



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
DECEMBER 4, 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

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CITY COUNCIL MEETING FOR DECEMBER 4, 2012
777 B STREET, HAYWARD CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 6:00 PM

1. **PUBLIC COMMENTS**
 2. Conference with Property Negotiators
Pursuant to Government Code 54956.8
 - Property Transaction
Under Negotiation: Approximately 400 Parcels owned by the California Department of Transportation in the Route 238 Corridor
Property Negotiators: City Manager David, Assistant City Manager McAdoo, City Attorney Lawson, Deputy City Attorney Brick, Development Services Director Rizk, Director of Public Works – Engineering and Transportation Fakhrai, and Neighborhood Partnership Manager Bristow
 3. Adjourn to City Council Meeting
-

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Zermeño

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Business Recognition Award: Mimi's Café

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. General Plan Update: Overall Project Schedule and Proposed Schedule for the General Plan Update Task Force (Report from Development Services Director Rizk)
[Staff Report](#)
[Attachment I Basic Project Schedule](#)
[Attachment II Detailed Six-Month Schedule](#)

2. Recommended Revisions to Hayward’s Alcohol Beverage Outlet Regulations(Report from Development Services Director Rizk and Police Chief Urban)
[Staff Report](#)
[Attachment I Existing Regulations](#)
[Attachment II January 24 2012 Meeting Minutes](#)
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[Attachment IV Resolution 12-106](#)
[Attachment V ABC License Types](#)
[Attachment VI Map](#)
[Attachment VII Summary Table](#)

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

CONSENT CALENDAR

3. Approval of Minutes of the Special City Council Meeting on November 13, 2012
[Draft Minutes](#)

4. Grant of Trail and Access Easement to the East Bay Regional Park District - Adjacent to Property Owned by the Bailey Ranch Owners’ Association
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)



5. Final Tract Map 7748 – KB Home/First American Title Company (Applicant/Owner) – Approving the Final Map, and Authorizing the City Manager to Execute a Subdivision Agreement, a Grant of Easement Agreement and Accepting, upon Completion of Improvements, Certain Streets into the City Street System
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6. Park In-Lieu Fee Allocation to the Hayward Area Recreation and Park District for the Hayward Senior Center Kitchen Americans with Disabilities Act Improvement Project, New Dog Park in the Eden Greenway, and New Ruus Park Americans with Disabilities Act-Compliant Restroom Installation Project
 - [Staff Report](#)
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 - [Attachment V Letter of Request from HARD](#)
 - [Attachment VI Park In Lieu Zone Map](#)

7. Acceptance and Appropriation of Gang Resistance Grant Award
 - [Staff Report](#)
 - [Attachment I Resolution](#)

8. Extension up to June 26, 2013 of Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis at Full-Service Restaurants Happy Hours from 4:00 to 9:00 pm and Music until Midnight
 - [Staff Report](#)
 - [Attachment I Resolution](#)
 - [Attachment II Resolution No. 12-106](#)
 - [Attachment III Minutes \(partial\) from June 19, 2012 City Council Meeting](#)

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

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



LEGISLATIVE BUSINESS

9. Bay Area Water Supply and Conservation Agency Bond for San Francisco Public Utilities Commission Debt Repayment (Report from Finance Director Vesely)

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

10. FY 2012 General Fund Year-end Review (Report from Finance Director Vesely)

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

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

NEXT MEETING – 7:00 PM, TUESDAY, DECEMBER 18, 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.



DATE: December 4, 2012

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: General Plan Update: Overall Project Schedule and Proposed Schedule for the General Plan Update Task Force

RECOMMENDATION

That Council reads and comments on this report.

BACKGROUND

On July 17, 2012, Council authorized staff to begin a comprehensive update of the City's General Plan¹. On October 23, 2012, Council appointed fifteen people to the General Plan Update Task Force and on October 25, 2012, the General Plan Update Task Force conducted their first meeting. This introduction and orientation meeting included an overview of the General Plan Update process and summarized the roles and responsibilities of the Task Force². On November 1, 2012, Council, the Planning Commission, and the Task Force attended a Training Session for the General Plan Update.

DISCUSSION

The purpose of this report is to provide an update to the Council regarding the overall project schedule for the General Plan Update, and to present a draft schedule for major community outreach events and public meetings by the General Plan Update Task Force, Planning Commission, and City Council.

Overall Project Schedule – Staff has prepared a schedule to complete the General Plan Update by June of 2014. The overall schedule for the General Plan Update involves seven phases:

- Phase 1: Project Initiation
- Phase 2: Background Reports
- Phase 3: Formulate Vision
- Phase 4: Drafting the General Plan

¹ Previous reports to the City Council are available at <http://www.hayward-ca.gov/GENERALPLAN/>

² Task Force agendas and meeting materials are available at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/GENERAL-PLAN-UPDATE-TASK-FORCE/>

- Phase 5: Environmental Impact Report
- Phase 6: Housing Element Update
- Phase 7: Adoption Hearings and Final General Plan Preparation

Attachment I is the Basic Project Schedule that generally shows when the above phases will occur. Attachment II is a more detailed schedule for the first six months of the project. Staff will regularly update the six month schedule as the project progresses, and will provide subsequent schedule updates to the Council.

Schedule for Major Community Outreach Events and Public Meetings – Table 1 provides the proposed schedule for major community outreach events and public meetings to be conducted by the Task Force, Planning Commission, and City Council. The table includes both meetings that have already occurred (for reference) and all meetings proposed to occur in the future. The rows of the table are color-coded as follows:

- Community/neighborhood workshops are highlighted in green
- Task Force meetings are highlighted in yellow
- Planning Commission meetings/hearings are highlighted in orange
- City Council meetings/hearings are highlighted in blue.
- Meetings that involve more than one group (such as a joint Planning Commission and City Council Study Session) are highlighted in purple

Table 1: General Plan Update: Proposed Schedule for Major Outreach Events and Public Meetings			
Group	Proposed Meeting Date	Location	Proposed Topics of Discussion
Task Force	Thursday, October 25, 2012	City Hall Council Chamber	Introduction and Orientation: Overview of the General Plan Update process, discussion of Task Force roles and expectations
Task Force, Planning Commission, City Council	Thursday, November 01, 2012	City Hall Council Chamber	Training Session: General Plan Update Overview
Task Force	Thursday, November 08, 2012	City Hall 2A	Complete Streets: Overview of Complete Streets, a Draft Complete Streets Policy, and Review of the Existing Circulation Element
Public	Thursday, November 29, 2012	City Hall 2A	Community Workshop: Discussion of community challenges, opportunities, and vision
Public	Saturday, December 01, 2012	City Hall 2A	Community Workshop: Discussion of community challenges, opportunities, and vision

**Table 1:
General Plan Update: Proposed Schedule for Major Outreach Events and Public Meetings**

Group	Proposed Meeting Date	Location	Proposed Topics of Discussion
City Council	Tuesday, December 04, 2012	City Hall Council Chamber	Review of the project schedule and proposed schedule for the Task Force
Public	Monday, December 3	MLK Middle School	Neighborhood Workshop: Discussion of community challenges, opportunities, and vision
Public	Thursday, December 6	Fairway Park Baptist Church	Neighborhood Workshop: Discussion of community challenges, opportunities, and vision
Public	Monday, December 10	Southland Mall	Neighborhood Workshop: Discussion of community challenges, opportunities, and vision
Public	Wednesday, December 12	Hayward High School	Neighborhood Workshop: Discussion of community challenges, opportunities, and vision
Task Force	Thursday, December 13, 2012	2A	Public Outreach Toolkit, Public Safety, and Disaster Preparation and Response: Review of existing policies and discussion of future policy options
Task Force	Thursday, January 03, 2013	1C	Regional Housing Needs Allocation and Priority Development Areas: Review of existing policies and discussion of future policy options
Task Force	Thursday, February 07, 2013	2A	Presentation of the Draft Vision and Guiding Principles
Planning Commission and City Council	Tuesday, February 19, 2013	City Hall Council Chamber	Joint Planning Commission and City Council Work Session: Presentation of the Draft Vision and Guiding Principles
Public	Late February, 2013 (Specific date to be determined)	To be determined	Community Workshop: Presentation of the Draft Vision and Guiding Principles
Task Force	Thursday, March 07, 2013	2A	Rising Sea Levels and Flooding: Review of existing policies and discussion of future policy options
Task Force	Thursday, April 04, 2013	2A	Economic Development: Review of the Strategic Plan and discussion of future policy options

Table 1: General Plan Update: Proposed Schedule for Major Outreach Events and Public Meetings			
Group	Proposed Meeting Date	Location	Proposed Topics of Discussion
Planning Commission and City Council	Mid April, 2013 (Specific date to be determined)	City Hall Council Chamber	Joint Planning Commission and City Council Work Session: meeting to provide a project update and present draft portions of the General Plan
Task Force	Thursday, May 02, 2013	2A	Climate Action Plan: Review of existing policies and discussion of future policy options
Task Force	Thursday, June 06, 2013	2A	Review of Draft General Plan Sections (specific sections to be determined)
Planning Commission and City Council	Mid June, 2013 (Specific date to be determined)	City Hall Council Chamber	Joint Planning Commission and City Council Work Session: meeting to provide a project update and present draft portions of the General Plan
Task Force	Thursday, July, 11, 2013	2A	Review of Draft General Plan Sections (specific sections to be determined)
Public	Late July, 2013 (Specific date to be determined)	To be determined	General Plan Environmental Impact Report: Scoping Meeting to identify issues to be addressed in the General Plan Environmental Impact Report
Public	September, 2013 (Specific date to be determined)	To be determined	Community Workshop: Presentation of the Draft General Plan
Task Force	Thursday, September 12, 2013	2A	Presentation of the Draft General Plan
Planning Commission and City Council	Late September, 2013 (Specific date to be determined)	City Hall Council Chamber	Planning Commission and City Council Work Session: Presentation of the Draft General Plan
Task Force	Thursday, October 10, 2013	2A	To be determined
Task Force	Thursday, November 14, 2013	2A	To be determined
Task Force	Thursday, December 12, 2013	2A	To be determined
Task Force	Thursday, January 02, 2014	2A	To be determined
Task Force	Thursday, February 06, 2014	2A	To be determined
Task Force	Thursday, March 06, 2014	2A	To be determined
Task Force	Thursday, April 03, 2014	2A	To be determined

Table 1: General Plan Update: Proposed Schedule for Major Outreach Events and Public Meetings			
Group	Proposed Meeting Date	Location	Proposed Topics of Discussion
Planning Commission	Late April, 2014 (Specific date to be determined)	City Hall Council Chamber	General Plan Update Public Hearing #1: Recommendation for Approval
Task Force	Thursday, May 01, 2014	2A	To be determined
Planning Commission	Early May, 2014 (Specific date to be determined)	City Hall Council Chamber	General Plan Update Public Hearing #2: Recommendation for Approval (if necessary)
Task Force	Thursday, June 5, 2014	2A	To be determined
City Council	Late May, 2014 (Specific date to be determined)	City Hall Council Chamber	General Plan Update Public Hearing: Adoption
City Council	June, 2014 (Specific date to be determined)	City Hall Council Chamber	General Plan Update Public Hearing: Adoption (If necessary)

In addition to the outreach efforts and meetings described in Table 1, staff will also be engaged in several other methods of community engagement and outreach, including:

- A Community Survey (administered on-line and in a hard copy format);
- Interviews and meetings with stakeholder agencies (such as BART, HARD, the Hayward Unified School District, Cal State University East Bay, Chabot College, the Hayward Chamber of Commerce, etc.); and
- An on-line engagement visioning platform and discussion board.

FISCAL IMPACT

The fiscal impacts associated with the General Plan update were provided in the September 25, 2012 City Council agenda report.

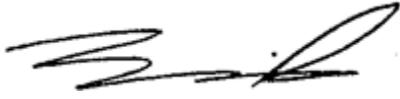
NEXT STEPS

If necessary, staff will revise the meeting schedule based on comments and direction from Council.

Prepared by: Erik J. Pearson, AICP, Senior Planner

Recommended by: David Rizk, Development Services Director

Approved by:

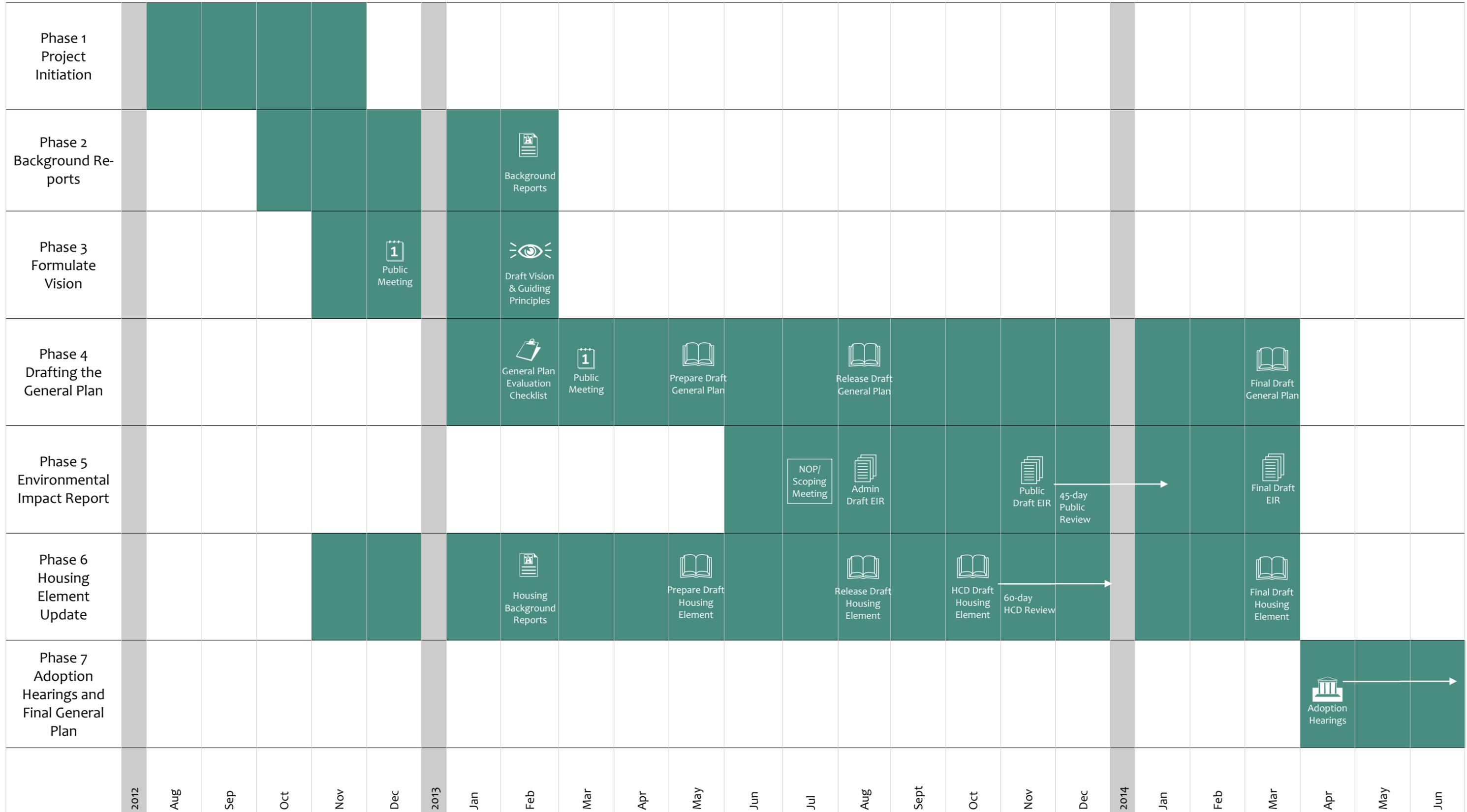


Fran David, City Manager

Attachments:

- | | |
|---------------|---|
| Attachment I | City of Hayward General Plan Update: Basic Project Schedule |
| Attachment II | Hayward General Plan Update: Six Month Schedule |

CITY OF HAYWARD GENERAL PLAN UPDATE BASIC PROJECT SCHEDULE



 Background Reports

 Public Meeting

 Draft Vision & Guiding Principles

 General Plan Evaluation Checklist

 Public Meeting

 Prepare Draft General Plan

 Release Draft General Plan

 Final Draft General Plan

 NOP/ Scoping Meeting

 Admin Draft EIR

 Public Draft EIR

45-day Public Review 

 Final Draft EIR

 Housing Background Reports

 Prepare Draft Housing Element

 Release Draft Housing Element

 HCD Draft Housing Element

60-day HCD Review 

 Final Draft Housing Element

 Adoption Hearings



General Plan Update: Six Month Schedule (DRAFT)

Status	Oct-26	Nov-2	Nov-9	Nov-16	Nov-23	Nov-30	Dec-7	Dec-14	Dec-21	Dec-28	Jan-4	Jan-11	Jan-18	Jan-25	Feb-1	Feb-8	Feb-15	Feb-22	Mar-1	Mar-8	Mar-15	Mar-22	Mar-29	Apr-5	Apr-12	Apr-19	Apr-26	
Phase 1: Project Initiation																												
Task 0.1: Project Start-up	X																											
Task 0.2: City Council Contract Approval	X																											
Task 1.1: Project Kick-off Meeting and City Tour	X																											
Task 1.2: Training Session #1: General Plan Overview	A		①																									
Task 1.3: Establish Community Engagement Program	A	10/26 (MIG)																										
Subtask 1.3.1: Community Workshops																												
Subtask 1.3.2: Outreach Toolkit																												
Subtask 1.3.3: Newsletters																												
Subtask 1.3.4: Presentations to Community Groups																												
Subtask 1.3.5: Translation Services																												
Task 1.4: Develop Final Work Program	X																											
Task 1.5: TS #2: Community Engagement Program	X																											
Phase 2: Background Reports																												
Task 2.1: TS #3: Reconnaissance and Existing Conditions	A		①																									
Task 2.2: GIS Database and Basemaps	A																											
Task 2.3: Background Report Studies																												
Task 2.4: Background Report Peer Review																												
Subtask 2.4.1: Prepare Public Review Draft BRs																												
Phase 3: Formulate Vision																												
Task 3.1: TS #4: Visioning and Narrowing Choices																												
Task 3.2: Vision and Guiding Principles																												
Task 3.3: Fiscal Impact Analysis																												
Task 3.4: Fiscal Model	A																											
Task 3.5: Target Industry Analysis	A																											
Phase 4: Drafting the General Plan																												
Task 4.1: TS #5: Preparing the General Plan																												
Task 4.2: Draft General Plan																												
Task 4.3: Strategic Implementation Plan																												
Task 4.4: Community Risk Reduction Plan																												
Phase 5: Environmental Impact Report																												
Task 5.1: Training Session #6: Preparing the EIR																												
Task 5.2: Initial Study/Notice of Preparation																												
Task 5.3: Scoping Meeting																												
Task 5.4: Administrative Draft EIR																												
Task 5.5: Draft Environmental Impact Report																												
Task 5.5: Responses to Public Comments, MMRP, NOD																												
Task 5.6: Findings of Fact and SOC																												
Phase 6: Housing Element Update																												
Task 6.1: TS #7: Updating the Housing Element	A																											
Task 6.2: Housing Element Public Outreach																												
Task 6.3: Peer Review Draft Housing Element																												
Task 6.4: Facilitate HCD Review of Draft Housing Element																												
Phase 7: Adoption Hearings and Final General Plan																												
Task 7.1: General Plan Adoption Assistance																												
Task 7.2: Prepare Final Web-Based General Plan																												
Project Management											0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

DATE: December 4, 2012

TO: Mayor and City Council

FROM: Director of Development Services and Chief of Police

SUBJECT: Recommended Revisions to Hayward's Alcohol Beverage Outlet Regulations

RECOMMENDATION

That the City Council reviews and provides comment on this report and the staff recommendations for revisions to Hayward's alcohol beverage outlet regulations.

SUMMARY

Staff is recommending revisions to Hayward's alcohol beverage outlet regulations to achieve the following major objectives:

1. Amend regulations in order to better promote and attract desirable alcohol-serving businesses, especially full-service restaurants and boutique specialty shops in the Downtown and other target areas.
2. Ensure future alcohol-serving uses will be operated in a safe and responsible manner and contribute positively to the Hayward community;
3. Develop more aggressive ways to proactively and immediately shut down undesirable businesses that serve alcohol that result in large or frequent events that demand significant responses from, and allocation of resources by, the Hayward Police Department; and
4. Provide a funding structure to support City staff activity associated with enforcement of City regulations associated with alcohol establishments.

Attachment VII is a table that summarizes Hayward's existing regulations and the proposed staff-recommended changes to them, and who would potentially be impacted with such changes.

BACKGROUND

City Policies - Existing policies and strategies from the Hayward General Plan seek to strike a balance between promoting economic growth and business choices for the public, while minimizing negative impacts to quality of life in residential and retail neighborhoods. For example, the Economic Development Chapter of the General Plan contains the following strategies:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a destination for nonresidents.
- Business attraction efforts should focus on sales tax and employment generators; high performance, fast-growing firms and community-serving retail as well as high technology and other industries that will enhance the local economy.

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

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

Additionally, the purposes of various commercial zoning districts seek to promote economic growth, as reflected below:

- The purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.
- The Neighborhood Commercial (CN) District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained, in order to make provision for a number of areas throughout the City carefully located in relationship to other Commercial Districts and to the Residential Districts served. The products and services intended are those primarily represented by convenience goods and services purchased frequently.

California Department of Alcohol Beverage Control - The California Department of Alcohol Beverage Control (ABC) has sole authority related to permitting and licensing alcohol sales. ABC issues a variety of licenses related to alcohol service. Attachment V includes a list of the most common license types. Four of the most common types of licenses issued by ABC for on-site sale of alcohol are Type 41, Type 42, Type 47, and Type 48 licenses. Type 41 (restaurants that serve beer and wine) and Type 47 (restaurants that serve beer, wine, and distilled spirits) are required by ABC to have at least fifty-one percent of sales to be non-alcohol related. Generally, ABC defines

such establishments as restaurants that allow minors during business hours and serve meals. Type 42 (sale of beer and wine) and Type 48 licenses (sale of beer, wine, and distilled spirits) are typically associated with a bar, tavern, or nightclub, into which minors are not allowed to enter and food service is not required.

According to ABC staff, alcohol sales are taxed by the State Board of Equalization, which checks restaurant receipts. If there is more than fifty percent alcohol sales (in violation of the standard ABC Type 47 license for a restaurant), then the State Board of Equalization contacts ABC, which will open up an investigation. The Hayward Police Department is contacted when an establishment is under investigation by ABC. Typically, due to limited resources, Hayward Police Department does not check receipts, but will work with ABC if complaints are received about an establishment.

History of City's Alcohol Beverage Outlet Regulations – The City's original Alcoholic Beverage Outlet regulations were adopted in 1993, and the stated purpose of those regulations was to stem the proliferation of establishments selling alcoholic beverages within the City, with the notion that they present problems which adversely impact residents, businesses, property owners, visitors, and workers of Hayward. The regulations were intended to address problems associated with establishments engaged in the sales of alcoholic beverages by restricting their locations in relation to one another and to their proximity to facilities primarily devoted to use by children and families with children. Such regulations entailed establishing a requirement for conditional use permits for new establishments engaged in the sale of alcoholic beverages, where conditions could be established to prevent the undesirable impacts on the community. Several changes to the original regulations were made, particularly related to the Downtown.

The City last comprehensively revised its alcohol beverage outlet regulations in 2006. According to the record, the City Council was interested in: (1) pursuing changes to the regulations that focused on the Downtown, liquor stores, and bars; (2) the extent of alcoholic beverages permitted to be sold by physical volume (e.g., cubic feet) rather than percentage of floor area; and (3) re-examining the relevance of the current separation requirements between establishments involved in the sale of alcoholic beverages. The January 17, 2006 City Council staff report and attachments are available at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2006/rp011706-03.pdf> and the minutes from that meeting are at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2006/rp012406-01.pdf>.

Overview of City's Current Regulations – The purpose of the current, existing regulations (see Attachment I) is stated at the beginning of those regulations in the Zoning Ordinance. The stated specific purpose of the regulations is “to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.”

Most new alcohol-serving establishments in Hayward are required to operate via a conditional use permit approved by the Planning Commission (or City Council upon appeal) via a noticed public hearing. As reflected in subsection (b)(3) on page 4 of Attachment I, exceptions to such requirement include “full-service” restaurants (see subsequent discussion); retail stores having at least 10,000 square feet of floor area and which devote not more than five percent of such area to alcohol sales, display, and storage; and special event functions, such as neighborhood or community festivals (provided other required permits and licenses are obtained for such events). With the

exception of these three use types, all other new alcohol-serving establishments require a conditional use permit.

If establishments operating under a use permit become problematic or operate in conflict with their use permit conditions, the City can revoke such use permits and seek to shut down such establishments. However, many establishments within Hayward have existed for several years, before the current regulations that require conditional use permits were adopted (called nonconforming uses). Therefore, without that Conditional Use Permit, the City does not have the same clear authority to regulate these establishments. (Such locations still require ABC licenses, and are subject to the same ABC regulations as newer establishments.)

The bottom of page six of the attached existing regulations (Attachment I) provides direction regarding nonconforming uses. Those provisions indicate such businesses may operate without a use permit, unless a change to their liquor license occurs or there is a substantial change in the mode or character of operation of an establishment. Such change could mean, “an expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.” For problematic businesses, such provisions would likely entail involvement of the City Attorney to show such threshold has been met and possibly to seek a court order to force a business to obtain a conditional use permit. As will be discussed later, in addition to existing remedies, staff is recommending new regulations that would provide additional opportunity to make it easier to address problematic establishments that create public nuisances or imminent threats to public health, safety, and welfare on a regular basis.

Full Service Restaurants – Pages two and three of the attached existing regulations (Attachment I) define a “full service restaurant” and identify operating standards. Restaurants that meet the definition and operating standards stated in the ordinance are allowed to serve alcohol without benefit of a conditional use permit. Such standards require that the primary function of the establishment be that of a sit-down restaurant (fast-food establishments and delicatessens do not qualify), at least sixty percent of gross sales receipts be from the sale of meals, that meal service be offered at all times when alcohol is served, and that no dancing be allowed. Regarding city regulations, which are separate from those of ABC, the City Council has temporarily authorized the playing of live or recorded music until midnight and “happy hour” alcohol sales from 4:00 to 9:00 pm at such restaurants.

Night Club - A “night club” is defined on page three of Attachment I as, “any alcohol beverage sales commercial activity which engages in the sale of alcohol beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 pm to 2:00 am, regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.” Such definition is the only specific one for uses that entail selling alcohol for on-site consumption, aside from the full-service restaurant definition. Also, such definition does not differentiate between establishments that have live entertainment and those that do not. As noted later, staff is recommending that new provisions be created that would require establishments such as night clubs or bars that offer entertainment to obtain a dance/entertainment permit or license from the Police Department, in addition to a conditional use permit, and that such permits only be issued

subject to written operating standards. Such standards would relate to security and management of such activities.

Other New Alcohol-Serving Establishments – Page five of the attached existing regulations provides standards for new on-sale establishments (where alcohol is sold and consumed on-site) and off-sale establishments (where alcohol is sold at the location and consumed off-site), related to proximity to other alcohol establishments and schools, libraries, parks, and other similar uses. New full-service restaurants that sell alcohol; grocery stores selling, displaying and storing alcohol in no more than five percent of their floor area; and public events are exempt from such standards.

New on-sale establishments outside Downtown cannot be located closer than 500 feet to another on-sale or off-sale establishment, unless approved by the City Council upon recommendation by the Planning Commission “if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.” Within Downtown, the separation requirement is 100 feet (only to off-sale establishments and schools, parks, libraries, etc., but not to other on-sale establishments) and no more than two on-sale establishments are allowed per block side or face. The provisions do not require a separation distance to schools, parks, libraries, etc. for new on-sale establishments on Main Street between A and C Streets and on B Street between Watkins Street and Foothill Boulevard.

Like new on-sale establishments outside Downtown, new off-sale establishments outside Downtown are required to be a minimum 500 feet from other on-sale or off-sale establishments and from schools, public parks, libraries, playgrounds, recreational centers, child care centers, or other similar uses.

Pages 5 and 6 of Attachment I list possible conditions that could be required for new alcohol establishments, but such conditions are not stated as being required. Although recent practice is to incorporate such conditions into conditional use permits approved for new establishments, staff would recommend that the listed conditions be stated as being required. These would be in addition to recommended new standards that are discussed later in this report.

