



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
NOVEMBER 5, 2013

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

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CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL MEETING FOR NOVEMBER 5, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 6:30 PM

1. **PUBLIC COMMENTS**
 2. Conference with Legal Counsel
Pursuant to Government Code 54956.9
 - Pending Litigation: McGraw v. Top Grade Construction, City of Hayward, etc.
Alameda County Superior Court, Case No. HG126175574
 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

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

1. Review of 1st Quarter Progress for Police Department Council Priorities FY 2014 (Report from Police Chief Urban)
[Staff Report](#)
[Attachment I](#)
 2. Update on Future Plans for Southland Mall(Report from Director of Development Services Rizk and Economic Development Manager Taylor)
[Staff Report](#)
[Attachment I Site Plan of Southland Mall](#)
[Attachment II Proposed Elevation of Southland Mall from I-880](#)
-

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

3. Approval of Minutes of the City Council Meeting on October 22, 2013
[Draft Minutes](#)
4. Adoption of an Ordinance Adding Article 13 to Chapter 4 of the Hayward Municipal Code Regarding Food Sharing Events
[Staff Report](#)
[Attachment I Notice of Ordinance](#)
5. Adoption of an Ordinance Adding Article 14 to Chapter 4 of the Hayward Municipal Code Relating to Park Hours
[Staff Report](#)
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6. Resignations of Nubia Piña and Joelynn Deng from the Hayward Youth Commission and Appointments of Elmer Beltran and Lilybeth Domingo to Fulfill Piña's and Deng's Unexpired Terms
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Resignation Letter](#)



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

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

PUBLIC HEARING

7. Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward (Report from City Manager David)-(Continued to 11/12/13)

[Staff Report](#)

LEGISLATIVE BUSINESS

8. Introduction of an Ordinance Amending the Hayward Municipal Code by Adding Article 15 to Chapter 4 Relating to Social Nuisances (Report from City Attorney Lawson and Police Chief Urban)

[Staff Report](#)

[Attachment I Ordinance](#)

[Attachment II RHOA Comments](#)

[Attachment III CAO Response](#)

9. Update on Status of Exclusive Negotiating Period with Waste Management of Alameda County (Report from Director of Public Works - Utilities & Environmental Services Ameri)

[Staff Report](#)

[Attachment I Reso Ext of Negotiations](#)

[Attachment II Reso Autho Request for RFP](#)

[Attachment III Reso Ext of Agreement](#)

[Attachment IV Reso Delay of Organic Collection MFD](#)

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 SPECIAL MEETING, TUESDAY, NOVEMBER 12, 2013



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 before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*

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

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

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

Please visit us on:



DATE: November 5, 2013

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT: Review of 1st Quarter Progress for Police Department Council Priorities FY 2014

RECOMMENDATION

That Council reviews and comments on the Police Department's 1st quarter report on their progress towards achieving the Council Priorities for FY 2014. Attachment 1 provides detailed actions and outcomes in relation to the Council Priorities.

BACKGROUND

On May 21, 2013, the Police Department recommended six new goals to Council for FY 2014. The recommended goals were the following:

1. Reduce the number of Part 1 crimes consistently over the next three years. Subsets of this goal include:
 - Reduce theft-related crimes by 5%
 - Include Part 1 Uniform Crime Report data in the City Manager's bi-weekly report.
2. Continue strategies to geographically reduce crime in "hot spots" by 5%.
3. Reduce the number of traffic accidents citywide over the next three years. A subset of this goal is to reduce accidents by 10% within the top three accident zones.
4. Conduct a minimum of nine SMASH operations.
5. Prevent expansion of reportable gang crimes. Subsets to this goal include to:
 - Increase the number of gang-related arrests by 5%.
 - Increase contacts with gang members by 10%.
 - Increase parole and probation searches by 5%.
 - Conduct at least two comprehensive conspiracy investigations targeting gang leadership.

6. Continue to invest in our people.

Council reviewed, discussed, and adopted these goals in conjunction with the approval of the FY 2014 budget; and established them as the Police Department's Operational Priorities for FY 2014.

DISCUSSION

The Police Department established a plan to achieve Council's Priorities over FY 2014. Attached is the first of four quarterly progress reports that will be provided to Council during FY 2014.

Prepared by: Lauren Sugayan, Police Program Analyst

Recommended by: Diane E. Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachments:

Attachment I First Quarter Progress Report - HPD



**Hayward Police Department
Priorities FY 2014
First Quarter Progress Report
(July-September 2013)**



Priority #1: Reduce the number of Part I crimes consistently over the next three years.

- **Reduce theft-related crimes by 5% (burglary, auto theft, larceny).**
- **Include Part I Uniform Crime Report data in the city manager's bi-weekly report.**
- **Quarterly Progress: On Target (Uniform Crime Report Data)**

	July		August		September		Quarterly Summary: Year over Year		Performance Against Measure – All Theft	
	2012	2013	2012	2013	2012	2013	#	%	#	%
Burglary	97	85	100	74	84	84	-38	-13.5	62	↓ 5.0
Larceny	233	187	168	153	169	200	-30	-5.0		
Auto theft	125	128	135	143	138	133	+6	+1.5		

DISCUSSION

The Hayward Police Department, along with all local law enforcement agencies, continues to experience a negative impact from [California Assembly Bill \(AB\) 109](#), which requires the California Department of Corrections to reduce the overall prison population down to 137.5 % of its designed capacity. Earlier this year, a three-judge court temporarily delayed the continued mass release of prisoners from California prisons back into our community; however, this delay is only valid until January 2014. Presently, involved stakeholders have reconvened to strategize continued compliance with the order, which holds the California Department of Corrections accountable to reduce the overall prison population down to 137.5 % of its designed capacity.

Since 2011, 641 prisoners have been released and assigned to Alameda County under the new Post Release Community Supervision program. Consequently, 149 of them have re-offended and are now in local custody in Alameda County jails rather than state prisons as they would have been prior to the implementation of AB 109. It is generally accepted that people who have served state prison time will reoffend at 75% rate. With this in mind, one can assume that the offenders that have been released back into our communities will likely reoffend, which will have a direct impact on the Police Department and the community as a whole.

Actions taken this quarter:

- Latent print identification resulted in five (5) arrests, twelve (12) cases pending for District Attorney Review and five (5) identified print cases pending follow-up by Hayward Police Detectives. This action helps solve theft-related crimes.
- As a community outreach strategy, there were a total of 37 messages sent out via Nixle this quarter. Both community and advisory messages sent out this quarter on Nixle served the purpose of raising awareness to the community about pressing issues related to crime within the City of Hayward, as well as educate them on crime prevention measures. A citizen's personal approach to safety and security hugely prevents theft-related crimes.
- Roll out of the Tennyson Area Project (TAP) took place in August. This program deploys our reserve police officers to the Tennyson Corridor where they are highly visible and make frequent contacts with merchants and businesses, which helps reduce theft-related crime in the area. This operation is carried out between Thursday and Sunday of each week.
- Multiple community events were hosted and well attended including a Latino neighborhood meeting, a Community Academy, a "Coffee with Cops" event and a pizza social, to name a few. These events are designed to discuss the most pressing issues as they relate to crime in the community. It reminds the community of the partnership the Police Department has with them when it comes to reducing crime, including theft-related crime.
- Key burglary case –

Detectives were assigned to conduct a follow up investigation for a burglary that occurred at Blue Star Motors located on Mission Blvd. Police staff recovered several latent prints, which were forwarded to a certified latent fingerprint examiner who identified a match.

HPD Officers were able to meet with the suspect and during the interview extract a great deal of information, including a confession and implication of accomplices. In addition to the burglary and motor vehicle theft involved in this investigation, the suspect implicated himself and his co-defendant in several other burglaries and motor vehicle thefts.

The named co-defendant was interviewed and he confessed to his involvement in several burglaries and motor vehicle thefts. The outcome of these combined investigations resulted in the arrest of the two (2) suspects. One suspect was arrested on four (4) counts of burglary and one (1) count of motor vehicle theft. The second suspect was arrested on three (3) counts of burglary and two (2) counts of motor vehicle theft. Four (4) burglary cases were cleared during this investigation.

Priority #2: Continue strategies to geographically reduce crime in “hot spots” by 5%.**DISCUSSION**

The Hayward Police Department uses a data driven approach to combat and prevent crime. The most recent program put into effect, Trends n' Tactics (TNT), uses the analysis of data to narrow the patrol focus to geographical areas that create a clustering of specific crimes. Based on the analysis of this data, Northern and Southern “hot spots” are identified geographically and resources are then directed where these problems exist.

For a three (3) week period, patrol officers spend their discretionary time in these “hot spot” locations. Each officer is encouraged to conduct walking patrols, traffic enforcement, and pedestrian stops, in addition to other proactive activities within the assigned “hot spot”. At the end of the time period, ongoing analysis is performed to determine the next focus area. It should be noted the success of this plan partially relies on standard or above standard staffing levels, among other factors.

Actions taken this quarter:

- Six (6) geographical “hot spots” were identified in both the North and South District during this quarter. Patrol officers were asked to conduct directed enforcement and probation searches in these areas.
- The “hot spot” strategy transitioned from data analysis by quarter mile grids to zones, ultimately allowing the Police Department to better pool resources and impact more citizens.
- During the time frame of August 2nd and August 23rd, the Northern District areas of A Street, B Street, Main Street, and Maple Street were identified as the TNT “hotspots”, as a result of three (3) Part 1 felony crimes. During the same time, the Southern District areas of Santa Clara Street, Tarman Avenue and Cypress Street were identified as the TNT “hotspots”, as a result of four (4) Part 1 felony crimes. Then, during the time frame of August 23rd and September 13th, patrol officers directed enforcement in these “hot spots”. As a result, the Northern District areas in question saw a decrease in the reported Part 1 crimes from three (3) to one (1) at night and from five (5) to zero (0) during the day. The Southern District areas saw a decrease in the reported Part 1 crimes from four (4) to zero (0) at night and from three (3) to one (1) during the day.

The Police Department is still analyzing how the program impacts crime outside of the hotspot and what will happen once police officers reduce attention to a

specific hot spot. As we move out of the infancy stage of this program, these impacts will be better analyzed when there is more comparable data.

Priority #3: Reduce the number of traffic accidents citywide over next three years.

- **Reduce accidents by 10% within the top three accident zones.**

DISCUSSION

At the beginning of Fiscal Year 2014, an analysis of vehicle collisions was conducted and the top ten “high accident” intersections were identified, and then. These top ten high accident intersections were then divided into three “high accident” zones. This data driven approach, known as “Top 3”, allows for supervisors to assign traffic officers to these zones to aggressively enforce traffic laws and ultimately, reduce accidents. During the fourth quarter of Fiscal Year 2013, City Council elected to terminate their contract with Red Flex Inc. and eliminate the photo red light camera system. Therefore, the “Top 3” initiative is one of several actions being taken to reduce traffic accidents.

Additionally, grant funds allow for DUI and other safety-related saturation patrols, checkpoints, multi-agency traffic operations and warrant service operations. There are some key factors that can slow or negate the overall reduction of traffic accidents. First, directed enforcement actions related to DUI and traffic safety are reliant on special grant funds, which can change depending on the fiscal climate. Second, the success of these initiatives aimed at reducing traffic accidents is reliant on a fully staffed Hayward Police Department Traffic Unit. Regardless, the Hayward Police Department is dedicated to creative measures moving forward that can prevent and reduce traffic accidents city-wide.

Actions taken this quarter:

- The three high accident zones were identified as the following:

Zone 1	Zone 2	Zone 3
D St. @ Foothill Blvd	Jackson St. @ Santa Clara St.	Hesperian Blvd @ Industrial Blvd.
A St. @ Second St.	Five Corners (Mission/Jackson)	Tennyson Rd. @ Patrick Ave.
Foothill Blvd @ Grove Wy.	Mission Blvd. @ Orchard	Tennyson Rd. @ Hesperian

- Traffic officers are deployed to these zones and a square mile radius around the zones for presence and enforcement. When compared to the fourth quarter of Fiscal Year 2013, here is the comparison:

Collision Data					
Zone 1		Zone 2		Zone 3	
Apr-June 2013	July-Sept 2013	Apr-June 2013	July-Sept 2013	Apr-June 2013	July-Sept 2013
10	5	9	10	11	8
Reduction	50%	Increase	11 %	Reduction	27%

Two out of the three high accident zones realized a significant reduction in collisions. However, Zone 2 actually saw an **11%** increase. After examination of each intersection in Zone 2, six (6) of the collisions occurred in the evening hours. It is difficult to identify a definitive factor that caused this increase in the zone. Traffic Officers work day shift, which leaves all zones without directed enforcement and high visibility in the evening hours. Also, environmental conditions, like lighting or signage issues, may have an effect on driver behavior in the evening hours. Regardless, this analysis allows for Traffic Bureau units to strategize additional measures to reduce accidents in the zone.

- An Office of Traffic Safety (OTS) grant allowed the Hayward Police Traffic Bureau to conduct three (3) motorcycle safety operations, which is an operation focused on enforcing motorcycle violations. Also, the funds allowed us to conduct twelve (12) traffic enforcement operations and two (2) distracted driving enforcement operations. All of these operations were done outside of normally assigned traffic duties. These operations resulted in the issuance of 146 traffic citations for various traffic violations. The Traffic Bureau also conducted seven DUI saturation patrols and one DUI checkpoint operation resulting in eight arrests for DUI.
- There is a citywide reduction in red light/stop sign collisions by 55% when compared to the same quarter last year.
- There is a 26% reduction citywide in speed-caused collisions when compared to the same quarter last year.
- Overall, as a result of the “Top 3” and grant funded operations there was an overall 5.6% reduction in collisions citywide.

Priority #4: Conduct a minimum of nine (9) SMASH operations.**DISCUSSION**

Synchronized Multi-Agency Safe House (SMASH) operations, from past to present, continue to address chronic problem locations throughout the City of Hayward. Led by the Hayward Police Department's District Command Unit, representatives from various City Departments unite and converge on a particular problem location. By deploying multiple resources all at once, City enforcement teams are able to aggressively identify violations and hold occupants accountable, either through arrest or citation. These violations include criminal, building and other illegal hazards or activities that may exist.

Actions taken this quarter:

- A SMASH operation was conducted in September 2013 at 24545 O'Neil Avenue, which resulted in the following:
 - One (1) subject arrested for a probation violation and narcotic paraphernalia. One (1) subject arrested for a no bail arrest warrant.
 - Multiple code violations including electrical, sanitary, fire and other building violations.
- Based on numerous citizen complaints, the District Command Unit has identified the next target location for a SMASH operation in October 2013.
- The remaining seven SMASH operations specified by this priority will be accomplished in the remaining eight months.

Priority #5: Prevent the expansion of reportable gang crimes.

- **Increase number of gang-related arrests by 5%.**
- **Increase contacts with gang members by 10%.**
- **Increase parole and probation searches by 5%.**
- **Conduct at least two (2) comprehensive conspiracy investigations targeting gang leadership.**

DISCUSSION

The Special Duty Unit (SDU), a street enforcement team, works collaboratively with the Special Duty Investigative Unit (SDIU), an investigative gang team. These two teams actively share intelligence, which then allows them to strategically target gangs and gang-related activity throughout the City of Hayward; and aids in the development and completion of comprehensive gang investigations.

Additionally, the Youth and Family Services Bureau (YFSB) remains steadfast in awareness and prevention campaigns, as it relates to gangs. Through funding provided by the California Gang Reduction, Intervention and Prevention Program (CalGRIP), YFSB's Hayward Positive Alternatives for Youth (HPAY) program provides early intervention and prevention services to Hayward youth and their families. The program consists of prevention, early intervention, and intensive intervention strategies to prevent and reduce gang activity in our community while increasing resilience and improving academics. Staff believes that this multi-faceted approach involving enforcement and education is the leading factor when it comes preventing the expansion of reportable gang crime.

