt must be factored into future rates. To the extent that

the City is successful in collecting monies owed, the fiscal health of the Water and Wastewater Operating Funds is improved and, therefore, the need for required rate increases is reduced.

FISCAL IMPACT

To give the Council a sense of the magnitude of the debt that could be subject to the proposed ordinances, staff has compiled data related to current outstanding charges, focusing on sewer only and multi-family accounts. Regarding sewer-only accounts, as of the writing of this report, the proposed ordinances would affect about 170 such accounts, with total charges of \$115,000 that are past due by at least sixty days. Use of the ordinances for multi-family properties would be very rare. Multi-family account issues are typically resolved much earlier in the collection process, even before tenants receive notice of pending water shut-off. At this time, only one multi-family account is seriously in arrears, with a past-due amount of \$3,800. This past due amount was much larger earlier this year; however, Revenue Division staff's diligent work succeeded in getting the property owner to make payments.

While it is difficult to predict with certainty the percentage of delinquent charges that will be collected as a result of the ordinances, staff believes that applying delinquent charges to the property tax bills as a regular annual collection tool will help recover a significant portion of the fees. Based on experience with solid waste collection and disposal charges, staff expects that a substantial percentage of the delinquent accounts will be paid in full when property owners receive notices of the impending tax roll assessment.

PUBLIC CONTACT

All legal noticing requirements applicable to amending the Municipal Code change will be met prior to adoption of the ordinance. In addition, staff contacted the Rental Housing Association (RHA) as the proposed ordinances could impact some of their members. In a letter from Tim May, Executive Director, the RHA recognized the criticality of reliable water and wastewater service and indicated that it has no objections to the ordinances. The Association expressed agreement with the City staff's position that multi-family property owners should be held responsible for water usage and charges where a master meter exists and indicated that other collection methods are preferable to discontinuing water service to tenants. A significant issue for the RHA is ensuring that rental properties continue to be habitable. To this end, Mr. May offered the Association's peer assistance in resolving egregious payment delinquency cases to help ensure that water service continues without interruption. A copy of Mr. May's letter is attached for Council's information (Attachment III).

If the ordinances are approved, Revenue Division staff of the Finance Department will notify property owners with delinquent accounts of their obligation to pay and the possibility that the charges will be placed on their property tax bill. Final notification will be in the form of a letter informing them of this action unless the outstanding amount is paid and also providing them an opportunity for an administrative hearing.

NEXT STEPS

If the City Council approves the introduction of the Ordinance to amend the Municipal Code as described in this report, the amendments would be placed on Council's agenda on or soon after November 27 and become effective thirty days after the adoption date. The first series of property tax assessments would be forwarded to the County Assessor's Office in August 2013, after City Council approval. In the meantime, staff will continue to work with affected customers to collect delinquent charges and avoid placement of these charges on their property tax bill.

Prepared by: Marilyn Mosher, Administrative Analyst III

Recommended by: Alex Ameri, Director of Public Works – Utilities & Environmental Services
Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments:

- I – Draft Ordinance – Delinquent Sewer Bills
- II – Draft Ordinance – Delinquent Water Bills
- III - Letter from the Rental Housing Owners Association dated October 29, 2012

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3 OF THE
HAYWARD MUNICIPAL CODE RELATING TO THE
COLLECTION OF DELINQUENT CHARGES FOR SEWER
SERVICE

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

Section 1. Upon the adoption of this ordinance, Article 11, Chapter 3, Sections 11-3.461 through 11-3.465 of the Hayward Municipal Code, relating to the collection of delinquent charges for sewer service, is hereby enacted to read as follows:

SECTION 11-3.461 COLLECTION OF DELINQUENT SEWER SERVICE CHARGES ON TAX ROLL. The City may elect to have delinquent charges for sewer service collected on the property tax roll in the same manner as, by the same person as, and at the same time as, and together with and not separately from, general taxes.

If a determination is made to enforce collection of delinquent charges by assessment on the Alameda County property tax roll, an administrative hearing shall be conducted in accordance with the provisions of Section 11-3.462 below. The amount to be assessed upon the property tax roll shall include all charges which are delinquent for not less than sixty days as of March 1 of each year, the actual cost of the assessment and the collection of the delinquent charges on the property tax roll and an administrative fee, initially set at \$50, and to be determined from time to time by resolution of the Hayward City Council.

SECTION 11-3.462 ADMINISTRATIVE HEARING PROCESS. Prior to placing delinquent charges on the Alameda County property tax roll for collection, written notice shall be given to the owner of the property receiving sanitary sewer service from the City of Hayward of the past due charges and the right to an administrative hearing. The purpose of the administrative hearing is to provide an opportunity for the property owner to raise any objections to the imposition of the charges on the property tax roll. The City Manager, or his or her designee, shall act as the hearing officer. The hearing officer may modify or confirm the proposed charges, as deemed equitable, in his or her sole discretion.

SECTION 11-3.463 ACCOUNT AND REPORT OF DELINQUENT CHARGES. The Director of Finance shall keep an account of the delinquent charges and shall render an annual itemized report in writing to the City Council. The City Council shall review and confirm the annual report of delinquent charges by way of resolution.