Existing Establishments – In staff’s opinion, the section of the alcohol regulations most in need of updating are those related to existing establishments. As indicated by the Hayward Police Department, most problematic alcohol-serving/selling establishments in Hayward are legal nonconforming businesses that operate without conditional use permits. “Legal, nonconforming” means the business was established legally (i.e., prior to the current applicable regulations), has continued in operation since being established, and is not subject to nor in compliance with current regulations that require a conditional use permit (i.e., is legally, non-conforming as defined above.) As stated near the bottom of page six of Attachment 1 (subsection 10), an establishment not otherwise exempt would be required to obtain a conditional use permit if its operation associated with alcohol sales expands, discontinues for more than six consecutive months, or is associated with “a pattern of conduct in violation of other laws or regulations.”

Recent Council Action and Direction - As indicated by City Council during meetings on January 24¹ and June 19² of this year, the City's Alcohol Beverage Outlet Regulations in the Zoning Ordinance (Attachment I) need to be revised. Concerns have been expressed by the public and Council members in the past as to whether the regulations (1) encourage needed restaurants and other desirable retail and entertainment establishments in target areas of the City, particularly Downtown; (2) provide adequate guidance regarding approval of alcohol serving establishments that have the potential to generate negative impacts and usurp scarce public safety resources; and/or (3) provide law enforcement with the necessary tools to take effective action against problematic locations selling alcohol. Also, concerns have been expressed that some of the standards and regulations are not business-friendly for full-service restaurants and may prevent some of those restaurants, which can operate without benefit of a conditional use permit, from reaching maximum business potential. The minutes from the January and June meetings are included as Attachments II and III to this report.

In response to promoting full-service restaurants, the City Council adopted Resolution 12-106 on June 19, 2012 (Attachment IV), which allows at full-service restaurants only through December 26, 2012 during a temporary trial period, live or recorded music until midnight (no dancing) and reduced price alcohol sales (happy hour) from 4:00 to 9:00 pm. Music must be in compliance with the City's noise regulations and happy hours must also include appetizers and non-alcoholic beverages at reduced prices. The City Council directed staff to return prior to December 26, 2012, with recommended "comprehensive revisions to the City's alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of the City." As shown in the attached June 19 meeting minutes, Council also directed staff to "assess the possibility of allowing dancing after the trial period."

The following sections of this staff report include staff's general recommendations for comprehensive revisions to the City's alcohol regulations.

DISCUSSION

Attachment VI is a map that shows the location of retail establishments in Hayward with ABC licenses. Not surprisingly, establishments are concentrated in Downtown and along major arterial corridors, many of which are legal, nonconforming, which means they operate without benefit of a conditional use permit, which was not required when they began operating. Of the 209 retail establishments that operate via an ABC license, twenty-six have conditional or administrative use permits from the City (the locations of which are indicated on the map in Attachment VI). Below is a table that summarizes the number of retail establishments in Hayward that have an active ABC license.

¹ January 24, 2012 Joint Work Session staff report and attachments at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca012412full.pdf> (agenda item number one)

² June 19, 2012 City Council meeting staff report and attachments at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca061912full.pdf> (agenda item number ten)

ABC License Types	Number of Establishments	Establishments with a CUP or AUP	Approximate Number of Stores >10,000 sf in Size	Assumed Number of Nonconforming Establishments
20,21: Off-Sale (stores)	78	8	27	43*
41,47: On-Sale (Restaurants)	106	14	NA	0*
40, 42, 48: On-Sale (Bars, Nightclubs)	21	4	NA	17
58, 63, 70, 86: On & Off-Sale (Misc-hospitals, etc.)	4	0	NA	4
TOTALS	209	26	27	64

*Staff has not conducted a detailed survey to confirm restaurants are operating in compliance with the standards for full-service restaurants and that no more than five percent of the floor areas of stores are being used for alcohol sales, display, and storage. Meeting such standards would eliminate the need for a conditional use permit (CUP) for those establishments.

In summary, and assuming all restaurants are operated in compliance with full-service restaurant standards, there are approximately sixty-four alcohol-selling retail establishments in Hayward that are nonconforming. The later discussion related to establishing deemed approved status relates to nonconforming establishments.

During the last several months, staff has reviewed the alcohol regulations from various cities, including the cities of Emeryville, Fremont, Pleasanton, San Francisco, San José, San Diego, Ventura, and Walnut Creek. The following recommendations are based on the best practices gleaned from that research, which included in-person discussions with both regulatory and enforcement staff from some of those cities.

Amend regulations in order to better promote and attract desirable alcohol-serving businesses, especially full-service restaurants and boutique specialty shops in the Downtown and other target areas. – To achieve this objective, staff recommends the following code revisions:

Formalize temporary revisions to allow happy hours and music at full-service restaurants – Given that no problems have arisen at full-service restaurants during the last six months associated with temporary allowance of happy hour alcohol sales from 4:00 to 9:00 pm (with reduced price appetizers and non-alcoholic drinks) and music until midnight (with no dancing), staff recommends that such provisions be codified. Also, in response to some Council members’ comments at the June 19, 2012 work session to possibly allow dancing at full-service restaurants, staff is also recommending that dancing be allowed at such restaurants with a dance/entertainment permit issued by the City Manager or designee.

Consider Allowing Certain Alcohol Uses with an Administrative Use Permit – To encourage certain desirable alcohol-serving uses, staff recommends that certain uses be allowed to operate with an administrative use permit (AUP) versus a conditional use permit (CUP). Both an AUP and CUP require the same findings to be made, but an AUP is typically issued by the Planning Director or his/her staff designee. Notices of an AUP application are sent to owners within 300 feet of an establishment, allowing for concerned neighbors and owners to voice concerns. Staff has the authority to refer any AUP application to the Planning Commission, and action by the Planning Director on an AUP is appealable to the Planning Commission.

One such use staff would recommend for consideration is a wine and cheese shop that meets certain standards, such as being operated and managed by a certified sommelier or oenologist and involving no sales of liquor/distilled spirits. If Council is supportive of such approach, staff will incorporate new provisions to define and allow such use via an AUP.

Also, to reflect the desirability of responsible alcohol service related to economic growth in entertainment areas of Hayward, like Downtown and the Hesperian Corridor, staff recommends the following provision be added to the ‘Purpose’ section of the alcohol regulations: “It is also recognized that regulations that promote responsible alcohol sales and consumption can help contribute to economic vitality, particularly in designated areas of Hayward.”

Ensure future alcohol-serving uses will be operated in a safe and responsible manner that contribute positively to the Hayward community – Currently, new alcohol-serving establishments are required to operate via a conditional use permit approved by the Planning Commission (or City Council on appeal) after a noticed public hearing. Also, the City can revoke a conditional use permit for an establishment that is not being operated in compliance with the conditions of the use permit.

New Entertainment Establishment License/Permit Provisions – To better differentiate between alcohol-serving establishments that include live entertainment, dancing, and/or disc jockeys (i.e., nightclubs) and those that do not (i.e., bar with no bands, etc.), staff is recommending that a new definition be developed in the alcohol beverage outlet regulations for an alcohol-serving entertainment establishment, the operations of which do not include food service associated with a permitted full-service restaurant.. Staff recommends such an establishment be defined as, “An establishment where alcohol is served and live entertainment is provided by or for any patron or guest, including but not limited to singing, playing music, dancing, acting, holding a fashion show, performing pantomime, performing comedy or other act or performance, either as the main purpose for such gathering or as an incident to some other purpose. Such establishments shall not include full-service restaurants.” For such establishments, staff also recommends that a dance/entertainment establishment permit be obtained from the City Manager or designee and that provisions/operating standards, review process, etc. for such establishments be included in Chapter 6, Article 2 of the Hayward Municipal Code, where the City’s existing Public Dance Regulations are located (<http://www.ci.hayward.ca.us/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/MUNICIPAL-CODE/MiscellaneousBusinesses.pdf>).

Currently, the Chief of Police issues dance permits. Such updates would include standards to operate an entertainment establishment, including minimum security staffing and training

requirements, requirement for on-site manager(s) to be present, etc. In the recommended and updated ordinance, the dance/entertainment permit would be issued by the City Manager³ or designee (usually the Chief of Police), and would be in addition to any requirements for obtaining conditional use permits. A new fee would be established to cover the actual costs for processing the permit. Currently, a dance permit application fee is \$42.

In summary, any establishment that entails the sale of alcohol and includes entertainment would be required to obtain a dance/entertainment permit from the City Manager or designee, including full-service restaurants.

Miscellaneous Revisions - Although recent conditional use permits contain provisions to ensure establishments will be operated in a manner that will not negatively impact surrounding areas, there is opportunity to codify operating standards for both on-sale and off-sale establishments to further ensure no incidents occur.

1. As stated previously, some of the conditions noted in the code as possible conditions for new establishments should be listed as performance standards – similar to full-service restaurants, which are required to operate in conformance with specific standards listed in the code. Such standards include proper lighting, size and type of containers for off-site consumption, etc.
2. To ensure the number of bars and liquor stores in the Downtown and throughout the City will not increase in areas with an “undue concentration”⁴ of such uses, staff recommends that language be added to subsection 13 (page 7 of Attachment 1) to prohibit the Planning Director from issuing public letters of convenience or necessity for new bars or liquor stores in areas where there is an undue concentration of such uses. Such language would be consistent with a resolution adopted by City Council in 2006 that states, “no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses.” Note that this would apply to

³This language is consistent with that used in all recent ordinance updates. In the case of dance permits, the City Manager’s designee is currently assumed to be the Police Chief.

⁴ Business and Professions Code Section 23958.4:

(a) For purposes of Section **23958**, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

liquor stores, not wine and cheese shops (see later discussion) and specialty boutique stores that sell specialty alcohol. Staff will develop definitions in the regulations that differentiate such uses from liquor stores.

Develop more aggressive ways to proactively and immediately shut down undesirable businesses that serve alcohol, and which business operations result in large or frequent events that demand significant responses from, and allocation of resources by, the Hayward Police Department – The City has the authority to abate any public nuisance, including violations of our municipal code. The Community Preservation Division performs the majority of investigations into municipal code violations and issues "notices to abate" where a violation is confirmed. However, other City departments are also involved in abatement of municipal code violations, such as when the Building Division issues an order to repair or demolish a dangerous building. The majority of nuisances are currently abated by way of this notice process.

Where the City is unable to obtain voluntary compliance with its notices to abate or orders to abate, the matter may be referred to the City Attorney's Office for further review, investigation and possible court action. The City Attorney's Office also has the capacity to perform investigations and issue its own orders to abate a nuisance. For example, the City Attorney's Office has issued "cease and desist" orders to medical marijuana dispensaries, unpermitted commercial enterprises, and other code violators. If all else fails, the last step is City-initiated court action where the City will seek judicial approval of nuisance abatement and cost recovery.

To augment these existing abatement remedies or "tools", staff is proposing major additions to the alcohol regulations to meet the objective stated above. Following is a description of those recommended additions.

'Deemed Approved' Regulations - Such provisions would require that all legal nonconforming alcohol-serving establishments meet basic operating standards. Per these regulations, such establishments would be considered 'deemed approved' and no longer nonconforming. The purpose of such provisions, similar to those of other cities, like Oakland and Walnut Creek, would be to establish a process where establishments would be notified of their 'deemed approved' status and expectation to be operated in compliance with basic standards, describe the procedure associated with establishments that are not operated in compliance with basic performance standards that would require such establishments be operated per a conditional use permit and associated conditions of approval, and establish a procedure for appealing imposition of conditions and/or revocation of the 'deemed approved' status.

Staff envisions a noticed public hearing before the Planning Commission related to an operators' appeal of the Planning Director's decision that basic operating standards (see below) per the 'deemed approved' status are not being followed. Also, a hearing before the Planning Commission would occur associated with a requirement for a conditional use permit and associated conditions of approval for an establishment that loses its 'deemed approved' status. As with other land use decisions, an appeal of the Planning Commission decision to the City Council would be available for any aggrieved party. Although such process will likely take some time to implement, including conferring 'deemed approved status' on nonconforming establishments and responding to establishments that do not comply with basic operating

standards, this process will help in establishing formal operational standards for such uses, and a process to respond if such standards are not followed.

‘Deemed approved’ operating standards would be identified in the new provisions, similar to those below regarding operation of an establishment:

- A. That it does not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area;
- B. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- C. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- D. That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;
- E. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

In summary, all establishments, except those currently exempted from the regulations (retail stores greater than 10,000 square feet where not more than five percent of their floor area is devoted to sale, display and storage of alcohol; full-service restaurants; and special public events/festivals), would operate either under a conditional use permit, administrative use permit, or per a ‘deemed approved’ status.

Summary Suspension Provisions – Such regulations would allow an executive team (“Team”), likely to consist of the City Manager, City Attorney, and the Chief of Police (or their designees) to take action to abate imminent threats to public health, safety, or welfare. The provisions would establish an informal procedure whereby the Team would attempt to contact the establishment permittee to seek immediate voluntary compliance with measures to eliminate an imminent public threat. The Team would have authority to summarily suspend for up to thirty days the City permit or license to operate if the initial communication fails, if the permittee fails to implement voluntary measures to effectively and immediately eliminate the imminent threat to the public, the voluntary compliance measures are not effective, or the Team determines the threat is so urgent that compliance with voluntary measures will further jeopardize the public health, safety, or welfare. The provisions would also establish a process where the involved permittee would be able to request an immediate hearing before a hearing officer, and also an appeal process to City Council for any decision by the hearing officer/designee with which the permittee disagrees. The City of San José utilizes a summary suspension process that is similar to the process suggested here.

The determination that there is an imminent threat to the public health, safety or welfare would be based on one or more factors, such as the following:

1. There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within 150 feet of the licensed or permitted premises; or
2. There has been a violation of a permit or license condition or other requirement associated with the establishment that creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises; or
3. The licensee or permittee has conducted the licensed or permitted business in a manner that creates or results in a public nuisance, as defined in the Hayward Municipal Code or in Sections 3479 and 3480 of the California Civil Code, and that public nuisance creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises.

Such provisions are supported by Hayward's Chief of Police and would give more authority to respond quickly to such threats.

Provide a funding structure to support City staff activity associated with enforcement of City regulations associated with alcohol establishments – Several municipalities have regulations that generate funding to support public safety oversight of alcohol-serving establishments or entertainment venues. For example, the City of Emeryville not only requires a conditional use permit from the Emeryville Planning Commission, but also a cabaret permit from the Emeryville Police Department (similar to the entertainment permit described previously). Such regulations require that operators pay an annual permit fee to offset the costs of administering the regulations, give broad authority to the City to inspect the books and premises (to which the operators give advance consent), and prohibit the cabaret permit from being transferred or sold. For problematic establishments, a cabaret permit can be revoked, meaning the operator could sell alcohol, but not conduct any cabaret activities. A similar dual permitting process with associated fees to recover costs is recommended for alcohol-serving establishments that provide entertainment.

ECONOMIC IMPACT

With revisions to the city's alcohol regulations that would provide more enforcement authority for problematic establishments and greater flexibility to attract desired alcohol-serving establishments, there would be expected to be positive economic benefits through an enhanced and attractive Downtown and business environment. Establishments that demonstrate responsible alcohol service and sales contribute to the economic vitality and activity in entertainment areas of cities that seek to attract residents and visitors. The recent success of allowing happy hours and music at full-service restaurants as part of a trial program is a good example of how regulations can positively impact economic growth and assist desirable businesses.

FISCAL IMPACT

At a future meeting, along with recommended Code revisions, staff will provide a fiscal impact analysis associated with administering and enforcing the City's regulations. Such analysis will

include recommended new fees to recover costs currently borne by the General Fund pertaining to City staff, including Police Department staff, for enforcement, education, compliance inspections, and administrative costs associated with the approximately 210 ABC-licensed retail establishments in Hayward.

Also, staff envisions including new Code language that would require reimbursement to the City for costs incurred in association with certain major activities, such as summary suspension or abatement actions. This would be in addition to recovering costs that could be obtained through court action through the City Attorney's Office. All recommendations will seek cost recovery and be in compliance with Proposition 26.

PUBLIC CONTACT

A LEADS (Licensee Education on Alcohol and Drugs) training class was conducted at City Hall on November 14 by ABC and Hayward Police Department staffs, which was attended by approximately thirty people who worked at various alcohol-serving establishments in Hayward. Notices of the class were sent to all ABC licensed establishments in Hayward. The class included instruction on checking various forms of identification, detecting and preventing illegal activity, liability laws and more.

Also, staff provided notice of this work session to the Chamber of Commerce, Downtown homeowners' associations, all ABC licensees in Hayward, and other interested parties. Also, notices were sent to all ABC licensees and interested parties of an upcoming December 11 community meeting and a December 13 Planning Commission work session associated with suggested revisions to the city's alcohol regulations.

NEXT STEP

Staff will incorporate input from Council, from the public at a December 11 community meeting, and from the Planning Commission at its scheduled December 13 work session, to develop recommended comprehensive code amendments regarding Hayward's alcohol regulations. Such amendments will be presented to the Planning Commission for consideration in early spring and to the City Council in mid to late spring.

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Diane Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Hayward Municipal Code Section 10-1.2735(b) et al (Alcohol Beverage Outlet Regulations)
- Attachment II: January 24, 2012 Joint Work Session Minutes
- Attachment III: June 19, 2012 City Council Meeting Minutes
- Attachment IV: Resolution No. 12-106
- Attachment V: List of Most Common ABC License Types
- Attachment VI: Location of Hayward Establishments with ABC Retail Licenses (map, per November 14, 2012 data from ABC)
- Attachment VII: Table Summarizing Proposed Revisions

- (c) Within 500 feet of any other adult entertainment activity as herein defined.
- (4) Public Display of Certain Matter Prohibited.
No person shall place, maintain, display or exhibit any material in a manner which exposes to public view photographs or illustrations of "specified sexual activities" or of poses which emphasize or direct the viewer's attention to "specified anatomical areas." As used herein, "exposes to public view" means exposes to the view of persons outside the building in which said material is placed, maintained or displayed.
- (5) Discontinuance of Nonconforming Activities.
No later than September 19, 1980, all adult entertainment activities made nonconforming by reason of the provisions hereof, except those activities rendered nonconforming because of being within 500 feet of any other adult entertainment activity, shall be discontinued or shall be brought into full conformance with the provisions hereof, except that such activities may be allowed to continue for an additional period upon the approval of a variance with the finding that the activity is obligated by written lease entered into before the effective date of this section for a period exceeding two years from such effective date, or that the activity involves investment of money in leasehold or improvements of such that a longer period is necessary to prevent undue financial hardship.

b. Alcoholic Beverage Outlet Regulations.

- (1) Purpose.
In addition to the general purposes listed in Section 10-1.110: General Provisions, the specific purpose of the Alcoholic Beverage Outlet Regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.
- (a) In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers of Hayward.
- (b) Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- (c) It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- (d) These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- (e) The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming

from such uses by the imposition of reasonable conditions upon the operation of such uses.

(2) Definitions.

For the purpose of these regulations, certain terms and words shall have the following meanings:

- (a) **Alcoholic Beverage Sales Commercial Activity.** “Alcoholic Beverage Sales Commercial Activity” means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding full-service restaurants that comply with the below-listed definition of full-service restaurant.
- (i) “On-sale Alcohol-related Commercial Activity” shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises. This section shall be interpreted to include bars, exclusive of night clubs.
- (ii) “Off-sale Alcohol-related Commercial Activity” shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- (iii) “Liquor store” shall mean any business of less than 10,000 square feet (gross) where beer, wine or distilled spirits are sold for off-sale consumption.
- (b) **Downtown Entertainment Area.** The “Downtown Entertainment Area” shall mean that area generally between A and D Streets and between Second Street and Grand Street.
- (c) **Restaurant – Full Service.** A “full service restaurant” shall mean a sit-down commercial activity which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants or delicatessens. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon 72 hours’ prior written notice. To be considered a full service restaurant, the commercial activity must meet the criteria listed below. Restaurants that fail to meet these criteria must apply for a conditional use permit. In the event that the establishment fails to obtain a conditional use permit, the establishment shall be in violation of these regulations and subject to the penalties and enforcement provisions set forth in Section 10-1.2850 of the Zoning Ordinance.

- (i) A full service restaurant shall serve meals to guests at all times the commercial activity is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (ii) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (iii) A full service restaurant shall not offer or permit any form of live or recorded entertainment; including by way of example and not limited to, the playing of recorded music by a disc jockey, karaoke, dancing, video or mechanical games. Background music complementary to a dining experience may be provided as determined by the Chief of Police.
- (iv) A full service restaurant shall not offer any type of reduced price promotion for alcoholic beverages served on the premises.
- (v) A full service restaurant is one that abides by all of the following performance standards:
 - (a) That it does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
 - (b) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
 - (c) That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
 - (d) That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
 - (e) That all its employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within 90 days of being employed; and
 - (f) That it complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
 - (g) That it does not sell alcoholic beverages to minors.
- (d) Night Club. "Night club" shall mean any alcoholic beverage sales commercial activity which engages in the sale of alcoholic beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 p.m. to 2:00 a.m. regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.

(3) Conditional Use Permit for New Establishments.

Except as otherwise provided herein, no new alcoholic beverage sales commercial activity may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- (a) Retail stores having 10,000 square feet or more of floor area and which devote not more than 5 percent of such floor area to the sale, display, and storage of alcoholic beverages;
- (b) Full-service restaurants; or
- (c) Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (i) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (ii) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each of the dates the event will be held; and
 - (iii) The duration of the event does not exceed three consecutive days or five days in any single calendar year.

(4) Posting of Conditions of Approval.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

(5) Findings.

- (a) In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages.
- (b) The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

(6) Application For Conditional Use Permit.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- (a) The type of Alcoholic Beverage Control license the applicant is seeking for the establishment; and
- (b) The true and complete name and address of each lender or share holder with a 5 percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- (c) A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

(7) Requirements For New On-Sale Alcohol-Related Commercial Activities.

(a) With the exception of the downtown entertainment area, no new on-sale alcohol-related commercial activity shall be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreational center, day care center, or other similar use.

(b) Notwithstanding the above:

(i) Outside the downtown entertainment area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.

(ii) Within the downtown entertainment area, no on-sale alcohol-related commercial activity shall be established or maintained within a radius of 100 feet of any off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol related commercial activities which front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.

(iii) Within the downtown entertainment area, no more than two on-sale alcohol-related commercial activities shall be permitted per block side or face, with the exception of new or existing establishments that are exempted by subsection (3) above. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related commercial activity on a block between the two immediate cross streets.

(8) Requirements For New Off-Sale Alcohol-Related Commercial Activities.

With the exception of the downtown entertainment area, no new off-sale alcohol-related commercial activity will be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

(9) Conditions.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and in subsection (1) above, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

- (a) Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare.
 - (b) Alcoholic beverage sales commercial activities shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
 - (c) Alcoholic beverage sales commercial activities with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
 - (d) Alcoholic beverage sales commercial activities shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
 - (e) No beer or malt liquor shall be sold in bottles or containers larger than 12 ounces for off-site consumption;
 - (f) Beer and malt liquor in containers of 12 ounces or less shall not be sold in units of less than one six-pack for off-site consumption;
 - (g) Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption;
 - (h) Distilled spirits shall not be sold in bottles or containers smaller than 750 ml for off-site consumption; and
 - (i) Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment;
 - (j) Alcoholic beverage sales commercial activities shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.
- (10) Existing Establishments Selling Alcoholic Beverages.

Any alcoholic beverage sales commercial activity lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations. Upon the occurrence of either of the following, however, operation of the establishment shall require approval of a conditional use permit:

- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a license classification; or
- (b) There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.

- (11) Modifications in Permitted Alcoholic Beverage Sales Commercial Activities.
Any permitted alcoholic beverage sales commercial activity operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:
- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a classification; or
 - (b) There is a substantial change in the mode or character of operations of the alcoholic beverage sales commercial activity as defined in subsection (11) above.
- (12) Notice.
In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within 300 feet of the perimeter of the subject property for which use permit approval is sought.
- (13) Letter of Public Convenience or Necessity.
The Planning Director is authorized to issue letters of public convenience or necessity to the State Department of Alcoholic Beverage Control for alcoholic beverage sales commercial activities that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit.

c. Catering Truck Standards.

All catering truck operations shall comply with the following standards:

- (1) Catering trucks shall only park on private property with the permission of said property owner(s).
- (2) Catering trucks shall not park on any City streets, rights-of-way or property.
- (3) Catering trucks shall not be located on a single parcel more than 20 minutes at a time.
- (4) Catering trucks shall not be located within 300 yards of a food vendor as defined in this Ordinance.
- (5) Catering trucks shall not return to the same location within less than two hours.
- (6) Catering trucks shall obtain all necessary approvals for the County Health Department and City of Hayward Police Department.

d. Christmas Tree and Pumpkin Patch Lot Regulations.

All Christmas tree and pumpkin patch lots shall comply with the following standards:

- (1) Pumpkin Patch lots shall not be established before October 1 of each year and Christmas tree lots shall not be established before November 22 of each year. Annual permits must be obtained from the Fire Department and the Building Division.
- (2) Prior to opening for business, all Fire Department and the Building Division permits shall be obtained. The lot shall be maintained and operated in compliance with all Fire Department and the Building Division requirements.
- (3) No merchandise, equipment, vehicles, refuse, or other material associated with the proposed lot shall block circulation or parking aisles outside fenced areas .



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

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that the Council met concerning four items: Public Employment regarding City Attorney; Conference with Labor Negotiators regarding all bargaining units; Conference with Legal Counsel regarding California Redevelopment Association, et al v. Matosantos, California Supreme Court Case No. S194861; and Conference with Legal Counsel regarding Nanette Dillard v. Alameda County Associated Community Action Program Governing Board Alameda County Superior Court No. RG11572661. There were no reportable items.

PUBLIC COMMENTS

Mr. Ron Teague, General Manager at Mimi's Cafe in Hayward, expressed support for removing the prohibition of reduced price alcohol sales "happy hour." Mr. Teague noted that Mimi's Cafe has 57 locations in California and the ban in Hayward does not allow them to participate in company-wide alcoholic beverage programs and also places them at a disadvantage with competitors in neighboring cities. He added that the sales generated from a happy hour program would increase tax revenue and potentially increase employment opportunities for local residents.

Mr. Jason Jago, District Manager of the Elephant Bar Restaurant in the Bay Area, noted that the ban on "happy hour" in Hayward places them at an economic disadvantage. Mr. Jago added that reduced prices on alcohol beverage coupons issued by Elephant Bar restaurants have a disclaimer that coupons are valid everywhere except Hayward. Mr. Jago mentioned that employees are cognizant that the restaurant is a full-service restaurant and are properly trained to handle situations related to alcoholic beverages. Mr. Jago favored instituting a "happy hour" from 3:00 p.m. to 7:00 p.m., similar to other locations.

Mr. Sassan Pirzaden, Shift Manager at the Elephant Bar Restaurant, favored a "happy hour" for his restaurant, noting that employees are properly trained about alcohol sales. Mr. Pirzaden noted that the Elephant Bar is at an economic disadvantage with Applebee's restaurant because the restaurant has reduced price alcohol sales.

Mr. Jesús Armas, with a business address on Main Street, invited all to the second annual "Fire and Salsa Game II," a basketball fundraising match between Los Chilonos de Hayward and Hayward Firefighters, Local 1909, on February 4, 2012, at noon at the Mateo Jimenez Gym. Mr. Armas noted that the proceeds would benefit the Hayward Youth Commission.

Mr. Doug Ligibel, Grand Terrace resident, relayed questions from Alcohol and Drugs Specialists (ADS) about the consideration of a "happy hour" at local restaurants. The questions related to happy hour and public safety, crime, nuisance, youth eating at restaurants, overconcentration of on-site alcohol outlets, and hours of service. Mr. Ligibel shared arrest records that reflected several driving under the influence offenses, and arrests that showed a problem with youth females drinking and driving. Mr. Ligibel was concerned about the 9:00 p.m. to close happy hour consideration and urged Council to pay attention to the 9:00 p.m. to 2:00 a.m., happy hour policies of some restaurants.