Actions taken this quarter:

- There were thirteen (13) gang-related arrests.
- There were eight (8) gang-related investigations.
- There were 107 total contacts with gang members.
- There were six (6) parole and probations searches conducted resulting in the arrest of a high profile gang member for possession of two (2) loaded handguns and two (2) ounces of methamphetamine.
- A partnership between SDIU and the District Attorney's Office Vertical Gang Prosecution Unit led to a covert investigation, named "Operation Generation 7". This operation targeted a high profile gang in the City of Hayward with the following results:
 - Over 30 gang-related incidents were investigated and over 20 search warrants were written spanning four counties.
 - The case culminated when Assistant District Attorney Elgin Lowe charged eleven gang members with criminal conspiracy charges and various crimes including carjacking, home invasion, assault with a deadly weapon, robbery, intimidation, drug sales, among others.
 - All eleven gang members were additionally charged with the criminal street gang enhancement, to which four members are facing potential life sentences in prison without the possibility of parole.
 - The remaining gang members received prison sentences ranging from 12-25 years with an 85% minimum mandatory service of time sentenced.

- Gang awareness/education presentations by the Department's HPAY Service Coordinator and Gang Specialist to 570 youth at elementary schools, middle schools, and as part of the Jr. Giants Summer baseball program.
- Five (5) School Resource Officers (SROs) received Gang Resistance Education and Training (GREAT). They are in the process of scheduling their thirteen week, evidence-based program to six middle school classes before the end of the 2013 school year.
- YFSB is currently preparing for and scheduling Parent Gang Awareness and Education presentations to take place in the near future. The goal is to reach out to 300 parents by end of Fiscal Year 2013-14.
- YFSB continues to provide family counseling and case management services to youth and their families who have been identified as being at-risk for gang involvement. Family counselors opened eleven (11) counseling cases serving a total of 34 clients this quarter. This number is traditionally low due to the summer season and is expected to rise by next fiscal quarter. Additionally, a total of eight (8) clients/cases were closed during the quarter.

Priority #6: Continue to invest in our people.

DISCUSSION

Issues related to staffing are systemic and not restricted to the Hayward Police Department. Injuries and attrition are the leading causes of staffing deficiencies at this present time. Yet, the success of our mission relies heavily on the number of employees and the health and well-being of every current employee in this organization. The increased workload on operations and administration employees can be unsafe and unmanageable at times. Therefore, investment in staff has a profound impact on all other functions of the Police Department, as well as the Department's ability to accomplish all other aforementioned Council Priorities.

Actions taken this quarter:

- Transitioned a Personnel and Training Lieutenant, which was previously a rotating assignment, to a full-time Personnel and Training Administrator. The lieutenant position was redeployed to create a Special Operations position. The Special Operations Lieutenant oversees the Traffic Unit, the Special Response Unit (SWAT), Hostage Negotiators, Emergency Preparedness, the Reserve Unit and the K9 Unit. This shift creates more accountability for these highly visible

and specialized units. It also allows for patrol lieutenants to be more accessible and available to patrol personnel who are deployed 24/7 in the community.

- Collaborative discussions are taking place among California Police Chiefs aimed at navigating the legal and political system as it relates to Worker's Compensation.
- A retired Hayward Police sergeant was extended on a per diem basis to monitor Worker's Compensation and modified duty personnel. This aggressive approach has ensured accountability from all stakeholders in the Worker's Compensation process by streamlining the "back to work" or retirement process for injured personnel.
- In July 2013, Police Department commanders and above from both sworn and professional staff, along with the Chief's Staff (Crime Analyst, CALEA/R&D Analyst, Personnel and Training Administrator and the Internal Affairs Lieutenant) attended an executive retreat. The group brainstormed many problem-solving strategies to key issues impacting the organization, as well as updated the Hayward Police Department's Strategic Plan. At its conclusion, participants left with an understanding regarding their role in developing the future leaders of the Hayward Police Department.
- Out of 666 applications for employment with HPD, 47 interviews were conducted. As a result, 26 backgrounds were conducted, which led to seven applicants hired (two police officer trainees, one academy graduate and four lateral police officers).
- Six (6) police officers completed their Field Training Program and are now considered probationary employees.
- Four (4) candidates have completed their probation and have successfully transitioned as full time employees.
- Reserve Police Officers augmented patrol by working approximately 2,800 hours.
- The Personnel and Training unit attended three (3) outside recruiting events. Additionally, Hayward Police Department hosted an open house for police officer applicants in September 2013.
- There were four (4) media platforms used to recruit including YouTube, Nixle, CalOpps and the California Police Chiefs Association website.

DATE: November 5, 2013

TO: Mayor and City Council

FROM: Development Services Director
Economic Development Manager

SUBJECT: Update on Future Plans for Southland Mall

RECOMMENDATION

That Council reviews and comments on the presentation by the owner of Southland Mall of the overview of current operations and of upcoming improvements to the center. This report is informational only and no action is necessary.

BACKGROUND AND DISCUSSION

Southland Mall, located alongside I-880 at West Winton Avenue, serves as an economic driver and significant landmark in the Hayward community. Serving the market for nearly 50 years, the mall represents over 1.3 million square feet of regional retail space. This mall is in an unique market situation due to its high visibility and central Bay Area location as well as its ability to serve 3.5 million residents within a 30 mile trade area.

In the early years, Southland Mall represented the largest regional mall in a wide area including Oakland, Pleasanton and Fremont. Residents from these communities drove to Hayward to shop in large national retail stores, as well as enjoy a range of activities including dining and even an ice rink in the early 1970's. Over the years, other retail centers have been developed in the region, which has impacted the tenant mix of the center as it is no longer the only regional mall. In addition to local competition, there have been major changes in the retail world such as the addition of new retail types such as "lifestyle or power centers" which are typically not enclosed, as well as non-traditional retail growth in the on-line markets. Traditional malls need to work diligently to stay relevant for today's consumers.

For many years, prior mall owners neglected to make the necessary investments in the center to keep it current and competitive. Nearly three years ago, [Rouse Properties](#) purchased the mall and it is now the largest shopping center in their portfolio of thirty-two properties in eighteen states. Rouse Properties is a publicly traded real estate investment trust (REIT) and is one of the largest mall owners in the country with experience in retail ownership, property management and leasing. Since the time they took ownership of Southland, they have been planning to make

changes to update and improve the center. Attachment I shows the site plan of the mall and areas of upcoming focus.

Tonight, Rouse will be discussing their efforts with leasing to improve the retail mix, physical improvements including interior and exterior cosmetic changes, as well as the addition of other amenities (such as their improved website and recently added wi-fi network for shoppers) and family-oriented events such as the recent Halloween event. These efforts are designed to ensure that the mall will be well-positioned into the future. See proposed elevation in Attachment II as will be seen from I-880.

Since taking ownership of the center, Rouse's team has been working to market the site to a wide range of retailers, including specialty apparel, specialty grocery stores and others. Rouse has had great success in the restaurant and dining category and more recent additions such as Panera Bread, Elephant Bar, Mimi's Café, and Famous Dave's (former Marie Callender's Restaurant) are doing very strong business and helping increase dining options for the community.

Rouse is currently working with the City to process a Zoning Text Amendment to allow them to include new uses that have become popular in the retail mix in recent years. Rouse has been working to secure approvals to build a new nearly 45,000 square foot health club near the intersection (near the southeastern corner) of Hesperian Boulevard and Southland Drive. Staff and Planning Commission supported approval of this use because the new facility encourages physical activity by providing amenities that are currently lacking at Southland Mall, such as a basketball court, racquetball courts, a swimming pool and spa, and convenient child care for health club patrons.

In addition, the text amendment would also allow pet boarding and pet day care facilities, which have become popular within many of the current pet stores. These uses will allow Rouse to take advantage of some of the latest trends in center development and this item, which was unanimously supported by the Planning Commission, will be coming before the Council on November 19 for consideration.

Other future plans include upcoming efforts to improve the façade facing I-880. These plans, which are currently being processed by staff, would update the look of the center and allow two-story retail space to be developed to accommodate a relocation of Burlington Coat Factory. The new façade will be visible to over 280,000 drivers each day and create new shop space and energy for the center, which is hoped to help attract new tenants. In addition, over the longer term, new uses will be actively recruited to ensure viability of the center.

ECONOMIC IMPACT

Southland Mall is a significant revenue generator for the community and a regional employer. Efforts to improve the center will have positive economic impacts for the community and region. Economic Development staff is committed to working with the mall owner to ensure a quality retail mix that maximizes both retail sales and promotes the vitality of the center.

Future efforts by Southland Mall to make improvements will need to be carefully considered as portions of the mall are located within Safety Compatibility Zones of the Hayward Executive Airport Land Use Compatibility Plan (ALUCP). Under California law, certain applications for development on property within an ALUCP area must be submitted to the Alameda County Airport Land Use Commission (ALUC) for review. Protection of economic development efforts at Southland Mall has been an ongoing concern of the City Council. Therefore, staff is currently moving forward with hiring a consultant to assist in developing a strategy related to addressing such concern while maintaining aviation safety. The consultant will research and provide information on what site specific development envelopes will de facto meet the existing FAA, Caltrans and ALUC requirements, where an exception process or an override might be desirable, and what that would mean to the City in terms of implementation.

With an adopted overrule, proposed projects within the Airport Influence Area would not be subject to ALUC review and only subject to City of Hayward review, thereby decreasing the time required for project approval. However, it is important to understand that there may be lesser strategies than adopting an overrule on the entire ALUCP that minimizes liability issues for the City while at the same time preserving the ability for economic growth at Southland Mall. Staff anticipates presenting the Planning Commission and City Council with such strategy for action in the Spring of 2014.

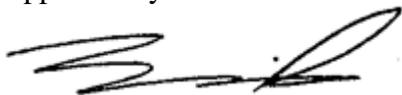
NEXT STEPS

At the regularly scheduled City Council meeting on November 19, 2013, the City Council will review the proposed Text Amendment application.

Prepared by: Lori Taylor, Economic Development Manager

Recommended by: Pat Siefers, Planning Manager and David Rizk, Development Services Director

Approved by:

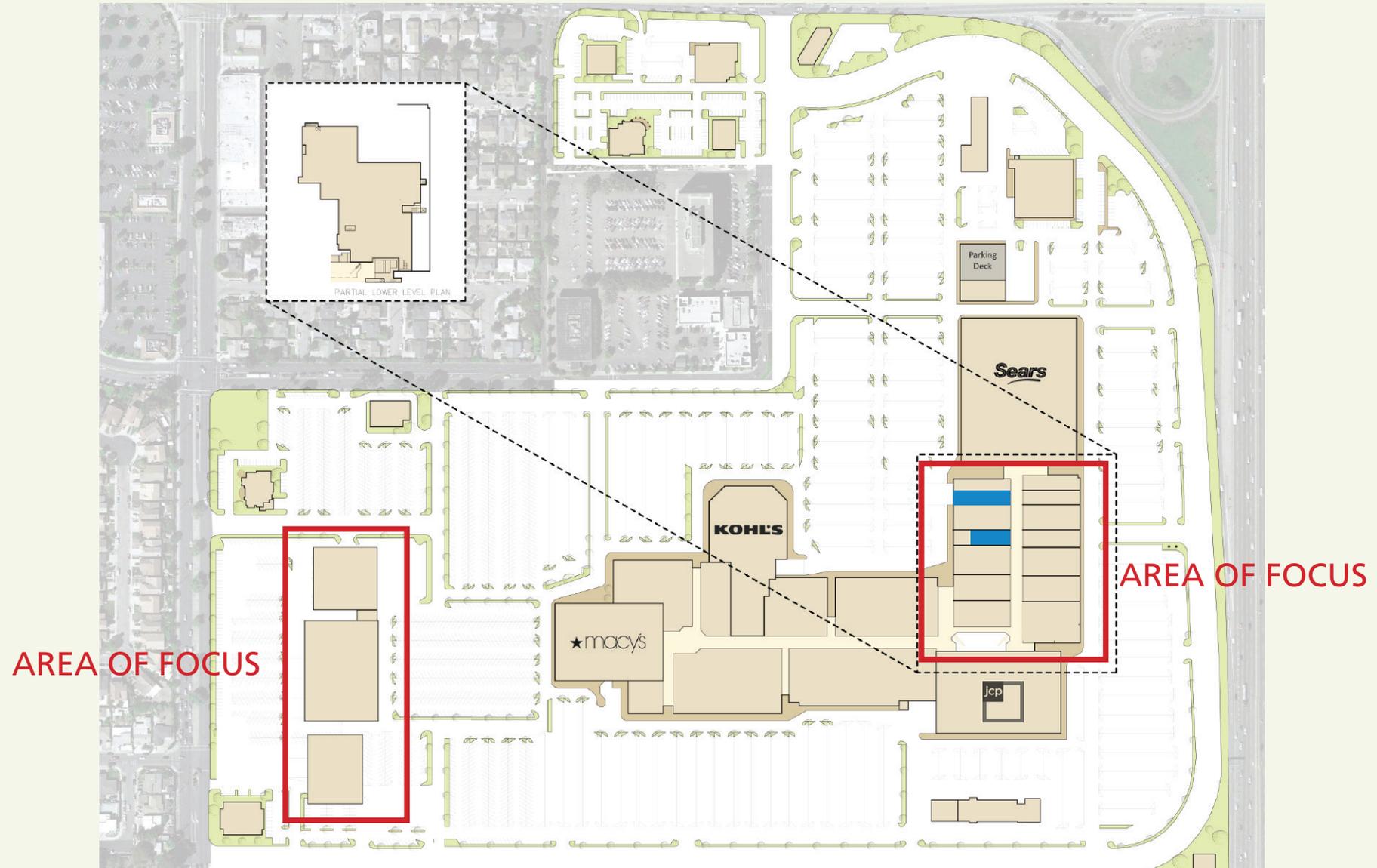


Fran David, City Manager

Attachments:

- | | |
|---------------|---|
| Attachment I | Site Plan of Southland Mall |
| Attachment II | Proposed Elevation of Southland Mall from I-880 |

CURRENT SITE PLAN





MATERIALS LEGEND

- ① ALUMINUM STOREFRONT (CLEAR)
- ② BRICK (TAN BLEND)
- ③ DECORATIVE OVERHEAD DOORS
- ④ FIBER CEMENT BOARD (WOOD GRAIN)
- ⑤ KALWALL, TRANSLUCENT WINDOW SYSTEM
- ⑥ METAL CANOPY
- ⑦ METAL CLADDING
- ⑧ PLASTER (LT. TAN)
- ⑨ PLASTER (TAN)
- ⑩ PLASTER (WHITE)

① EAST ELEVATION



SITE PLAN KEY

SCALE: N.T.S.

SOUTHLAND MALL
ROUSE PROPERTIES

CONCEPTUAL EAST ELEVATION EXHIBIT

HAYWARD, CA

KTGY # 20130143
 Conceptual

04.01.2013
 10.01.2013

KTGY Group, Inc.
 Architecture+Planning
 17922 Fitch
 Irvine, CA 92614
 949.851.2133
 ktgy.com





**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 22, 2013, 7:00 p.m.**

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 reported that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; met with legal counsel pursuant to Government Code 54956.9 regarding Meserve v. City of Hayward, Alameda County Superior Court, No. HG12636333; and met with property negotiators pursuant to Government Code 54956.9 regarding Damante v. City of Hayward, Alameda County Superior Court Case No. HG12620646. Mayor Sweeney noted there was no reportable action.

PROCLAMATION

Mayor Sweeney read the Proclamation proclaiming Monday November 11, 2013, as Veterans Day. Mr. Emet Miranda, Hayward Veterans Post 870 Commander; Ms. Lisa Brunner, Hayward Veterans Post 870 Assistant Sergeant-At-Arms; and Mr. Mark Chandler, Alameda County Veterans Affairs Commissioner accepted the proclamation. Mr. Emet Miranda thanked the Council on behalf of the veterans.

PUBLIC COMMENTS

Ms. Jacquelyn Young, Hayward resident, expressed displeasure about insufficient parking at the residential developments at Cannery Place.