SECTION 11-3.464 NOTICE OF REPORT. The City Clerk shall post a copy of the report and list of delinquent charges on the bulletin board designated for the posting of agendas for City Council meetings, together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least ten days before the time that the report is considered by the City Council.

SECTION 11-3.465 REPORT BY THE DIRECTOR OF FINANCE. After City Council confirmation of the annual report, the City Director of Finance, who may receive the list of delinquent charges at any time after confirmation and until a list of unpaid liens/assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection and enforcement of City taxes are hereby made applicable to such liens or assessments and the lien or assessment shall have the priority of the taxes with which it is collected.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2012, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2012, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2 OF
THE HAYWARD MUNICIPAL CODE RELATING TO
RESPONSIBILITY FOR PAYMENT OF WATER CHARGES AND
THE COLLECTION OF DELINQUENT CHARGES FOR WATER
SERVICE

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

Section 1. Upon the adoption of this ordinance, Article 11, Chapter 2, Section 11-2.42 of the Hayward Municipal Code, relating to the responsibility of payment for water service, is hereby enacted to read as follows:

SECTION 11-2.42 PERSONS RESPONSIBLE FOR PAYMENT. The person responsible for payment of service and water use charges shall be that person who requested connection to the Hayward Water System or the successor in interest, or any person, persons, or legal entity requesting that such bill be charged to them.

In the event that water usage is recorded on a meter for which no connection has been requested, the property owner of record shall be responsible for all charges. This shall be the case regardless of whether or not the owner requests such connection, unless it is demonstrated to the City's satisfaction that, during the period of water use, the property was occupied by a person, persons, or legal entity who had requested that service at the property be terminated.

Section 2. Upon the adoption of this ordinance, Article 11, Chapter 2, Sections 11-2.48 through 11-2.52 of the Hayward Municipal Code, relating to the collection of delinquent charges for water service, is hereby enacted to read as follows:

SECTION 11-2.48 COLLECTION OF DELINQUENT WATER CHARGES ON TAX ROLL. The City may elect to have delinquent charges for water service collected on the property tax roll in the same manner as, by the same person as, and at the same time as, and together with and not separately from, general taxes.

If a determination is made to enforce collection of delinquent charges by assessment on the Alameda County property tax roll, an administrative hearing shall be conducted in accordance with the provisions of Section 11-2.49 below. The amount to be assessed upon the property tax roll shall include all charges which are delinquent for not less than sixty days as of March 1 of each year, the actual cost of the assessment and the collection of the delinquent charges on the property tax roll and an administrative fee, initially set at \$50, and to be determined from time to time by resolution of the Hayward City Council.

SECTION 11-2.49 ADMINISTRATIVE HEARING PROCESS. Prior to placing delinquent charges on the Alameda County property tax roll for collection, written notice shall be given to the owner of the property receiving water service from the City of Hayward of the past due charges and the right to an administrative hearing. The purpose of the

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



1264 A Street
Hayward, California 94541
510.537.0340

ATTACHMENT III

October 29, 2012

SENT VIA EMAIL – SIGNED COPY SENT USPS

Alex Ameri – Director of Public Works
City of Hayward
777 B Street
Hayward, CA 94541

RE: Proposed Ordinance Changes to allow for collection of Delinquent Water and Sewer charges on Property Tax Rolls

We have reviewed your comments and the proposed changes you have conveyed. Both areas are of concern to us because properly functioning sewer and water are required to maintain a habitable rental in California. We can't imagine any instance where it is acceptable to provide rental housing without them.

Based on the information you provided:

We find no objections to the water portion of proposal and agree that owners should pay for service to multifamily properties where tenants are not directly responsible for authorizing water services.

- We agree that turning off water at the master meter and rendering a multi-family property uninhabitable is not an option.
- It is our understanding that the City will use a system (similar to what is in place for solid waste) to ensure that property owners, in particular rental property owners, will have a minimum of three delinquent notices sent to the owner of record for the property. They will also have a right to an administrative hearing if they wish to dispute the charges.
- Additionally, we endorse your procedure for collecting from the party that initiates service in single family properties, since in cases where the bill is in a tenant's name, owners have no control over payment.
- While you are proposing limited use for multifamily water service, we remind you again the importance of continuing service to tenants so that the property does not become uninhabitable. In cases where you are having issues, we are offering peer intervention in an attempt to help curb your most egregious cases of non-payment.

Likewise, we find no objections to information you provided relating to sewer delinquencies.

- You conveyed that the City will use a system similar to what was described above to collect on delinquent water charges.
- We also understand that the sewer component is limited to approximately 900 "sewer only" customers served by the city in adjacent unincorporated areas who receive water services from EBMUD.

Thank you for reaching out to us in the spirit of cooperation and earnestly seeking our feedback. We appreciate knowing that our feedback counts. In the future, please let me know if there are any other areas where we can help improve the quality of rental housing in Hayward.

Sincerely,

Timothy May
Executive Director