Mr. Kim Huggett, Chief Executive Officer of Hayward Chamber of Commerce, supported removing the prohibition against restaurants offering alcoholic beverages for a reduced price promotion because the prohibition placed Hayward restaurants at a competitive disadvantage, compared to neighboring communities, reduced restaurant income, impacted City sales tax, and jobs. He noted that the prohibition erroneously presumed that owners and managers of our restaurants did not know how to train their employees and how to responsibly serve alcoholic beverages. Lastly, on behalf of Buffalo Bills' owner, Geoff Harries, he relayed to Council Mr. Harries' support for removing the ban against restaurants offering discounted alcoholic beverages.

Ms. Julie McKillop, Neumanali Restaurant owner, stated that she was not aware of the City's ordinance banning discounted alcohol beverages. Ms. McKillop favored happy hour as a good marketing tool and not necessarily something that increased alcohol consumption. She disapproved seeing Hayward restaurants at a competitive disadvantage and asked for a compromise on this issue.

SPECIAL JOINT CITY COUNCIL/PLANNING COMMISSION WORK SESSION

1. Revisions to the Alcohol Beverage Outlet Regulations in the Zoning Ordinance

Staff report submitted by Development Services Director Rizk and Police Chief Urban, dated January 24, 2012, was filed.

Mayor Sweeney invited Planning Commissioners to join Council at the dais. Development Services Director Rizk provided a synopsis of the report.

Mayor Sweeney said it seemed inappropriate to modify regulations for alcohol-serving establishments without having a tangible plan for enforcing the regulation of any undesirable uses that might drain limited City resources.

Council Member Henson noted that the purpose of revising the City's regulations on alcoholic beverage sales at full-service restaurants was an attempt to balance the economic needs of such restaurants with the need to eradicate problematic establishments.



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Mr. Henson shared that other cities offered cabaret licenses and/or entertainment permits. Development Services Director Rizk noted that upon receiving direction from Council, staff could conduct research on the topic. In response to Council Member Henson's request to address the concerns raised by Mr. Ligibel, Director Rizk commented that full-service restaurants would have to adhere to regulations that required that 60% of restaurant sales come from food, and noted that, according to the Police Department, full-service restaurants were typically not a large source of calls for service. Council Member Henson pointed out there should be a clause in the City's ordinance addressing the actions that could be taken if things got out of hand.

Council Member Peixoto supported a compromise on the timing of happy hours, noting that the ordinance could be revised to restrict happy hours during the late night period.

Council Member Peixoto commented that the City's priorities were in place to develop a thriving downtown and believed that happy hours would encourage customers to stay at the full-service restaurant and have a meal. He agreed with Mayor Sweeney's concerns about potential safety issues that may arise from permitting happy hours after 9:00 p.m.

Planning Commissioner Lamnin favored instituting happy hours for full-service restaurants and suggested the following: that the revised ordinance require full-service restaurants to also offer low priced appetizers in addition to the discounted drinks; that the training provided to restaurant personnel be consistent for all of the full-service restaurants offering a happy hour; that the ordinance contain language for violations of the happy hour provision; and that full-service restaurants participate in crime prevention through environmental design standards. Commissioner Lamnin asked staff to look into whether or not dancing could be permissible at certain establishments. Due to concerns regarding the added costs resulting from the institution of a happy hour, Commissioner Lamnin shared that some cities had implemented an alcohol and tobacco retailer's license to assist in offsetting the cost of enforcement. She further stated that as a reward for businesses that were compliant with the City's regulations, a business might receive a discount in their permit fee.

Planning Commissioner Lavelle favored lifting the restriction on happy hours because it would allow local full-service restaurants to compete with other restaurants in the Bay Area. Commissioner Lavelle noted that the Elephant Bar in Hayward was the only Elephant Bar restaurant in Northern California lacking a happy hour. She expressed that having one early happy hour time would be adequate for restaurants and customers and added that discounted drinks being available late at night could contribute to driving under the influence. Ms. Lavelle supported Commissioner Lamnin's suggestion of discounted appetizers. Ms. Lavelle asked staff to explore the possibility of permitting music of a variety of sources at the full-service restaurants, and when permitted, would be in concurrence with the City's noise regulations. Ms. Lavelle noted that she did not read any references to Community Prevention of Alcohol-Related Problems (COMMPRE) and hoped that a representative would share their views regarding the proposed happy hour regulations.

In response to Planning Commissioner Mendall's question regarding situations that would necessitate changing back to the former regulation such as due to an increase in the number of service calls, Assistant City Attorney Conneely stated that staff could propose a trial period during which to test the revised regulation. Mr. Mendall asked if the City could place restrictions on problematic establishment. Development Services Director Rizk noted that the establishment would not be in compliance with the criteria of full-service restaurant and, therefore, would need to obtain a conditional use permit. Commissioner Mendall was supportive of revising the ordinance to allow happy hour for full-service restaurants, but only if regulating mechanisms were in place. He was amenable to a 3:00 p.m. to 7:00 p.m. happy hour timeframe, but was not comfortable with the late night happy hour. He added that the funding mechanism would need to be proportional to the size of the establishment or the amount of alcohol being served.

Planning Commissioner Faria pointed out that Applebee's restaurant had a conditional use permit, but was not on the list provided. Ms. Faria noted that in an effort to promote growth and business in the City, she would support lifting the prohibition of happy hour for full-service restaurants. She supported a funding mechanism for the oversight of the ordinance.

Planning Commissioner Márquez stated support of loosening the restrictions placed on full-service restaurants; however, she also believed that there needed to be additional research in terms of handling problematic businesses and maintaining compliance. In response to Commissioner Márquez' question of what intervening agency would respond to a problematic business, Police Chief Urban responded that it would be a shared responsibility between the Police Department and Alcohol and Beverage Control (ABC). Commissioner Márquez noted that the City needed to have fees associated with a revised ordinance and noted that a trial period made sense. She was in support of restricting happy hour from 3:00 p.m. to 7:00 p.m.

Planning Commission Chair Loché concurred with the comments made. Chair Loché noted that businesses that were poorly managed, whether they served alcohol or not, were the businesses that drained City services and he noted the importance of addressing that issue. In terms of a funding structure, he suggested cabaret fees. He added that a funding structure could help eliminate poorly run businesses and, on the same token, could help incentivize well run businesses.

Council Member Zermeño agreed with Planning Commission Chair Loché's comments regarding problematic businesses. Mr. Zermeño noted that he had been a proponent of eliminating the provision that prohibited happy hours, but disagreed that there needed to be more research for a funding structure to enforce regulations. He mentioned that the City was in need of economic vitality. For the time being, he agreed with the 3:00 p.m. to 7:00 p.m. happy hour timeframe. Furthermore, he mentioned that he wanted to see no limit to the number of restaurants that could be next to each other on a particular block.

Council Member Salinas stated that he was in agreement with the comments expressed by Council and Planning Commissioners. Mr. Salinas mentioned model businesses that were doing well. He liked the fact that bartenders were educated and skilled to identify and take care of problem customers. He added that full-service restaurants had a good opportunity to work with cab companies. He was supportive of lifting the provision that prohibits happy hour for full-service



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restaurants, allows music in those restaurants up until 10:00 p.m., and allows staff to conduct further research on alcohol sales.

Council Member Halliday mentioned that the Elephant Bar, Mimi's Cafe, Olive Garden, and Applebee's restaurants were relatively new to the Southland Mall area and appreciated staff's efforts to bring them into conformity with other cities in the area. In response to Council Member Halliday's question, Director Rizk explained that the State Board of Equalization would notify the Department of Alcohol Beverage Control (ABC) if a full-service restaurant had exceeded 40% of alcohol sales, and ABC would then work with the Hayward Police Department to address the issue. She agreed that having happy hour extended later into the night could prove problematic and therefore she favored allowing the earlier times for happy hours at full-service restaurants and allowing music and use permits for dancing. She was supportive of proper training for employees and researching a funding structure to regulate uses.

Council Member Quirk agreed with his fellow Council Members and, in particular, with Council Member Zermeño about getting the happy hour started right away. Mr. Quirk asked staff to poll participants of the restaurant tour about the importance of late night happy hours. He mentioned that if there was no evidence of problems, then he would not have a reason to be concerned about late night happy hours.

Council Member Henson said he was in favor of going forward and exploring the funding to support public safety oversight of alcohol-serving establishments. Mr. Henson noted that during this economic environment it was appropriate to give restaurants the opportunity to be competitive.

Mayor Sweeney stated there was general consensus among the two bodies and asked staff to provide options when the item comes back to Council. Mayor Sweeney noted that there was consensus to restrict the hours of the happy hour, with the exception of Council Member Quirk's request that staff poll restaurants and conduct a survey of late night happy hours, and bring back findings. Mayor Sweeney mentioned the suggestion offered by Commissioner Mendall to have a trial period with restrictions and at the end of the trial there would be a recommendation to establish a happy hour or leave the ordinance as is. Mayor Sweeney brought up Commissioner Lamnin's suggestion to consider adding discounted appetizers to the happy hour of full-service restaurants. He also pointed out that an effective strategy needed to be developed to address problem businesses that drain Police resources. Lastly, Mayor Sweeney commented that a stronger strategy needed to be developed to improve Hayward's economy.

2. Presentation of the Alternative Scenarios for the Regional Sustainable Communities Strategy

Staff report submitted by Development Services Director Rizk, dated January 24, 2012, was filed.



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Attachment III

Resolution 12-104, “Providing Notice of Scheduled Adoption of Appropriations Limit for Fiscal Year 2013 Pursuant to Article XIII B of the Constitution of the State of California”

8. Extension of 72-Inch Effluent Pipeline Shoring at the Water Pollution Control Facility

Staff report submitted by Senior Utilities Engineer Clark, dated June 19, 2012, was filed.

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

Resolution 12-105, “Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with McGuire and Hester to Extend 72 Inch Effluent Pipeline Shoring at the Water Pollution Control Facility”

LEGISLATIVE BUSINESS

9. Introduction of Ordinance to Amend the Hayward Municipal Code Section 11-3.255 Regarding Sewer Connection Fees to Allow for Longer Payment Terms – Continued to June 26, 2012

Staff report submitted by City Manager David, dated June 19, 2012, was filed.

Mayor Sweeney noted that staff was recommending continuation of the item to June 26, 2012.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 7:55 p.m.

It was moved by Council Member Halliday, seconded by Council Member Henson, and carried unanimously, to continue the item to June 26, 2012.

10. Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis Happy Hours from 4:00 to 9:00 p.m. and Music until 10:00 p.m. at Full-Service Restaurants

Staff report submitted by Director of Development Services Rizk and Chief of Police Urban, dated June 19, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report.

Council Member Zermeño asked about the prohibition of dancing during the trial period. Development Services Director Rizk noted that dancing could be allowed with a conditional use permit and he added that the recommendation was for music to be complementary to a full-service restaurant dining experience.

In response to Council Member Henson’s inquiry related to dancing, Police Chief Urban said that music was secondary to the full-service dining experience and reiterated that dancing could be allowed by applying for a conditional use permit. Mr. Henson supported the proposed licensee education classes/trainings (LEADS) that the Hayward Police Department and the Department of Alcohol Beverage Control (ABC) plan to offer to ABC establishments.

In response to Council Member Halliday’s inquiry related to the terms of Applebee’s happy hour, Development Services Director Rizk noted that Applebee’s Conditional Use Permit did not specify happy hour and he added that staff will look into an enforcement mechanism.

Mayor Sweeney opened the public hearing at 8:08 p.m.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, spoke on behalf of Hayward Chamber restaurant owners expressing support for the staff recommendation and noting that the current prohibition of reduced price alcohol sales places restaurant and chains at a disadvantage. Mr. Huggett added that musical entertainment improves the quality of life and would add to the success of local restaurants.

Ms. Francesca Lomotan, Second Street resident and representing the Hayward Coalition for Healthy Youth, spoke in support of allowing, on a trial basis, happy hours and musical entertainment at full service restaurants with three amendments: change happy hours from 5:00 to 7:00 p.m., remove “all you can drink” and “two for one” specials. Ms. Lomotan said the proposed amendments would reduce the possibility of binge drinking and over-consumption. Ms. Lomotan urged Council to support the Coalition’s recommendations.

Mr. Ravai Bhatnagar, representing the Golden Peacock Banquet and Restaurant on Santa Clara Street, expressed support for the trial period in which happy hours and musical entertainment would be allowed. Mr. Bhatnagar also welcomed the licensee education classes/training. He added that dancing would allow Hayward restaurants to be competitive with other cities.

Mr. Tony Everfield, representing Mimi’s Café on Hesperian Boulevard, mentioned that happy hour increased low volume sales, increased patronage, and allowed establishments to hire more employees. Mr. Everfield emphasized the importance of a good management team that would not allow underage drinking or binge drinking.

Mr. Ronald Gruel, Voyager Way resident, supported restricting happy hours from 5:00 to 7:00 p.m. Mr. Gruel urged Council to consider the current prohibitions carefully. He noted that dancing could cause negative situations and he mentioned there was a high density of liquor licenses in Hayward.

Mr. Richmond Apande, prospective B Street business owner, spoke in support of the staff recommendation. Mr. Apande noted that surrounding cities that offer happy hour promotions



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generate more business. He added that he would take proper measures to keep customers safe, bring entertainment, and provide appropriate training for his employees.

Mr. Aric Yererino, representing the Dirty Bird Lounge on Mission Boulevard, spoke in support of the staff recommendation. Mr. Yererino said he planned on opening a full service restaurant in downtown, but current regulations created roadblocks to open a successful downtown business. He mentioned Hayward needed to attract a younger population.

Ms. Monica Thompkins, Stonehaven Court resident and ME Restaurant owner, thanked Chief Urban for Police department support in providing the licensee education classes/training and asked Council to consider the staff recommendation. Ms. Thompkins mentioned that the happy hour promotion would generate revenue, walk-in-traffic, and needed jobs.

Mr. Ronnie Stewart, Executive Director of the Blues Society, spoke in support of the staff recommendation and, as a musician, commented that happy hours helped improve economic vitality and create a destination point. He also noted that the happy hour time frame could be extended.

Mr. Jason Jago, Elephant Bar Restaurant District Manager, noted that the Hayward location was the only restaurant that did not have a happy hour and added that through social media, Yelp being one, he received complaints from customers. Mr. Jago mentioned that Elephant Bar Restaurants provide alcohol awareness training for its employees and said that staff was responsible for alerting management if there were any alcohol-related issues.

Mayor Sweeney closed the public hearing at 8:39 p.m.

Council Member Salinas indicated he was in support of the staff recommendation noting the City needed to develop strategies for businesses to generate revenue. Mr. Salinas mentioned he frequents downtown establishments in order to patronize local businesses, along with other young urban professionals, and he had not witnessed any problems. Mr. Salinas noted that college students relayed to him that there was nothing to do in the downtown. Mr. Salinas supported the staff recommendation with an amendment to extend live or recorded musical entertainment from 10:00 p.m. to midnight.

Council Member Quirk seconded the motion. In response to Council Member Quirk's inquiry about the Police Department foreseeing any problems with extending musical entertainment until midnight, Police Chief Urban said the trial period would be a great opportunity to evaluate all concerns. Development Services Director Rizk noted that music must be in compliance with the Noise Ordinance.

Council Member Zermeño said he was in support of the staff recommendation and the amendment to extend musical entertainment until midnight. Mr. Zermeño pointed out that there would be consequences if businesses did not abide by the regulations and commented that the

recommendations offered by Ms. Lomotan were unnecessary. In response to Mr. Zermeño’s inquiry, Development Services Director Rizk indicated that if an establishment wanted to allow dancing, it would need to apply for a Conditional Use Permit which would go to the Planning Commission and noticed as a public hearing.

Council Member Peixoto was in support of the staff report. Mr. Peixoto indicated that one of Council’s priorities was to revitalize downtown and he noted that by allowing, on a trial basis, happy hours, more restaurants would come into downtown and generate needed revenue. He noted that effective management was a significant factor for problematic alcohol-serving establishments.

Council Member Henson was strongly in favor of allowing, on a trial basis, happy hours, noting it would help revitalize downtown and other areas where full-service restaurants were in operation. Mr. Henson added that the temporary revisions would make the City competitive, and if missteps happened during the trial period, he suggested allowing them to work it out through training. He was in favor of allowing dancing during the trial period.

Council Member Halliday supported the staff recommendation noting that happy hours would create equity for Hayward’s full-service restaurants with other cities. Ms. Halliday mentioned downtown was a good place for entertainment, and noted that establishments that provide music and dancing in other residential areas of the City needed to use common sense and comply with the Noise Ordinance. She said she was in support of the motion because this was a trial period that would provide an opportunity to see how it worked while staff developed more permanent regulations.

Council Member Quirk offered an amendment to the motion directing staff to assess a suitable regulation to allow dancing after the trial period without disrupting the restaurant business. Council Member Salinas was amenable to the motion.

Mayor Sweeney noted that he was going to vote against the motion because of his concern with happy hours. Mr. Sweeney noted that “two for one” and “all you can drink” specials did not encourage patrons to reduce the amount of drinks. He added that drinking and encouraging drinking often leads to tragedy. He noted that Council’s first priority was to protect the public. He did not agree that extending happy hour opportunities would improve economic activity.

It was moved by Council Member Salinas, seconded by Council Member Quirk, and carried with Mayor Sweeney voting against, to adopt the staff recommendation with an amendment to allow until midnight, during a six-month trial period, recorded or live musical entertainment without dancing at full service restaurants, and to direct staff to assess the possibility of allowing dancing after the trial period.

Resolution 12-106, “Resolution Allowing Reduced Price Alcohol Sales from 4:00 P.M. to 9:00 P.M. and Musical Entertainment without Dancing until Midnight at Full Service Restaurants During a Six-Month Trial Period”

11. Revised Community Promotions / Neighborhoods Arts Events Funding Recommendations - FY 2013

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-106

Introduced by Council Member Salinas

RESOLUTION ALLOWING REDUCED PRICE ALCOHOL SALES FROM 4:00 P.M. TO 9:00 P.M. AND MUSICAL ENTERTAINMENT WITHOUT DANCING UNTIL MIDNIGHT AT FULL SERVICE RESTAURANTS DURING A SIX-MONTH TRIAL PERIOD

WHEREAS, the Hayward City Council and Hayward Planning Commission held a joint work session on January 24, 2012, to discuss possible revisions to the City of Hayward's Alcohol Beverage Outlet regulations; and

WHEREAS, local restaurants and the Hayward Chamber of Commerce have requested authorization to offer happy hours and musical entertainment at full-service restaurants, which activities are currently permitted under the City's Zoning Ordinance only with a conditional use permit, in order to allow Hayward's full service restaurants the opportunity to compete favorably with restaurants in surrounding communities; and

WHEREAS, direction was provided at the joint work session for staff to develop options for the City Council to consider, including a requirement that full-service restaurants offer reduced price appetizers and reduced price non-alcoholic drinks during happy hours, and for staff to develop a comprehensive set of revisions in the near future to address problem establishments and fiscal impacts to the City.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Hayward hereby authorizes, on a temporary, trial basis for a period of up to six months (to expire not later than December 26, 2012), a Happy Hour Trial Program, permitting the following activities without the need to obtain a conditional use permit:

a) Reduced price alcohol sales (also referred to as "Happy Hour") from 4:00 p.m. to 9:00 p.m. at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that each full-service restaurant offering reduced price alcohol beverages also offer reduced prices for appetizer food items and non-alcoholic drinks during Happy Hour; and

b) Live or recorded music until midnight at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that dancing is not allowed with such music and such musical entertainment does not violate provisions of the City's Noise Ordinance.

BE IT FURTHER RESOLVED, that full-service restaurants may participate in the Happy Hour Trial Program only if the restaurant operator has an ABC license in good standing and is in compliance with all applicable requirements of the City's Municipal Code. This Happy Hour Trial Program does not confer a vested right on operators, owners and/or licensees of full-service restaurants to continue to offer happy hours and/or music after the conclusion of the Happy Hour Trial Program.

BE IT FURTHER RESOLVED, that staff is directed to return to Council with a report should an increase in incidents associated with alcohol sales at restaurants occur during the Happy Hour Trial Program, at which time the City Council may unilaterally terminate the Happy Hour Trial Program without further notice.

BE IT FURTHER RESOLVED, that City staff is directed to return to City Council prior to December 26, 2012, with recommended comprehensive revisions to the City's alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of the City.

IN COUNCIL, HAYWARD, CALIFORNIA June 19, 2012

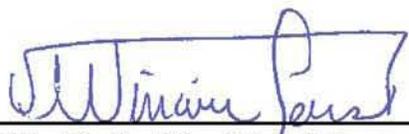
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson

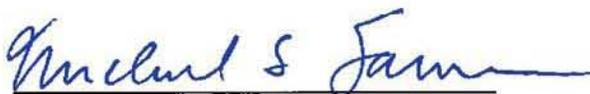
NOES: COUNCIL MEMBERS: None
MAYOR: Sweeney

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE - EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	ON SALE BEER & WINE - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL - SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

SPECIAL DAILY BEER AND/OR WINE LICENSE - (Form ABC-221) Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

DAILY ON SALE GENERAL LICENSE - (Form ABC-221) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

CATERING AUTHORIZATION - (Form ABC-218) Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC-approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

EVENT AUTHORIZATION - (Form ABC-218) Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

WINE SALES EVENT PERMIT - (Form ABC-239) Authorizes Type 02 licensees to sell bottled wine produced by the winegrower for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.6.

Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises; consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional licenses, Sections 23800-23805.)
4. Licensees whose license allows minors on the premises may have a "house policy" restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-608); Alcoholic Beverage Control Act (complete laws); Rules & Regulations; and P-90 (describes privileges of non-retail licenses).

Department of Alcoholic Beverage Control
**NON-RETAIL ABC LICENSE TYPES
 AND THEIR BASIC PRIVILEGES**

State of California
 Edmund G. Brown Jr., Governor

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery over 60,000 barrels per year) This license is required by makers of beer in this State. An exception under State and Federal law allows a person to produce up to 100 gallons of beer a year for his/her own consumption (maximum of 200 gallons per household). See also <u>Small Beer Manufacturer</u> (Type 23) for brewpubs and micro-breweries. "Beer manufacturer" means any person, except those manufacturing pursuant to Section 23356.2 (home brew), engaged in the manufacture of beer (Section 23012).
02	WINEGROWER - (Winery) The following pertains to new winegrowers' licenses issued after September 17, 1965. A winegrower must have facilities and equipment for the conversion of fruit into wine and engage in the production of wine (Section 23013). Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations permit a winegrower to use the facilities and equipment of another winegrower to produce wine. This is commonly referred to as an "alternating proprietorship." Separate winegrower licenses are issued to each legal entity manufacturing wine under its own bonded winery permit. Wine must be made from the fermentation of agricultural products to which may be added brandy that is distilled from the same agricultural product from which the wine is made. Thus, neutral grain or other distilled spirits cannot be used to fortify wine - only brandy of a specific type. No more than 15% added flavoring or blending material may be added. (Section 23007).
03	BRANDY MANUFACTURER - The following pertains to brandy manufacturers' licenses, and to duplicate brandy manufacturer's licenses issued after September 17, 1965. This license authorizes the holder to manufacture only brandy and not other distilled spirits (Section 23014). Brandy made by the distillation of wine or fermented fruit.
04	DISTILLED SPIRITS MANUFACTURER - The following pertains to new distilled spirits manufacturer's licenses issued after September 18, 1959. The Act defines a distilled spirits manufacturer as "...any person who produces distilled spirits from naturally fermented materials or in any other manner" (Section 23015). The functions of this type of license, in addition to that of production, include packaging, bottling, rectifying, flavoring and others as found within Section 23356. The functions apply only to distilled spirits; they do not include wine or beer.
05	DISTILLED SPIRITS MANUFACTURER'S AGENT - This license authorizes any of the following: (a) The possession of distilled spirits in public or private warehouses. (b) The exportation of distilled spirits. (c) The cutting, blending, mixing, flavoring, and coloring of distilled spirits for his own account or for the account of a distilled spirits manufacturer, manufacturer's agent, rectifier, or wholesaler. (d) Whether cut, blended, mixed, flavored, or colored by him, or any other person, the packaging and the sale or delivery of distilled spirits only to holders of distilled spirits manufacturer's, rectifier's or distilled spirits wholesaler's licenses. A person need not actually engage in the cutting, blending, or bottling of distilled spirits in order to qualify for a distilled spirits manufacturer's agent's license.
06	STILL - The following applies to still licenses used for the making of alcoholic beverages or capable of such use. A still is "...any apparatus capable of being used for separating alcohol, or alcoholic vapors or solutions from alcohol or alcoholic solutions or mixtures ..." Stills used for laboratory purposes or stills used solely for producing distilled water or other non-alcoholic beverages are exempt from licensing (Section 23034). (Generally, this license is not required to produce fuel alcohol.)
07	RECTIFIER - This type of license is frequently referred to as a "distilled spirits rectifier's license", which is incorrect since the license also permits the rectification of wine. This licensee is authorized to cut, blend, rectify, mix, flavor and color distilled spirits and wine upon which excise tax has been paid and, whether rectified by the licensee or another person, to package, label, export and sell the products to persons holding licenses authorizing the sale of distilled spirits (Sections 23016 and 23368). This licensee may sell distilled spirits and wine without the need for any other license, but he/she may <u>not</u> sell wine to a person who does not hold a license that also authorizes the sale of distilled spirits. A rectifier may also elect to function as a distilled spirits wholesaler, but when doing so, he/she must comply with all of the provisions applicable to a distilled spirits wholesaler (Section 23371).

LICENSE TYPE	DESCRIPTION
08	WINE RECTIFIER - The wine rectifier's license is one in very limited use. Presently, there are no active Type 08 licenses. A rectifier's license (Type 07) includes wine rectification privileges in addition to allowing distilled spirits rectification privileges. A wine blender's license allows most of the same privileges as the wine rectifier's license. A wine rectifier may only deal in "tax-paid" wine, unlike a wine blender who may process "in-bond" (non-tax paid) wine. A wine rectifier's license authorizes the person to whom issued to cut, blend, mix, flavor, or color wine upon which excise tax has been paid, and whether so cut, blended, rectified, mixed, flavored, or colored by him, or any other person, to package, label, export, and sell the products to persons holding licenses authorizing the sale of wine (Section 23372).
09	BEER AND WINE IMPORTER - This license is only issued to a person who holds another type of license which permits the sale of beer and wine for resale. This license has no sale privileges. It only permits the holder to import and export alcoholic beverages and to transfer the beverages to him/herself under another license (Section 23374).
10	BEER AND WINE IMPORTER'S GENERAL - This type of license is one frequently issued to agents for out-of-state breweries or wineries who refer to themselves as "brokers." Such agents differ greatly from true brokers as is shown in the functions they perform. This license should also be held by companies representing manufacturers/suppliers where such companies have a physical marketing presence in California. This presence may consist of a regional sales office or one person/employee working out of his/her home while performing general missionary work. Another common situation requiring the holding of this license is where an out-of-state vendor imports beer or wine in its own name and uses the services of a licensed public warehouse for importation, storage and distribution of beer and wine to authorized licensees. Section 23374.6 authorizes the person to whom this license is issued to become an importer of beer or wine and to sell State tax-paid beer and wine to beer manufacturers, winegrowers, beer and wine wholesalers, wine rectifiers, and other beer and wine importer's general licensees.
11	BRANDY IMPORTER - This license is only issued to a person who holds another type of license which permits the sale of brandy for resale. It, however, may not be issued to a California Brandy Wholesaler. (Section 23378.1) Brandy is included in the definition of distilled spirits (Section 23005).
12	DISTILLED SPIRITS IMPORTER - This license is only issued to a licensee who has another type of non-retail distilled spirits license. This license has no sale privileges. It only permits the holder to import and export alcoholic beverages, and to transfer the beverages to him/her under another license (Section 23374).
13	DISTILLED SPIRITS IMPORTER'S GENERAL - This type of license is one most frequently issued to agents for out-of-state rectifiers, distilleries, or nation-wide import companies. Such agents differ greatly from true brokers as is shown in the functions they perform. This license should also be held by companies representing manufacturers/suppliers where such companies have a physical marketing presence in California. This presence may consist of a regional sales office or one person/employee working out of his/her home while performing general missionary work. Another situation requiring the holding of this license is where an out-of-state vendor imports distilled spirits in its own name and uses the services of a licensed public warehouse for importation, storage and distribution of distilled spirits to authorized licensees. A distilled spirits importer's general license authorizes the person to whom issued to become an importer of distilled spirits and to sell distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, rectifiers and distilled spirits general importers (Section 23374.5).
14	PUBLIC WAREHOUSE - A public warehouse license is required for a warehouseman who provides warehouse service for alcoholic beverage licensees. This is distinguished from private warehouse permits, where a licensee has a leasehold or ownership interest and provides his/her own help at a premises other than that where licensed. The Act defines a public warehouse as "...any place licensed for the storage of, but not for sale of, alcohol, or alcoholic beverages, for the account of other licensees..." (Sections 23036 and 23375). A public warehouse is one of the types of premises to which imports may come to rest (Section 23661). It is also one of the types of premises from which a distilled spirits wholesaler may make deliveries if it is in the county where he/she is licensed (Section 23355.1).