Mr. Victor Chalco, Hayward resident, noted the speed humps installed on Sleepy Hollow Avenue between Hesperian and Industrial boulevards did not meet the City's guidelines or process for installation of speed humps.

The following Service Employees International Union, Local 1021 (SEIU 1021) individuals spoke about current labor negotiations and urged the Council to direct the negotiating team to get back to the bargaining table and continue to negotiate a fair and equitable contract. SEIU 1021 members noted its union had circulated a petition that garnered about 670 signatures from Hayward residents in support of Hayward workers. The petition was submitted for the record.

Ms. Amber Bell, SEIU 1021 member
Ms. Jill Mayghan, SEIU 1021 member
Ms. Wendy Felber, SEIU 1021 member
Mr. Michael Stotts, SEIU 1021 member
Ms. Angela Osayande, SEIU 2021 Field Representative
Ms. Linda Reid, SEIU 1021 member
Mr. Elden Walker, SEIU 1021 member
Ms. Ariana Casanova, SEIU 1021 East Bay Political Coordinator

Ms. Susan Harman, announced Representation for the People was sponsoring a Town Hall meeting on November 5, 2013, at the South Berkeley Senior Center, regarding Alameda County District Attorney O'Malley and Sheriff Ahern.

Mr. Jim Drake, Hayward resident, expressed concern about the safety and the vehicle theft crime in Hayward.

Mr. S.J. Samiul, Hayward resident, urged everyone to read the book entitled, "Tattoos on the Heart" and purchase "I love Hayward" stickers; and asked Council to support City employees.

WORK SESSION

1. General Plan Update - Presentation of Draft Policy Document

Staff report submitted by Senior Planner Buizer, dated October 22, 2013, was filed.

Development Services Director Rizk announced the report and introduced Senior Planner Buizer who provided a synopsis of the report.

The Council praised City staff and members of the General Plan Update Task Force for the work done on the General Plan Update and provided the following recommendations under Land Use and Community Character (LU), Community Safety (CS), Economic Development (ED), Natural Resource Element (NR), and Education and Lifelong Learning (EDL): LU-20 Industrial Technology and Innovation Corridor Plan was important for job generation; CS-3 Police Department Strategic Plan Review and Update needed benchmarks and metrics for crime reduction; LU-13 needed increased open space and parks; suggested moving the implementation of ED-5 Business Resource Center and Website and ED-16 Ombudsperson Service sooner than 2017-2019; EDL-5 Education Awards Program should include rewarding and celebrating the students; CS-5 Homeless Services Partnership should include a partnership with Alameda County; ED-8 Local Hire Incentives needed language about wages that sustain families; recommended streamlining the permitting process; and proposed to have Council Standing Committees review the draft General Plan policies in relation to their area of expertise. Council had reservations regarding NR-9 Residential Energy Performance Audit and Disclosure Ordinance and NR-10 Commercial Energy Performance Audit and Disclosure Ordinance.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 22, 2013, 7:00 p.m.**

2. Update on the City of Hayward Workers Compensation Program

Staff report submitted by Acting Senior Human Resources Analyst Collins, dated October 22, 2013, was filed.

Human Resources Director Robustelli announced the report and introduced Acting Senior Human Resources Analyst Collins who provided a synopsis of the report.

Discussion ensued and Council offered the following comments and recommendation: praised the Return to Work Program; complimented the Third Party Administrator (TPA) savings; commended the communication among Human Resources, Directors, TPA, and injured workers; and requested data about the Hayward Workers Compensation Program prior to 2011. It was noted that the authorization to add a Senior Human Resources Analyst position would be reviewed during the midyear budget review.

CONSENT

3. Approval of Minutes of the City Council Meeting on October 15, 2013

It was moved by Council Member Jones, seconded by Council Member Halliday, and carried unanimously, to approve the minutes of the City Council Meeting on October 15, 2013.

PUBLIC HEARING

Council Member Jones and Council Member Salinas disclosed they owned property in the northern section of the Mission Boulevard Corridor and they would recuse from discussing and voting on the item as it related to the Mission Boulevard Corridor Specific Plan for the northern segment.

4. Certification of a Program Environmental Impact Report in Accordance with the California Environmental Quality Act (CEQA) Guidelines, Section 15168; and Approval of the Mission Boulevard Corridor Specific Plan, including a Form-Based Code and Related General Plan Amendment; Encompassing an Area of Approximately 240 Acres and 600 Parcels Along Two Miles of the Mission Boulevard Corridor from Harder Road to the Northern City Boundary, Excluding the Downtown Area Between Jackson Street and A Street (General Plan Amendment Application No. PL-2013-0268, Text Amendment Application No. PL-2013-0270, and Zone Change Application No. PL-2013-0271) – City of Hayward (Applicant)

Staff report submitted by Director of Development Services Rizk, dated October 22, 2013, was filed.

City Manager David announced the report and introduced Director of Development Services Rizk who provided a synopsis of the report. Mr. Rizk noted staff was in receipt of recommendations from

Dr. Sherman Lewis and staff was offering amendments to the staff recommendation per Dr. Lewis' comments which included: the Sustainable Mixed Use (SMU) General Plan land use designation would not apply to properties proposed to have T3 zoning in the Form-Based Code; and the SMU density range of the T4 and T5 zones in the adopted South Hayward BART Form-Based Code and the proposed Mission Boulevard Corridor Form-Based Code would be 17.5 to 100.0 units per net acre.

Discussion ensued related to the southern segment of the Mission Boulevard Corridor. Council Member Zermeño recommended "Cesar Chavez" as a name for one of the streets, roads, or slip lanes in areas of the Specific Plan.

Mayor Sweeney opened the public hearing at 9:34 p.m. for the southern segment of the Mission Boulevard Corridor Specific Plan.

Ms. Audrey LePell, President of Citizens for Alternative Transportation Solutions (CATS), acknowledged City staff and other organizations for their continued assistance. Ms. LePell asked about the status of the Route 238 relinquishment.

Mr. Bob Berndt, AutoNation representative for real estate transactions of the former Ford dealership site, noted AutoNation supported the staff recommendation for the Mission Boulevard Corridor Specific Plan.

Mr. Jesús Armas, AutoNation consultant, urged Council to adopt the staff recommendation and the unanimous recommendation of the Planning Commission that the Commercial Overlay zone apply to the first 250 feet at the former Ford dealership site.

Mr. Charles Pifier, property owner at 671 Berry Avenue which abuts the former Ford site, supported the Planning Commission recommendation and agreed to the dedication of the thoroughfare on his property.

Mayor Sweeney closed the public hearing at 9:48 p.m.

Council Member Zermeño offered a motion per the staff recommendation including amended Exhibits A, B, C and D of the proposed resolution. Council Member Mendall seconded the motion.

Discussion ensued among the Council and City staff about the Mission Boulevard Corridor and what was envisioned for the area such as requiring more commercial development that would encourage job creation, considering uses that would support the imminent expansion of California State University East Bay, extending the commercial overlay zone to encourage retail along Mission Boulevard, and adding a Conditional Use Permit element to the former Ford site that would provide flexibility by allowing light industrial uses including research and development.

Council Member Zermeño withdrew his original motion and offered a second motion to continue the item and bring back a report consistent with Council's comments pertaining to the southern portion of the Mission Boulevard Corridor. Council Member Jones seconded the motion.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 22, 2013, 7:00 p.m.**

Council Member Mendall offered a friendly amendment to create a second Commercial Overlay zone that included the rest of the former Ford site and additional properties that front Mission Boulevard, and that the second overlay would only allow residential ground floor use by Conditional Use Permit. Mr. Mendall recommended that staff bring back a recommendation for the location of the additional properties.

Council Member Zermeño was amenable to the friendly amendment.

Council Member Jones clarified that his original recommendation was consistent with the Council Economic Development Committee discussion for the Mission Boulevard Specific Corridor Plan related to the former Ford site and he recommended providing flexibility by extending the Conditional Use Permit process to the rest of the former Ford site. Mr. Jones added he was supportive of the second Commercial Overlay zone for properties that front Mission Boulevard with specific locations to be proposed by staff.

Pertaining to the southern segment of the Mission Boulevard Corridor, it was moved by Council Member Zermeño, seconded by Council Member Jones, and carried with a friendly amendment to direct staff to bring back a report with two revisions: have a second Commercial Overlay zone that would extend over the rest of the former Ford site and require a Conditional User Permit for ground floor residential use; and that the second Commercial Overlay zone include additional properties along Mission Boulevard to be proposed by staff.

AYES: Council Members Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
NOES: None
ABSENT: None
ABSTAINED: None

Council Members Jones and Salinas left the Council Chambers at 10:22 p.m.

Mayor Sweeney opened the discussion and hearing for the northern segment of the Mission Boulevard Corridor Specific Plan.

There being no public comments Mayor Sweeney opened and closed the public hearing at 10:23 p.m.

Council Member Halliday offered a motion to approve the staff recommendation as it related to the northern segment of the Mission Boulevard Corridor Specific Plan and directed staff to bring it back as part of the report for the southern segment. Council Member Zermeño seconded the item.

AYES: Council Members Zermeño, Halliday, Peixoto, Mendall
MAYOR Sweeney
NOES: None
ABSENT: Council Members Jones, Salinas
ABSTAINED: None

Council Members Jones and Salinas returned to the dais at approximately 10:24 p.m.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño noted October 26, 2013, was “Make a Difference Day,” and he invited all to join the Keep Hayward Clean and Green Task Force Litter Clean-Up and Graffiti Removal event at the Palma Ceia Neighborhood.

Council Member Salinas announced that The Kids’ Breakfast Club would be cooking and serving breakfast to volunteers on October 26, 2013.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:27 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: November 5, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of an Ordinance Adding Article 13 to Chapter 4 of the Hayward Municipal Code Regarding Food Sharing Events

RECOMMENDATION

That the City Council adopts the Ordinance introduced on October 29, 2013.

BACKGROUND

The Ordinance was introduced by Mayor Sweeney at the October 29, 2013, special meeting of the City Council with the following vote:

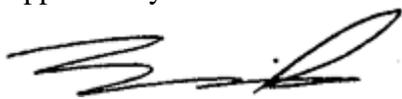
AYES:	Council Members:	Zermeño, Jones, Halliday, Peixoto, Salinas, Mendall
	Mayor:	Sweeney
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

The motion was carried with direction to staff to continue to work with the local community, faith-based service organizations, and the Community Services Commission to further develop the creation of a community services center; and to return to Council in six months with a report on the implementation of the Ordinance.

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, November 2, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Summary of Ordinance Published on 11/02/13

**PUBLIC NOTICE OF AN INTRODUCTION OF ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA
ADDING ARTICLE 13 TO CHAPTER 4 OF THE HAYWARD
MUNICIPAL CODE REGARDING FOOD SHARING EVENTS

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

Section 1. Article 13 is added to Chapter 4 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 13
FOOD SHARING EVENT ORDINANCE

SEC. 4-13.00 FINDINGS AND PURPOSE
SEC. 4-13.10 DEFINITIONS
SEC. 4-13.20 PERMIT REQUIRED
SEC. 4-13.25 ADMINISTRATIVE PENALTIES
SEC. 4-13.30 PERMIT APPLICATION PROCEDURE
SEC. 4-13.35 EVENT REGULATIONS
SEC. 4-13.40 BASIS FOR DENYING PERMIT
SEC. 4-13.45 REVOCATION OF PERMITS
SEC. 4-13.50 ADMINISTRATIVE APPEALS
SEC. 4-13.55 ADMINISTRATIVE APPEAL HEARING PROCEDURE
SEC. 4-13.60 EXEMPTIONS

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

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

Introduced at the special meeting of the Hayward City Council held October 29, 2013, the above-entitled Ordinance was introduced by Mayor Sweeney.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on November 5, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. A copy of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: November 2, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: November 5, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of an Ordinance Adding Article 14 to Chapter 4 of the Hayward Municipal Code Relating to Park Hours

RECOMMENDATION

That the City Council adopts the Ordinance introduced on October 29, 2013.

BACKGROUND

The Ordinance was introduced by Mayor Sweeney at the October 29, 2013, special meeting of the City Council with the following vote:

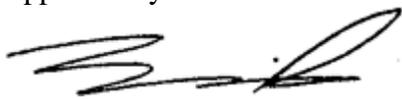
AYES:	Council Members:	Zermeño, Jones, Halliday, Peixoto, Salinas, Mendall
	Mayor:	Sweeney
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

The motion was carried with direction to staff to continue to work with the local community, faith-based service organizations, and the Community Services Commission to further develop the creation of a community services center; and to return to Council in six months with a report on the implementation of the Ordinance.

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, November 2, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments: Attachment I Summary of Ordinance Published on 11/02/13

**PUBLIC NOTICE OF AN INTRODUCTION OF ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD**

**ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA
ADDING ARTICLE 14 TO CHAPTER 4 OF THE HAYWARD
MUNICIPAL CODE RELATING TO PARK HOURS**

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

Section 1. Article 14 is added to Chapter 4 of the Hayward Municipal Code and is hereby enacted to read as follows:

**ARTICLE 14
PARK HOURS**

SEC. 4-14.00 DEFINITIONS

SEC. 4-14.10 PARK HOURS

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

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

Introduced at the special meeting of the Hayward City Council held October 29, 2013, the above-entitled Ordinance was introduced by Mayor Sweeney.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on November 5, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. A copy of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: November 2, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: November 5, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Resignations of Nubia Piña and Joelynn Deng from the Hayward Youth Commission and Appointments of Elmer Beltran and Lilybeth Domingo to Fulfill Piña's and Deng's Unexpired Terms

RECOMMENDATION

That the City Council accepts the resignations of Ms. Nubia Piña and Ms. Joelynn Deng from the Hayward Youth Commission and appoints Mr. Elmer Beltran and Ms. Lilybeth Domingo to fulfill Ms. Piña's and Ms. Deng's unexpired terms respectively.

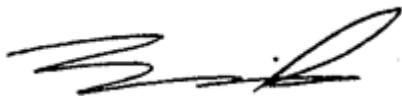
BACKGROUND

Ms. Piña was appointed to the Hayward Youth Commission on December 18, 2012. Her resignation became effective October 21, 2013. Mr. Beltran will be selected from the Hayward Youth Commission Alternate List to fill Ms. Piña's term, which will expire June 30, 2014.

Ms. Joelynn Deng was appointed to the Hayward Youth Commission on June 26, 2012. Her resignation became effective October 28, 2013. Ms. Domingo will be selected from the Hayward Youth Commission Alternate List to fill Ms. Deng's term, which will expire June 30, 2014.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution
Attachment II	Resignation Letters

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE RESIGNATIONS OF NUBIA PIÑA AND JOELYNN DENG FROM THE HAYWARD YOUTH COMMISSION AND APPOINTING ELMER BELTRAN AND LILYBETH DOMINGO TO FULFILL NUBIA PIÑA’S AND JOELYNN DENG’S TERMS

WHEREAS, Ms. Nubia Piña was appointed to the Hayward Youth Commission on December 18, 2012.

WHEREAS, Ms. Joelynn Deng was appointed to the Hayward Youth Commission on June 26, 2012.

WHEREAS, the Council hereby accepts the resignations of Nubia Piña and Joelynn Deng from the Hayward Youth Commission; and commends them for their civic service to the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Mr. Elmer Beltran and Ms. Lilybeth Domingo will be selected from the Hayward Youth Commission Alternate List to fill Ms. Nubia Piña’s and Ms. Joelynn Deng’s terms, which will expire June 30, 2014.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013.