LICENSE TYPE	DESCRIPTION
15	<p>CUSTOMS BROKER - This type of licensee will generally be located near the dock area in seaports or at international airports. The Customs Broker is also frequently located in port cities in building where many foreign consulates or commercial attaches have their offices.</p> <p>Special Note: This Department has taken the position that where a customs broker makes either entry or withdrawal in his own name, is identified as the responsible person and has a possessory right, the possibility of unlawful diversion into the internal commerce of the State exists. Under these circumstances, we believe he/she should be subject to State control and, therefore, licensed. On the other hand, if the customs broker is solely engaged as an agent for licensed importers and if all entries and/or withdrawal documents disclose the licensed importer as the principal, he/she need not be licensed by this Department. However, we strongly suggest that such persons apply for and hold Type 15 licenses to permit the flexibility needed to handle unforeseen special circumstances requiring licensure.</p> <p>"Customs broker" means every person who is authorized to act as agent or broker for a person licensed as an importer of for a person whose place of business is without the State, in regard to the importing of alcoholic beverages into the State in United States Internal Revenue bond or in United States Customs bond. (Section 23019). The principal function of a customs broker is handling the paperwork and paying the duty on behalf of his principals on imported merchandise.</p>
16	<p>WINE BROKER - A wine broker is an independent contractor who acts as the agent in the sale of wine products. Typically, wine broker's services are contracted by smaller wineries and wholesalers who cannot maintain their own in-house marketing representatives. A wine broker means every person, other than a salesman who is regularly employed by a licensee, who engages as an agent in the sale or purchase of wine for or on behalf of another or others for a fee or commission (Section 23020).</p>
17	<p>BEER AND WINE WHOLESALER - The following pertains to beer and wine wholesalers generally. This permits incidental sales to other supplier-type licensees. However, to qualify as a bona fide wholesaler, a licensee <u>must</u> sell to retailers generally (Section 23779).</p>
18	<p>DISTILLED SPIRITS WHOLESALER - The following pertains to distilled spirits wholesalers generally. However, specific mention will be made of certain "grandfather" privileges with regard to tied-house situations and in regard to sales of merchandise other than alcoholic beverages. "Wholesale sale" means a sale of distilled spirits to any licensee for the purpose of resale (Section 23027). This permits incidental sales to other supplier-type licensees. However, to qualify as a bona fide wholesaler, a licensee <u>must</u> sell to retailers generally (Section 23779, Rule 28).</p>
19	<p>INDUSTRIAL ALCOHOL DEALER - An industrial alcohol dealer sells alcohol for use in the trades, professions, and industries, but not for beverage use. He/she may sell to non-licensees only if they have a use permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB). Section 23022 defines an industrial alcohol dealer as one who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use. Section 23380 authorizes a dealer to sell undenatured ethyl alcohol in packages of more than one gallon for use in the trades, professions, or industries and not for beverage consumption. It also authorizes the importation and exportation of undenatured ethyl alcohol. Undenatured ethyl alcohol is alcohol that is fit for beverage purposes as differentiated from denature alcohol which is not fit for beverage purposes.</p>
22	<p>WINE BLENDER - The following pertains to new wine blender's licenses issued on and after February 3, 1968. A wine blender is a person authorized to operate a bonded wine cellar pursuant to a Federal Basic Permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB) who does not have facilities or equipment for the conversion of fruit into wine and does not engage in the production of wine (Section 23013.5). Wine must be made from the fermentation of agricultural products to which may be added brandy which is distilled from the same agricultural product from which the wine is made. No other type of distilled spirits may be used to fortify wine. No more than 15% added flavoring or blending material may be added (Section 23007). A wine blender is not required to engage in blending, processing, or bottling wine. He/she may elect to operate only a warehouse facility for the storage of non-tax paid ("in-bond") wine. This activity requires a Bonded Wine Cellar permit from TTB in addition to the wine blender license (Section 23770). Normally, the application fee for a wine blender license varies according to the total wine gallonage blended; however, an applicant who intends to operate only a bonded warehouse should pay the minimum fee.</p>

LICENSE TYPE	DESCRIPTION
23	<p>SMALL BEER MANUFACTURER - (Less than 60,000 barrels per year) The privileges and limitations for this type of license are the same as for other beer manufacturers . The only difference is the license fees. (See also Type 1 - Beer Manufacturer.) This license formerly related only to Steam beer. "Steam" beer is made by fermentation at cellar temperature rather than near freezing as is the case with other beers. It is made using only one type of malt--malted barley. It contains no corn, rice or other cereal grains as regular beers normally do. The method of carbonation is entirely natural and involves a process known as <u>Krausening</u>. This process requires taking beer which has been completely fermented and adding to it beer which is still fermenting. This causes a second fermentation to occur. The Krausening process in beer corresponds closely to the "bulk process" in making some types of sparkling wines. The most common users of this license are operators of micro-breweries and brewpubs. These designations are not to be construed as legal definitions. Their use below is only for descriptive purposes.</p> <p><u>"Micro-brewery"</u>: A small-scale brewery operation that generally produces approximately 15,000 barrels a year. Its beer products are primarily intended for local and/or regional consumption. Typically, these operations are solely dedicated to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.</p> <p><u>"Brewpub"</u>: Typically, a very small brewery with a restaurant where the beer it produces is sold in draft form exclusively at its own premises. This operation often sells other supplier's bottled beer, including other hand-crafted or micro-brewed beers as well as wine to patrons for consumption on its premises. See "Special Note" below.</p> <p><u>Special Note</u>: A brewpub-restaurant (Type 75) license, authorized under Section 23396.3, has a limited brewing privilege and may sometimes be referred to as "brewpub." However, the Type 75 is an <u>on-sale retail</u> license with significant differences/limitations in license privileges from those of a true "beer manufacturer" (either Type 01 or Type 23).</p>
24	<p>DISTILLED SPIRITS RECTIFIER'S GENERAL - A distilled spirits rectifier's general license is similar to a rectifier's license except that a distilled spirits rectifier's general licensee may <u>not</u> rectify wine or sell distilled spirits to retailers. A distilled spirits rectifier's general license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits, and whether so cut, blended, mixed, flavored, or colored by him or any other person, to package, label, export, and sell the distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, distilled spirits general importers, rectifiers, and distilled spirits general rectifiers (Section 23368.1).</p>
27	<p>CALIFORNIA WINEGROWER'S AGENT - A California winegrower's agent acts as the sole representative for a California winegrower or brandy manufacturer (Section 23373.2). This license authorizes the holder to possess wine and brandy produced in this State in public and private warehouses; to sell only to wholesalers for his/her own account or to solicit and make sales of wine or brandy made in California only to wholesalers for his/her principal, and to invoice and collect payments for orders solicited by him/her (Section 23373). This license does not authorize the holder to represent an out-of-state winegrower or brandy manufacturer.</p>
29	<p>WINE GRAPE GROWER'S STORAGE - This license was authorized by legislation in 1982 to enable wine grape growers to more effectively deal with unpredictable market conditions that periodically caused an oversupply of grapes. Subsequent legislation in 1985 expanded the number of licensees to whom a wine grape grower could sell wine. A wine grape grower's storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this State to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers. (Section 23358.3).</p>

DEFINITIONS

Beer - "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine. (Section 23006 Business and Professions Code)

Brandy - "Brandy" means a liquor which is obtained from the distillation of wine or a fermented mash of fruit. (London, R., & London, A. [1953]. In Cocktails and snacks [pp. 11-20], Cleveland, OH: World Pub. Co.)

Wine - "Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine. . . . (Section 23007 Business and Professions Code)

Distilled Spirits - (Section 23005) "Distilled spirits" means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof. (Section 23005 Business and Professions Code)

Importer - "Importer" means:

(a) Any consignee of alcoholic beverages brought into the State from without this State, when the alcoholic beverages are for delivery or use within this State.

(b) Any person, except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State.

(c) Any person, licensed as an importer, selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this State.

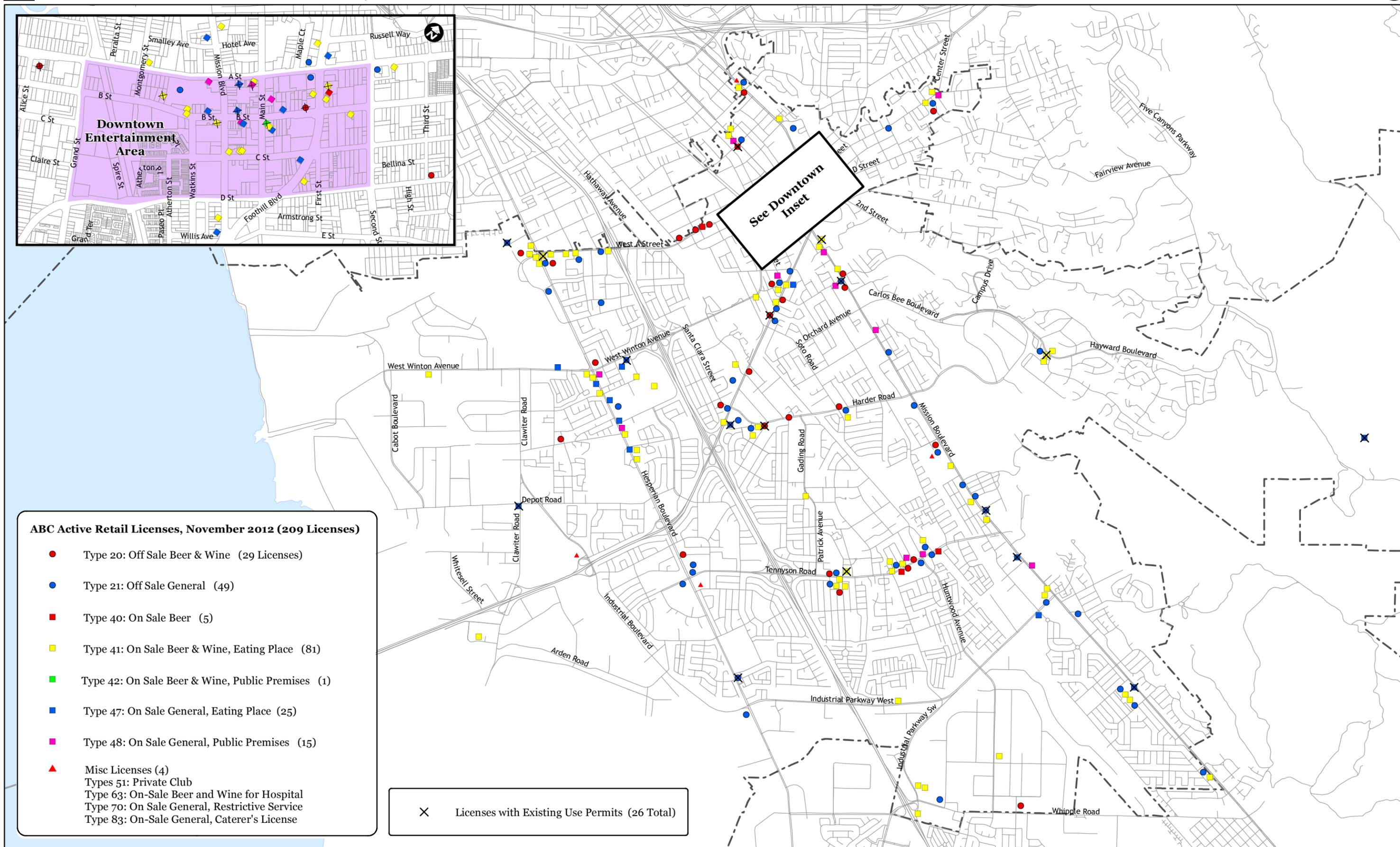
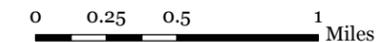
(d) Any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

A person licensed as a customs broker who is acting as an agent for a licensed importer or for another person whose place of business is without the State shall not be deemed to be the importer of alcoholic beverages consigned in United States internal revenue bond or in United States customs bond to the licensed customs broker. (Section 23017 Business and Professions Code)

Wholesale Sale - "Wholesale sale" or "sale at wholesale" means a sale to any licensee for purposes of resale. (Section 23027 Business and Professions Code)



ABC Retail Licenses in Hayward



Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(1) Purpose	To provide for the orderly integration of alcohol-related uses and identify reasons such provisions are needed	Add additional text: "It is also recognized that regulations that promote responsible alcohol sales and consumption can help contribute to economic vitality, particularly in designated areas of Hayward."	To recognize the value of responsible alcohol sales and service to businesses and economic growth for the city.	No direct impacts
(2) Definitions	To define various uses/items: On-sale and Off-sale Alcoholic-Related Commercial Activity, Liquor Store, Downtown Entertainment Area, Full-Service Restaurant, and Night Club	<p>Add the following new definitions for:</p> <ol style="list-style-type: none"> 1. Alcohol-serving Entertainment Establishment 2. Wine and Cheese Shop 3. Specialty/boutique store <p>Modify the definitions for:</p> <ol style="list-style-type: none"> 4. Bar/Tavern (modification of definition for Night Club) 5. Full-Service Restaurant (to codify the happy hour trial period provisions: reduced price alcohol drink sales allowed from 4:00 to 9:00 pm with reduced price non-alcohol drink sales and reduced price appetizers, and live or recorded music allowed until midnight in compliance with the City's noise regulations; dancing allowed as a secondary use to the restaurant with an entertainment permit approved by the City Manager or designee) <p>→Will also entail more comprehensive dance/entertainment provisions in Chapter 6, Article 2 of the Muni Code that are administered by the Police Department</p>	To better differentiate between establishments that have entertainment from those that don't, to better attract full-service restaurants, and to distinguish between typical liquor stores and specialty shops that sell alcohol (related to public convenience and necessity)	More flexibility for full-service restaurants; more restrictions on traditional bars and liquor stores (related to public convenience and necessity); more formal process for allowing entertainment

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(3) Conditional Use Permit for New Establishments	Clarifies uses subject to a conditional use permit (CUP) and those that are not; exemptions: (a) a retail store >10,000 square feet that devotes no more than five percent of its floor area to the sale, display, and storage of alcohol; (b) a full-service restaurant; or (c) a special community or neighborhood event or festival that secures all required permits from the City and ABC and is no longer in duration than three consecutive days or five days in a calendar year	Allow specialty stores to operate with an administrative use permit, versus conditional use permit	To encourage establishment of such uses	TBD
(4) Posting of Conditions of Approval	Requires that a copy of the conditions associated with a CUP be posted in a place "where it may readily be viewed by the general public"	None		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(5) Findings	Identifies additional findings required to be made by the Planning Commission or City Council in approving a conditional use permit	None		
(6) Application for Conditional Use Permit	Identifies additional information required in addition to information required for a conditional use permit application	None		
(7) Requirements for New On-Sale Alcohol-Related Commercial Activities	Establishes separation standards for such activities (exempting those uses in subsection (3) above)	None		
(8) Requirements for New Off-Sale Alcohol-Related Commercial Activities	Establishes separation standards for such activities (exempting those uses in subsection (3) above)	None		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(9) Conditions	Lists ten conditions the Planning Commission or City Council may consider requiring as conditions associated with approval of a CUP	<ol style="list-style-type: none"> 1. Require compliance with these conditions as standards for a new establishment 2. Establish additional standards for entertainment establishments 	To provide clearer and consistent direction on the expectations for operating new establishments	Will impact future establishments that seek conditional use permits to operate
(10) Existing Establishments Selling Alcoholic Beverages	Indicates a CUP is required for a nonconforming use if the ABC license type changes within a license classification, or there is a substantial change in the "mode or character of operation"	<ol style="list-style-type: none"> 1. Develop "Deemed Approved" Provisions 2. Develop "Summary Suspension" Provisions 3. Require a dance/entertainment permit from the City for entertainment activities 	To establish expected minimum operating standards for nonconforming uses and to provide additional tools for addressing problematic establishments, including those that create an imminent threat to public health, safety, and welfare	Will affect nonconforming uses
(11) Modifications in Permitted Alcoholic Beverage Sales Commercial Activities	Requires an amendment to a CUP for an establishment operating under a CUP if any of the situations specified in subsection (10) above occur	None, other than incorporating "deemed approved" provisions (see above)		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(12) Notice	Requires notices for new CUP applications or appeals of administrative use permit applications to be sent to occupants in buildings within 300 feet of the parcel of the proposed use (not just property owners)	No change is proposed, since staff already sends all public hearing notices to occupants, in addition to property owners		
(13) Letter of Public Convenience or Necessity	Authorizes Planning Director to issue letters of public convenience or necessity to ABC for alcoholic beverage sales commercial activities that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit.	Codify language in City Council Resolution 06-005: "no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of <u>bars or liquor stores</u> in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses".	To formalize City policy related to such establishments	No new bars or liquor stores will be allowed in such over-concentrated areas

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
OTHER		<p>Recommendation to add text to address cost recovery for actions conducted by and permits issued by City staff in administering and enforcing these provisions (Example: separate fees for conditional use permits (as exists), entertainment/dance permits (will be greater than current \$42), and alcohol serving establishments (to cover basic compliance checks by PD staff, etc.))</p>	<p>To reduce the impact to the City's General Fund and place the burden of such costs on those establishments that create the need for enforcement and administration of the provisions</p>	<p>Will impact most businesses that sell alcohol, though minimally for those that do not require a conditional use or dance/entertainment permit from the City and that do not create disturbances that create significant and/or ongoing enforcement requirements</p>



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
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The City Council meeting was called to order by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Salinas.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney announced that the Council met regarding the City Manager's performance evaluation and noted there was no reportable action. City Attorney Lawson announced that Council met with legal counsel regarding Guzman, et al. v. Sangha, et al., Alameda County Superior Court No. HG12640596; with property negotiators regarding 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; with property negotiators regarding APN 415-0240-041-00; and with labor negotiators regarding all groups. There were no reportable items.

PRESENTATION

The November 2012 Business Recognition Award was presented to Siemens Infrastructure & Cities, Building Technologies Division, which is a leading provider of clean energy projects including renewable energy. Siemens opened its Hayward office in 1993 and currently employs 350 people. Siemens was recognized by the Dow Jones Sustainability Index as the highest rated company in its sector. The Business Recognition Award was presented to Siemens Infrastructure & Cities, Building Technologies Division in recognition of contributions made by locating its business in Hayward; providing job opportunities to local residents; participating in the local community; being an industry leader in sustainability; and contributing to the overall economic well-being of the community. Mr. Bob Kelly, Zone Finance Manager, and Paul Ainsworth, Area Service Manager, accepted the award. Mr. Kelly, on behalf of Siemens, thanked the Council for such a special recognition. Mr. Ainsworth noted Siemens' employees raised money for the Hayward Unified School District and participated in other charitable projects.

PUBLIC COMMENTS

Ms. Debbie Frederick, Bunker Hill Boulevard resident, submitted a letter regarding a Deferred Maintenance Agreement (DMA) that Caltrans tenants, attempting to purchase their properties, are being required to sign. Ms. Frederick noted that the pro-rata share costs associated with public improvements in the Bunkerhill neighborhood were premature and there were irregularities with

payment terms. Ms. Frederick requested that Council review the DMA and suggested that the proposed agreement be rescinded.

Ms. Tracy Diane Asturias, Bunker Hill Boulevard resident, noted signing the Deferred Maintenance Agreement (DMA) under duress and asked that Council review the proposed agreement. Ms. Asturias requested feasible payment plans associated with the cost of public improvements, term options for sale and transfer of property, or amendment of the DMA.

Mr. Anthony Fidel, Maitland Road resident and potential buyer of a Caltrans property, noted it was unfair to be charged with an assessment for public improvement. Mr. Fidel requested additional time to meet deadlines set forth in the DMA, and to find a lending institution that would be agreeable to loaning money for a property that would already have a lien on title at the time the deed was transferred.

Mr. Bill Betchart, speaking on behalf of Bunker Hill Boulevard resident, Taunya DeYoung, complimented the Council for supporting Bunker Hill tenants with their effort to purchase their homes. Mr. Betchart said three provisions in the terms of the agreement conflicted with the City's initial goal of helping the tenants.

Mr. Jim Drake, Franklin Avenue resident, expressed concern regarding the quality of paving done on Foothill Boulevard. Mr. Drake showed pictures of improperly installed storm drains along the median and noted they created a public safety hazard.

Mr. Kristoffer Cabanesas, with the Mt. Eden High School Band, mentioned the successful performance by the band at the Golden State Warriors game on November 7, 2012. He also announced and invited everyone to two events: Texas – Chicken and Ribs Dinner at Mt. Eden High School on December 1, 2012, and the Mt. Eden High School Winter Concert on December 13, 2012, at All Saints Catholic Church.

Mr. Peter Green, City Walk Place resident, spoke about a random shooting at the Hayward BART station on October 29, 2012, when a bullet hit the sliding glass door of his residence. Mr. Green requested increased police presence at night for the area between City Hall and City Walk Place. Mayor Sweeney also requested improved lighting for the area between City Hall and the condominiums.

Mr. John Super, Myrtle Street resident, requested an update on the construction of the park at the Cannery development on Meek Street and the one-way traffic from Madison and Filbert streets. Mr. Super expressed concern that the area of unpaved sidewalk on the south side of Meek Street seemed to be a target for dumping. Mayor Sweeney asked staff to research the concerns raised and schedule a community meeting with the Burbank neighborhood.

Mr. Si Samiul, Deaton Avenue resident, suggested the City should provide electric vehicles for Council members and City Manager David noting there were advantages from a sustainability perspective.



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Council Mendall noted the City had acquired a free charging station for electric vehicles that is located at the City Hall parking garage. Mr. Mendall also noted he had back surgery and needed to stand periodically.

Mayor Sweeney encouraged staff to engage in communication with the Caltrans tenants who raised concerns and asked that Council be informed of any outcomes.

WORK SESSION

1. Overview of the 2012 Resident Satisfaction Survey Results

Staff report submitted by Management Fellow Thomas, dated November 13, 2012, was filed.

Assistant City Manager McAdoo announced the work session and introduced Bryan Godbe, President of Godbe Research. Ms. McAdoo also acknowledged Management Fellow, Mary Thomas, for her contributions to the staff report. Mr. Godbe provided an overview of the 2012 Resident Satisfaction Survey results.

Council Member Mendall noted the survey results showed Hayward resident appreciate the overall quality of life in Hayward and praised staff for the high scores received in terms of courtesy delivered by City staff under the customer service category.

Council Member Halliday commented on the value of having three survey results to compare and noted the 2012 survey showed the City was doing well with fewer resources. Ms. Halliday suggested using the survey results as a guide when ascertaining Council goals.

Council Member Salinas pointed out that the Resident Satisfaction Survey reflected the City's priorities and core services and was glad to see that quality of life and the sense of neighborhood had improved. Mr. Salinas noted an increase of bilingual safety personnel, which was reflective of the Hayward community. He also noted that rudeness/disrespectful was one aspect that gave residents a negative image on Hayward.

Council Member Peixoto was surprised to see that the diverse population category did not score higher as an item under positive image for Hayward and that the poor schools category did not receive high scores under negative image for Hayward. Mr. Peixoto praised staff for the high scores for the courtesy displayed by City staff. He was disappointed that using Access Hayward on the City's website scored low as a method to contact the City. Mr. Peixoto encouraged staff to educate the community about the Access Hayward online service as it would address manpower challenges.

Council Member Zermeño thanked staff and Mr. Godbe for the survey results and asked that efforts

be made to bring the resident satisfaction rate to 99 percent.

Mayor Sweeney noted there was overall satisfaction with the survey results, concurred with Council Member Zermeño about the importance of continued improvement and thanked staff and Godbe Research for the report.

CONSENT

Consent Item No. 4 was pulled for discussion.

2. Approval of Minutes of the Special City Council Meeting on October 16, 2012

It was moved by Council Member Zermeño, seconded by Council Member Peixoto, and unanimously carried to approve the minutes of the Special City Council Meeting of October 16, 2012.

3. Approval of Minutes of the Special Joint City Council/Redevelopment Successor Agency/Housing Authority Meeting on October 23, 2012

It was moved by Council/RSA/HA Member Zermeño, seconded by Council/RSA/HA Member Peixoto, and unanimously carried to approve the minutes of the Special Joint City Council/Redevelopment Successor Agency/Housing Authority Meeting of October 23, 2012.

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

Staff report submitted by Associate Civil Engineer Lam, dated November 13, 2012, was filed.

Mr. Jim Drake, Franklin Avenue resident, asked about the contractor's fee associated with the project and the process for selecting the consultant.

Council Member Mendall noted that the staff report provided information about the proposals received from three companies and reviewed by City staff.

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

Resolution 12-177, "Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Corpro Companies, Inc., for Consultant Services for the Cathodic Protection System Evaluation Project, Project No. 7041"

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

Staff report submitted by Purchasing Manager Gacusan, dated November 13, 2012, was filed.



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

Resolution 12-173, “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”

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 submitted by Human Resources Director Robustelli, dated November 13, 2012, was filed.

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

Resolution 12-174, “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 (\$115) per Month for Calendar Year 2013”

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 Fuel Cell Energy for the New Cogeneration Power System at the Water Pollution Control Facility

Staff report submitted by Assistant City Attorney Vigilia, dated November 13, 2012, was filed.

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

Resolution 12-175, “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”

8. Resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force

Staff report submitted by City Clerk Lens, dated November 13, 2012, was filed.

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

Resolution 12-176, “Resolution Accepting the Written Resignation of Muhammad Irfan from the Keep Hayward Clean and Green Task Force”

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)

Staff report submitted by Senior Planner Buizer, dated November 13, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report.

Council Member Zermeño asked staff to research the option of moving the development’s entrance to the eastern-most street to eliminate the issue of car headlights shining into the house across from the project.

Council Member Salinas suggested requesting the developer to install a taller fence in front of the properties along that street line to block car headlights from disrupting neighboring houses.

Development Services Director Rizk confirmed for Council Member Jones that under consideration was an amendment to change the General Plan land use designation from low to medium density residential and noted the final design of the houses, including circulation issues, would be discussed later at a public hearing.

Council Member Mendall commented that circulation issues should be resolved to make the development less intrusive for the neighboring homes and that he would like Denton Avenue to be made more attractive. Mr. Mendall suggested having access to the public park from the development.



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Mayor Sweeney cautioned that previous access to public parks from private developments had resulted in problems.

Development Services Director Rizk responded to Council Member Halliday that financing of the purchase for expansion of Greenwood Park would come from park-in-lieu fees at the rate of \$15.00 per square foot and there would also be improvement funds.

In response to Mayor Sweeney's question regarding a Community Facilities District, Development Services Director Rizk confirmed that language was in the Development Agreement and in Condition of Approval No. 12. It was also stated that the land transfer would occur 90 days after the execution of the Development Agreement.

Mayor Sweeney opened the public hearing at 8:57 p.m.

Mr. Si Samiul, Denton Avenue resident, supported the proposal for park expansion, but noted that the design of the development and the circulation were problematic. Mr. Samiul said the neighborhood would like to work with Westlake Development and suggested having two entry points, one on Eden and another on Denton avenues that would lessen issues of traffic and car headlights disturbing neighboring homes. Mr. Samiul suggested that the area could be used for a dog park.

Mr. James Huen, Denton Avenue resident, supported continued closure of Denton Avenue and explained that Denton Avenue was closed because commuters would speed through the neighborhood. Mr. Huen supported the proposed development because the vacant lot had been an eyesore.

Council Member Salinas encouraged the developer's representatives to pay close attention as to how car headlights would shine into neighbors' homes. Mr. Sunny Tong, representing the developer, noted that the developer would continue dialogue with neighbors.

In response to Council Member Jones' question regarding access off of Eden Avenue, Mr. Jack Matthews, project architect, noted that the complex access from Eden Avenue would reduce the usable area of the public park.

Mayor Sweeney closed the public hearing at 9:05 p.m.

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

Resolution 12-178, "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”

Introduction of Ordinance 12-_, “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”

Introduction of Ordinance 12-_, “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”

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

Staff report submitted by Administrative Analyst II Blohm, dated November 13, 2012, was filed.