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

From: **Nubia Piña** <nubiabpina@yahoo.com>
Date: Mon, Oct 21, 2013 at 5:17 PM
Subject: HYC
To: "sespinosa@husd.k12.ca.us" <sespinosa@husd.k12.ca.us>, "MaiM@haywardrec.org" <MaiM@haywardrec.org>, "machetez@sbcglobal.net" <machetez@sbcglobal.net>

Advisors,

I'm having some issues with my parents and them letting me continue in the commission.. The same ones from the end of last year I never had the chance to talk to you about. I took the time since the meetings started to possibly convince them, but I apologize for not giving any type of notice of my absences. My wishes were never to resign from the commission because I know what an important and rigorous program it is, but I'm afraid it needs to happen to have someone fill my spot ASAP and have the commission up and running. With that said, it was such a privilege working with the rest of the commission and you as advisors, and please keep me in mind for any ideas or projects you might need help with. I can certainly meet with any of you and further clarify the issue if you'd like. Again, I'm sorry about my leave of absence and abrupt resignation.

Thank you for the opportunity to have worked with such an amazing group of individuals. I look forward to seeing our commission continue to prosper. In the words of Council member Zermeño, "Hayward on!"

Respectfully,

Nubia B. Piña

ATTACHMENT II

From: Joelynn Deng [mailto:joelynn1000@gmail.com]
Sent: Monday, October 28, 2013 3:04 PM
To: Miriam Lens
Subject: Re: HYC Commissioner Joelynn Deng

Hello Miriam,

Sorry, I haven't sent an email earlier, but due to a school commitment, I will not be able to make the meeting times this year.

Thank you,

Joelynn Deng

DATE: November 5, 2013

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Proposed Revisions Related to Hayward’s Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward’s Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

RECOMMENDATION

That the item be continued to 11/12/13.

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

Approved by:



Fran David, City Manager

DATE: November 5, 2013

TO: Mayor and City Council

FROM: City Attorney
Chief of Police

SUBJECT: Introduction of an Ordinance Amending the Hayward Municipal Code by Adding Article 15 to Chapter 4 Relating to Social Nuisances

RECOMMENDATION

That the City Council introduces the attached ordinance amending the Hayward Municipal Code (HMC) by adding to Article 15 to Chapter 4 relating to Social Nuisances (Attachment I).

SUMMARY

On October 1, 2013, staff presented to the City Council a work session report concerning regulations to reduce property-related social nuisance behavior. Staff recommended the introduction and adoption of a municipal ordinance requiring property owners to prevent and abate nuisance-creating behavior on their property. The new ordinance would hold property owners accountable for their own nuisance-creating behaviors and/or those of the occupants of their property.

At the October 1 meeting, the Council directed staff to bring back a proposed ordinance for Council consideration. Additionally, staff was directed to engage with, and receive feedback from, community stakeholders concerning the proposed ordinance.

At the October 29, 2013 meeting, the Council received a report with a revised ordinance reflecting Council's concerns, as well as the concerns of stakeholders. The Council continued the report to November 5th, in order to allow additional public review of staff's recommendations.

Staff recommends introduction of the Social Nuisance Ordinance. The ordinance would give City staff the ability to effectively and efficiently address nuisance-creating behaviors existing on properties in Hayward. Adoption of the Social Nuisance Ordinance aligns with the City's overall efforts toward neighborhood livability, safety, and cleanliness.

BACKGROUND

The Hayward Police Department (HPD) and other City staff routinely receive complaints from members of the community regarding physical conditions and behaviors that deteriorate neighborhoods. These conditions and/or behaviors are often associated with criminal activity such as drug dealing, drug use, prostitution, gang activity, chronic unruly gatherings, and noisy activity during late night hours. Oftentimes, this activity results from the lack of proper management and inadequate oversight of private properties. Staff recognizes that public nuisances sometimes occur without the property owner's knowledge, but in many cases the property owner is aware, or should be aware, of the problem, but chooses not to take action. Among the City's current abatement strategies, there exists no administrative recourse for addressing behavior-related social nuisances; and the City must often rely on time-consuming and expensive judicial proceedings to abate or resolve nuisance issues.

Many cities face similar challenges of dwindling resources and the need to find more effective and efficient ways to deal with the abatement process. Cities such as Stockton, Vallejo, and Woodland have successfully adopted nuisance abatement policies that give teeth to the process of holding property owners accountable for nuisance behavior occurring on their property. These model ordinances allow their municipal staff to provide notice and warning to property owners, management groups, or landlords regarding potential social nuisances and require them to take appropriate action to abate the issue. These cities then work cooperatively with owners in their efforts to reach compliance.

Currently, the Police Department handles an average of 5.5 incidents a month relating to chronic social nuisances at private properties. These nuisances are primarily handled by patrol officers and followed up by Police personnel who staff the two District Command offices. Thus far, the City has relied on voluntary compliance through the issuance of informative letters to property owners, managers, and landlords making them aware of the nuisance behavior and hoping they comply. However, when the responsible parties ignore such warnings, the City has little recourse absent expensive and time-consuming civil litigation.

The proposed Social Nuisance Ordinance creates an administrative process to hold property owners accountable for their own nuisance-creating behaviors and/or those of the occupants of their property. The ordinance authorizes City staff to issue orders to abate nuisance-creating behaviors on properties and impose a monetary penalty when a property owner fails to take the necessary actions within the purview of their property management responsibilities. To assist and encourage successful resolution of nuisances, the ordinance also provides additional remedies such as providing training to owners and property management personnel, offering participation in the Crime Free Multi- Housing Program, and recommending specific physical improvements to the property.

DISCUSSION

The Social Nuisance Ordinance:

Staff recognizes that with limited City resources, it is imperative to creatively, efficiently, and fairly enhance the City's ability to encourage compliant behavior of those who own and manage properties on which nuisance activities repeatedly occur. To address social nuisances, staff has developed an ordinance to address irresponsible ownership and maintenance of property. The Social Nuisance Ordinance prohibits an owner of property from permitting nuisance-creating behaviors to exist on their property and contains the following key features:

- **Public Nuisance Defined:** a precise definition of public nuisance activities that includes behaviors such as illegal drug use and sales, prostitution, violent criminal acts, unreasonable noises, and the firing of gunshots or brandishing of weapons.
- **Courtesy Notice:** A courtesy notice process designed to attain voluntary abatement.
- **Order to Abate:** A process for issuing an order to abate that compels a property owner to abate a nuisance and the authority to impose an administrative penalty for non-compliance with an order.
- **Administrative Hearing Right:** the right to an administrative hearing when a property owner chooses to contest an order to abate or an administrative penalty.
- **Judicial Review:** the right to judicial review of a hearing officer's administrative decision.

The proposed ordinance includes administrative penalties up to \$5,000, but provides ample opportunity for violators to correct the nuisance conditions and provide evidence of such abatement within an appropriate time-frame to avoid penalties. Safeguards are included to protect property owners demonstrating good-faith efforts from receiving unnecessary penalties. However, failure to comply may result in additional enforcement, including civil litigation to compel owners to abate the nuisance-creating behaviors.

Community Meeting:

On October 18, 2013, City staff conducted a public meeting to present the draft social nuisance ordinance to community stakeholders and to obtain feedback. The meeting was attended by a cross-section of community interests. The neighborhood groups represented at the meeting included those from Central Avenue, Fairway Park, Upper B Street, C Street, Optimist Street, and Cypress Avenue. Also in attendance were members from the Chamber of Commerce, Downtown Business Improvement Area Board, Rental Housing Association Board of Directors, Bay East Association of REALTORS, Crime Free Multi-Housing program, and Hayward Neighborhood Watch. The comments received reflect the varied perspectives of the diverse stakeholders at the meeting.

The residents and neighborhood group representatives at the meeting generally expressed support for the Social Nuisance Ordinance. Many residents provided anecdotes of nuisance properties within their neighborhoods and expressed optimism that the ordinance could address problem properties within their community.

City staff also received comments from the owners of rental housing and rental housing organization representatives (“rental housing stakeholders”). The comments largely focused on two specific topics and the comments are summarized as follows:

- **The Residential Rent Stabilization Ordinance:** the rental housing stakeholders expressed their position that the “Eviction for Cause” provisions in the City’s Residential Rent Stabilization Ordinance create a burden, economic and otherwise, on property owners. The rental housing stakeholders expressed a desire to repeal the Residential Rent Stabilization Ordinance.
- **Conflict with the Proposed Social Nuisance Ordinance:** the rental housing stakeholders were also concerned that the proposed Social Nuisance Ordinance may conflict with the terms of the “Eviction for Cause” section of the Residential Rent Stabilization Ordinance.

Originally adopted in 1983, the [Residential Rent Stabilization Ordinance](#) (“RRSO”) expresses the existing policy of the City Council concerning rent control and eviction for cause. The stated purpose of the RRSO includes: providing relief to residential tenants by stabilizing rent increases to certain tenants; encouraging investment in new residential property by providing for the gradual elimination of rent increase controls; and assuring efficient landlords both a fair return on their property and rental income.

In addition to providing relief to residential tenants by stabilizing rents, the RRSO also limits the “causes” for which a landlord may evict a tenant. Section 19 of the RRSO – known as “Eviction for Cause” – requires a landlord to prove the existence of specific “cause” or reason before a tenant can be evicted from a rental unit. If a landlord fails to establish cause under the Eviction for Cause provisions, a landlord is unable to recover possession of the unit.

The proposed Social Nuisance Ordinance does not conflict with the Eviction for Cause section of the RRSO. Although the Social Nuisance Ordinance provides an administrative process for compelling a property owner to abate nuisance-creating behavior – including the imposition of a monetary penalty – the ordinance does not require a property owner to perform an eviction in order to comply with its terms. As the Social Nuisance Ordinance does not compel an eviction, it does not conflict with the RRSO’s provisions protecting against evictions without cause.

In fact, the Social Nuisance Ordinance complements the RRSO and can facilitate a proper eviction. The illegal sale of controlled substances is an example: where a tenant engages in the illegal sale of a controlled substance on a property, the tenant runs afoul of the Social Nuisance Ordinance and is subject to proper eviction pursuant to the Eviction for Cause provisions. Under the Social Nuisance Ordinance, the illegal sale of controlled substance is defined as a public nuisance. Under the Eviction for Cause provisions, the illegal sale of controlled substance is a cause for eviction.

A second example is where a tenant repeatedly causes unreasonable noises by hosting unruly parties. The behavior is defined as a public nuisance and violates the Social Nuisance Ordinance. The behavior is also cause for eviction – for disturbing the peace and quiet of other tenants of the premises – under the Eviction for Cause provisions. In both of the examples cited, the notices and orders produced as part of the City’s code enforcement action could be used as evidence in an eviction proceeding initiated by a landlord against that tenant.

Public Comments:

On Friday, October 25, 2013, City staff received written comments from the Rental Housing Owners Association (RHOA). The written comments consisted of approximately twenty-four questions, concerns and/or suggestions regarding the language of the Ordinance (Attachment II). The City Attorney’s Office reviewed and analyzed RHOA’s list of concerns and drafted a point-by-point response (Attachment III).

In response to the concerns raised by the residential housing stakeholders, City staff included the following additional protections and/or language in the proposed ordinance:

- The right to contest the allegations of nuisance at the Courtesy Notice stage by the person(s) allegedly causing the public nuisance.
- Safeguards against the imposition of a monetary penalty where the property owner is making good faith efforts to abate the nuisance;
- Access to any City notices and orders, and authority to use said records as evidence in any judicial action, including but not limited to eviction proceedings;
- Authority for a hearing officer to issue subpoenas to compel attendance and production of documents;
- Language affirming that the City’s Enforcement Officer will comply with any subpoena issued in accordance with California law; and
- Clarification of legal terms in Sections 4-15.08 (Penalties/Enforcement) and Section 4-15.14 (Public Nuisance).

The proposed Ordinance is shaded in areas reflective of input from RHOA. City staff believes the proposed Social Nuisance Ordinance strikes a balance between the City’s efforts towards neighborhood livability, safety and cleanliness, and the concerns articulated by the stakeholders.

ECONOMIC IMPACT

Public nuisance on properties not only negatively impacts a neighborhood’s health and safety, but also impacts the real property value and livability of a neighborhood. Public nuisance behavior also has a negative economic impact and is a drain on City resources. It is anticipated that the negative

economic impact will be alleviated by adoption of the Social Nuisance Ordinance, through efficient enforcement and the availability of cost recovery.

FISCAL IMPACT

Staff believes the efficiency of a Social Nuisance Ordinance will decrease the time and expense currently attributed to civil litigation in extreme nuisance cases. Furthermore, the ordinance will minimize the wasted costs of chronic Police responses to nuisance properties not yet the subject of litigation. Therefore, the fiscal impact is likely to be positive.

PUBLIC CONTACT

Over the past nine months, City staff has discussed the creation of a social nuisance ordinance in various public forums. City staff has addressed the topic at Neighborhood Watch meetings, Neighborhood Alert board meetings, the Hayward Police Department Community Academy, and Crime Free Multi-Housing Program training. The prospect of such an ordinance has also been discussed at other neighborhood meetings specific to the issue of social nuisances.

During the months of May and June, City staff met with board members of the Downtown Business Improvement Association (DBIA), the Rental Housing Association (RHA), the Bay East Realtors Association, and the Hayward Chamber of Commerce. The concept of the ordinance was shared with each group and feedback was received.

On October 18, 2013, City staff conducted a public meeting to discuss the topic of social nuisances and receive feedback concerning the draft social nuisance ordinance. The comments received reflect the varied perspectives of the diverse stakeholders at the meeting and included both support for the ordinance as well as reservations concerning its impact on owners of rental housing.

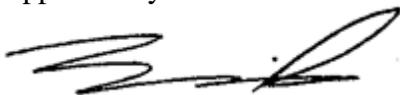
NEXT STEPS

If introduced on November 5, the City Council will consider adoption of the ordinance on November 12, 2013. The ordinance will become effective thirty days after adoption.

Prepared by: Mark Koller, Lieutenant (Northern District Commander)
Rafael Alvarado, Assistant City Attorney

Recommended by: Michael Lawson, City Attorney
Diane E. Urban, Chief of Police

Approved by:



Fran David, City Manager

- Attachment I: Ordinance of the City of Hayward California Adding Article 15 to Chapter 4 of the Hayward Municipal Code Relating to Social Nuisances
- Attachment II: RHOA Written Comments submitted to the City of Hayward
- Attachment III: City Attorney's Office response to RHOA Written Comments

ORDINANCE NO.

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA
ADDING ARTICLE 15 TO CHAPTER 4 OF THE HAYWARD
MUNICIPAL CODE RELATING TO SOCIAL NUISANCES

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

Section 1. Article 15 is hereby added to Chapter 4 of the Hayward Municipal Code, as set forth in Exhibit A attached hereto, to be known and referred to as the ‘Social Nuisance Ordinance.’

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

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

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

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

**EXHIBIT A:
SOCIAL NUISANCE ORDINANCE**

CHAPTER 4

ARTICLE 15

SOCIAL NUISANCE ORDINANCE

Section	Subject Matter
4-15.01	TITLE
4-15.02	FINDINGS
4-15.03	PURPOSE
4-15.04	APPLICATION

GENERAL RESPONSIBILITIES

4-15.05	RESPONSIBILITY FOR PROPER PROPERTY MANAGEMENT
4-15.06	RESPONSIBILITY OF EVERY TENANT
4-15.07	AUTHORITY
4-15.08	PENALTY FOR VIOLATIONS; ENFORCEMENT

DEFINITIONS

4-15.09	OWNER
4-15.10	TENANT
4-15.11	ENFORCEMENT OFFICER
4-15.12	HEARING OFFICER
4-15.13	ADMINISTRATIVE EXPENSES
4-15.14	PUBLIC NUISANCE

NOTICES

- 4-15.15 COURTESY NOTICE
- 4-15.16 ORDER TO ABATE – CONTENT
- 4-15.17 ORDER TO ABATE –SERVICE
- 4-15.18 ORDER TO ABATE – FEE
- 4-15.19 CITY MANAGER’S REVIEW OF COMPLIANCE
- 4-15.20 NOTICE OF ADMINISTRATIVE PENALTY

HEARING RIGHTS

- 4-15.21 RIGHT TO HEARING
- 4-15.22 REQUEST FOR HEARING
- 4-15.23 HEARING NOTICE - CONTENTS.
- 4-15.24 HEARING NOTICE - SERVICE
- 4-15.25 HEARINGS - GENERALLY
- 4-15.26 RECORD OF ORAL EVIDENCE AT HEARING
- 4-15.27 CONTINUANCE
- 4-15.28 OATHS
- 4-15.29 EVIDENCE RULES
- 4-15.30 RIGHTS OF PARTIES
- 4-15.31 OFFICIAL NOTICE
- 4-15.32 DECISION OF THE HEARING OFFICER
- 4-15.33 ENFORCEMENT OF HEARING OFFICER ORDERS
- 4-15.34 ACCESS TO RECORDS AND EVIDENCE
- 4-15.35 JUDICIAL REVIEW OF ADMINISTRATIVE DECISION

COLLECTION PROCEDURE

4-15.36	NOTICE OF LIEN/SPECIAL ASSESSMENT
4-15.37	LIEN/SPECIAL ASSESSMENT HEARING
4-15.38	ACCOUNT AND REPORT OF COST
4-15.39	NOTICE OF REPORT
4-15.40	COLLECTION ON TAX ROLL

ARTICLE 14

SOCIAL NUISANCE ORDINANCE

SEC. 4-15.01 TITLE. This ordinance shall be known as the "Social Nuisance Ordinance," may be cited as such, and will be referred to herein as "this ordinance."