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

Mayor Sweeney opened the public hearing at 9:11 p.m.

Mr. Joseph Oberman, Jefferson Street resident said that he was concerned that he would be held responsible for abandoned vehicles and dumped items left in front of his property, but was supportive of keeping the City clean. Mr. Oberman spoke about the costly expense to take dumped items to the San Leandro Transfer Station and, if the ordinance passed, suggested setting aside funds from the collected fines to help pay for the dumping costs of residents.

Ms. Diane Fagalde, Tyrrell Avenue resident, expressed support for the proposed ordinance and relayed that she had been communicating to her neighbors and landlord that they needed to clean up their areas before the City fined them.

Ms. Kathy Super, Myrtle Street resident and member of the Keep Hayward Clean and Green Task Force, spoke in support of the proposed ordinance.

Ms. Sherry Blair, Alice Street resident, appreciated the additional language about implementation procedures and said the ordinance should punish people who dump and not property owners. Ms.



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Blair suggested that police staff, if the ordinance passes, should collect data about calls received and police response related to illegal dumping.

Ms. Valerie Snart, Warren Street resident, opposed the proposed ordinance noting it was unfair to accuse property owners and that the City needed to punish the offenders.

Mr. Blair Barnett, Main Street resident, expressed opposition to the proposed ordinance and said he hoped the City could find an alternative way to address the dumping problem other than holding innocent property owners liable.

Mr. Rich LaPlante, Jane Court resident and Keep Hayward Clean and Green Task Force member, requested Council enact the ordinance and honor the volunteers, residents, and staff that strive to keep the City clean through innovative efforts such as the Adopt-a-Block program.

Mr. Luis Munoz, Amador Street resident, opposed the ordinance and noted the increased dumping problem seemed to coincide with the foreclosure crisis. Mr. Munoz expressed concern about the liability placed on property owners, removing illegal dumping without safety procedures, and the cost involved to transfer garbage. He hoped the item would be continued to allow for more discussion and to reach mutual consensus.

Ms. Florine Banks, Gazelle Way resident, expressed support for the proposed ordinance noting it needed to pass in order to prosecute offenders.

Mr. Bill Espinola, Carlos Bee Boulevard resident, opposed the proposed ordinance noting the language in the staff report and in the ordinance could be interpreted differently and requested that the item be continued to allow for more discussion and language revision.

Mr. Richard Hammer, Montana Way resident, spoke in support of the proposed ordinance noting that no individual property owner would be punished but the ordinance would serve to punish habitual offenders.

Mr. Al Parso, Prospect Street resident and President of Prospect Hill Neighborhood Association, noted that the Association was in support of solving the City's dumping problem, but the proposed ordinance did not have due process and did not provide an affordable way to legally dump items. Mr. Parso suggested continuing the item to revise the proposed language and place additional resources to prosecute offenders.

Mr. Brian Schott, Morse Court resident, opposed the proposed ordinance noting that the concept and intent of the ordinance was acceptable, but the way it was written and its execution was unfair and punished property owners. Mr. Schott requested that Council table the item to allow for further discussion and revision of the ordinance.

Mr. Matthew Spielberg, Morse Court resident, noted the proposed ordinance was fine, but the implementation did not work because there was no provision in the ordinance for property owners to appeal the issuance of more than one violation notice.

Ms. Laura Oliva, Chesterfield Court resident and member of the Keep Hayward Clean and Green Task Force, supported the ordinance noting that she had seen illegal dumping and understood the burden it places on City resources and agreed that property owners should be held financially liable.

Mr. Blaine Ricketts, McKeever Avenue, did not support the proposed ordinance noting that property owners should not be held liable for something they did not do.

Ms. Joanne Gardiner, Kirkwood Drive, apartment owner in the Tennyson-Tyrrell Triangle, opposed an ordinance that would tax property owners for the illegal dumping done by others. Ms. Gardiner suggested that a place on the outskirts of Hayward could be used as a dump site and also recommended educating residents on how to dispose trash. Ms. Gardiner requested that Council table the item for further discussion.

Mr. John Super, Myrtle Street resident, supported the ordinance and said property owners should educate their tenants and require sufficient deposits to fund the disposal cost of items left by vacating tenants. Mr. Super suggested utilizing funds from the fines for close circuit surveillance cameras to enforce and prosecute offenders.

Ms. Allison McManus, Carlos Bee Boulevard resident, did not support the ordinance noting it penalized property owners and discouraged prospective homebuyers.

Mr. Michael Mahoney, Lancaster Court resident and Chair of the Government Relations Committee for the Hayward Chamber of Commerce, supported the staff report but did not concur with the ordinance because it was in conflict with the intent of the report and was not good policy. Mr. Mahoney encouraged Council to table the item and rewrite the ordinance to incorporate the intended language from the staff report, but he supported increasing penalties for the offenders.

Mr. John Wilma, Greenoaks Way resident, mentioned he had a business on Dollar Street where dumping was a severe problem. Mr. Wilma supported the goal of the ordinance, but did not believe it could be achieved by penalizing property owners. Mr. Wilma said the staff report explained the intent of the ordinance and the enforcement, but the ordinance needed to be rewritten to address the offenders.

Mr. Greg Galati, Turlock Way resident and Glassbrook Neighborhood Cleanup Team volunteer, thanked Council members for supporting the proposed ordinance, had faith that the Maintenance Department would fairly enforce the ordinance, and noted there were provisions to protect innocent homeowners. Mr. Galati said the ordinance would encourage landlords and tenants to work together and take responsibility for the proper disposal of items.

Mr. David Stark, Public Affairs Director of Bay East Association of Realtors, acknowledged the speakers who opposed the ordinance and noted the staff report addressed some issues brought up at the Council meeting of October 23, 2012, but the ordinance language had not changed. Mr. Stark



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noted submitting a letter to Council dated November 7, 2012, which expressed his concerns. Mr. Stark mentioned a possible conflict with the ordinance related to Proposition 218 and asked that Council continue the item to rewrite the proposed ordinance.

Mayor Sweeney closed the public hearing at 10:03 p.m.

In response to Mayor Sweeney's inquiry, Assistant City Attorney Vigilia responded that the staff report was not in conflict with the ordinance.

Mayor Sweeney offered a motion to adopt the ordinance and include staff reports from October 23 and November 13, 2012, as part of the administrative record; that staff provide Council with a one-year progress report on the effectiveness of the implementation of the Illegal Dumping Ordinance; that staff work with the Keep Hayward Clean and Green Task Force in preparing the report to Council; that during the first annual review staff explore strategies to improve the program by engaging various stakeholders and consider the strategies Council offered during the meetings.

Council Member Peixoto seconded the motion.

Mayor Sweeney noted that the City and taxpayers had been taking responsibility for the cost of handling dumped items, when it was the responsibility of individuals, landlords, business owners and banks. Mayor Sweeney noted the ordinance was a step forward to improve the City and said staff would continue to research other strategies.

In response to Council Member Peixoto's inquiry regarding the issues raised, Director of Maintenance Services McGrath said the City would continue to clean-up illegal dumping and property owners would be entitled to appeal abatement notices. Mr. Peixoto noted there were alternatives to dumping garbage including the bulky trash collection, Waste Management coupons, and transfer stations. He supported the motion.

Council Member Jones did not support the ordinance and noted the City needed to make enforcement of the existing illegal dumping law a priority for the Police Department and continue to search for alternatives to target problem areas and properties. Mr. Jones mentioned a program in Los Angeles where tenants or landlords called for special pickups and paid the extra costs to waste management. Mr. Jones said that if the ordinance was approved he would like to see a delay in the penalty phase until July 2013 to enable landlords time to insert language in their leases to cover the cost of disposing dumped items. Mr. Jones added the ordinance was not specific enough about implementation.

Council Member Salinas supported the motion noting the ordinance was strong, had due process and made a commitment by the city to engage community members, and he said the intent of the ordinance was clarified by appending the staff reports to the ordinance. Mr. Salinas said he trusted that the Maintenance Services Department would implement the ordinance judiciously. Mr. Salinas

suggested the Keep Hayward Clean and Green Task Force could distribute information to help educate the public.

Council Member Halliday said she had reservations about the ordinance, but supported the motion because she supported the effort of Keep Hayward Clean and Green Task Force volunteers and the City to clean Hayward. Ms. Halliday said illegal dumping goes against the three Council goals of Safe, Clean, and Green. Ms. Halliday noted the intent of the ordinance was in the staff report and noted one of the ordinance's purposes was to encourage property owners to become part of the solution. She supported cameras as a preventative tool to combat illegal dumping and noted that the annual review of the ordinance would measure its effectiveness.

In response to Council Member Zermeño's inquiry related to Proposition 218, Assistant City Attorney Vigilia responded that any costs or fees related to the ordinance were considered regulatory fees pursuant to the police powers of the City and were not subject to Proposition 218. Mr. Zermeño acknowledged all the speakers and noted there would be data provided relating to illegal dumping. Mr. Zermeño supported the motion and was satisfied with the clarification of the language and the inclusion of the staff reports.

Council Member Mendall supported the item and appreciated the speakers and noted there was consensus that the City has an illegal dumping problem. Mr. Mendall said the ordinance was a step forward and asked staff to set up a protocol for handling calls related the illegal dumping calls that are received by the Police Department. He said he would like lower cost options for residents wishing to discard unwanted bulky items through Waste Management. He noted it would be costly to utilize law enforcement personnel for illegal dumping enforcement and preferred maintenance staff to handle those situations. Mr. Mendall said the ordinance was a tool to reduce the dumping problem and he encouraged residents to contact him if anyone gets unfairly penalized.

Mayor Sweeney offered a motion to adopt the ordinance and include staff reports from October 23 and November 13, 2012, as part of the administrative record; that staff provide Council with a one-year progress report on the effectiveness of the implementation of the Illegal Dumping Ordinance; that staff work with the Keep Hayward Clean and Green Task Force in preparing the report to Council; that during the first annual review staff explore strategies to improve the program by engaging various stakeholders and consider the strategies Council offered during the meetings.

It was moved by Mayor Sweeney, seconded by Council Member Peixoto, and carried with Council Member Jones voting against, to adopt the following:

Ordinance 12-06, "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"

11. Introduction of an Ordinance Amending Building Abatement Code, Chapter 9, Article 3 of the Hayward Municipal Code

Staff report submitted by Assistant City Attorney Alvarado, dated
November 13, 2012, was filed.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 13, 2012, 7:00 p.m.**

Assistant City Attorney Alvarado provided a synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:45 p.m.

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

Introduction of Ordinance 12-_, “Ordinance Amending Article 3 of Chapter 9, Sections 9-3.101 Through 9-3.906, of the Hayward Municipal Code Relating to Building Abatement”

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

Staff report submitted by Administrative Analyst III Mosher, dated November 13, 2012, was filed.

Director of Public Works-Utilities and Environmental Services Director Ameri provided a synopsis of the report.

Director of Public Works Ameri explained for Council Member Zermeño that water was a variable cost and tenants were responsible and had control over water usage and therefore delinquent charges were not the responsibility of the property owner.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:55 p.m.

Council Member Mendall offered a motion per the staff recommendation and commented he was pleased to see a letter from Mr. Timothy May from the Rental Housing Association in support of the proposed ordinance and recognized Director of Public Works Ameri for reaching out to the Rental Housing Association.

Council Member Halliday seconded the item.

Assistant City Attorney Vigilia noted there was a clerical omission as to the effective date of the ordinances and stated that pursuant to the City Charter the ordinances would take effect 30 days from adoption and this language would be included at time of adoption of the ordinances.

Council Member Zermeño concurred with Council Member Mendall and said he was glad to see more collaboration and partnership with associations and commended Director of Public Works Ameri for reaching out to the Rental Housing Association and encouraged continued efforts.

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

Introduction of Ordinance 12-_, “An Ordinance Amending Chapter 11, Article 3 of the Hayward Municipal Code Relating to the Collection of Delinquent Charges for Sewer Service”

Introduction of Ordinance 12-_, “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”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas reported attending a Burbank Elementary School celebration recognizing that students scored 845 on the Academic Performance Index (API). Mr. Salinas also reported he attended the Alameda County Veterans Day Observance event sponsored by Alameda County Veteran Affairs Commission and the City of San Leandro. Mr. Salinas wished everyone a Happy Thanksgiving and encouraged everyone to spend black Friday in Hayward shops.

Council Member Halliday reported attending the Literacy Plus Annual Reception at City Hall on November 7, 2012, where all volunteers were honored. Ms. Halliday commented that a Stanford University filmmaker had made a documentary film about the Literacy Plus Program and commended Library Director Reinhart for his efforts with the program.

Council Member Zermeño announced a Keep Hayward Clean and Green Task Force Clean-Up event scheduled for the Whitman-Mocine neighborhood on November 17, 2012. Mr. Zermeño wished everyone a Happy Thanksgiving and encouraged everyone to shop in Hayward. He added that the Saturday after Thanksgiving was Small Business Day in Hayward and encouraged all to shop at local small businesses.

Council Member Mendall reported attending a community meeting in South Hayward where crime was discussed and he commended Police Chief Urban and her team for reaching out to people. Mr. Mendall also noted that at a South Hayward BART Joint Powers Authority public meeting folks in the neighborhood expressed frustration with the lack of a plan for long-term parking needs. He added that a parking plan would need to be in place before more developments get approved.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 13, 2012, 7:00 p.m.**

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 11:05 p.m., in memory of Harry Reed Francis. Mayor Sweeney mentioned that Mr. Francis and his wife, Maryann, contributed greatly to the Hayward community noting Mr. Francis had served on the Hayward Area Park and Recreation District and the local East Bay Dischargers Authority Board. Mayor Sweeney asked staff to work with his family to plant a tree in his memory.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: December 4, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Engineering and Transportation

SUBJECT: Grant of Trail and Access Easement to the East Bay Regional Park District - Adjacent to Property Owned by the Bailey Ranch Owners' Association

RECOMMENDATION

That Council adopts a resolution authorizing the City Manager to execute a Grant of Easement to the East Bay Regional Park District (EBRPD).

BACKGROUND

In 1975, the City of Hayward was granted, through Challenge Development, Inc., Lot C of Tract Map 3413 as a condition of the tentative map approval; the lot is located in the Bailey Ranch area and is graphically depicted in Attachment II. In 1999 and 2000, Tract Maps 6169 and 7109, which are owned by the Bailey Ranch Owners' Association and include a trail totaling approximately 3,047 linear feet through both tracts, were developed next to Tract 3413. A portion of that trail, which measures 284 linear feet, meanders into Lot C of Tract 3413. During July 2012, the East Bay Regional Park District obtained an easement from the Bailey Ranch Owners' Association along the portion of the trail that is part of the Association's property. Acquisition of the easement was delayed as the environmental impact portions of the agreement required State approval.

In order to allow for uninterrupted access to the trail, EBRPD is requesting a grant of easement to the remaining portion controlled by the City.

DISCUSSION

The East Bay Regional Park District has requested an easement for access to a trail that was installed along and over a sanitary sewer easement constructed as part of Tracts 6169 and 7109. A twenty-foot portion of this trail runs through City property, which is part of Lot C of Tract Map 3413 as noted above. The grant for Lot C specified that it be used solely for public horseback riding, trail, and park purposes only; therefore, the granting of this easement to EBRPD would be consistent with the uses prescribed in the grant. In addition, this trail ties into and is a part of the Garin Park land use plan.

ECONOMIC IMPACT / FISCAL IMPACT

No additional revenue will be generated nor expenses incurred as a result of this grant of easement to EBRPD. Per the easement agreement, EBRPD will maintain the trail and will be responsible for associated expenses.

PUBLIC CONTACT

As this item is procedural in nature, no public outreach was needed or required.

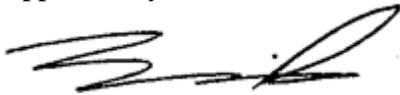
NEXT STEPS

If Council adopts the attached resolution, the City Manager will execute a Grant of Easement to EBRPD.

Prepared by: Brian Spore, Surveyor

Recommended by: Morad Fakhrai, Director of Public Works – Engineering and Transportation

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: Trail Easement Area Plat

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT OF TRAIL AND ACCESS EASEMENT WITH THE EAST BAY REGIONAL PARK DISTRICT

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute, on behalf of the City, a Grant of Easement for trail and access, to the East Bay Regional Park District, adjacent to property owned by the Bailey Ranch Owners' Association and as generally described in the diagram attached hereto as Attachment II.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

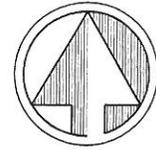
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



NORTH

PARCEL B
TRACT
6169

BAILEY RANCH
OWNERS'
ASSOC.

1

2

PARCEL A
TRACT 7109

BAILEY RANCH ROAD

BAILEY RANCH
OWNERS' ASSOC.

CITY
OF
HAYWARD

LOT C
TRACT 3413

20' WIDE EASEMENT

3

4

5

6

7

8

EAST BAY
REGIONAL PARK
DISTRICT

CITY OF HAYWARD ENGINEERING DIVISION		
DRAWN BY: BDS	DATE 10/11/2012	
CHECKED BY:	SCALE: 1"=100'	
APPD. BY	APPROVED	
REV	DATE	BY
		CITY ENGINEER
		DIR. PUBLIC WORKS

TRAIL AND ACCESS
EASEMENT
TO
EAST BAY REGIONAL PARK DISTRICT

DWG. NO. 12011

FILED

SHT. 1 of 1 of 1

DATE: December 4, 2012

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Final Map Tract 7748 – KB Home/First American Title Company (Applicant/Owner) – Approving the Final Map, and Authorizing the City Manager to Execute a Subdivision Agreement, a Grant of Easement Agreement and Accepting, upon Completion of Improvements, Certain Streets into the City Street System

RECOMMENDATION

That the City Council approves and adopts the two attached resolutions:

1. Approving Final Map Tract 7748, finding that is in substantial conformance with the approved Vesting Tentative Map Tract 7613 and the conditions of approval thereof;
2. Authorizing the City Manager to execute a Subdivision Agreement covering the installation of required improvements;
3. Accepting the street improvements into the City's Street System upon certification by the Director of Public Works – Engineering & Transportation that the required street improvements have been completed; and
4. Authorizing the City Manager to execute a Grant of Easement agreement covering the installation and maintenance of improvements under the West Winton Avenue overpass (Attachment V).

BACKGROUND

Tentative tract and final maps are required for all subdivisions creating five or more parcels. A tentative tract map is required to ensure that any proposed development complies with: the Subdivision Map Act; the California Environmental Quality Act; the City of Hayward's subdivision, zoning and building regulations; the Hayward General Plan and Neighborhood Plans; and requirements of the Public Works, Fire, and Police Departments. After the tentative tract map is approved, the developer submits the final map and improvement plans for review and approval by the City before proceeding with the construction.

On December 13, 2005, the City Council approved Vesting Tentative Map Tract 7613 to allow for the development of residential units and a retail building in the Cannery Place development, which is located north of West Winton Avenue, west of Myrtle Street, south of C Street, and east of the Union Pacific Railroad tracks. The development is surrounded by an established residential neighborhood and major collector streets.

In June 2006, as part of the overall development of the Cannery area, the City entered into an exchange, purchase, and sale agreement whereby the underlying fee title of Cannery Court was transferred to SCS Development Company (Citation Homes) and an agreement was made to vacate the right-of-way when alternate access was provided. That action was approved by the Council on October 23, 2007.

On April 24, 2007, the City Council approved Final Map 7613, the first final map for the Cannery Development Area, which entailed property generally located in the northeast quadrant of the Cannery area, covering only a portion of the corresponding vesting tentative map approved in 2005. On October 23, 2007, the City Council approved a previous version of Final Map 7748, a subdivision to accommodate 162 condominium units. However, due to a decline in the housing market at that time, Citation Homes could not continue the development of Tract 7748, as well as other approved developments in the Cannery Place. The previous version of Final Map 7748 was never recorded.

On June 9, 2011, Citation Homes requested a minor modification to the approved Planned Development District affecting Tract 7748 in the Cannery, including: (1) reducing the number of units from 162 to 155; (2) replacing the ‘motorcourt’ townhome product with a townhome row product; (3) increasing open space areas; and (4) eliminating tandem parking. On November 4, 2011, the Planning Director administratively and conditionally approved the requested minor modification of the approved Planning Development District.

On June 4, 2012, KB Home completed its acquisition of Tract 7748 from SCS Development Company, and submitted revised Improvement Plans and the new Final Map to the City for review and approval so that the last piece of vacant land in the Cannery area can be developed as previously approved.

DISCUSSION

Final Map - Tract 7748 is generally located on the southeast quadrant of the Cannery area. The Final Map Tract 7748 is the fourth final map approval in the Cannery Place development, and includes a 32-lot subdivision to accommodate 155 condominium units, a private street (George Circle), eight common driveways, and six public streets to serve those units. The six public streets are as follows: Martin Luther King Drive, Staley Avenue, Gibbons Street, Cannery Court, Morrow Street and Moss Way. The aforementioned streets will be accepted, upon completion of improvements, into the City’s street system.

The final map was reviewed by the City Engineer and was found to be in substantial compliance with the vesting tentative tract map, and in conformance with the Subdivision Map Act and provisions of local ordinances. There have not been significant changes to the final map, as

compared to the tentative tract map the Council approved in December of 2005, and the approved minor modification to Planned Development District approved by the Planning Director in November of 2011. The developer has submitted the subdivision improvement plans and subdivision bonds totaling \$3,669,000 for the required tract improvements.

Granting of Easement for the area under Winton Avenue Overpass - During a field review of the project site, representatives of KB Home and City staff noticed that when a perimeter fence, as approved for the development, is installed along the project boundary, the area beneath the West Winton Avenue overpass could become a problematic area, due to its lack of visibility and potential use for undesirable activities. City staff worked with KB Home on a proposal to transform the area into an attractive and welcoming park area with strolling pathways, children's play area, and a fenced dog park. Additionally, the maintenance of this proposed park would be performed by the Homeowner's Association created for the development. City staff supports the proposal of constructing the park and eliminating the unneeded portion of perimeter fencing along West Winton Ave, and recommends that the City Council grants an easement allowing the installation and maintenance of park improvements underneath the Winton Avenue overpass to KB Home and, subsequently, the Homeowner's Association (Attachments III and V).

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) for the Cannery Area Design Plan and associated development, including that associated with the development of Tract 7748, was previously certified by the Hayward City Council via Resolution No. 02-025 on March 12, 2002, and therefore, no additional environmental review is required per the California Environmental Quality Act.

ECONOMIC AND FISCAL IMPACT

Construction of 155 residential condominium units would increase economic property values above and beyond the current uses and, in turn, increase property tax revenues that the City would receive. Assuming an average sale price of \$500,000 per unit, the City would receive approximately \$155,000 in annual revenues to its General Fund associated with the 155 condominiums.

The annual General Fund expenditures associated with the condominiums would be approximately \$191,000, resulting in a negative fiscal impact annually to the General Fund of approximately \$36,000. However, the negative fiscal impact would be reduced, because the project is located within Community Facilities District No. 2 (CFD), where an annual assessment is required to be paid per unit. Assuming such assessment is approximately \$500 per unit (set originally in July of 2010 at \$484 per unit, with an annual increase equal to the Bay Area CPI, up to four percent), an additional \$77,500 would be generated annually, resulting in an annual net positive impact to the General Fund of approximately \$41,500, or \$268 per unit.

PUBLIC CONTACT

A public hearing is not required for the filing of Final Map Tract 7748. Public hearings were already conducted for the approval of Vesting Tentative Tract Map 7613, of which Final Map Tract 7748 is part.

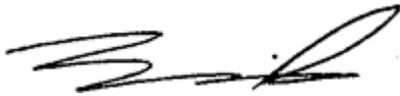
NEXT STEPS

Assuming the City Council approves the Final Map and granting of the easement, the subdivision agreement will be executed, the applicant will have the final map recorded, and construction will commence of improvements shown on the approved Improvement Plans. The applicant has posted subdivision bonds and obtained a Grading Permit in October, and anticipates completing construction of the project by the end of 2014.

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

Recommended by: David Rizk, AICP, Development Services Director

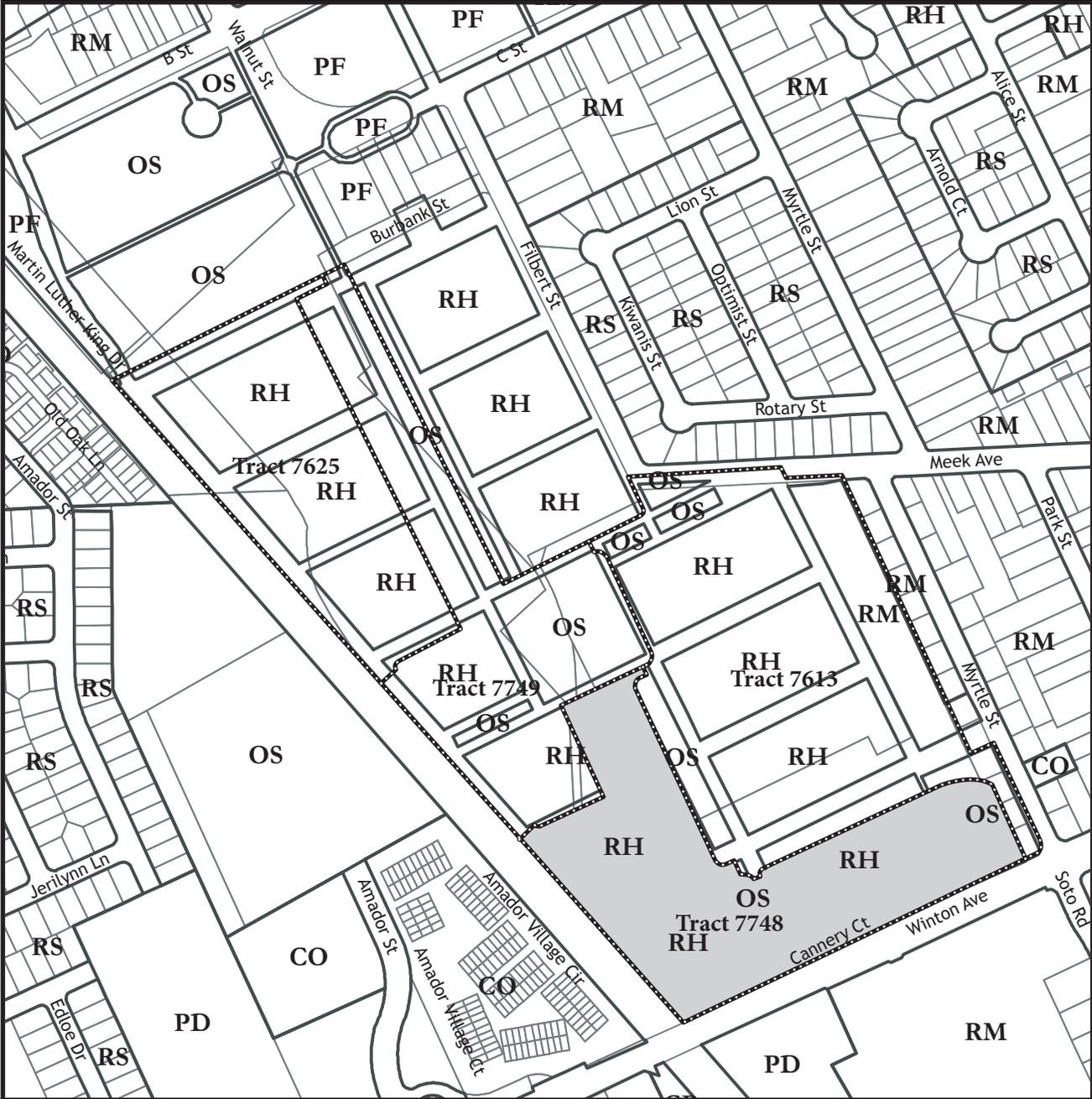
Approved by:



Fran David, City Manager

Attachments:

Attachment I	Vicinity Map
Attachment II	Cannery Place Area Map
Attachment III	Site Plan Tract 7748
Attachment IV	Resolution Approving Final Map
Attachment V	Resolution Granting Easement



Area Map

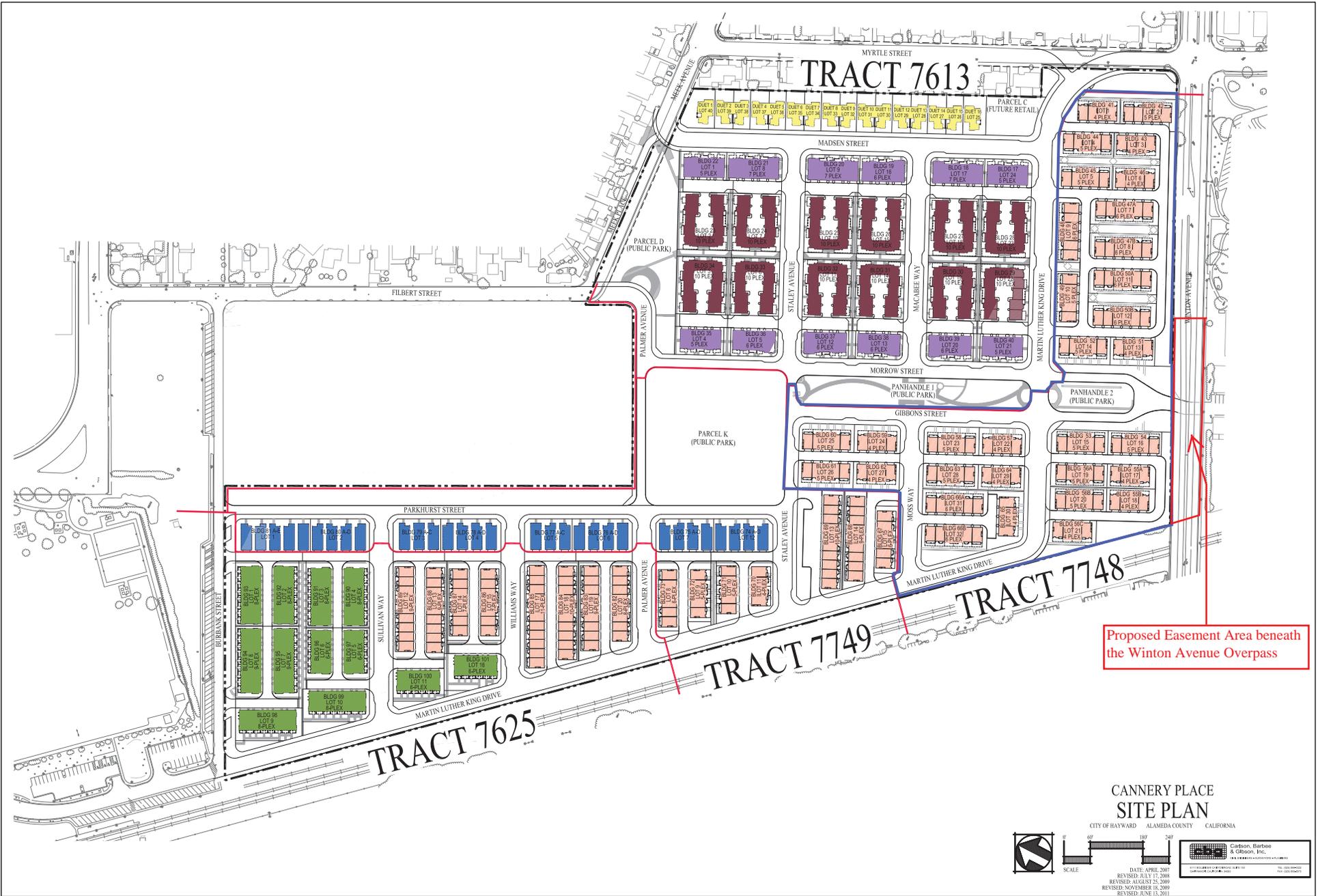
TTM 7613, TTM 7625,
TTM 7748, TTM 7749

Address: Cannery Area
 Applicant: KB Home South Bay, Inc.
 Owner: KB Home South Bay, Inc.