SEC. 4-15.02 FINDINGS. The city council finds as follows:

- a) Just as the physical conditions of properties within the City of Hayward can constitute public and private nuisances, so too the behavior of persons on properties within the city can constitute public and private nuisances. Examples of behavior which can constitute nuisances include large and noisy gatherings, noisy activities during late night hours, use or sale of controlled substances on the premises, and the coming and going of persons with the intent to purchase controlled substances.
- b) It is as important to the public health, safety and welfare for interested residents of the city or the city to be able to abate nuisance-creating behaviors as it is to abate nuisance-creating physical conditions.
- c) The owners of properties within the city are responsible to monitor their properties and to take appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance-creating behaviors. Such nuisances can be avoided with adequate property management. If property owners do not fulfill their responsibilities, it is necessary for the safety, health and welfare of neighborhoods and the city as a whole that interested persons or the city be able to undertake abatement action.
- d) Neighborhood health and safety must be protected in a way which does not promote housing discrimination or promote evictions based on prejudice, unfounded fears, or personal animosities.
- e) Nothing in this ordinance exempts property owners from strict compliance with state housing law on evictions, retaliatory conduct or discriminatory conduct, or privacy.

SEC. 4-15.03 PURPOSE. The purpose of this ordinance is:

- a) To set forth and enforce minimum standards relating to the management of properties to protect the public health, safety, and welfare, and
- b) To put in place a remedy which will permit aggrieved persons or the city to take effective, efficient administrative or judicial action against property owners who permit nuisance-creating behaviors to occur on their properties on a continuing basis in order to compel such owners to abate the nuisance-creating behaviors.
- c) The provisions of this ordinance are intended to be supplementary and complementary to all of the other provisions of the Hayward Municipal Code and state law and all remedies

set forth herein shall be cumulative to other remedies which may be available under the Hayward Municipal Code or state law.

SEC. 4-15.04 APPLICATION. The provisions of this ordinance shall apply generally to all property, whether owner occupied or rental, throughout the City of Hayward wherein any of the nuisances hereinafter specified, are found to exist. A criminal conviction is not required for establishing the occurrence of a nuisance violation pursuant to this ordinance. The provisions of this ordinance shall not apply to activities which constitute a bona fide exercise of constitutional rights.

GENERAL RESPONSIBILITIES

SEC. 4-15.05 RESPONSIBILITY FOR PROPER PROPERTY MANAGEMENT. Every owner of real property within the city is required to manage the property in a manner so as not to violate the provisions of this ordinance and the owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding the property.

SEC. 4-15.06 RESPONSIBILITY OF EVERY TENANT. Every tenant, occupant, lessee or holder of any possessory interest in the real property is required to behave on the property, and supervise any guests on the property, in a manner so as not to violate the provisions of this ordinance.

SEC. 4-15.07 AUTHORITY. The City Manager, or the city manager's designee (hereafter "city manager"), shall administer the provisions of this ordinance. The city manager shall have the authority to designate employees as Enforcement Officers in conformance with this ordinance to assist with enforcement responsibilities of this ordinance, including, but not limited to, the issuance of notices, orders and fines. Hearings or appeals of the city manager's orders shall be heard by a hearing officer appointed by the city manager.

SEC. 4-15.08 PENALTY FOR VIOLATIONS; ENFORCEMENT.

- a) The administrative enforcement described in this ordinance notwithstanding, the city attorney may bring a civil action for injunctive relief and civil penalties against any owner who violates this ordinance.
- b) Any person affected aggrieved by a public nuisance described in this ordinance may bring a civil action for injunctive relief and damages against any owner who violates this ordinance.
- c) In any civil action brought pursuant to this ordinance, the court may award reasonable attorneys fees and costs to the prevailing party.

DEFINITIONS

SEC. 4-15.09 OWNER . Owner shall mean any person, persons, organizations or legal entity owning property as shown on the last equalized assessment roll for City taxes.

SEC. 4-15.10 TENANT . Tenant shall mean any occupant, lessee, sublessor, sublessee, or holder of any possessory interest in the real property.

SEC. 4-15.11 ENFORCEMENT OFFICER . Enforcement Officer shall mean any person authorized by the City Manager to enforce the provisions of this ordinance.

SEC. 4-15.12 HEARING OFFICER . Hearing Officer shall mean any person appointed by the City Manager to preside over the administrative hearings pursuant to this ordinance.

SEC. 4-15.13 ADMINISTRATIVE EXPENSES. "Administrative expenses" shall include, but not be limited to:

- a) The costs associated with any hearings before a hearing officer.
- b) City's personnel costs, direct and indirect, incurred in enforcing this article and in preparing for, participating in or conducting any hearings subject to this article, including but not limited to attorney's fees.
- c) The cost incurred by the city in documenting the safety violations, including but not limited to, the actual expense and costs of the city responding to the safety violation(s); investigating and enforcing statutory crimes related to the safety violation, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, administrative citations, and orders.

SEC. 4-15.14 PUBLIC NUISANCE . It is hereby declared a public nuisance and a violation of this ordinance for an owner or tenant of any premises in this City to permit those premises to be used in such a manner that any one or more of the activities described in the following subsections are found to occur and to occur repeatedly thereon:

- a) The illegal sale of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Sections 3479 and 3480.
- b) The illegal use of controlled substances and other illegal drugs and substances which creates a public nuisance as defined in Civil Code Section 3479 and 3480.
- c) The frequent gathering, or coming and going, of people who have an intent to engage in the illegal purchase or illegal use of controlled substances on the premises.
- d) The occurrence of prostitution.
- e) Violent criminal acts, whether or not a criminal case is filed, including, but not limited to, rape, attempted rape, robbery, battery, homicide, shooting, kidnapping, or arson.

- f) Unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22).
- g) The creating or causing to be created any unreasonable noises which disturbs the peace, quiet, and comfort of the community, or any portion thereof.
- h) Allowing the occupancy load to exceed the permitted number within a public assembly, as established by the California Building Code, when alcohol and/or drugs are being consumed or accessible to the gathering;
- i) The firing of gunshots or brandishing of weapons by a resident, or by a guest of a resident.
- j) The occurrence of any criminal activity not specified above which threatens the life, health, safety or welfare of the residents of the property, neighbors or the public.

NOTICES

SEC. 4-15.15 COURTESY NOTICE.

- a) To commence enforcement of this ordinance, the city manager shall notify the property owner of the occurrence of a nuisance violation on the owner's property. The city manager shall communicate with the owner to request that the owner voluntarily cooperate with the city to abate the nuisance. The city manager may concurrently give notice thereof to the property manager where applicable.
- b) The city manager shall also concurrently give written notice to the tenants, where applicable, identifying the nuisance violations.
- c) The courtesy notice shall contain the following information:
 - 1) The street address where the nuisance violation is occurring.
 - 2) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance.
 - 3) A statement that the tenant(s) person(s) allegedly causing the nuisance have the right to contest the allegations of nuisance at an informal meeting with the city manager as described in subsection (d). The request for meeting with the city manager must be made within fifteen (15) calendar days of the initial notification. Notice to the tenant or unit need not be given when the city manager determines that doing so would endanger persons or compromise an ongoing police investigation.
- d) The city manager shall hold an informal meeting pursuant to subsection (c)(3) no later than fifteen (15) calendar days after the tenant's request by a person(s) allegedly causing

the nuisance. At the meeting, the tenant person(s) allegedly causing the nuisance shall be given the opportunity to demonstrate that he or she is not causing a nuisance. The city manager shall mail copies of a letter describing the results of the informal meeting to the tenant person(s) allegedly causing the nuisance and the property owner.

- e) The Courtesy Notice shall be served in the manner prescribed by Section 4-15.24.
- f) An “Order to Abate” shall not be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to city communications and requests, active professional property management, taking steps to repair physical conditions which contribute to the nuisance, and utilizing any and all legal remedies to abate and/or remedy the nuisance, including but not limited to an unlawful detainer action.
- g) The city manager may issue an “Order to Abate” the nuisance after following the procedures described in subsections (a) through (f).

SEC. 4-15.16 ORDER TO ABATE – CONTENT. The Order to Abate shall contain:

- a) The street address where the nuisance violation is occurring.
- b) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance, and reasonable actions which the city manager orders the owner to take to abate the nuisance.
- c) A statement advising the owner to abate the nuisance within thirty (30) calendar days of mailing of the Order to Abate, or such longer time as the city manager may order. An extension of time to abate the nuisance shall be granted if the owner is making good faith efforts to abate the nuisance and those efforts are delayed due to judicial proceedings relating to the property.
- d) A statement advising the owner that he or she has the right to request a hearing to contest the Order to Abate.
- e) A statement advising the owner that an administrative penalty in an amount not to exceed five thousand dollars (\$5000.00) shall be imposed upon the owner and made a lien/special assessment on the property involved if the nuisance is not abated as required by the Order to Abate and no written request for hearing is filed within thirty (30) days of receipt of the Order to Abate.
- f) A statement that in responding to the Order to Abate, the owner should comply with all applicable federal, state, and local regulations relating to evictions and prohibitions against discrimination.

- g) Whenever the city manager issues an Order to Abate to abate a nuisance at a rental residential property, the city manager shall concurrently issue a written notice to the tenants of the cited property or unit.
- h) The Order to Abate shall state that a written abatement plan executed by the owner and city manager shall be deemed to be a final order of the hearing officer.

SEC. 4-15.17 ORDER TO ABATE – SERVICE. The Order to Abate shall be served in the manner prescribed by Section 4-15.24.

SEC. 4-15.18 ORDER TO ABATE – FEE. In addition to administrative penalties, the city may impose a fee on the owner of any property for which an Order to Abate is issued pursuant to this ordinance. The fee shall be calculated to recover any and all administrative expenses incurred by the city. The fee shall be a personal obligation of the owner and a lien/special assessment against the property which is the subject of the Order to Abate. Any fee not paid within the time specified shall be recovered pursuant to Section 4-15.35 – 4-15.39 of the Hayward Municipal Code.

SEC. 4-15.18 CITY MANAGER’S REVIEW OF COMPLIANCE. After the time for abatement set forth in the Order to Abate has expired, the city manager shall determine whether the owner has taken action ordered by the city manager and whether the nuisance has been abated. If the city manager determines that the owner has complied with the city manager’s order and the nuisance has been abated, the owner and any tenants other than the owner shall be notified in writing of such determination and the administrative action shall be suspended. If the city manager suspends the administrative action, he/she may continue to monitor the property and activity associated with it. If the city manager determines that the nuisance activity recurs and/or the owner has failed to comply with the previously issued Order to Abate within eighteen months (18) of suspension of the case, the city manager may impose an administrative penalty as provided in Section 4-15.20.

SEC. 4-15.20 NOTICE OF ADMINISTRATIVE PENALTY.

- a) If the city manager determines that the nuisance has not been abated and that the owner has failed to comply with the city manager’s order, or that the nuisance actually has recurred, the city manager shall issue a “Notice of Administrative Penalty” imposing an administrative penalty of not more than five thousand dollars (\$5,000.00) upon the owner of the premises. In addition, the city manager may issue another Order to Abate to the owner pursuant to Section 4-15.16 for the existence of any nuisance which has not been abated, or which has recurred.
- b) The Notice of Administrative Penalty shall specify the amount of the administrative penalty, advise the owner of his or her right to request a hearing to contest the administrative penalty, and state that if no hearing request is received within thirty (30) calendar days, the administrative penalty will become final and be made a lien/special assessment upon the property involved.
- c) No owner shall pass on to tenants penalties incurred pursuant to this ordinance.

- d) The notice of administrative penalty shall be served in the manner prescribed by Section 4-15.24.

HEARING RIGHTS

SEC. 4-15.21 RIGHT TO HEARING. The property owner has the right to request a hearing to contest any Order to Abate issued, any fee or any administrative penalty imposed by the city manager.

SEC. 4-15.22 REQUEST FOR HEARING. A request for hearing to contest an Order to Abate, a fee or an administrative penalty imposed shall be made in writing, to the city manager, within thirty (30) calendar days after mailing of the Order to Abate or Notice of Administrative Penalty. If a request for hearing is not timely filed, the Order to Abate, the fee or the administrative penalty imposed shall be deemed a final order of the hearing officer.

SEC. 4-15.23 HEARING NOTICE - CONTENTS. Upon the owner's request for a hearing, the city manager shall issue a hearing notice. The notice shall contain:

- a) A copy of the Order to Abate.
- b) A copy of the Notice of Administrative Penalty, where applicable.
- c) The amount of any fee imposed, where applicable.
- d) An order to the owner to appear before a hearing officer at a stated time, but in no event less than twenty calendar days after mailing of the hearing notice.
- e) A list of the actions which the city manager intends to ask the hearing officer to order the owner to take if the matter is not resolved before hearing. Nothing shall prevent the hearing officer from ordering other actions not listed in the hearing notice.
- f) A statement that all interested persons may attend and testify at the hearing.

SEC. 4-15.24 HEARING NOTICE - SERVICE. The hearing notice shall be served in the following manner:

- a) The hearing notice, and any amended or supplemental notice, shall be served either by personal delivery or by first class mail, proof of service attached, postage prepaid, upon the owner at the owner's address as it appears on the latest equalized assessment roll of Alameda County, or as known to the city manager. At the discretion of the city manager, copies of the notice may also be mailed to any holder of an interest in the property or a mortgage, deed of trust, or other lien or encumbrance of record.
- b) Proof of service of the hearing notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made.

- c) Failure to effect service on any person specified herein shall not invalidate proceedings against any person who is properly served.

SEC. 4-15.25 HEARINGS - GENERALLY. At the time set, the hearing officer shall proceed to hear the testimony of city staff, the owner, any tenants, and other persons regarding the nuisance-creating behaviors on the premises and the steps necessary to abate the nuisance, the imposition of an administrative penalty or any fee imposed. The hearing officer shall have the power to examine witnesses and to issue subpoenas to compel the attendance of witnesses and/or the production of documents.

SEC. 4-15.26 RECORD OF ORAL EVIDENCE AT HEARING. The proceedings at the hearing shall be recorded by a tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

SEC. 4-15.27 CONTINUANCES. The hearing officer may grant continuances from time to time for good cause shown.

SEC. 4-15.28 OATHS. The hearing officer shall administer the oath or affirmation.

SEC. 4-15.29 EVIDENCE RULES.

- a) Oral evidence shall be taken only on oath or affirmation.
- b) Hearings need not be conducted according to the technical rules of evidence.
- c) Any relevant evidence shall be admitted if it is of the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- d) Irrelevant and unduly repetitious evidence shall be excluded.