Zoning Classifications

- RESIDENTIAL**
- RH High Density Residential, min lot size 1250 sqft
- RM Medium Density Residential, min lot size 2500 sqft
- RS Single Family Residential, min lot size 5000 sqft
- COMMERCIAL**
- CO Commercial Office
- OPEN SPACE**
- OS Open Space
- OTHER**
- PD Planned Development
- PF Public Facilities

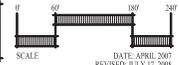




Proposed Easement Area beneath
the Winton Avenue Overpass

CANNERY PLACE
SITE PLAN

CITY OF HAYWARD ALAMEDA COUNTY CALIFORNIA



DATE: APRIL 2007
REVISED: JULY 17, 2008
REVISED: AUGUST 15, 2009
REVISED: NOVEMBER 18, 2009
REVISED: JUNE 15, 2011

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION APPROVING FINAL MAP FOR TRACT 7748,
AUTHORIZING THE CITY MANAGER TO EXECUTE A
SUBDIVISION AGREEMENT, AND TO ACCEPT CERTAIN
STREETS INTO THE CITY STREET SYSTEM

WHEREAS, Vesting Tentative Tract Map No. 7613, Cannery Development Area, was approved by the City Council on December 13, 2005, and the Final Map for Tract 7748, a phase subdivision, has been presented to the City Council of the City of Hayward for a development of a 32-lot subdivision containing 155 residential condominium units located on the southeast quadrant of the Cannery Place area; and

WHEREAS, the Director of Public Works reviewed the Final Map, and found it to be in substantial compliance with the approved tentative map, the Subdivision Map Act, and provisions of local ordinances.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby find that the Final Map for Tract 7748 is in substantial conformance with the approved vesting tentative map and does hereby approve the Final Map, subject to the condition that the subdivider enter into an agreement for the construction of improvements and other obligations required as conditions of approval of the tentative map for Tract 7613 and that approval shall not be effective until and unless such agreement is entered into.

BE IT FURETHER RESOLVED that the City Manager is hereby authorized for and on behalf of the City of Hayward to negotiate and execute a subdivision agreement in forms approved by the City Attorney, and to execute any and all documents necessary to complete the transfer of those portions of Tract 7748 property that will be dedicated to or acquired by the City.

BE IT FURTHER SOLVED that the City Council shall hereby accept the street improvements into the City Street System of the City of Hayward upon certification by the Director of Public Works of satisfactory completion of the street improvements in substantial conformance with the approved plans.

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT OF EASEMENT ALLOWING THE INSTALLATION AND MAINTENANCE OF IMPROVMENTS UNDERNEATH THE WEST WINTON AVENUE OVERPASS ASSOCIATED WITH FINAL MAP 7748

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute on behalf of the City a Grant of Easement for the installation and maintenance of improvements underneath the West Winton Avenue overpass with KB Home, Inc.

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: December 4, 2012

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Park In-Lieu Fee Allocation to the Hayward Area Recreation and Park District for the Hayward Senior Center Kitchen Americans with Disability Act Improvement Project, New Dog Park in the Eden Greenway, and New Ruus Park Americans with Disability Act-Compliant Restroom Installation Project

RECOMMENDATION

That Council adopts the attached resolution reimbursing \$426,968.72 to the Hayward Area Recreation and Park District (HARD) for the Hayward Senior Center Kitchen Americans with Disability Act (ADA) Improvement Project from the Park-in-Lieu fee account for Zones C, D and E; reimbursing \$72,287.52 for a new dog park in the Eden Greenway from the Park-in-Lieu fee account for Zone A; and approving allocation of \$250,000 for a new Americans with Disability Act (ADA) compliant pre-fabricated restroom building at Ruus Park from the Park-in-Lieu fee account for Zone B.

BACKGROUND

The City of Hayward requires all subdivisions and other development of land for residential purposes to set aside land and/or pay in-lieu fees to provide for park and recreational facilities. Collected park in-lieu fees are used for the purpose of acquiring necessary land and developing new parks, or rehabilitating existing parks, in the Park Dedication Zone in which the property is located. Reimbursements from multiple Zones may be made for district-wide parks and facilities.

The Hayward Area Recreation and Park District (HARD) seeks reimbursement in the amount of \$499,256.24 for two completed projects and an allocation amount of \$250,000 for a new restroom building at Ruus Park. The two completed projects are the Hayward Senior Center Kitchen ADA Improvement project, completed earlier this year, and a new dog park (Hayward's first) in the Eden Greenway. Attachments III and IV provide details on the two completed projects.

The Hayward Senior Center Kitchen project involves reimbursement of \$426,968.72 (\$142,322.90 from each of Zones C, D and E). The new completed dog park at Eden Greenway linear park entails reimbursement of \$72,287.52 from Zone A. The allocation request is for the installation of a new pre-fabricated ADA-compliant restroom building at Ruus Park, planned for installation this fiscal year. Such request will entail an allocation of \$250,000 from Zone B. There are sufficient funds in

these Zone accounts to fund the completed and proposed improvement projects. Staff supports the use of the park-in-lieu funds for these three projects.

DISCUSSION

Hayward Senior Center - The Hayward Senior Center is located at 22325 North Third Street adjacent to the Japanese Gardens. The kitchen, built in 1978, serves free or low-cost meals to over 100 seniors a day. The kitchen was built to comply with the Americans with Disabilities Act requirements and the current California Health Department codes. As a part of this project, HARD improved the functional work and pantry areas of the kitchen with new commercial kitchen appliances and a new stand-alone refrigerator/freezer, grease trap, and trash container area. This new kitchen will continue to serve the current demand of about 30,000 free or low-cost meals annually to the seniors and will have increased capability to serve a greater number of the seniors that participate in the many programs offered at this facility. The project was completed on October 22, 2012, and HARD seeks a reimbursement of \$426,968.72 from the in-lieu accounts for Zones C, D and E.

New Dog Park in the Eden Greenway - This first dog park in Hayward is located in the Eden Greenway Linear Park at Contessa Street in response to requests from Hayward residents. The new dog park consists of a fenced large-dog area and a separate small-dog area (for dogs under 32 pounds). Each dog area has benches, shade trees, and water basins.

The Eden Greenway consists of about thirty-two acres that have pedestrian and bicycle pathways in the PG&E-owned transmission line property, where HARD has an easement. At different sections of the Eden Greenway are play areas, basketball courts, and other recreational amenities. The dog park was completed on June 25, 2012, and HARD seeks a reimbursement of \$72,287.52 from the in-lieu account of Zone A.

New ADA-Compliant Restroom Building at Ruus Park – Ruus Park is a 5.57-acre park located at the corner of Dickens and Folsom Avenues. The park has picnic tables with barbecues, ball fields, a basketball court, play area and a recreation building. The existing restrooms built in the 1960s are the focus of this project to make them ADA-compliant. HARD plans to remove the existing restrooms, and install a new pre-fabricated ADA-compliant restroom building. The new restroom building will be furnished with low flow sinks, toilets and energy-efficient light fixtures in compliance with the current building codes. The restroom building installation will take place during the first half of calendar year 2013. HARD seeks an advance of \$250,000 from the Zone B in-lieu account for this project.

Below is a summary of fund account balances:

Park In-Lieu Funds

	Zone A	Zone B	Zone C	Zone D	Zone E
Available funds	\$1,967,114	\$342,377	\$1,829,058	\$362,230	\$381,555
Funding required for Hayward Senior Center Kitchen ADA Improvements (Requested total \$426,968.72)			\$142,322.90	\$142,322.90	\$142,322.90

	Zone A	Zone B	Zone C	Zone D	Zone E
Available funds	\$1,967,114	\$342,377	\$1,829,058	\$362,230	\$381,555
Funding required for a new dog park in the Eden Greenway Linear Park (Requested total \$72,287.52)	\$72,287.52				
Funding required for a new ADA compliant restroom building at Ruus Park (Requested total \$250,000)		\$250,000			
Remaining balance after the allocation	\$1,894,826.50	\$92,377	\$1,686,735.10	\$219,907.10	\$239,232.10

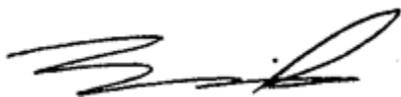
FISCAL IMPACT

No fiscal impact to the City is anticipated. HARD is responsible for providing funds from other revenue sources to cover the remaining cost of the park improvements and to maintain the parks.

Prepared by: Michelle Koo, RLA ASLA, Landscape Architect

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



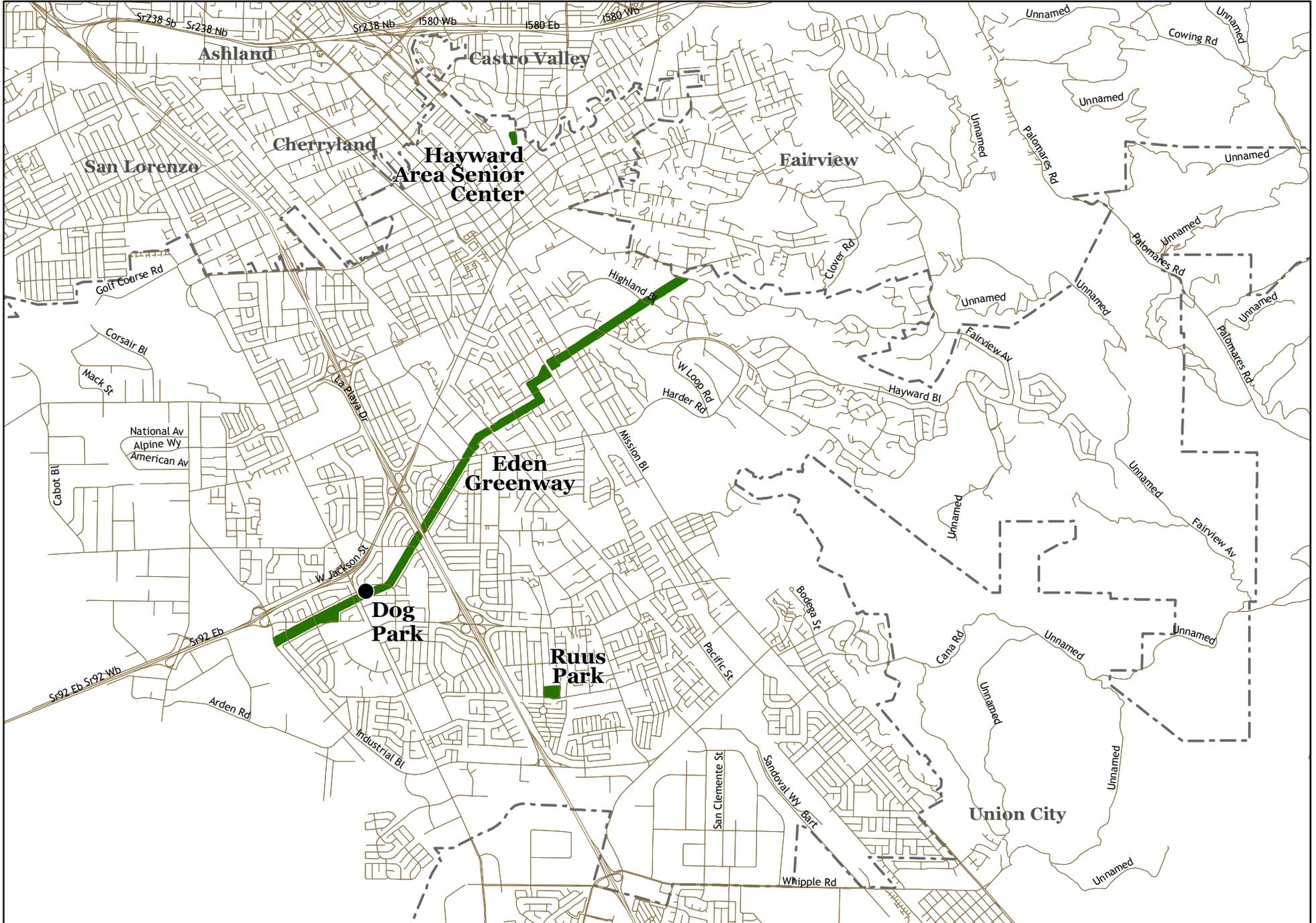
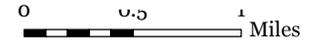
Fran David, City Manager

Attachments:

Attachment I	Location Map
Attachment II	Draft Resolution
Attachment III	Letter of Request from HARD for Hayward Senior Center Kitchen ADA Improvement Project, dated August 23, 2012
Attachment IV	Letter of Request from HARD for New Dog Park in the Eden Greenway Linear Park Project, dated August 22, 2012
Attachment V	Letter of Request from HARD for New ADA Compliant Restroom Building Project at Ruus Park, dated March 1, 2012
Attachment VI	Park In-Lieu Zone Map



Location Map



HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING REQUEST OF HAYWARD AREA RECREATION AND PARK DISTRICT FOR ALLOCATION OF PARK DEDICATION IN-LIEU FEES FOR THE PURPOSE OF REBUILDING HAYWARD SENIOR CENTER KITCHEN IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND CALIFORNIA HEALTH DEPARTMENT CODES, BUILDING A NEW DOG PARK AT EDEN GREENWAY, AND INSTALLING A NEW PRE-FABRICATED RESTROOM BUILDING IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AT RUUS PARK

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the request of Hayward Area Recreation and Park District for allocation of park dedication in-lieu fees in the amount of \$426,968.72 for the purpose of the Hayward Senior Center Kitchen Americans with Disabilities Act (ADA) Improvement Project, \$72,287.52 for building a new dog park at Eden Greenway, and \$250,000 for installing a new pre-fabricated ADA compliant restroom building at Ruus Park, to be divided among the following park sites:

1. Hayward Senior Center Kitchen Americans with Disabilities Act (ADA) Improvement Project –
In Lieu Zones C, D and E - \$426,968.72
2. New Dog Park at Eden Greenway –
In Lieu Zone A – \$72,287.52
3. New Pre-Fabricated Restroom Building Installation –
In Lieu Zone B - \$250,000.00

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



HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

August 23, 2012

Kelly Morariu
Assistant City Manager
City of Hayward
777 "B" Street
Hayward, CA 94541

RECEIVED
AUG 27 2012
PLANNING DIVISION

RE: Hayward Senior Center Kitchen ADA Improvement Project

Dear Ms. Morariu:

On January 2, 2012, the Hayward Area Recreation and Park District (HARD) sent a request to expend up to \$540,000 from the in-lieu fees account to completely rebuild the Hayward Senior Center kitchen to make it ADA compliant and to bring the kitchen that was originally built in 1978 to meet current Health Department codes. As part of this project, the Park District has improved the functional work and pantry areas of the kitchen with new commercial kitchen appliances, and a new exterior stand alone refrigerator/freezer, grease trap and trash container area. The Park District is seeking a progress payment of \$ **426,968.72** from District Wide in-lieu accounts (except Area A) to help fund this commercial kitchen project.

This new commercial kitchen will serve about 30,000 free or low cost meals to seniors that participate in the many programs offered at this facility. The Hayward District Wide in-lieu account has sufficient funds to fund this project. If you have any questions, please call me at (510) 881-6716 or email me at lepl@haywardrec.org.

Sincerely,

Larry Lepore
Superintendent of Parks

090602 HaywardNewKitchen

cc: Michelle Koo
Landscape Architect

**BOARD OF
DIRECTORS**

Louis M. Andrade
Paul W. Hodges Jr.
Minane Jameson
Carol A. Pereira
Dennis M. Waespi

GENERAL MANAGER
John Gouveia

Asset ID	Suf	Asset Description	Asset Class ID	Acquisition Date	Acquisition Cost
4-084	28	4-084 PROF.SRV 23.8% OF CNTRCT	LND BLD IMP	11/29/2011	\$10,000.00
4-084	29	4-084-TEST SAMPLES FOR HZRDOUS MATS	LND BLD IMP	12/12/2011	\$144.00
4-084	30	4-084 TEST MATERIALS -ASBETOS	LND BLD IMP	12/7/2011	\$128.00
4-084	31	4-084 PROFESSIONAL SRVR2294	LND BLD IMP	12/29/2011	\$22,000.00
4-084	32	4-084 ADDTNL MATERIAL TSTNG	LND BLD IMP	12/29/2011	\$60.00
4-084	33	4-084/K. ZABEL CC DEC 2011	LND BLD IMP	12/31/2011	\$1,150.00
4-084	34	K.ZABEL JAN 2012 CC	LND BLD IMP	1/31/2012	\$2,845.76
4-084	35	4-084/K.ZABEL FEB 2012 CALCARD	LND BLD IMP	2/29/2012	\$743.00
4-084	36	4-084 REROUTE 2 PHONE LINES	LND BLD IMP	3/22/2012	\$806.00
4-084	37	4-084 R2313 ASBESTOS ABATEMENT	LND BLD IMP	3/22/2012	\$3,120.00
4-084	38	4-084 WORK PROG. 3/6-4/6/12	LND BLD IMP	4/13/2012	\$61,825.86
4-084	39	4-084 PERMITS FOR KITCHEN L.LEPORE CC	LND BLD IMP	4/4/2012	\$10,862.36
4-084	40	4-084 NEW CONNECTION PRMT	LND BLD IMP	5/18/2012	\$4,633.36
4-084	41	4-084/K. ZABEL CC MAY 2012	LND BLD IMP	5/31/2012	\$109.00
4-084	42	4-084 PROF.SRV 88% COMPLETE	LND BLD IMP	6/7/2012	\$5,000.00
4-084	43	4-084 WORL COMP. 4/7-5/19/12	LND BLD IMP	6/7/2012	\$45,980.00
4-084	44	4-084 PIPES FRM GROENIGER & CO	LND BLD IMP	6/30/2012	\$720.26
4-084	45	4-084/R2329 PERIODIC EST#3 5/20-6/13/12	LND BLD IMP	6/30/2012	\$51,727.50
4-084	46	4-084/R2329 PERIODIC EST#4 6/14-30/12	LND BLD IMP	6/30/2012	\$50,807.90
4-084	47	4-084 REPAIR GLV PIPE COVER	LND BLD IMP	7/26/2012	\$200.00
4-084	48	4-084 WRK COMPLETE 7/1-7/21/12	LND BLD IMP	7/26/2012	\$59,033.72
4-084	50	4-084 WRK COMPLT 7/21-8/4/12	LND BLD IMP	8/9/2012	\$167,827.00
4-084	51	4-084 ELECT REPAIRS	LND BLD IMP	8/9/2012	\$245.00
					\$499,968.72

Extended Description	Asset Status
GUTIERREZ/ASSOCIATES	Active
FORENSIC ANALYTICAL LABORATORIES INC	Active
FORENSIC ANALYTICAL	Active
GUTIERREZ /ASSOCIATES	Active
FORENSIC ANALYTICAL	Active
CO ALAMEDA ENVIRONMENT HEALTH	Active
CITY OF HAY-PLAN REVIEW FEE	Active
CITY OF HAYWARD/HSC TRASH PERMIT	Active
STANLEY CONVERGENT SECURITY SOLUTIONS IN	Active
STNERGY ENTERPRISES, INC.	Active
EAGLE'S GENERAL CONSTRUCTION CO.	Active
CITY OF HAYWARD	Active
CASTRO VALLEY SANITARY DISTRICT	Active
CITY OF HAYWARD	Active
GUTIERREZ/ ASSOCIATES	Active
EAGLE'S GENERAL CONSTRUCTION CO	Active
L.LEPORE CAL CARD JUN 2012	Active
EAGLE'S GENERAL CONST. CO.	Active
EAGLE'S GENERAL CONST. CO	Active
RAS-CO	Active
EAGLES'S GENERAL CONSTRUCTION CO	Active
EAGLE'S GENERAL CONSTRUCTION CO.	Active
HARVEY ELECTRIC	Active

Active
Active



HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

August 22, 2012

Kelly Morariu
Assistant City Manager
City of Hayward
777 "B" Street
Hayward, CA 94541

RECEIVED
AUG 27 2012
PLANNING DIVISION

RE: New Dog Park

Dear Ms. Morariu;

The Hayward Area Recreation and Park District (HARD) has received a number of requests from Hayward residents to construct a dog park in Hayward. A new dog park was constructed in the Eden Greenway linear park at Contessa Street in Hayward. The Eden Greenway consists of about 32 acres that have pedestrian and bicycle pathways in this PG&E easement. At different sections of the Eden Greenway are play areas, basketball courts and other amenities.

The new dog park area project consists of a fenced large dog area and a separate small dog area (for dogs under 32 pounds). Each dog area has benches, new shade trees, and dog water basins. This project created the first dog park in Hayward which will serve a neighborhood Hayward residents. The cost of this project is \$72,287.52. The Park District seeking \$72,287.52 from the in-lieu account to fund this project from area A.

The Hayward area in-lieu account will have sufficient funds to fund the new Project. If you have any questions, please call me at (510) 881-6716 or email me at lepl@haywardrec.org.

Sincerely,

Larry Lepore
Superintendent of Parks

Cc: Michelle Koo

BOARD OF
DIRECTORS

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Paul W. Hodges Jr.
Minane Jameson
Carol A. Pereira
Dennis M. Waespi

GENERAL MANAGER

John Gouveia

2-034 EDEN GREENWAY OFFLEASH AREA

Asset ID	Suf	Asset Description	Acquisition Date	Acquisition Cost	Extended Description
2-034	23	R2289/2-034-ARCHITECTURAL SVC	2/24/2012	\$600.00	SAKAMOTO, WESLEY
2-034	24	2-034/R2338-2 PET FOUNTAIN MURDOCK	5/10/2012	\$7,572.15	PLAYGROUNDS BY DESIGN
2-034	25	2-034#25/R2337-BENCHES & TABLES	5/16/2012	\$11,057.04	NSP3
2-034	26	2-034/R2347 INSTALL FENCING/TABLES	6/21/2012	\$50,065.00	PACHECO BROTHERS GARDENING INC
2-034	27	2-034A PISTACIA CHINENSIS	6/21/2012	\$358.33	VALLEY CREST TREE CO
2-034	28	2-034/R2347 RETENTION	6/30/2012	\$2,635.00	PACHECO BROS GARDENING INC.
TOTAL PROJECT COST FOR 2-034				\$72,287.52	



HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

RECEIVED
MAR 05 2012
PLANNING DIVISION

March 1, 2012

Kelly Morariu
Assistant City Manager
City of Hayward
777 "B" Street
Hayward, CA 94541

RE: Ruus Park New ADA Restroom Project

Dear Ms. Morariu;

The Hayward Area Recreation and Park District (HARD) plans to remove the non ADA compliant restroom at Ruus Park that was built in the 1960's and install a new pre-fabricated ADA compliant restroom building. The project includes construction of a new foundation pad on the footprint of the existing building, connection of existing utilities and adjacent sidewalk/site work. The new restroom building will have low flow sinks and toilets and energy efficient lighting fixtures. This project will provide park patrons a new ADA compliant restroom building, which will serve all Hayward residents. The estimated cost of this project is \$250,000. The demo work may take place this fiscal year and the new restroom building will be installed in fiscal year 2012/2013. The Park District will be seeking **\$250,000** from the in-lieu account to fund this project from area B. Final plans will be submitted to the City of Hayward for permits.

The Hayward area in-lieu account will have sufficient funds to fund the new Project. If you have any questions, please call me at (510) 881-6716 or email me at lepl@haywardrec.org.