SEC. 4-15.30 RIGHTS OF PARTIES. The parties and anyone who participates in a hearing under this ordinance may be represented by an attorney or other person of the party's choice. If a party does not proficiently speak or understand the English language, the party may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have any involvement in the issues of the case prior to the hearing.

SEC. 4-15.31 OFFICIAL NOTICE. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments.

SEC. 4-15.32 DECISION OF THE HEARING OFFICER

- a) If it is shown by a preponderance of evidence that behaviors occurring on the premises constitute a public nuisance and that the owner of the premises has not taken adequate steps to abate the nuisance as prescribed by the city manager, the hearing officer shall issue a written decision declaring the premises a public nuisance. The hearing officer may order the owner to take such action the hearing officer deems appropriate to abate the nuisance. The actions ordered shall be reasonable and may include, but shall not be limited to:
- 1) Provision of additional exterior lighting;
 - 2) The posting of security personnel on the premises;
 - 3) Installation of appropriate fencing;
 - 4) Posting of signs on the premises, and provisions in rental applications and agreements, which state that nuisance-creating behaviors on the premises, including but not limited to the nuisance-creating behaviors identified in this ordinance, shall be grounds for eviction;
 - 5) Hiring a competent property management firm to manage the property;
 - 6) Hiring of a competent resident manager who has experience, education, and training in rental property management;
 - 7) Posting a sign on the premises setting forth the name, address and daytime and evening telephone numbers of the owner or of a local property manager who is authorized to make decisions relating to management of the property;
 - 8) Obtaining education and training in rental property management, including completion of the Hayward Police Department's the Crime Free Multi-Housing Program;
 - 9) Correcting any violations of the Uniform Housing Code or Uniform Code for the Abatement of Dangerous Buildings;
 - 10) Such other reasonable actions as may be deemed appropriate by the hearing officer.
- b) The hearing officer may affirm, reject or modify any administrative penalty imposed on the owner by the city manager based upon the severity of the nuisance-creating behaviors on the premises and the owner's efforts, or lack thereof, to remedy the problem. The administrative penalty may be adjusted if the hearing officer finds that imposition of the penalty would work a substantial undue economic hardship on the owner or tenants.
- c) The hearing officer shall not have the authority to order that the owner evict a tenant or any other person from the premises.

- d) If the hearing officer orders the owner to take specified actions to abate the nuisance, the city manager shall review the owner's compliance with the hearing officer's order pursuant to Section 4-15.18.
- e) The decision shall inform the owner that if the nuisance is not abated within the time specified and the owner has not complied with all orders of the hearing officer, an administrative penalty in an amount not to exceed five thousand dollars may be imposed upon the owner and made a lien/special assessment on the property involved.
- f) If the decision orders the owner to take any actions which were not listed in the hearing notice, the decision shall specifically designate those actions.
- g) The decision shall be posted on the premises and served upon the owner and to any tenants other than the owner, by personal delivery or by first class mail, proof of service attached, postage prepaid. The decision shall also be sent by first class mail to any holder of any mortgage or deed of trust or the lien or encumbrance of record, the owner or holder of any lease of record, the holder of any other estate or legal interest of record in the premises. Failure to serve the decision on any person specified herein shall not invalidate proceedings against any person who is properly served.
- h) The decision of the hearing officer shall be final. Any person aggrieved by the administrative decision of a hearing officer may seek judicial review, as specified in Section 4-15.34.

SEC. 4-15.33 ENFORCEMENT OF HEARING OFFICER ORDERS. After any order of the hearing officer made pursuant to this ordinance becomes final, no owner to whom any such order is directed shall fail, neglect or refuse to obey any such order. The city attorney may commence appropriate judicial action against any owner who fails to abate a nuisance pursuant to the order of the hearing officer.

SEC. 4-15.34 ACCESS TO RECORDS AND EVIDENCE.

- a) Any notice, order, and/or decision, including the Courtesy Notice, Order to Abate, Notice of Administrative Penalty, and the Decision of the Hearing Officer, shall be a record subject to disclosure pursuant to terms set forth in the California Public Records Act. Said records may be used, subject to any applicable rules of evidence, in any judicial action.
- b) In a judicial action, the Enforcement Officer shall comply with a subpoena issued in accordance with the procedures set for the in the California Code of Civil Procedure, Section 1985 *et seq.*

SEC. 4-15.35 JUDICIAL REVIEW OF ADMINISTRATIVE DECISION.

- a) Any person aggrieved by an administrative decision of the hearing officer ordering the abatement of a nuisance and any associated administrative penalties or reimbursement for costs set forth in the Hearing Decision, may seek review of the administrative decision in

the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure.

- b) The filing of a request for judicial review shall not stay the operation or effect of an administrative decision or order unless a court of competent jurisdiction issues a specific stay order.

PROCEDURES FOR COLLECTION OF ADMINISTRATIVE PENALTY

SEC. 4-15.36 NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid inspection fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

SEC. 4-15.37 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing by written request within 10 days of receipt of the notice of lien/special assessment. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by any person liable to be charged for the work of abating cited code violations and related charges associated with their property. The city manager shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the hearing officer may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the hearing officer, including inspection charges and administrative expenses shall, after being confirmed by the city council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to judicial review shall be governed California Code of Civil Procedure Section 1094.5.

SEC. 4-15.38 ACCOUNT AND REPORT OF COST. The Enforcement Officer shall keep an account of the cost of abating the nuisance on each separate lot or parcel of land where the work is done by the City, as well as any inspection charges which remain unpaid, and shall render an annual itemized report in writing to the City Council showing the cost of abatement, including any salvage value, and outstanding inspection charges. The City Council shall review and confirm the annual report and lien/special assessment list, amended as necessary, by way of resolution.

SEC. 4-15.39 NOTICE OF REPORT. The City Clerk shall post a copy of the report and lien/special assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for confirmation by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 4-15.40 COLLECTION ON TAX ROLL. After City Council confirmation of the annual report and lien/special assessment list, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid liens/special assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such liens or special assessments and this lien or special assessment shall have priority of the taxes with which it is collected.

RHA Comments Specific to the language in Hayward’s proposed – Social Nuisance Behavior Ordinance

Submitted via email to:

Rafael E. Alvarado Jr.
Assistant City Attorney
Hayward City Attorney's Office
777 B Street
Hayward, CA 94541

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Section 3-14.04 Application

SEC. 3-14.04 APPLICATION. The provisions of this ordinance shall apply generally to all property, whether owner occupied or rental, throughout the City of Hayward wherein any of the nuisances hereinafter specified, are found to exist. A criminal conviction is not required for establishing the occurrence of a nuisance violation pursuant to this ordinance. The provisions of this ordinance shall not apply to activities which constitute a bona fide exercise of constitutional rights.

This section states that a criminal conviction is not necessary to establish a nuisance violation. A later section states that the standard is "preponderance of the evidence." "Preponderance of the evidence" is a lower standard that what might be required for an eviction. We recommend a standard that will be more helpful in the unlawful detainer process. Perhaps "clear and convincing" to be the standard.

3-14.08 Penalties/Enforcement

SEC. 3-14.08 PENALTY FOR VIOLATIONS; ENFORCEMENT.

- a) The administrative enforcement described in this ordinance notwithstanding, the city attorney may bring a civil action for injunctive relief and civil penalties against any owner who violates this ordinance.
- b) Any person affected by a public nuisance described in this ordinance may bring a civil action for injunctive relief and damages against any owner who violates this ordinance.
- c) In any civil action brought pursuant to this ordinance, the court may award reasonable attorneys fees and costs to the prevailing party.

Subsection (a) only authorizes civil action against owner, not tenant. It should also allow for action against tenants.

Subsection (b) This allows an "affected" person to bring an action for public nuisance. Our understanding is that for a public nuisance claim an individual must be specially affected by the nuisance. We are not sure this is a principal that can be changed in a local ordinance. Please explain

Subsection (c) Prevailing party provision for attorney fees in a civil action. This creates incentive for eviction delay tactics and can create problems with ordinance compliance and as a result. It can exponentially increase the cost of an unlawful detainer case if held over for a jury trial. This is problematic and could cause serious consequences for an owner attempting to act in good faith.

Section 3-14.13 Administrative Expenses

SEC. 3-14.13 ADMINISTRATIVE EXPENSES. "Administrative expenses" shall include, but not be limited to:

- a) The costs associated with any hearings before a hearing officer.

b) City's personnel costs, direct and indirect, incurred in enforcing this article and in preparing for, participating in or conducting any hearings subject to this article, including but not limited to attorney's fees.

c) The cost incurred by the city in documenting the safety violations, including but not limited to, the actual expense and costs of the city responding to the safety violation(s); investigating and enforcing statutory crimes related to the safety violation, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, administrative citations, and orders.

This is a very detailed list of expenses that will vary tremendously from one matter to another. If the City plans to charge this as a fee (without it getting passed as a tax), they will probably have to calculate it individually for each owner. Any standard amount is going to either be insufficient or be too large and therefore not really a "fee."

Section 3-14.14 Public Nuisance

SEC. 3-14.14 PUBLIC NUISANCE. It is hereby declared a public nuisance and a violation of this ordinance for an owner or tenant of any premises in this City to permit those premises to be used in such a manner that any one or more of the activities described in the following subsections are found to occur and to occur repeatedly thereon:

f) The frequent gathering, or coming and going, of people who have an intent to purchase or use controlled substances on the premises.

j) The creating or causing to be created any unreasonable noises which disturbs the peace, quiet, and comfort of the community, or any portion thereof.

k) Allowing the occupancy load to exceed the permitted number within a public assembly, as established by the California Building Code, when alcohol and/or drugs are being consumed or accessible to the gathering;

This requires a violation to "occur repeatedly." How many times is that? In what span of time? Needs to be more concise.

Subsection (f) should say "illegally use controlled substances." What status would medical marijuana use have under these provisions?

Subsection (j) "unreasonable noises which disturb... the community, or any portion thereof." How many people need to be disturbed? Does an individual/habitual caller to the Police department constitute a public nuisance? (Say, a cranky neighbor?) Is there an objective plan to deal with this?

Subsection (k) Is it a nuisance to illegally overcrowd a place in the absence of alcohol or drugs? What does "accessible to the gathering mean"? Review terms and clarify in ordinance.

Section 3-14.15 Courtesy Notice

SEC. 3-14.15 COURTESY NOTICE.

a) To commence enforcement of this ordinance, the city manager shall notify the property owner of the occurrence of a nuisance violation on the owner's property. The city manager shall communicate with the owner to request that the owner voluntarily cooperate with the city to abate the nuisance. The city manager may concurrently give notice thereof to the property manager where applicable.

b) The city manager shall also concurrently give written notice to the tenants, where applicable, identifying the nuisance violations.

c) The courtesy notice shall contain the following information:

- 1) The street address where the nuisance violation is occurring.
- 2) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance.
- 3) A statement that the tenant(s) have the right to contest the allegations of nuisance at an informal meeting with the city manager as described in subsection (d). The request for meeting with the city manager must be made within fifteen (15) calendar days of the initial notification. Notice to the tenant or unit need not be given when the city manager determines that doing so would endanger persons or compromise an ongoing police investigation.
- d) The city manager shall hold an informal meeting pursuant to subsection (c)(3) no later than fifteen (15) calendar days after the tenant's request. At the meeting, the tenant shall be given the opportunity to demonstrate that he or she is not causing a nuisance. The city manager shall mail copies of a letter describing the results of the informal meeting to the tenant and the property owner.
- e) The Courtesy Notice shall be served in the manner prescribed by Section 3-14.24.
- f) An “Order to Abate” shall not be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to city communications and requests, active professional property management, taking steps to repair physical conditions which contribute to the nuisance, and utilizing any and all legal remedies to abate and/or remedy the nuisance.

The first step in enforcement is a “courtesy notice” to the owner, manager and tenant –where applicable. When is notice to the tenant(s) “applicable?” Does notice go to the violating tenant or to all tenants?

Subsection (c)(2) The statement contains information about the offense, but it is not clear whether any of it would take the form of something the owner could use as evidence in an unlawful detainer, such as police reports, statements from other tenants, etc. Please clarify to include documents that could be used by the owner in the unlawful detainer process, such as police reports, statements from other tenants, etc.

Subsection (c)(3) describes the process for the tenant to contest the allegation of nuisance. There is no process for the owner to challenge the owner’s alleged violation at this stage. There is also no process for the owner to be involved in the tenant’s hearing, even though the owner may have relevant evidence and there is no mechanism to provide that to the City. Modify to include both.

Subsection (d) should provide for notice to the owner when tenant establishes s/he is not causing a nuisance. Modify to include proper notice to owner when tenant is found not be causing nuisance

Subsection (f) states that an order to abate will not be issued if the owner is making good faith efforts, however, there is no time period for compliance with the courtesy notice or a specific process to verify it. Please be more specific.

Section 3-14.16 Order to Abate

SEC. 3-14.16 ORDER TO ABATE – CONTENT. The Order to Abate shall contain:

- a) The street address where the nuisance violation is occurring.

- b) A statement specifying with particularity the activities and behaviors which constitute the nuisance, including where applicable, addresses and unit numbers of the person or persons allegedly causing the nuisance, and reasonable actions which the city manager orders the owner to take to abate the nuisance.
- c) A statement advising the owner to abate the nuisance within thirty (30) calendar days of mailing of the Order to Abate, or such longer time as the city manager may order. An extension of time to abate the nuisance shall be granted if the owner is making good faith efforts to abate the nuisance and those efforts are delayed due to judicial proceedings relating to the property.
- d) A statement advising the owner that he or she has the right to request a hearing to contest the Order to Abate.
- e) A statement advising the owner that an administrative penalty in an amount not to exceed five thousand dollars (\$5000.00) shall be imposed upon the owner and made a lien/special assessment on the property involved if the nuisance is not abated as required by the Order to Abate and no written request for hearing is filed within thirty (30) days of receipt of the Order to Abate.

Subsection (c) provides that an owner may get an extension if his good faith efforts are delayed due to judicial proceedings. This is the only permissible grounds for an extension. There are other grounds that would be also appropriate, such as correcting building code violations that may take longer than 30 days depending on the severity of the problem. Modify to accommodate other reasonable delay causes as cited above.

Subsection (e) states that there will be a penalty assessed unless the owner has complied with the order or has requested a hearing. It is not clear what happens if the owner has been granted an extension. Is that still compliance with the order? Please clarify in ordinance.

Section 3-14.18 Order to Abate – Fee

SEC. 3-14.18 ORDER TO ABATE – FEE. In addition to administrative penalties, the city may impose a fee on the owner of any property for which an Order to Abate is issued pursuant to this ordinance. The fee shall be calculated to recover any and all administrative expenses incurred by the city. The fee shall be a personal obligation of the owner and a lien/special assessment against the property which is the subject of the Order to Abate. Any fee not paid within the time specified shall be recovered pursuant to Section 3-14.35 – 3-14.39 of the Hayward Municipal Code.

Depending on how much the city charges and for what– this may not be valid. That is a question of how ordinance is implemented.

Section 3-14.18

SEC. 3-14.18 CITY MANAGER’S REVIEW OF COMPLIANCE. After the time for abatement set forth in the Order to Abate has expired, the city manager shall determine whether the owner has taken action ordered by the city manager and whether the nuisance has been abated. If the city manager determines that the owner has complied with the city manager’s order and the nuisance has been abated, the owner and any tenants other than the owner shall be notified in writing of such determination and the administrative action shall be suspended. If the city manager suspends the administrative action, he/she may continue to monitor the property and activity associated with it. If the city manager determines that the nuisance activity recurs and/or the owner has failed to comply with the previously issued Order to Abate within eighteen months (18) of suspension of the case, the city manager may impose an administrative penalty as provided in Section 3-14.20.

What does “any tenants other than the owner” mean? Please clarify

Section 3-14.20(c)

c) No owner shall pass on to tenants penalties incurred pursuant to this ordinance.

Does this prohibition on pass-through's mean that if the tenant is clearly the cause of the nuisance and when the tenant is evicted the City is satisfied that the nuisance has been abated, the owner cannot recover damages from the tenant, to reimburse the owner for the "administrative fee" that was only necessary because of the tenant's conduct? That does not seem reasonable.

Hearing Rights – Section 3-14.21 and following

There is no hearing process available to the owner at the "courtesy notice" stage. Making this available at this stage might also create the dialogue desired and provide due process. Please modify.

Section 3-14.25

SEC. 3-14.25 HEARINGS - GENERALLY. At the time set the hearing officer shall proceed to hear the testimony of city staff, the owner, any tenants, and other persons regarding the nuisance-creating behaviors on the premises and the steps necessary to abate the nuisance, the imposition of an administrative penalty or any fee imposed.

If the owner asks for a hearing can tenants be compelled to attend? Include in ordinance.

Section 3-14.29

c) Any relevant evidence shall be admitted if it is of the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

Subsection (c) defines rules of evidence for these hearings that contradict the state Evidence Code. This may be a violation of an owner's due process rights, as well as preempted by state law. How would this work? An owner could be found liable for a nuisance caused by a tenant on evidence that would not be admissible if the owner tries to evict the tenant. What if the owner seeks judicial review of the administrative action? Does this change the rules of evidence for the California Superior Court? Please address specifically in your response or modify to clarify.

Section 3-14.32

a) If it is shown by a preponderance of evidence that behaviors occurring on the premises constitute a public nuisance and that the owner of the premises has not taken adequate steps to abate the nuisance as prescribed by the city manager, the hearing officer shall issue a written decision declaring the premises a public nuisance. The hearing officer may order the owner to take such action the hearing officer deems appropriate to abate the nuisance. The actions ordered shall be reasonable and may include, but shall not be limited to:

- 1) Provision of additional exterior lighting;
- 2) The posting of security personnel on the premises;
- 3) Installation of appropriate fencing;

4) Posting of signs on the premises, and provisions in rental applications and agreements, which state that nuisance-creating behaviors on the premises, including but not limited to the nuisance-creating behaviors identified in this ordinance, shall be grounds for eviction;

Subsection (a) (4) The provision regarding what should be in an application or rental agreement is vague. What are “nuisance creating behaviors” other than the ones listed in the ordinance? Vague contracts can create liability. Please clarify.

c) The hearing officer shall not have the authority to order that the owner evict a tenant or any other person from the premises.

Subsection (c) While the hearing office can’t order owner to evict, they should at least offer that as a range of options, because it will help the owner do it. Please include.

h) The decision of the hearing officer shall be final. Any person aggrieved by the administrative decision of a hearing officer may seek judicial review, as specified in Section 3-14.34.

Subsection (h) “any person aggrieved” may seek judicial review. Does this include people who were not the subject of the abatement action? Like for example, the tenant? Please clarify.

Section 3-14.35 Notice of Lien

SEC. 3-14.35 NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid inspection fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

Who are all “applicable” owners? Please clarify.

Section 3-14.36

SEC. 3-14.36 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing by written request within 10 days of receipt of the notice of lien/special assessment. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by any person liable to be charged for the work of abating cited code violations and related charges associated with their property. The city manager shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the hearing officer may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the hearing officer, including inspection charges and administrative expenses shall, after being confirmed by the city council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to judicial review shall be governed California Code of Civil Procedure Section 1094.5.

Does the second to last sentence mean that there is a lien while the hearing is going on? Please clarify.



INTRODUCTION:

The Rental Housing Owners Association submitted a list of twenty-four questions, concerns and suggestions to the City Attorney's Office (Attachment II). The City Attorney's Office has reviewed and analyzed RHA's list of concerns, and below is a point-by-point response. The City Attorney found merit with several concerns, as the analysis indicates. As to Concern 11, the proposed ordinance includes language responsive to RHA's concern. As to Concerns 3, 7, 12 and 18, the City Attorney has drafted language responsive to RHA's concerns and said language is included in the proposed Ordinance (Attachment I).

Comment/Concern No. 1:

Section 4-15.04 (Application): RHA recommends using a "clear and convincing" standard to establish a violation of the Social Nuisance Ordinance (herein "Ordinance").

Response: The use of the "preponderance of the evidence" standard in the Ordinance is in harmony with the evidentiary standard applicable to civil actions, including unlawful detainer actions. A standard of "clear and convincing" is more akin to the standard used in criminal cases ("proof beyond a reasonable doubt") and conflicts with the intent of the Ordinance to address violations that may fall short of criminal prosecution.

Comment/Concern No. 2:

Section 4-15.08 (Penalties/Enforcement): RHA recommends adding language to authorize the City Attorney to bring actions against tenants who engage in the nuisance-creating behaviors. The Ordinance currently authorizes the City Attorney to bring an action against a property owner who violates the Ordinance.

Response: The purpose of the Ordinance is to enforce minimum standards relating to the management of all properties in Hayward and creates a process for addressing property owners who allow continued nuisance behaviors to occur on their property. The City Attorney having authority to bring an action against the property owner effectuates this purpose. Additionally, the City has the inherent authority to bring an action against a tenant for a violation of the municipal code.

Comment/Concern No. 3:

Section 4-15.08 (Penalties/Enforcement): RHA is concerned that the Ordinance allows any “affected” person to bring a civil action against a property owner who violates the Ordinance. RHA requests that only a person “specially affected” by the nuisance should be allowed to bring an action.

Response: City staff will propose amended language at the City Council meeting. In order to maintain consistency through the Ordinance, the terms “any person aggrieved” will be added to Section 4-15.08(b).

Comment/Concern No. 4:

Section 4-15.08 (Penalties/Enforcement): RHA is concerned that the attorney fees provision will encourage delay tactics in eviction proceedings and thwart compliance with the Ordinance.

Response: The Ordinance authorizes a Superior Court judge to award attorney fees to a prevailing party in a civil action: (1) by the City Attorney against the property owner in violation of the Ordinance; and (2) by a person affected by a public nuisance against a property owner in violation of the Ordinance. The attorney fee provision is not applicable to an unlawful detainer action between a landlord and a tenant.

Comment/Concern No. 5:

Section 4-15.13 (Administrative Expenses): RHA is concerned that the imposition of administrative expenses should occur on a case-by-case basis and should not be imposed as a standard figure applicable in all cases.

Response: The Ordinance authorizes the City to recover any administrative expenses arising from enforcement of the Ordinance. The administrative expense is calculated on a case-by-case basis and depends on the actual expense and costs of the City responding to safety violations.

Comment/Concern No. 6:

Section 4-15.14 (Public Nuisance): RHA questions and comment – “This [Public Nuisance definition] requires a violation to ‘occur repeatedly.’ How many times is that? In what span of time? Needs to be more concise.”

Response: The purpose of the Ordinance is to put in place a remedy for the City to take administrative action against property owners who fail to abate chronic nuisance behaviors. To that end, the definition of public nuisance states that it is a violation to permit nuisance behavior to “occur repeatedly” on a property.

The Ordinance does not seek to punish first-time offenders, but nonetheless requires the City to issue a “Courtesy Notice” for first time offenses. A second offense within an 18-month period of time results in an “Order to Abate” and the imposition of a monetary penalty.

Comment/Concern No. 7:

Section 4-15.14 (Public Nuisance): RHA comment and question – “Subsection (f) should say ‘illegally use controlled substances.’ What status would medical marijuana use have under these provisions?”

Response: First, City staff agrees the language of subsection (f) can be tightened. City staff will propose amended language at the City Council meeting.

Second, medical marijuana use is regulated by California law and any interpretation of the legality of medical marijuana use is based upon application of state law. The Ordinance does not penalize any person for legal behavior.

Comment/Concern No. 8:

Section 4-15.14 (Public Nuisance): RHA question – “Subsection (j) ‘unreasonable noises which disturb... the community, or any portion thereof.’ How many people need to be disturbed? Does an individual/habitual caller to the Police department constitute a public nuisance? (Say, a cranky neighbor?) Is there an objective plan to deal with this?”

Response: The Ordinance makes it a public nuisance to create unreasonable noises that disturb the peace, quiet, and comfort of the community. The focus is on the repeated existence of unreasonable noises on a property and not the number of people disturbed.

State law addresses the issue of annoying or harassing calls to the police department. California Penal Code 653x makes it unlawful for any person to call the 911 emergency line with the intent to annoy or harass another person. The Hayward Police Department evaluates such matters on a case-by-case basis.

Comment/Concern No. 9:

Section 4-15.14 (Public Nuisance): RHA question– “Subsection (k) Is it a nuisance to illegally overcrowd a place in the absence of alcohol or drugs? What does ‘accessible to the gathering mean’? Review terms and clarify in ordinance.”

Response: Overcrowding alone is not a nuisance behavior under the terms of the Ordinance. In other words, if no drugs/alcohol are involved at an overcrowded assembly, it is not a violation under the Ordinance.

Comment/Concern No. 10:

Section 4-15.15 (Courtesy Notice): RHA question– “The first step in enforcement is a ‘courtesy notice’ to the owner, manager and tenant – where applicable. When is notice to the tenant(s) ‘applicable?’ Does notice go (sic) the violating tenant or to all tenants.”

Response: Where City staff becomes aware of nuisance-creating behavior on a property, the first step in enforcement is the issuance of a “Courtesy Notice.” The Courtesy Notice is issued to the property owner and/or tenant who engages in public nuisance behavior.

Comment/Concern No. 11:

Section 4-15.15 (Courtesy Notice): RHA requests language that allows a property owner to use police reports in an unlawful detainer process.

Response: At the October 18, 2013 public meeting, rental housing stakeholders expressed a similar comment. In response to the comment, City staff created “Section 4-15.34, Access To Records and Evidence”, which allows a property owner to use enforcement records in any judicial action, subject to any applicable rules of evidence.

Comment/Concern No. 12:

Section 4-15.15 (Courtesy Notice): RHA comments that an owner should (1) be allowed to challenge an owner’s alleged violation of the Ordinance at the “Courtesy Notice” stage; and (2) be notified if tenant successfully challenges a violation at the “Courtesy Notice” stage.

Response: City staff agrees with the comment and will propose amended language at the City Council meeting.

Comment/Concern No. 13:

Section 4-15.15 (Courtesy Notice): RHA comments that the Ordinance should include language identifying the time period for compliance with a “Courtesy Notice.”

Response: The Ordinance does not identify a specific period of time for compliance with a “Courtesy Notice,” but instead identifies the factors that City staff will consider in determining whether an owner is making good faith efforts. The Ordinance allows for flexibility, as some efforts (e.g., taking steps to repair physical conditions which contribute to the nuisance) may take longer than others (responding to City communications).

Comment/Concern No. 14:

Section 4-15.16 (Order to Abate): RHA comments that the Ordinance requires compliance with an Order to Abate to occur within a thirty-day period, but should accommodate extensions.

Response: Section 4-15.16 addresses the specific language to be included in an “Order to Abate.” The section requires an Order to Abate to include “[a] statement advising the owner to abate the nuisance within thirty (30) calendar days of mailing of the Order to Abate, *or such longer time as the city manager may order.* Therefore, the language sets a standard of thirty (30) days for compliances, but provides flexibility to the City Manager to increase the time for compliance where warranted.

Comment/Concern No. 15:

Section 4-15.18 (Order to Abate Fee): RHA comments on the Order to Abate Fee – “Depending on how much the city charges and for what – this may not be valid. That is a question of how ordinance is implemented.”

Response: The Ordinance authorizes the City to recover any administrative expenses arising from enforcement of the Ordinance. The administrative expense is calculated on a case-by-case basis and depends on the actual expense and costs of the City responding to safety violations. The Ordinance provides a definition of the recoverable “administrative expenses” in Section 4-15.13.

Comment/Concern No. 16:

Section 4-15.20 (Notice of Administrative Penalty): RHA question and comment concerning the administrative penalty: “Does this prohibition on pass through’s [of an administrative penalty imposed upon to landlord] mean that if the tenant is clearly the cause of the nuisance and when the tenant is evicted the City is satisfied that the nuisance has been abated, the owner cannot recover damages from the tenant, to reimburse the owner for the “administrative fee” that was only necessary because of the tenant’s conduct. That does not seem reasonable.”

Response: An administrative penalty is imposed upon a property owner only where that owner has failed to comply with an Order to Abate and continues to allow the nuisance creating-behavior to occur on the owner’s property. Therefore, it is the property owner’s behavior that results in the imposition of an administrative penalty. The Ordinance prohibits a landlord from passing this administrative penalty onto a tenant.

Comment/Concern No. 17

Section 4-15.21 (Right to Hearing): RHA comments that [“t]here is no hearing process available to the owner at the ‘courtesy notice’ stage. Making this available at this stage might also create the dialogue desired and provide due process. Please modify.”

Response: The Ordinance provides an informal meeting process at the “Courtesy Notice” stage and a hearing process at the “Order to Abate” stage of enforcement. This creates a progressive enforcement process and provides due process for property owner and tenants.

Comment/Concern No. 18

Section 4-15.25 (Hearings Generally): RHA question – “If the owner asks for a hearing can tenants be compelled to attend? Include in ordinance.”

Response: This is a good point. City staff will propose amended language at the City Council meeting.

Comment/Concern No. 19

Section 4-15.29 (Evidence Rules): RHA comments that the Ordinance “defines rules of evidence for [administrative] hearings that contradict the state Evidence Code.”

Response: The Ordinance provision regarding administrative hearings do not conflict with the state Evidence Code. Municipalities are not preempted from creating administrative hearing rules that expand the categories of evidence to be considered by a hearing officer.

Comment/Concern No. 20

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(4) authorizes a hearing officer, after the hearing officer determines a nuisance exists on a property, to order a property owner to include “provisions in rental applications and agreements, which state that the nuisance-creating behaviors on the premises, including but not limited to the nuisance-creating behaviors identified in this ordinance, shall be grounds for eviction.” RHA has expressed concern that this language is vague and can create liability for property owners.

Response: It is not uncommon for rental agreements to contain terms prohibiting nuisance behavior on premises. For example, the California Association of Realtor provides a model lease form widely used by landlords throughout the state of California. A provision in the existing model lease form prohibits nuisance behaviors on property. The Ordinance authorizes a hearing officer to augment existing language to warn tenants that a violation of the Ordinance is grounds for eviction.

Comment/Concern No. 21

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(5) restricts a hearing officer from ordering a property owner to perform an eviction. RHA comments that [w]hile the hearing officer can’t order owner to evict, they should at least offer that as a range of options, because it will help the owner do it. Please include.

Response: Although a hearing officer may not order a property owner to perform an eviction for violations of the Ordinance, a hearing officer is permitted to consider an unlawful detainer action as a sign of a property owner’s good faith effort to comply with the Ordinance.

Comment/Concern No. 22

Section 4-15.32 (Decision of the Hearing Officer): Section 4-15.32(a)(h) authorizes “any person aggrieved” by a hearing officer’s decision to seek judicial review. RHA question seeking clarification of who may seek judicial review.

Response: Under the Ordinance, any aggrieved person includes the property owner and/or the tenant.

Comment/Concern No. 23

Section 4-15.35 (Notice of Lien): Section 4-15.35 requires the City to provide “all applicable owners” notice prior to placing any liens or special assessments against the property. RHA question – “Who are all ‘applicable’ owners? Please clarify.”

Response: The Ordinance defines the term “owner” as “any person, persons, organizations, or legal entity owning property as shown on the last equalized assessment roll for City taxes.”

Comment/Concern No. 24

Section 4-15.36 (Lien/Special Assessment Hearing): Section 4-15.36 allows a property owner to contest a potential lien/special assessment at a lien/special assessment hearing. RHA requests clarification about whether a lien is placed on a property during the lien/special assessment hearing process.

Response: A lien or special assessment is placed on a property only after a property owner has been provided his or her right to a lien/special assessment hearing and the lien/special assessment is confirmed by the City Council. Only then is a lien/special assessment sent to the County for collection on the property tax roll.