Sincerely,

Larry Lepore
Superintendent of Parks

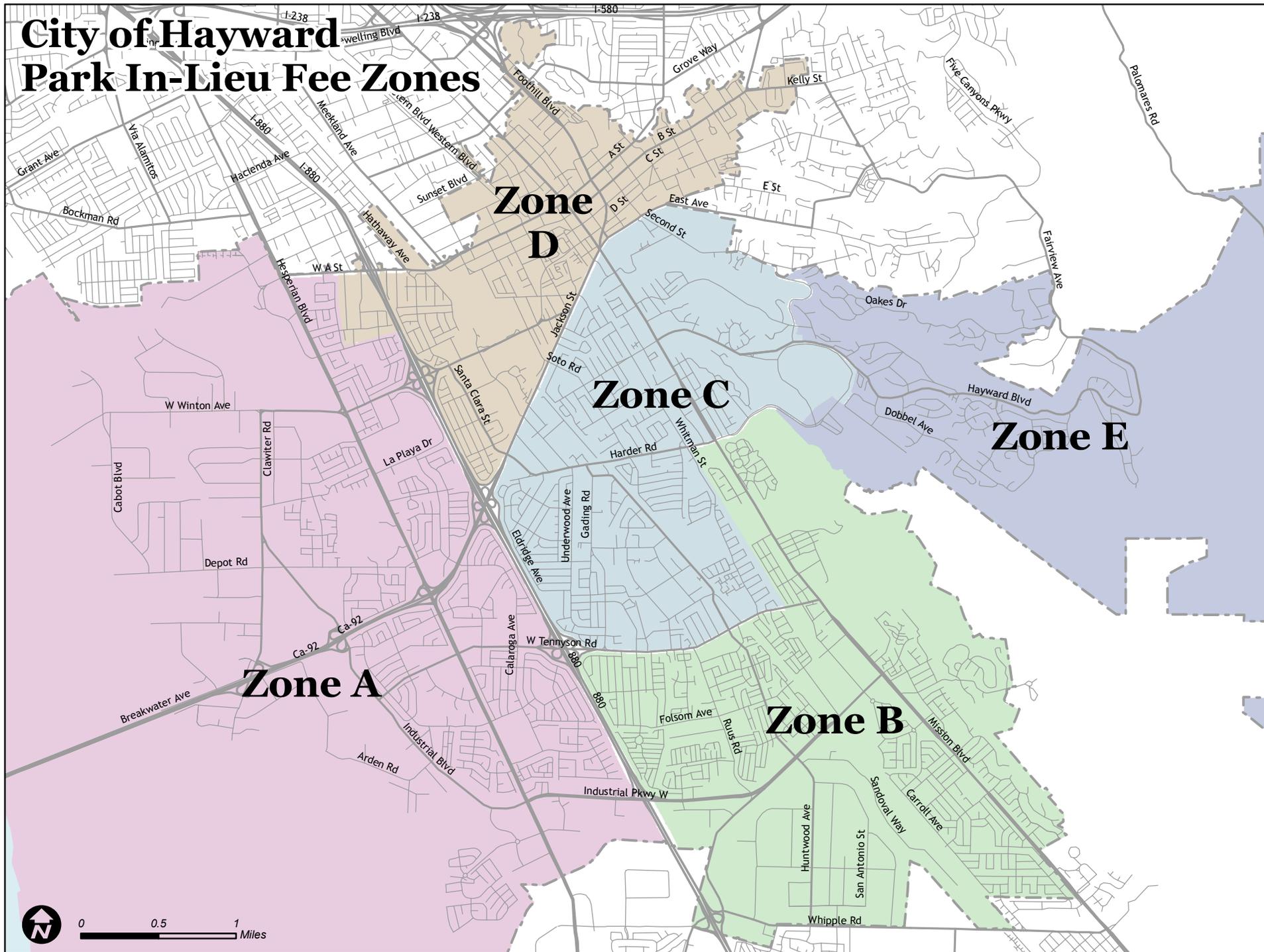
Cc: Michelle Koo
090602 Adobe /Weekes

BOARD OF DIRECTORS

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- Paul W. Hodges Jr.
- Minane Jameson
- Carol A. Pereira
- Dennis M. Waespi

GENERAL MANAGER
Rita Bedoya Shue

City of Hayward Park In-Lieu Fee Zones



DATE: December 4, 2012
TO: Mayor and City Council
FROM: Chief of Police
SUBJECT: Acceptance and Appropriation of Gang Resistance Grant Award

RECOMMENDATION

That Council authorizes the City Manager to accept a \$500,000 California Gang Reduction, Intervention, and Prevention award; and to supplementally appropriate the grant funding to support activities funded by the grant program.

BACKGROUND

On May 25, 2007, Governor Schwarzenegger announced the creation of the California Gang Reduction, Intervention, and Prevention initiative (Cal-GRIP) for the purpose of providing a comprehensive approach to addressing gang violence. This included using State Restitution funds for anti-gang programs that incorporated a regional (multi-agency, multi-jurisdictional) approach and implemented proven, evidence-based strategies. All grants require a dollar-for-dollar match, and mandate that at least 20% of the award be provided to a community-based organization.

The Police Department received a \$400,000, two-year grant which started on April 1, 2009, and then a second, 18-month grant for \$369,309, which runs through December 31, 2012.

DISCUSSION

Acceptance of this new award will continue the City's Hayward Positive Alternatives for Youth (HPAY) program through December 2014. HPAY's goals involve increasing our youth's ability to resist violence and other negative behaviors, increasing academic performance, and reducing gang membership. Specific objectives target reducing truancy, suspensions, expulsions, and alcohol and drug abuse. HPAY provides age appropriate services to Hayward's elementary through high school students and their families. The City's partners in HPAY include the Hayward Unified School District, La Familia, the Choose College Education Foundation (CCEF), Horizon Services, and the Tiburcio Vasquez Health Center, Inc.

To date, HPAY has served 4,629 participants, including youth, parents/guardians, and teachers. Positive outcomes have been documented in all service areas. For example, 81.4% of participants

in the gang awareness presentations have demonstrated increased understanding of gangs and have developed skills in avoiding gang involvement. Sixty-nine percent of youth participating in therapeutic intervention have demonstrated reduced truancy and suspension rates.

ECONOMIC IMPACT

The City of Hayward and adjacent communities continue to be affected by gang violence, which negatively impacts our quality of life. This grant directly addresses reducing youth gang membership.

FISCAL IMPACT

Over a two-year period, this \$500,000 grant will fully fund the continuation of a half-time Gang Prevention Specialist, two half-time Youth & Family Services Bureau (YFSB) Case Managers, and the resources required by our HPAY partners to continue this valuable program.

The required dollar-for-dollar match of this award will be in-kind and will use existing resources at no net cost to the City.

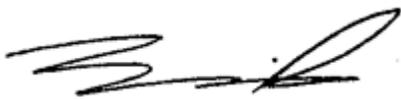
NEXT STEPS

If this recommendation is approved, the City Manager will sign and return the award documents and supplementally appropriate the award funding. If not approved, the City will forfeit the funding being offered.

Prepared by: Bob Davis, Administrative Analyst III

Recommended by: Diane E. Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachments:

Attachment I Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE BUREAU OF STATE AND COMMUNITY CORRECTIONS TO IMPLEMENT THE 2012/14 CALIFORNIA GANG REDUCTION, INTERVENTION AND PREVENTION PROGRAM GRANT (CAL-GRIP) AWARD

WHEREAS, the Hayward Police Department has been awarded \$500,000 from the Bureau of State and Community Corrections (BSCC) to continue the ongoing Hayward Positive Alternatives for Youth (HPAY) program through 2014.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to execute an agreement with BSCC to accept the funding for the 2012/14 Cal-GRIP grant in a form approved by the City Attorney.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Manager is authorized to supplementally appropriate the grant funding.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

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: December 4, 2012

TO: Mayor and City Council

FROM: Chief of Police and Director of Development Services

SUBJECT: Extension up to June 26, 2013 of Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis at Full-Service Restaurants Happy Hours from 4:00 to 9:00 pm and Music until Midnight

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) allowing happy hours from 4:00 to 9:00 pm, and recorded or live musical entertainment (no dancing) until midnight on a trial basis for up to an additional six months until June 26, 2013, at full service restaurants.

BACKGROUND

On June 19 of this year, the City Council adopted a resolution (Attachment II) that temporarily allowed at full-service restaurants only reduced price alcohol sales (happy hours) from 4:00 pm to 9:00 pm through December 26, 2012. This trial period required reduced price appetizers and non-alcoholic drinks; and allowed live or recorded musical entertainment with no dancing at full service restaurants until midnight. The staff report for the June 19 meeting is at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca061912full.pdf> (item number 10 on the agenda), and the meeting minutes are included as Attachment III.

DISCUSSION

Hayward Police Department (HPD) staff has reviewed statistics/data from June through the end of September and compared such data with data prior to the trial period and reports that there has been no increase in calls for service or crime activity as a result of the happy hour and music at full-service restaurants. The Council action in June only applies to full-service restaurants, which are sit-down establishments that serve alcohol as an adjunct to the primary purpose of food service. Press regarding the trial period has been positive, consistent with the HPD staff's comments.

Additionally, the City's Economic Development Manager indicates, on average, most full service restaurants surveyed have experienced significant sales increases between ten to twenty-five percent above what they had prior to the trial period, inclusive of all product categories. He indicates that the biggest known benefactor has been the Elephant Bar restaurant at Southland Mall, which is now

number two in the nation for sales within their chain. The Economic Development Manager also indicates that Apple Bee’s at Southland Mall has also improved sales, and that they are now number four in their region within their chain, up from number seven. Even non-alcohol serving restaurants’ sales, such as Panera Bread, are up as more people are drawn to the region and the spillover effect benefits adjacent businesses.

ECONOMIC IMPACT

As indicated above, the economic benefits of the trial period are positive, and are expected to continue to be so.

FISCAL IMPACT

Because there have been no noticeable increases in calls for service and criminal activity at full-service restaurants since the trial period began approximately six months ago, no negative fiscal impacts to the City’s General Fund have occurred, or are expected to occur with the extension of the trial period.

PUBLIC CONTACT

An ABC Licensee Education on Alcohol and Drugs (LEAD) class was held on November 14 with ABC and Hayward Police Department staffs, which entailed education on California law and practical information on serving alcoholic beverages safely and responsibly. The class was attended by approximately thirty representatives from Hayward establishments.

Staff plans to hold a community meeting in the Council Chamber on the evening of December 11 to present initial recommendations. Staff will invite all ABC licensees to said meeting, as well as other interested parties (CommPre, speakers at prior work sessions and hearings, etc.).

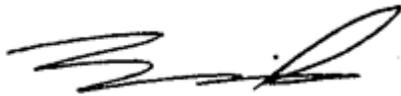
NEXT STEPS

<u>ACTIVITY</u>	<u>DATE</u>
Community meeting	December 11, 2012
Staff will present initial suggestions for revisions to the City’s alcohol regulations to the Planning Commission, incorporating feedback from Council’s 12/4/12 work session.	December 13, 2012
Staff will present final recommendations to Planning Commission	Early Spring 2013

<u>ACTIVITY</u>	<u>DATE</u>
Staff will present final recommendations to City Council incorporating feedback from the entire process	Spring 2013

Prepared and Recommended by: David Rizk, Director of Development Services
Diane Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Draft Resolution
- Attachment II: Resolution No. 12-106
- Attachment III: Minutes (partial) from the June 19, 2012 City Council meeting

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-_____

Introduced by Council Member _____

RESOLUTION EXTENDING UNTIL JUNE 26, 2013,
A HAPPY HOUR TRIAL PROGRAM ALLOWING
REDUCED PRICE ALCOHOL SALES AND MUSICAL
ENTERTAINMENT DURING SPECIFIED
TIMES AT FULL SERVICE RESTAURANTS

WHEREAS, local restaurants and the Hayward Chamber of Commerce had requested authorization to offer happy hours and musical entertainment at full-service restaurants, which activities are currently permitted under the City's Zoning Ordinance only with a conditional use permit, in order to allow Hayward's full service restaurants the opportunity to compete favorably with restaurants in surrounding communities; and

WHEREAS, on June 19, 2012, the Hayward City Council adopted Resolution No. 12-106 that allowed on a temporary six-month trial basis full-service restaurants in Hayward to offer reduced price alcohol sales with reduced price appetizers and non-alcoholic drinks from 4:00 pm to 9:00 pm, and musical entertainment without dancing until midnight (the "Happy Hour Trial Program"); and

WHEREAS, the Happy Hour Trial Program expires no later than December 26, 2012, unless extended by the City Council, and Hayward Police Department staff indicate that there has not been a noticeable increase in calls for service or criminal activity at full-service restaurants since the trial program began; and

WHEREAS, the City's Economic Development Manager indicated that there has been increased sales at restaurants and positive economic benefits since the Happy Hour Trial Program began.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Hayward hereby extends, on a temporary, trial basis for a period of six additional months (to expire not later than June 26, 2013), the existing Happy Hour Trial Program, permitting the following activities without the need to obtain a conditional use permit:

- a) Reduced price alcohol sales from 4:00 p.m. to 9:00 p.m. at full-service restaurants; provided, however, that each full-service restaurant offering reduced price alcohol beverages also offer reduced prices for appetizer food items and non-alcoholic drinks during Happy Hour; and

- b) Live or recorded music until midnight at full-service restaurants; provided, however, that dancing is not allowed with such music and such musical entertainment does not violate provisions of the City’s Noise Ordinance.

BE IT FURTHER RESOLVED, that full-service restaurants may participate in the Happy Hour Trial Program only if the restaurant operator has an ABC license in good standing and is in compliance with all applicable requirements of the City’s Municipal Code. This Happy Hour Trial Program does not confer a vested right on operators, owners and/or licensees of full-service restaurants to continue to offer happy hours and/or music after the conclusion of the Happy Hour Trial Program.

BE IT FURTHER RESOLVED, that staff is directed to return to Council with a report should an increase in incidents associated with alcohol sales at restaurants occur during the extended Happy Hour Trial Program, at which time the City Council may unilaterally terminate the Happy Hour Trial Program without further notice.

BE IT FURTHER RESOLVED, that City staff is directed to return to City Council prior to June 26, 2013, with recommended comprehensive revisions to the City’s alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of 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

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-106

Introduced by Council Member Salinas

RESOLUTION ALLOWING REDUCED PRICE ALCOHOL
SALES FROM 4:00 P.M. TO 9:00 P.M. AND MUSICAL
ENTERTAINMENT WITHOUT DANCING UNTIL MIDNIGHT
AT FULL SERVICE RESTAURANTS DURING A SIX-MONTH
TRIAL PERIOD

WHEREAS, the Hayward City Council and Hayward Planning Commission held a joint work session on January 24, 2012, to discuss possible revisions to the City of Hayward's Alcohol Beverage Outlet regulations; and

WHEREAS, local restaurants and the Hayward Chamber of Commerce have requested authorization to offer happy hours and musical entertainment at full-service restaurants, which activities are currently permitted under the City's Zoning Ordinance only with a conditional use permit, in order to allow Hayward's full service restaurants the opportunity to compete favorably with restaurants in surrounding communities; and

WHEREAS, direction was provided at the joint work session for staff to develop options for the City Council to consider, including a requirement that full-service restaurants offer reduced price appetizers and reduced price non-alcoholic drinks during happy hours, and for staff to develop a comprehensive set of revisions in the near future to address problem establishments and fiscal impacts to the City.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Hayward hereby authorizes, on a temporary, trial basis for a period of up to six months (to expire not later than December 26, 2012), a Happy Hour Trial Program, permitting the following activities without the need to obtain a conditional use permit:

a) Reduced price alcohol sales (also referred to as "Happy Hour") from 4:00 p.m. to 9:00 p.m. at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that each full-service restaurant offering reduced price alcohol beverages also offer reduced prices for appetizer food items and non-alcoholic drinks during Happy Hour; and

b) Live or recorded music until midnight at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that dancing is not allowed with such music and such musical entertainment does not violate provisions of the City's Noise Ordinance.

BE IT FURTHER RESOLVED, that full-service restaurants may participate in the Happy Hour Trial Program only if the restaurant operator has an ABC license in good standing and is in compliance with all applicable requirements of the City's Municipal Code. This Happy Hour Trial Program does not confer a vested right on operators, owners and/or licensees of full-service restaurants to continue to offer happy hours and/or music after the conclusion of the Happy Hour Trial Program.

BE IT FURTHER RESOLVED, that staff is directed to return to Council with a report should an increase in incidents associated with alcohol sales at restaurants occur during the Happy Hour Trial Program, at which time the City Council may unilaterally terminate the Happy Hour Trial Program without further notice.

BE IT FURTHER RESOLVED, that City staff is directed to return to City Council prior to December 26, 2012, with recommended comprehensive revisions to the City's alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of the City.

IN COUNCIL, HAYWARD, CALIFORNIA June 19, 2012

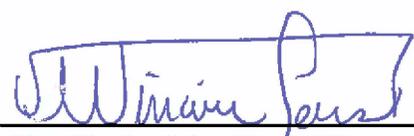
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson

NOES: COUNCIL MEMBERS: None
MAYOR: Sweeney

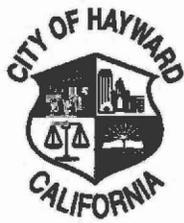
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the 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, June 19, 2012, 7:00 p.m.**

Attachment III

Resolution 12-104, "Providing Notice of Scheduled Adoption of Appropriations Limit for Fiscal Year 2013 Pursuant to Article XIII B of the Constitution of the State of California"

8. Extension of 72-Inch Effluent Pipeline Shoring at the Water Pollution Control Facility

Staff report submitted by Senior Utilities Engineer Clark, dated June 19, 2012, was filed.

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

Resolution 12-105, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with McGuire and Hester to Extend 72 Inch Effluent Pipeline Shoring at the Water Pollution Control Facility"

LEGISLATIVE BUSINESS

9. Introduction of Ordinance to Amend the Hayward Municipal Code Section 11-3.255 Regarding Sewer Connection Fees to Allow for Longer Payment Terms – Continued to June 26, 2012

Staff report submitted by City Manager David, dated June 19, 2012, was filed.

Mayor Sweeney noted that staff was recommending continuation of the item to June 26, 2012.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 7:55 p.m.

It was moved by Council Member Halliday, seconded by Council Member Henson, and carried unanimously, to continue the item to June 26, 2012.

10. Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis Happy Hours from 4:00 to 9:00 p.m. and Music until 10:00 p.m. at Full-Service Restaurants

Staff report submitted by Director of Development Services Rizk and Chief of Police Urban, dated June 19, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report.

Council Member Zermeño asked about the prohibition of dancing during the trial period. Development Services Director Rizk noted that dancing could be allowed with a conditional use permit and he added that the recommendation was for music to be complementary to a full-service restaurant dining experience.

In response to Council Member Henson's inquiry related to dancing, Police Chief Urban said that music was secondary to the full-service dining experience and reiterated that dancing could be allowed by applying for a conditional use permit. Mr. Henson supported the proposed licensee education classes/trainings (LEADS) that the Hayward Police Department and the Department of Alcohol Beverage Control (ABC) plan to offer to ABC establishments.

In response to Council Member Halliday's inquiry related to the terms of Applebee's happy hour, Development Services Director Rizk noted that Applebee's Conditional Use Permit did not specify happy hour and he added that staff will look into an enforcement mechanism.

Mayor Sweeney opened the public hearing at 8:08 p.m.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, spoke on behalf of Hayward Chamber restaurant owners expressing support for the staff recommendation and noting that the current prohibition of reduced price alcohol sales places restaurant and chains at a disadvantage. Mr. Huggett added that musical entertainment improves the quality of life and would add to the success of local restaurants.

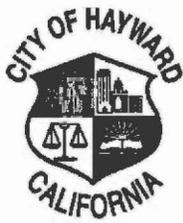
Ms. Francesca Lomotan, Second Street resident and representing the Hayward Coalition for Healthy Youth, spoke in support of allowing, on a trial basis, happy hours and musical entertainment at full service restaurants with three amendments: change happy hours from 5:00 to 7:00 p.m., remove "all you can drink" and "two for one" specials. Ms. Lomotan said the proposed amendments would reduce the possibility of binge drinking and over-consumption. Ms. Lomotan urged Council to support the Coalition's recommendations.

Mr. Ravai Bhatnagar, representing the Golden Peacock Banquet and Restaurant on Santa Clara Street, expressed support for the trial period in which happy hours and musical entertainment would be allowed. Mr. Bhatnagar also welcomed the licensee education classes/training. He added that dancing would allow Hayward restaurants to be competitive with other cities.

Mr. Tony Everfield, representing Mimi's Café on Hesperian Boulevard, mentioned that happy hour increased low volume sales, increased patronage, and allowed establishments to hire more employees. Mr. Everfield emphasized the importance of a good management team that would not allow underage drinking or binge drinking.

Mr. Ronald Gruel, Voyager Way resident, supported restricting happy hours from 5:00 to 7:00 p.m. Mr. Gruel urged Council to consider the current prohibitions carefully. He noted that dancing could cause negative situations and he mentioned there was a high density of liquor licenses in Hayward.

Mr. Richmond Apande, prospective B Street business owner, spoke in support of the staff recommendation. Mr. Apande noted that surrounding cities that offer happy hour promotions



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Tuesday, June 19, 2012, 7:00 p.m.

Attachment III

generate more business. He added that he would take proper measures to keep customers safe, bring entertainment, and provide appropriate training for his employees.

Mr. Aric Yererino, representing the Dirty Bird Lounge on Mission Boulevard, spoke in support of the staff recommendation. Mr. Yererino said he planned on opening a full service restaurant in downtown, but current regulations created roadblocks to open a successful downtown business. He mentioned Hayward needed to attract a younger population.

Ms. Monica Thompkins, Stonehaven Court resident and ME Restaurant owner, thanked Chief Urban for Police department support in providing the licensee education classes/training and asked Council to consider the staff recommendation. Ms. Thompkins mentioned that the happy hour promotion would generate revenue, walk-in-traffic, and needed jobs.

Mr. Ronnie Stewart, Executive Director of the Blues Society, spoke in support of the staff recommendation and, as a musician, commented that happy hours helped improve economic vitality and create a destination point. He also noted that the happy hour time frame could be extended.

Mr. Jason Jago, Elephant Bar Restaurant District Manager, noted that the Hayward location was the only restaurant that did not have a happy hour and added that through social media, Yelp being one, he received complaints from customers. Mr. Jago mentioned that Elephant Bar Restaurants provide alcohol awareness training for its employees and said that staff was responsible for alerting management if there were any alcohol-related issues.

Mayor Sweeney closed the public hearing at 8:39 p.m.

Council Member Salinas indicated he was in support of the staff recommendation noting the City needed to develop strategies for businesses to generate revenue. Mr. Salinas mentioned he frequents downtown establishments in order to patronize local businesses, along with other young urban professionals, and he had not witnessed any problems. Mr. Salinas noted that college students relayed to him that there was nothing to do in the downtown. Mr. Salinas supported the staff recommendation with an amendment to extend live or recorded musical entertainment from 10:00 p.m. to midnight.

Council Member Quirk seconded the motion. In response to Council Member Quirk's inquiry about the Police Department foreseeing any problems with extending musical entertainment until midnight, Police Chief Urban said the trial period would be a great opportunity to evaluate all concerns. Development Services Director Rizk noted that music must be in compliance with the Noise Ordinance.

Council Member Zermeño said he was in support of the staff recommendation and the amendment to extend musical entertainment until midnight. Mr. Zermeño pointed out that there would be consequences if businesses did not abide by the regulations and commented that the

recommendations offered by Ms. Lomotan were unnecessary. In response to Mr. Zermeño's inquiry, Development Services Director Rizk indicated that if an establishment wanted to allow dancing, it would need to apply for a Conditional Use Permit which would go to the Planning Commission and noticed as a public hearing.

Council Member Peixoto was in support of the staff report. Mr. Peixoto indicated that one of Council's priorities was to revitalize downtown and he noted that by allowing, on a trial basis, happy hours, more restaurants would come into downtown and generate needed revenue. He noted that effective management was a significant factor for problematic alcohol-serving establishments.

Council Member Henson was strongly in favor of allowing, on a trial basis, happy hours, noting it would help revitalize downtown and other areas where full-service restaurants were in operation. Mr. Henson added that the temporary revisions would make the City competitive, and if missteps happened during the trial period, he suggested allowing them to work it out through training. He was in favor of allowing dancing during the trial period.

Council Member Halliday supported the staff recommendation noting that happy hours would create equity for Hayward's full-service restaurants with other cities. Ms. Halliday mentioned downtown was a good place for entertainment, and noted that establishments that provide music and dancing in other residential areas of the City needed to use common sense and comply with the Noise Ordinance. She said she was in support of the motion because this was a trial period that would provide an opportunity to see how it worked while staff developed more permanent regulations.

Council Member Quirk offered an amendment to the motion directing staff to assess a suitable regulation to allow dancing after the trial period without disrupting the restaurant business. Council Member Salinas was amenable to the motion.

Mayor Sweeney noted that he was going to vote against the motion because of his concern with happy hours. Mr. Sweeney noted that "two for one" and "all you can drink" specials did not encourage patrons to reduce the amount of drinks. He added that drinking and encouraging drinking often leads to tragedy. He noted that Council's first priority was to protect the public. He did not agree that extending happy hour opportunities would improve economic activity.

It was moved by Council Member Salinas, seconded by Council Member Quirk, and carried with Mayor Sweeney voting against, to adopt the staff recommendation with an amendment to allow until midnight, during a six-month trial period, recorded or live musical entertainment without dancing at full service restaurants, and to direct staff to assess the possibility of allowing dancing after the trial period.

Resolution 12-106, "Resolution Allowing Reduced Price Alcohol Sales from 4:00 P.M. to 9:00 P.M. and Musical Entertainment without Dancing until Midnight at Full Service Restaurants During a Six-Month Trial Period"



CITY OF
HAYWARD
HEART OF THE BAY

DATE: December 4, 2012

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Bay Area Water Supply and Conservation Agency Bond for San Francisco
Public Utilities Commission Debt Repayment

RECOMMENDATION

That City Council approves the attached resolution authorizing the Bay Area Water Supply and Conservation Agency (“BAWSCA”) to prepay the City’s portion of a \$367 million debt owed by the BAWSCA agency members to the City and County of San Francisco (“San Francisco”); and to agree to make wholesale water purchase surcharge payments to BAWSCA in order to repay the City’s share of bonds to be sold by BAWSCA. These bonds will provide BAWSCA with the source of funds to prepay the debt owed to San Francisco.

BACKGROUND

The City of Hayward (the “City”) contracts with San Francisco to purchase water pursuant to a Water Supply Agreement, dated July 2009 (the “WSA”). The City is also a member of BAWSCA, which represents the interests of twenty-four cities and water districts, and two private utilities (collectively, the “Wholesale Customers” or “Members”). These members, through BAWSCA, purchase water wholesale from the San Francisco regional water system. Pursuant to the 2009 WSA, the Wholesale Customers agreed to pay San Francisco for capital improvements undertaken by San Francisco that benefited the Members prior to their entering into the WSA (the “Prior Debt”). The prior debt was to be repaid over a twenty-five year period at a fixed interest rate of 5.13%. Approximately \$367 million of the prior debt remains outstanding. Each Wholesale Customer currently pays for its share of the prior debt in the form of a capital cost recovery charge, which is one of many components used to establish the annual wholesale water rate it pays to San Francisco.

DISCUSSION

The WSA provides that the Wholesale Customers, acting through BAWSCA, may prepay capital debt payments due to San Francisco on existing regional assets. BAWSCA is authorized by statute to issue bonds in order to make this prepayment. On the advice of its financial advisor (KNN), BAWSCA believes that Members could realize net present value (“NPV”) debt service savings of at least 6% of the prior debt and possibly as much as 9%. The Government Finance Officers Association has adopted a minimum NPV savings target of 3% of the par amount of refunding bonds as a “best practices” standard. Total NPV savings are expected to equal or exceed this best practices standard.

BAWSCA proposes to issue bonds in an amount sufficient to prepay the entire prior debt and imposing a new wholesale water purchase surcharge on participating Members, to be collected by San Francisco as part of its monthly water bill, to repay their respective shares of the bonds issued by BAWSCA to pay off the prior debt.

Each Member electing to have BAWSCA prepay its share of the prior debt is asked to adopt a participant resolution. The intent is that all Member agencies participate in the bond issuance for maximum benefit – and it currently appears that all intend to participate. Failure of an agency to participate would reduce the amount of Prior Debt that is pre-paid and change the distribution of debt service cost among the participating agencies. Adoption of the resolution confirms that the Member is electing to participate in the prepayment of the prior debt and directs the Member's staff to assist BAWSCA in completing the issuance of bonds by BAWSCA. The resolution requires certain certifications relating to Hayward's outstanding water revenue bonds, which certifications have been reviewed by the City's Financial Advisor (NHA Advisors) and the City Attorney. Each has determined that the City can make these certifications. These certifications are as follows:

- (A) Certify that the Prepayment has been duly authorized by the City and will not violate any law or agreement (including agreements respecting obligations providing for the issuance of debt secured by the revenues of the City's water enterprise);
- (B) Certify that payment of the Surcharge by the City will constitute an operation and maintenance expense of the City's water enterprise payable from the revenues of the City's water enterprise prior to the payment of obligations payable from the net revenues of the City's water enterprise;
- (C) Certify that any information respecting the City and the City's water enterprise and the financial and operating data respecting the City's water enterprise included or incorporated by reference in the Official Statement delivered by BAWSCA in connection with the sale and issuance of the Bonds is true and correct; and
- (D) Execute and deliver any continuing disclosure undertaking, or agreement to assist BAWSCA in connection with any BAWSCA continuing disclosure undertaking, required in connection with the sale of the Bonds.

BAWSCA does not operate under a water enterprise fund structure and therefore has never issued revenue bonds. The proposed bond structure for BAWSCA will have a unique credit structure that the bond market has not previously encountered. Based on preliminary feedback from the underwriter, a rating projection and interest rates expectations have been made that are expected to generate savings to all Members. After further discussions with the City's financial advisor (NHA Advisors), staff believes that the financial benefit of the proposed BAWSCA bond will be significant and recommends approval of the resolution. Any savings generated through the issuance of the BAWSCA bond will reduce the demand on the City's water fund and customer rates.