DATE: November 5, 2013
TO: Mayor and City Council
FROM: Director of Public Works – Utilities & Environmental Services
SUBJECT: Update on Status of Exclusive Negotiating Period with Waste Management of Alameda County

RECOMMENDATION

That Council adopts the attached resolutions:

1. Approving an extension in the period of exclusive negotiations with Waste Management of Alameda County (WMAC), the City's current solid waste and recycling service franchisee, by another 120 days to March 14, 2014;
2. Authorizing the City Manager to issue a request for proposals for professional services to assist City staff in preparation of a comprehensive solid waste and recycling services request for proposal (RFP);
3. Directing staff to extend the current Franchise Agreement with WMAC by one year to May 31, 2015 with the existing terms; and
4. Requesting approval from the Alameda County Waste Management Authority (ACWMA) for a one-year delay in the City's implementation of organics collection at multi-family developments.

BACKGROUND

Waste Management of Alameda County (WMAC) has been the City's solid waste and recycling services franchisee since at least the mid-seventies. WMAC provided the service under a different business name initially (Oakland Scavenger Company) and has, in the past twenty years, subcontracted with Tri-CED Community Recycling for residential recycling services.

The City entered into the most recent franchise agreement with WMAC in 2007, for services effective June 1, 2007, for an initial period of seven years. The initial period expires on May 31, 2014. The City has the option of extending the contract for three one-year terms, with the same terms and conditions as the current contract, so the current franchise can be extended through May 31, 2017, if necessary.

The City has wide discretion with respect to awarding franchises. Section 1503 of the City Charter allows for non-competitive negotiations with a single provider if Council determines it is in the City's best interests. Consistent with the [Charter](#), Municipal Code Sec. 11-1.12 authorizes the Council to exercise broad discretion in awarding franchises, including engaging in exclusive negotiations with an existing franchisee.

At the Council meeting on July 9, 2013, staff advised the Council that it had two main options in securing long-term solid waste management services. The first was to consider a negotiated agreement with WMAC, the current service provider, in order to continue the current franchise agreement beyond its initial and eventual expiration date. The second option was to prepare and issue a Request for Proposals (RFP), before any discussions with WMAC, and call for new proposals from any qualified and interested service provider, including WMAC. Given the City's long history of service relationship with WMAC, staff recommended entering into a limited-period of negotiations with WMAC. This was intended to provide more information to staff and to Council as to whether it was possible to reach agreement with WMAC with mutually acceptable terms and conditions for the extension of the current franchise, or to determine the need to issue a Request for Proposals.

An overarching goal of any new agreement, whether through the extension of the current franchise with WMAC or entering into a new agreement with a different firm, is to preserve and enhance the services that the community is currently receiving under the franchise agreement at a reasonable cost. Staff is aware and has kept track of the expressed desires of Council and community members, both residents and businesses, and those service enhancements will be considered for any future franchise. Staff will also evaluate the impact of providing these services on the City's infrastructure and will require the new franchisee to mitigate such impacts, as appropriate.

At its July 9 meeting, Council authorized staff to begin negotiating with WMAC for a defined period of 120 days, and to return to Council to report on the progress of negotiations. At that time, Council and staff would have more information to more completely inform Council's decision to direct staff to either extend the current contract or issue an open Request for Proposals.

DISCUSSION

Staff began discussions and held its first meeting with WMAC's team on July 22, followed by three meetings in August. Due to an issue external to the negotiations, WMAC delayed meeting with City staff by five weeks, and finally met again with staff in late September. Staff met with the WMAC team twice more in the second half of October and another meeting is scheduled for November 12.

It is apparent at this time that staff and WMAC will not be able to reach agreement on principal issues during the initial period of negotiations authorized by Council, which will end on November 15. Given the delays and lack of sufficient progress in discussions with WMAC on the key issues, staff is concerned about further delaying the process to procure a consultant to assist in the preparation of a comprehensive RFP for a new franchise agreement. The need to begin this process now is outlined in more detail below. A compromise that may both protect the

Council's prerogative to issue a RFP and to allow staff more time to work on outstanding issues with WMAC is to extend the current period of exclusive negotiations while, at the same time, securing the services of a competent consulting firm to assist in preparing a RFP package for solid waste and recycling services.

It is noteworthy that a similar approach was followed in 2006 during the then-negotiations for a contract extension. Due to lack of sufficient progress in negotiations, by a Council action on February 4, 2006, Council directed staff to develop a request for proposals for collection and disposal services. Subsequently, a few months later, staff was able to successfully develop business terms for a new Franchise Agreement with WMAC. In January 2007, the Council approved the Franchise Agreement.

Extension of Negotiating Period

As noted above, staff and WMAC will not be able to conclude negotiations by November 15. However, it is staff's belief that there has been sufficient progress in some aspects to warrant continuing the negotiations for a limited period to determine if final agreement can be reached. Thus, staff recommends that the Council authorize an additional 120-day exclusive negotiating period with WMAC, until March 14, 2014, after which staff will report to Council on the outcome.

Even if staff and WMAC are unable to reach agreement on a long term extension, there is a potential benefit to both parties to continue discussions. Agreements on some service enhancements that staff has been discussing with WMAC, such as provision of bulky items pickup from multi-family homes, could be reached and implemented in one or more single-year extension periods which are available to the City, at the City's sole option, in the current franchise.

Preparation of RFP

While staff believes that continuing negotiations with WMAC for another 120-day period would be beneficial, it is important to note that extending the negotiating period without the effort to secure outside help and to begin to prepare a RFP for future solid waste and recycling services would potentially make it harder for other service providers to compete and secure the needed equipment and personnel to start the new services in a timely manner given the existing timelines in the franchise agreement. Typically, once a franchise has been awarded for services to a city the size of Hayward, it would take the selected service provider over a year to purchase collection containers and vehicles, as well as to hire and train staff, to initiate the new services.

In the event that negotiations with WMAC prove successful, the RFP package for collection and disposal services will not be issued, and the consultant advice would be used to assist City staff in its negotiations with WMAC. If, on the other hand, the negotiations do not reach a successful conclusion in this period, the City would be in a position to issue the RFP for Franchise services shortly after June 2014. This schedule is in keeping with what staff had outlined in its report to Council in July¹.

¹ See Item 6 at <http://www.ci.hayward.ca.us/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca070913full.pdf>

Extension of the Current Franchise Agreement

Given the delays and the current status of negotiations, even if a negotiated agreement is reached with WMAC in the next four months, it is prudent to exercise the first of three extensions that are allowed in the Agreement at the sole discretion of the City to ensure uninterrupted service to Hayward customers. Extensions must be in periods of at least twelve months, and notice of the initial extension must be provided to WMAC at least 180 days prior to the expiration of the agreement. Therefore, staff recommends that Council direct staff to inform WMAC before December 1, 2013 of the City's desire to extend the current Franchise by twelve months, to May 31, 2015. The existing terms and conditions of the franchise agreement would remain in place. Two additional single-year extensions will remain available to the City after this initial extension.

Request to Approve a Delay in Organics Collection at Multi-Family Complexes

This issue is only peripherally related to the negotiations, but should be addressed because its implementation will require amendments to the Franchise Agreement. The Alameda County Waste Management Authority (ACWMA) operates under the terms of a Joint Exercise of Powers Agreement (JPA) to manage waste in Alameda County. The JPA empowers the ACWMA to enact County-wide ordinances and implement County-wide waste diversion programs to meet State requirements. The ACWMA Board approved a mandatory recycling ordinance at its January 25, 2012 meeting to respond to the member agencies' stated goals to landfill no more than 10% by weight of all readily recyclable and compostable materials originating in Alameda County by 2020. This ordinance goes beyond the State's Mandatory Commercial Recycling Law² in that it specifies which materials are targeted for collection and includes inspection and enforcement provisions.

The ordinance includes two phases. Briefly, Phase 1 requires businesses with four cubic yards or more of weekly garbage service (large businesses) and all multi-family property owners to arrange for collection of recyclables, such as a variety of paper types, and food and beverage containers made of glass, metal and plastic. All multi-family developments have arranged for recyclables collection, and 78% (554) of all businesses subject to Phase 1 of the ordinance have also done so. The ACWMA's agents and City staff will continue to work with the remaining larger businesses (approximately 155) to provide assistance to implement collection of recyclables.

Phase 2 of the ordinance, which takes effect on July 1, 2014, expands the scope to require all businesses to arrange for collection of recyclables and would also require the collection of food and compostable paper from multi-family properties and food-generating businesses. The ordinance allows member agencies to request postponement of its participation by January 1, 2014 in order to allow additional time to achieve compliance with the mandated services. Because the City's solid waste franchise will need to be amended to include collection of organics from multi-family developments before this service can be offered, staff recommends requesting a one-year postponement of organics collection from multi-family properties only. Staff intends to implement the portion of Phase 2 that requires all businesses to arrange for collection of recyclables and organics, because no service changes to the franchise are required.

²Key Elements of California's Mandatory Commercial Recycling Law: <http://www.calrecycle.ca.gov/recycle/commercial/>

The ACWMA ordinance requires jurisdictions to notify the Authority of a delay in implementing Phase 2 provisions at least six months in advance of July 1, 2014. The request, therefore, must be submitted no later than December 31, 2013. Because of the status of negotiations with WMAC and the fact that it appears unlikely that an agreement for new services can be reached in time to implement the Phase 2 provisions on July 1, staff requests Council authorization to request approval from the Authority to postpone the City's participation in Phase 2 of the ordinance by one year, until July 1, 2015. If agreement is reached with WMAC, it may be feasible to initiate these services prior to that date.

ECONOMIC IMPACT

The requested actions, if approved, would keep the existing rate structure in place for the next service year. Any additional costs would be related to additional services or service enhancements that may be preliminarily agreed upon in the negotiating period. Such services, and their exact costs, would be discussed before Council at the conclusion of the extended negotiating period.

FISCAL IMPACT

The cost for preparing the waste services RFP will be limited to a ceiling of \$150,000. To the extent that the new services relate to waste diversion and recycling, Recycling Fund monies can be used to pay for a portion of the total cost. The rest would have to come from unrestricted funds. Staff recommends that all the costs related to preparation of the RFP be recovered from the firm that would be eventually selected to provide the future services so that there is no impact on the General Fund.

City staff, including the Environmental Services Manager and Solid Waste Manager would continue to provide support during any extension of negotiations with WMAC, and would manage the consultant's contract if Council directs staff to release a RFP.

PUBLIC CONTACT

Some limited public contact has been conducted at this point. However, given the delays in negotiations, staff curtailed its outreach at this time. Staff will plan and conduct public outreach and make community and business contacts in order to hear first-hand, and be better informed and educated about, the community needs and wants related to these services. Such desires, to the extent that they are reasonable, with willingness of the public to pay the cost, would be incorporated in the new services.

SCHEDULE

The estimated schedule for completing this effort is summarized as below:

Negotiations to date:

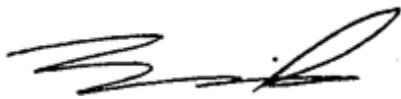
Began Initial Negotiating Period	July 15, 2013
Report to Council	November 5, 2013

Future efforts:

Extend Initial Negotiating Period and Continue Discussions	November 16, 2013
Prepare RFP for Consultant Services for Selecting the Franchisee	January 2014
Council Action for Entering into an Agreement with Selected Consultant and/or Report on Continued Discussions with WMAC	February 2014
Report to Council Summarizing Results of Public Outreach and Proposed Services	May 2014
Finalize RFP (with consultant's help) for Council issuance	June 2014
Receive Proposals	September 2014
Select a Franchisee and Negotiate a Contract	October 2014
Council Approval of New Franchise Agreement	February 2015
New Service Provider to Order Carts, Bins, Vehicles, etc.	February 2015
Receive equipment and distribute new collection carts	March 2016
Begin New Service	June 1, 2016

Prepared and Recommended by: Alex Ameri, Director of Public Works - Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution for Extension of Exclusive Negotiations
Attachment II	Resolution Authorizing Issuance of RFP for Professional Services
Attachment III	Resolution for Extension of Franchise Agreement
Attachment IV	Resolution for Delay of Organics Collection at Multi-family Properties

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND EXCLUSIVE NEGOTIATIONS WITH WASTE MANAGEMENT OF ALAMEDA COUNTY FOR AN ADDITIONAL 120-DAY PERIOD TO MARCH 14, 2014

WHEREAS, on July 9, 2013, the City Council of the City of Hayward authorized and directed the City Manager to enter into exclusive negotiations with Waste Management of Alameda County (WMAC), for a period of 120 days to November 15, 2013 in order to discuss terms of a new Franchise Agreement; and

WHEREAS, the City Council for the City of Hayward considered a report at its November 5, 2013 meeting that described the status of the exclusive negotiations with WMAC; and

WHEREAS, the City Council for the City of Hayward also considered in the same report staff's recommendation that the City Council authorize an additional 120-day exclusive negotiating period with WMAC which would end on March 14, 2014.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs the City Manager to enter into an additional 120-day exclusive negotiating period with WMAC to end on March 14, 2014.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO ISSUE A REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES TO ASSIST IN PREPARATION OF A REQUEST FOR PROPOSAL FOR COMPREHENSIVE SOLID WASTE AND RECYCLING SERVICES

WHEREAS, the City Council for the City of Hayward considered a report at its November 5, 2013 meeting that described the status of the exclusive negotiations with WMAC; and

WHEREAS, the City Council for the City of Hayward also considered in the same report staff's recommendation that the City Council authorize the City Manager to issue a request for proposal for professional services to assist City staff in preparation of a comprehensive solid waste and recycling services request for proposal.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to issue a request for proposal for professional services to assist City staff in preparation of a request for proposal for comprehensive solid waste and recycling services.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING EXTENSION OF THE FRANCHISE AGREEMENT BETWEEN THE CITY OF HAYWARD AND WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. BY ONE YEAR TO MAY 31, 2015

WHEREAS, the City Council for the City of Hayward considered a report at its November 5, 2013 meeting that described the status of the exclusive negotiations with Waste Management of Alameda County (WMAC) to discuss the terms of a new Franchise Agreement; and

WHEREAS, the City Council for the City of Hayward also considered in the same report staff's recommendation that the City Council authorize staff to extend the current Franchise Agreement with WMAC by one year to May 31, 2015; and

WHEREAS, the City has the sole prerogative to extend the current Franchise Agreement by exercising the first of three twelve-month extensions, to May 31, 2015.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs staff to extend the current Franchise Agreement with WMAC by one year to May 31, 2015.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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. 13-

Introduced by Council Member _____

RESOLUTION APPROVING A REQUEST FOR A ONE-YEAR DELAY IN THE CITY’S IMPLEMENTATION OF ORGANICS COLLECTION AT MULTI-FAMILY DEVELOPMENTS OF PHASE 2 OF ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY ORDINANCE NO. 2012-1 REGULATING RECYCLING BY BUSINESSES, MULTI-FAMILY RESIDENCES AND SELF-HAULERS

WHEREAS, on January 25, 2012, the Alameda County Waste Management Authority (ACWMA) Board adopted Ordinance No. 2012-1 to regulate recycling by businesses, multi-family residences and self-haulers; and

WHEREAS, the City Council for the City of Hayward considered Phase 2 of Ordinance No. 2012-1 at its November 5, 2013 meeting; and

WHEREAS, the Ordinance allows the municipalities in Alameda County to request postponement of its participation by January 1, 2014 in order to allow additional time to comply with the mandated services; and

WHEREAS, for the reasons enunciated in Section 10 (Waivers) (g) Compliance Schedule Waiver of ACWMA Ordinance No. 2012-1, the City Council finds it is in the best interest of the residents and property owners of the City of Hayward to request a delay from July 1, 2014 to July 1, 2015 in the City’s implementation of organics collection for multi-family developments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves preparation of a Compliance Schedule Waiver to ACWMA requesting a delay from July 1, 2014 to July 1, 2015 in the City’s implementation of organics collection for multi-family developments.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

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