In order to repay the prior debt, BAWSCA will issue a combination of taxable and tax-exempt revenue bonds. Taxable bonds, which typically carry slightly higher interest rates, are necessary to fund that portion of the transaction that benefits Stanford University and the California Water Service Company, neither of which can take advantage of tax-exempt bonds for this transaction. The blended cost on this debt will be shared by Members in proportion to their respective water purchases in the form of a water purchase surcharge that will be rolled into the wholesale water rate

paid to San Francisco by each Member. The water purchase surcharges will be forwarded to a bond trustee that will use this revenue to pay debt service on the bonds. The bonds will be secured solely by the water purchase surcharges and a stabilization fund initially funded with bond proceeds, and not by the water enterprise revenues of the Members or of San Francisco.

BAWSCA bonds will not be an obligation of any Member, and BAWSCA's failure to pay its bonds will not constitute a default by any Member. Should any Member fail to pay its water purchase surcharge, BAWSCA will rely on a stabilization fund (which will be funded from bond proceeds at 50% of maximum annual debt service) that will serve as a debt service reserve fund and be used to make debt service payments in the year of the shortfall, and will collect the shortfall in the subsequent year from Members by adjusting the water purchase surcharge. BAWSCA and the SFPUC will be required to pursue legal remedies against the defaulting Member to enforce their obligation to pay water purchase surcharges.

This risk of bearing the debt service expense of a defaulting Member is no different than the risk each Member currently assumes on the prior debt under the WSA. Under the WSA, San Francisco maintains a balancing account. If its revenues collected are less than its revenue requirement (due to either a Member's default or lower than expected water consumption), San Francisco will use the balancing account to fund the revenue deficiency, and increase the wholesale water rate in the subsequent year to make up for the prior year shortfall and reimburse the balancing account.

Under the existing prior debt repayment structure, because all costs are based on water consumption, each Member pays proportionately more of the prior debt as its water consumption increases relative to other Members – its share of the prior debt principal and interest increases. Likewise, if a Member reduces its percentage of water purchases, it pays less of the prior debt principal and interest. Because the debt service on the proposed bonds will be allocated via a water purchase surcharge based on water consumption, this payment structure will not change.

ECONOMIC IMPACT

This action will not impact the City of Hayward's debt threshold or be considered debt held by the City. The fundamental economic impact will be the reduction in the City's and all member agency's water purchase costs.

FISCAL IMPACT

Savings to each Member can only be estimated at this time. Actual savings will depend on the ratings on the bonds, investor reception to the credit structure, market interest rates in effect when bonds are expected to be sold (currently estimated to be January 2013), and the actual share of water purchases each Member makes in every year when surcharges are collected. Taking into account bond pricing uncertainty, BAWSCA estimates that the net present value ("NPV") savings to be realized by the City will range from \$2,100,000 to \$3,600,000 over the 21.5 year term of the bonds. These savings reflect the 6% to 9% NPV saving range discussed under earlier.

Hayward represents the largest participating municipal agency and the second largest agency overall in BAWSCA. Assuming no change in the City's future water consumption, these total NPV savings figures translate into a projected annual value savings that range from \$100,000 to \$170,000 – depending on the actual result of the bond issuance. The City currently spends about \$24 million in water purchase costs each year. Because each Participating Member's repayment of the prior

debt is proportional to the amount of water purchased, if the City's water consumption rises over this period relative to other wholesale customers, its savings will rise as well. Conversely, the savings will fall if the City's water consumption declines relative to other wholesale customers.

The bond resolution to be adopted by the BAWSCA Board, among other limits, requires net present value debt service savings of at least 3% of the prior debt. Below is a summary that shows the projected sources and uses of bond funds.

Projected Sources of Funds
Total Bond Proceeds \$383,000,000

Projected Uses of Funds
Prior Debt Prepayment \$367,700,000
Stabilization Fund 13,100,000
Financing Costs 2,200,000
Total Uses \$383,000,000

ALTERNATIVE ACTION

The City is under no obligation to participate in this financing. If the Council elects not to participate, it would not pass the requested resolution. If less than all of the Members participate, then only a portion of the prior debt will be prepaid. The City would continue to repay its outstanding share of the prior debt at 5.13% interest rates as it has historically done.

Prepared by: Tracy Vesely, Director of Finance

Recommended by:

Tracy Vesely, Director of Finance
Alex Ameri, Director of Public Works Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
AUTHORIZING THE MAKING OF A PREPAYMENT UNDER A WATER SUPPLY
AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO AND
RELATED MATTERS

WHEREAS, the City and County of San Francisco (“San Francisco”) and wholesale water customers of San Francisco in Alameda County, San Mateo County and Santa Clara County (the “Wholesale Customers”), including the City of Hayward (the “City”), have entered into a Water Supply Agreement, dated July 2009 (the “WSA”), providing for the sale of water by San Francisco to the Wholesale Customers;

WHEREAS, the City and other Wholesale Customers are members of the Bay Area Water Supply and Conservation Agency (“BAWSCA”);

WHEREAS, pursuant to the terms of the WSA, the cost of water paid by the Wholesale Customers (including the City) includes a component designed to provide San Francisco capital cost recovery for existing regional assets (“ERA Payments”);

WHEREAS, the WSA provides that the Wholesale Customers, acting through BAWSCA, may prepay the remaining principal balance of the ERA Payments, in whole or in part;

WHEREAS, substantial savings over the term of the WSA may be achievable through the prepayment through BAWSCA (the “Prepayment”) of the ERA Payments to be made by Wholesale Customers participating in such Prepayment (the “Prepayment Participants”);

WHEREAS, BAWSCA proposes to finance the Prepayment through an issuance of revenue bonds (the “Bonds”) by BAWSCA;

WHEREAS, to pay debt service on the Bonds, to maintain required reserves and to satisfy BAWSCA’s other obligations related to the Bonds, BAWSCA will impose charges on Prepayment Participants, which may be in the form of surcharges on water sold by San Francisco to Prepayment Participants under the WSA (the “Surcharge”);

WHEREAS, the Surcharge is expected to be payable by the Prepayment Participants to San Francisco (for delivery to BAWSCA) together with the Prepayment Participants’ other payments to San Francisco under the WSA;

WHEREAS, the issuance of the Bonds and the making of the Prepayment are subject to a variety of conditions, including a determination by BAWSCA that savings for Prepayment Participants can be achieved thereby;

WHEREAS, this City Council has determined that it is in the best interests of the City for the City to be a Prepayment Participant;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD AS FOLLOWS:

Section 1. The City hereby elects to be a Prepayment Participant and hereby authorizes BAWSCA to make the Prepayment on behalf of the City.

Section 2. The City Manager, Assistant City Manager and Director of Finance of the City are each, acting individually, hereby authorized and directed to take, for and on behalf of the City, all such actions by the City as shall be necessary to enable BAWSCA to issue and sell the Bonds and make the Prepayment, including, without limitation, the following:

(A) Certify that the Prepayment has been duly authorized by the City and will not violate any law or agreement (including agreements respecting obligations providing for the issuance of debt secured by the revenues of the City's water enterprise);

[(B) Certify that payment of the Surcharge by the City will constitute an operation and maintenance expense of the City's water enterprise payable from the revenues of the City's water enterprise prior to the payment of obligations payable from the net revenues of the City's water enterprise;

(C) Certify that any information respecting the City and the City's water enterprise and the financial and operating data respecting the City's water enterprise included or incorporated by reference in the Official Statement delivered by BAWSCA in connection with the sale and issuance of the Bonds is true and correct; and

(D) Execute and deliver any continuing disclosure undertaking, or agreement to assist BAWSCA in connection with any BAWSCA continuing disclosure undertaking, required in connection with the sale of the Bonds.

Section 3. All actions heretofore taken by any officers, employees, or agents of the City with respect to the Prepayment and the issuance of Bonds are hereby approved, confirmed and ratified; and any such other officers, employees, or agents of the City as may be authorized by the City Manager are hereby authorized and directed, for and in the name of and on behalf of the City, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or desirable to carry out, give effect to and comply with the terms and intent of this Resolution.

Section 4. This Resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA December 4, 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

City Clerk

DATE: December 4, 2012
TO: Mayor and City Council
FROM: Director of Finance
SUBJECT: FY 2012 General Fund Year-end Review

RECOMMENDATION

That Council reviews and comments on this report.

BACKGROUND

The Finance Department is currently working with the City's outside auditor to develop and finalize the financial statements for the period ending June 30, 2012 (FY 2012). The full results of the audit and the FY 2012 Comprehensive Annual Financial Report (CAFR) are currently scheduled to be presented to Council in January 2013.

In the meantime, staff would like to provide City Council with a preliminary review of the FY 2012 year-end performance for the General Fund. Attachment I (General Fund Statement of Revenues, Expenditures and Changes in Fund Balances) presents a section of the draft audit document that displays actual-to-budgeted revenues and expenditures for FY 2012 (fiscal year ending June 30, 2012). This chart is generally used to communicate year-end performance of the General Fund in the final CAFR document.

Following considerable expenditure reductions and employee concessions, the City Council adopted the FY 2012 budget in June 2011. As part of the budget, Council agreed to use \$4.2 million of the General Fund Reserve as a one-time measure to close the remaining budget gap. The initial revenue projections for FY 2012 were appropriately conservative, given the volatile economy and the rapid loss of Hayward sales and property tax revenues in the preceding periods. In February 2012, Council revised its year-end outlook based on "year-to-date" revenue and expenditure projections, reducing the assumed use of the General Fund Reserve to \$3.4 million.

Preliminary FY 2012 year-end data indicate the need for use of the General Fund Reserve of about \$1.73 million, which is a \$1.7 million improvement over the adjusted projections – entirely attributed to increases in revenue, some one-time in nature. While there are some positive revenue returns, which are discussed in detail later in this report, overall operating costs continue to exceed available revenues. The negative effects of the sluggish economy are still impacting City revenues; property tax revenues remained flat in FY 2012 over FY 2011 and ended 0.7% below revised projections. In addition, future revenue projections will assume very mild growth based on the current economic indicators. Given this fact and cost increases to operations, the City will continue to face a structural gap or operating deficit in upcoming years without additional cost reductions.

DISCUSSION

Preliminarily, FY 2012 ended the year with a \$1.73 million in use of reserves (compared to the \$3.4 million revised projection from February 2012). Table 1 compares the FY 2012 actuals to the FY 2012 Adjusted Budget to gauge performance against revised expectations. Given the uncertainty of the economy and its impacts on local revenues, a 2.3% variance between projected and actual revenues is a reasonable margin, and is well within the 3% variance established by industry standards.

Table 1 – Net Change to Fund Balance

(\$ in 1,000's)	FY 2012 Adopted	Mid Year		Variance	
		FY 2012 Adjusted	FY 2012 Actual	(Adjusted to Actual)	Variance %
Revenues	112,134	112,850	115,465	2,615	2.3%
Expenditures	113,625	113,574	113,994	(420)	0.4%
Transfers In/Out	(2,722)	(2,723)	(3,200)	(477)	17.5%
Net Change in Fund Balance	(4,213)	(3,447)	(1,729)	(1,718)	-49.8%

The net variance between FY 2012 actuals and the Adjusted Budget is \$1.72 million, and is largely attributed to revenues.

- ❑ Of the \$2.6 million in revenue variance from the Adjusted Budget, about \$1.3 million is considered to be non-recurring as explained later in the report.
- ❑ The \$420,000 in expenditure variance from the Adjusted Budget was caused by various factors, the most predominant being labor costs, and further discussed later in the report.
- ❑ The \$477,000 variance in transfers is primarily due to:
 - Transfers in to the General Fund were reduced due to the loss of cost allocation revenues from the former Redevelopment Agency and a loss of revenues due to an expired grant that was incorrectly budgeted.
 - Transfers out of the General Fund increased due to adjustments to transfers to the Library Grant Fund, Equipment Maintenance Fund and the Capital Projects Fund for projects and activities that came up after the budget was adopted; each of which was approved by Council action during the course of the year.

While the year-end use of Reserves is about half of what was anticipated, the City is still facing a General Fund structural gap. This outcome (and future year projections in the General Fund Ten-Year Plan) indicates the need for additional balancing measures to further preserve the City's critical General Fund reserves and to continue progress in the implementation of long-term structural financial balancing.

FY 2012 General Fund Revenues

Table 2 presents a summary of the General Fund revenues (exclusive of Transfers In) as categorized in the CAFR. Overall, City revenues performed \$2.6 million better than projected compared to the Adjusted Budget – a 2.3% positive variance.

This good news is tempered with the fact that much of this revenue is one-time in nature. In addition, the City's single largest revenue source, Property Taxes, continues to see a slight decline over revised projections due to the slowly recovering real estate market.

Table 2 – City General Fund Revenues

Revenue (\$ in 1,000's)	Mid Year			Variance	
	FY 2012 Adopted	FY 2012 Adjusted	FY 2012 Actual	(Adjusted to Actual)	Variance %
Property Tax	36,654	35,960	35,716	(244)	-0.7%
Sales Tax	23,647	25,777	26,346	569	2.2%
Real Property Transfer Tax	3,491	3,500	4,778	1,278	36.5%
Utility Users Tax	14,800	14,800	14,797	(3)	0.0%
Business License Tax	2,400	2,400	2,483	83	3.5%
Other Taxes	12,049	12,193	13,366	1,173	9.6%
Licenses & Permits	3,056	3,056	3,178	122	4.0%
Fines & Forfeitures	2,410	2,488	2,403	(85)	-3.4%
Investment & Rental Income	526	450	510	60	13.3%
Intergovernmental	4,490	4,233	3,716	(517)	-12.2%
Fees & Charges for Services	4,918	4,265	4,375	110	2.6%
Other Revenue	3,693	3,728	3,797	69	1.9%
Total	112,134	112,850	115,465	2,615	2.3%

Variance Analysis

Sales Tax: +\$569,000 (mostly due to one-time sales tax receipts)

Sales Tax comprises about 23% of General Fund revenue. Our recent quarterly meeting with MuniServices, the City's Sales Tax audit consultant, affirmed the City's current sales tax revenue projections – which reflect a modest future growth in Sales Tax revenues of about 3-5%.

As a result of audit efforts in FY 2012, the City received revenues from the collection of “back taxes” owed to the City. The City also received use tax payments generated by large equipment purchases by companies doing business in the City. Both the collection of back taxes and use taxes for large purchases are one-time in nature, therefore almost all of the \$569,000 is considered to be non-recurring revenue and will not be considered in future revenue projections.

Property Transfer Tax: + \$1,278,000 (\$850K one-time and \$428K in recurring new revenue)

Property Transfer Tax is a volatile revenue category directly linked to the performance of the real estate market. The substantial increase in FY 2012 was due primarily to the sale and transfer of a large parcel located in the Hayward Business Park (about \$850,000). This was an unusual and large transaction and is not expected to be recurring in nature. While future projections will not include this “spike,” the market seems to indicate a slight improvement and positive adjustments to future projections may be warranted.

Other Taxes: +\$1,173,000 (recurring new revenue)

This category relates to revenue received from Franchise Fees, Transient Occupancy Tax, Construction Tax, and Excise Tax revenue. Since most of these revenues are considered recurring in nature, although volatile in the current economy, staff will consider adjustments to future projections in accordance with these returns. Any revisions to current year revenues will be

presented to City Council during the second quarter update in February 2013. Table 3 provides a summary of these other taxes and a brief variance analysis for the key revenue differences.

Table 3 – Other Taxes

Description (\$ in 1,000's)	Variance
Franchise Fees	\$809,000
Transient Occupancy Tax	\$76,000
Construction Tax	\$114,000
Aggregate net total of all other taxes	\$174,000
Total Variance	\$1,173,000

❑ *Franchise Fees: +\$809,000*

The majority of the increase in Franchise Fees revenue is derived from four main sources:

- Waste Management fees increased \$214,000 above projected.
- New Special Assessment on delinquent garbage bills brought in \$103,000.
- Cable TV generated \$217,000 above projected.
- Water Franchise Fees provided an increase of \$188,000 which can be attributed to the increase in water rates (October 2011).

❑ *Transient Occupancy Tax and Construction Tax: +\$190,000*

The positive variance to these two taxes can be linked to a conservative rebound in the economy. Whether this revenue increase will be ongoing in nature is yet to be determined; however, staff will consider these increases as part of future projection analyses.

Intergovernmental: -\$517,000 (one-time loss of revenue)

This category captures revenues received from State and Federal funding sources. As seen in Table 4, reimbursements for the Police TCS Checkpoint Program and the HPA Y Grant Reimbursement (totaling \$463,000) comprise the majority of this variance. While the grant funds were fully received and expended appropriately in prior years, the associated revenue budget was duplicated in error in FY 2012—creating a budget variance.

Table 4 – Intergovernmental Revenues

Description (\$ in 1,000's)	Variance
Police TCS Checkpoint Program Grant	(217,000)
HPA Y Grant Reimbursement	(246,000)
Aggregate net total of all other activities	(54,000)
Total Variance	(517,000)

FY 2012 General Fund Expenditures

Table 5 provides a summary of General Fund expenditures (exclusive of Transfers Out) as categorized in the draft CAFR. Attachment II provides a summary of Expenditures by department and spending category as well.

Table 5 – General Fund Expenditure Summary

Expenditures (\$ in 1,000's)	Mid Year		Variance		
	FY 2012 Adopted	FY 2012 Adjusted	FY 2012 Actual	(Adjusted to Actual)	Variance %
General Government	9,983	9,273	8,924	349	3.9%
Public Safety	88,135	89,082	89,879	(797)	-0.9%
Public Works/Transportation	1,732	1,576	1,539	37	2.4%
Library & Community Services	4,856	5,032	4,763	269	5.6%
Planning & Building	5,157	5,063	5,059	4	0.1%
Maintenance Services	3,762	3,548	3,830	(282)	-7.4%
Total	113,625	113,574	113,994	(420)	-0.4%

Of the approximately \$420,000 net overage (negative variance) between actual and budgeted expenditures, the majority can be directly attributed to salary and benefit related costs and savings. Key variances are discussed below. Table 5 is a summary of various expense categories. The variance analysis below provides detail by department – and a summary of expenditures by department can be found in Attachment II.

Variance Analysis

General Government: +\$349,000 (net savings)

Areas of significant variance under General Government category occurred within the City Manager’s Office, the City Clerk’s Office, and the Human Resources Department. The City Manager’s Office exceeded the adjusted budget by \$130,000. This was due primarily to two unbudgeted positions: one of which was added after budget adoption, and a position that is shared with another department that was not appropriately budgeted. The funding for these positions was excluded from the budget in error and has been corrected in FY 2013.

However, both the Office of the City Clerk and the Human Resources Department had significant budgetary savings. The City Clerk realized \$94,000 in savings due to less than expected election costs from the County; and the Human Resources Department realized \$385,000 in savings due to a managed decrease in Unemployment Benefit costs.

Public Safety: -\$797,000 (over expenditure)

The major portion of the negative expenditure variance in Public Safety occurred in the Fire Department (\$775,000) – with the balance (\$22,000) attributed to the Police Department. These negative variances are almost entirely due to labor costs – and largely driven by elements not in the direct control of department management. Revenues generated by the Fire Department in the amount of about \$329,000 help to offset the over-expenditure. These revenues are captured in the Licenses & Permits and the Fees and Service Charges revenue categories.

Fire Department Summary: In addition to the significant cost savings of about \$3.2 million realized through labor concessions generated by the Firefighters Association (Local 1909) and other department bargaining units, the department as a whole incurred additional budget reduction measures in FY 2012, including a target vacancy savings (for all department staff) and furlough savings (for non-sworn staff) totaling \$369,000.

During FY 2012, the department experienced a significant amount of used leave by sworn employees (Workers' Compensation, vacation, etc.). In order to maintain minimum staffing, it was necessary to backfill these positions through the use of overtime. Some of this leave was taken to help reduce accrued leave balances and future leave liability as directed by the City Manager.

An additional budget balancing measure in FY 2012 was a reduction of about \$314,000 to Fire Department overtime budget (over FY 2011 adopted levels). The net impact of the increased amount of used leave and the overtime budget reduction caused the department to exceed budgeted overtime by \$690,000. Although the Fire Department recorded approximately \$156,000 in net salary savings, it was not enough to offset the overtime costs. As an improvement to the City's budgeting approach, the Fire Department's overtime budget was restored in FY 2013 to more directly reflect normal staffing trends.

In addition to the increased overtime costs, the department experienced a number of retirements and incurred payouts totaling \$241,000 for accrued leave. ¹These payout costs were not directly budgeted and the department has no direct control over these retirement costs.

Library & Community Services: +\$269,000 (savings)

The \$269,000 positive variance shown for the Library & Community Services is due to the relocation of grant expenditures from the General Fund into a new separate grant fund. The associated revenues were transferred as well. These budgeted expenditures should have been reduced when the program was moved out of the General Fund – but this failed to occur – hence the budget variance.

Maintenance Services: -\$282,000 (over expenditure)

The over-expenditure in Maintenance Services was generated primarily by labor-related costs, which can be best described as “direct” labor costs and “other” labor costs.

- ❑ Several factors caused salaries and benefits (direct costs) to exceed the budget by \$158,500:
 - Some positions were budgeted at lower pay steps, but filled at higher pay steps for a variety of unanticipated reasons;
 - Acting, Special Assignment, and Differential Pay, was assigned to several positions, but was not budgeted; and
 - A \$41,000 target vacancy savings was included as a balancing measure, but since the department maintained full staffing for the year, the savings was not realized.

- ❑ Interdepartmental charges (other labor costs) are charges to other funds for work performed by the Maintenance Services staff at the request of the other departments or as part of a multi-departmental project – and charged to other funds (resulting in a savings to the General Fund). These charges were about \$123,500 less than anticipated in the budget.

As a positive note, the department earned revenues from parking citations that exceeded adjusted expectations by about \$127,000.

¹ Leave payouts have historically been unbudgeted and absorbed within department salary savings generated by position vacancies. As staffing has reduced, these savings are no longer a realistic mechanism to fund this liability expense. As part of the FY 2014 budget process, staff is reviewing a way to fund accrued leave payouts within the budget to mitigate and proactively fund this unfunded liability.

PUBLIC CONTACT

The Council Budget & Finance Committee reviewed, discussed, and commented on a draft of this report on November 26, 2012.

FISCAL IMPACT

For FY 2012, the City ended with a \$1.73 million gap or deficit. This gap, while less than projected, resulted in the use of the \$1.73 million in General Fund Reserve to balance the budget.

NEXT STEPS

The final FY 2012 audit report will be submitted to City Council in January 2013. Financial statements developed as part of the audit are critically important as they serve to set the groundwork for future financial planning, such as the City's ten-year financial plan and establishing the baseline budget for FY 2014.

Staff will be providing Council with a comprehensive FY 2013 second quarter update and General Fund Ten-Year Plan review in early February 2013. It is important to note that staff will carefully and thoroughly evaluate future revenues and expenditures to ensure that any one-time "spikes" to projections (i.e. deferred payments from the State, one-time reimbursements, etc.) are not included in projections unless verified as warranted.

Prepared and Recommended by: Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachment I: FY 2012 Statement of Revenues, Expenditures and Changes in Fund Balance
Attachment II: Summary of FY 2012 Expenditures by Department & Category

CITY OF HAYWARD
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2012

	<u>Budgeted Amounts</u>		<u>Actual Amounts Budgetary Basis</u>	<u>Variance with Adjusted Budget Positive (Negative)</u>
	<u>Adopted</u>	<u>Adjusted</u>		<u>(Negative)</u>
REVENUES:				
Property taxes	\$36,654,000	\$35,960,000	\$35,716,000	(\$244,000)
Real Property Transfer Tax	3,491,000	3,500,000	4,778,000	1,278,000
Sales taxes	23,647,000	25,777,000	26,346,000	569,000
Utility users tax	14,800,000	14,800,000	14,797,000	(3,000)
Business License Tax	2,400,000	2,400,000	2,483,000	83,000
Other taxes	12,049,000	12,193,000	13,366,000	1,173,000
Licenses and permits	3,056,000	3,056,000	3,178,000	122,000
Fines and forfeitures	2,410,000	2,488,000	2,403,000	(85,000)
Investment & Rental Income	526,000	450,000	510,000	60,000
Intergovernmental	4,490,000	4,233,000	3,716,000	(517,000)
Fees and charges for services	4,918,000	4,265,000	4,375,000	110,000
Other revenue	3,693,000	3,728,000	3,797,000	69,000
Total Revenues	112,134,000	112,850,000	115,465,000	2,615,000
EXPENDITURES:				
Current:				
General government	9,983,000	9,273,000	8,924,000	349,000
Public safety	88,135,000	89,082,000	89,879,000	(797,000)
Public works and transportation	1,732,000	1,576,000	1,539,000	37,000
Library and community services	4,856,000	5,032,000	4,763,000	269,000
Planning and building	5,157,000	5,063,000	5,059,000	4,000
Maintenance services	3,762,000	3,548,000	3,830,000	(282,000)
Capital outlay	0	0	0	0
Debt Service:	0	0	0	0
Principal	0	0	0	0
Interest and fiscal charges	0	0	0	0
Total Expenditures	113,625,000	113,574,000	113,994,000	(420,000)
EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES	(1,491,000)	(724,000)	1,471,000	2,195,000
OTHER FINANCING SOURCES (USES):				
Proceeds from sale of capital assets	0	0	0	0
Transfers in	5,607,000	5,606,000	5,314,000	(292,000)
Transfers (out)	(8,329,000)	(8,329,000)	(8,514,000)	(185,000)
Total Other Financing Sources (Uses)	(2,722,000)	(2,723,000)	(3,200,000)	(477,000)
NET CHANGE IN FUND BALANCE - BUDGET BASIS	(4,213,000)	(3,447,000)	(1,729,000)	\$1,718,000

FY 2012 Expenditures by City Department and Expense Category

Expenditures by Department

Expenditures (\$ in 1,000's)	Mid Year			Variance	
	FY 2012 Adopted	FY 2012 Adjusted	FY 2012 Actual	(Adjusted to Actual)	Variance %
Mayor & Council	506	503	495	8	1.6%
City Manager	2,912	2,622	2,755	(133)	-5.1%
City Attorney	1,019	975	963	12	1.2%
City Clerk	763	858	764	94	11.0%
Development Services	5,157	5,063	5,059	4	0.1%
Human Resources	1,871	1,380	995	385	27.9%
Finance	2,912	2,935	2,952	(17)	-0.6%
Police	58,037	58,804	58,826	(22)	0.0%
Fire	30,098	30,278	31,053	(775)	-2.6%
Public Works-Engineering & Transportation	1,701	1,545	1,510	35	2.3%
Public Works-Utilities & Env Services	31	31	29	2	6.5%
Library & Community Services	4,856	5,032	4,763	269	5.3%
Maintenance Services	3,762	3,548	3,830	(282)	-7.9%
Total	113,625	113,574	113,994	(420)	-0.4%

Expenditures by Category

Expenditures (\$ in the 1,000's)	Mid Year			Variance	
	FY 2012 Adopted	FY 2012 Adjusted	FY 2012 Actual	(Adjusted to Actual)	Variance %
Employee Services	96,233	96,871	97,935	(1,064)	1.1%
Salaries	62,972	63,847	62,615	1,232	-1.9%
Overtime	3,811	4,397	4,493	(96)	2.2%
Target Vacancy Savings	(1,303)	(1,303)	-	(1,303)	-100.0%
Medical Benefits	8,911	8,512	8,515	(3)	0.0%
Retiree Medical	2,560	2,560	2,560	-	0.0%
Other Benefits	7,473	7,928	7,592	336	-4.2%
PERS	18,447	18,278	17,492	786	-4.3%
Interdepartmental (ID) Charges	(5,021)	(5,731)	(5,332)	(399)	-7.0%
Furlough Savings	(1,617)	(1,617)	-	(1,617)	-100.0%
Maintenance & Utilities	1,017	690	810	(120)	17.4%
Supplies & Services	7,080	6,178	5,898	280	-4.5%
Internal Service Fees	9,280	9,280	9,280	-	0.0%
Capital	14	43	71	(28)	65.1%
FY 2012 Mid-Year Adjustments	-	511	-	511	-100.0%
Total	113,624	113,573	113,994	(421)	0.4%