



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
NOVEMBER 12, 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

Table of Contents

Agenda	3
Continued Discussion of Council Priorities for FY 2015 & FY 2016 (Report from City Manager David)	
Staff Report	8
Attachment I	12
Attachment II	13
Attachment III	14
Attachment IV	15
Summary of Community-Wide and Municipal Energy Use and Efforts to Improve Efficiency (Report from Environmental Services Manager Pearson)	
Staff Report	22
Attachment I PGE Solutions	34
Attachment II PGE Energy Watch Rprt	37
Attachment III Energy Use Summary	43
Attachment IV Energy Related Emis Summary	44
Attachment V PGE Summery for COH 05-12.	45
Attachment VI Use by COH Facilities	47
Report Regarding the Impact of the Patient Protection and Affordable Care Act to the City of Hayward (Report from Human Resources Director Robustelli)	
Staff Report	48
Approval of Minutes of the Special City Council Meeting on October 29, 2013	
Draft Minutes	57
Resolution Authorizing the City Manager to Negotiate and Execute a New Ground Lease Agreement with Meridian Aviation, Inc. for Lease of a Parcel of Land at Hayward Executive Airport	
Staff Report	63
Attachment I	69
Attachment II	71
Attachment III	72
Attachment IV	73
Related to City Council Action Taken on September 24, 2013, 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 Development Services Director Rizk and Police Chief Urban)	
Staff Report	75
Attachment I Ord re Alcohol Regs (red-lined)	82
Attachment II Ord re Alcohol Regs (clean)	99
Attachment III Ord re Zoning Definitions	116

Attachment IV Ord re CC-C & CG Zoning	134
Attachment V Ord re Cabarets	148
Attachment VI Resolution re CEQA and Ordinances	166
Attachment VII Resolution re New Fees	170
Attachment VIII September 24, 2013 Council Mtg Minutes	178



SPECIAL CITY COUNCIL MEETING FOR NOVEMBER 12, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

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

1. PUBLIC COMMENTS

2. Conference with Labor Negotiators

Pursuant to Government Code 54957.6

- Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager McAdoo, Human Resources Director Robustelli, Finance Director Vesely, Deputy City Attorney Vashi, Director of Maintenance Services McGrath

Under Negotiation: All Groups

3. Conference with Property Negotiators

Pursuant to Government Code 54956.8

Property Transaction

- Property Negotiators: City Manager David, Assistant City Manager McAdoo, City Attorney Lawson, Assistant City Attorney Conneely, and Assistant City Attorney Brick

Under Negotiation: 22632 Main Street (APN 428-0066-024-00); 22654 Main Street (APN 428-0066-039-00); 22696 Main Street (APN 428-0066-038-02); 1026 C Street (APN 428-0066-037-00); 1026 C Street (APN 428-0066-038-01)

4. Adjourn to Special Work Session Meeting

SPECIAL WORK SESSION
Conference Room 2A – 5:45 PM

CALL TO ORDER Pledge of Allegiance Council Member Jones

ROLL CALL

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.)*

1. Continued Discussion of Council Priorities for FY 2015 & FY 2016 (Report from City Manager David)

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

Adjourn to Special City Council Meeting

SPECIAL CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Jones

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.)*



REGULAR WORK SESSION

2. Summary of Community-Wide and Municipal Energy Use and Efforts to Improve Efficiency (Report from Environmental Services Manager Pearson)

[Staff Report](#)

[Attachment I PGE Solutions](#)

[Attachment II PGE Energy Watch Rprt](#)

[Attachment III Energy Use Summary](#)

[Attachment IV Energy Related Emis Summary](#)

[Attachment V PGE Summery for COH 05-12](#)

[Attachment VI Use by COH Facilities](#)

3. Report Regarding the Impact of the Patient Protection and Affordable Care Act to the City of Hayward (Report from Human Resources Director Robustelli)

[Staff Report](#)

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

4. Approval of Minutes of the Special City Council Meeting on October 29, 2013

[Draft Minutes](#)

5. Resolution Authorizing the City Manager to Negotiate and Execute a New Ground Lease Agreement with Meridian Aviation, Inc. for Lease of a Parcel of Land at Hayward Executive Airport

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

[Attachment III](#)

[Attachment IV](#)

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

6. Related to City Council Action Taken on September 24, 2013, 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 Development Services Director Rizk and Police Chief Urban)

[Staff Report](#)

[Attachment I Ord re Alcohol Regs \(red-lined\)](#)

[Attachment II Ord re Alcohol Regs \(clean\)](#)

[Attachment III Ord re Zoning Definitions](#)

[Attachment IV Ord re CC-C & CG Zoning](#)

[Attachment V Ord re Cabarets](#)

[Attachment VI Resolution re CEQA and Ordinances](#)

[Attachment VII Resolution re New Fees](#)

[Attachment VIII September 24, 2013 Council Mtg Minutes](#)

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 REGULAR MEETING, 7:00 PM, TUESDAY, NOVEMBER 19, 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. *****

November 12, 2013



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

Please visit us on:



November 12, 2013



DATE: November 12, 2013
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Continued Discussion of Council Priorities for FY 2015 & FY 2016

RECOMMENDATION

That Council receives the attached materials and continues the discussion about the Council priorities for FY2015 and FY2016. This discussion will focus on the goals and metrics associated with the Council priority of Safe.

BACKGROUND

On October 29, 2013, the Council began its discussion of the Council priorities for FY2015 and FY2016. The intent of that initial meeting was to discuss a proposed process for the development of Council priorities this year, establish and confirm a schedule for the process, and begin a dialogue about the Council's desired outcomes for the priority setting process. The Council provided staff with the following feedback during that first work session:

Process:

- Council intends to utilize a shorter, simpler process, utilizing less meeting time; no schedule was agreed upon or specified
- Meeting in Conference Room 2A is good
- Council directed that the goals from the General Plan should be woven into the priority setting process
- Council expects that the ultimate "priorities document" that is meant to go out to the public will be succinct and clear
- Council wants to utilize information gathered from the community during the General Plan Update process

Priorities

- Council appeared to define a priority as a service area or program that needs to be fixed or improved in the organization
- Council asked for information on how the organization did in FY 2013 in meeting Council priorities as they discuss each priority area

- Council reaffirmed Safe, Clean, and Green as clear priorities, and has not yet provided clear direction on whether there should be another category that includes services and goals that don't neatly fit under the Safe, Clean, or Green categories; and which encompasses those things currently in the Supporting Priorities category of Land Use, Fiscal Sustainability, and Organizational Health.
- There was some discussion about Council specifying priorities at a higher level (i.e., what was to be accomplished in each area), and allowing staff to determine how it was to be accomplished. However, that was not firmly agreed upon by Council.
- All priorities are to have improved metrics in the next period, on which Council and staff should agree

DISCUSSION

Timeline/Process: Staff is recommending the attached revised timeline (Attachment I), which shortens the time Council is scheduled to discuss priorities and separates Council priority discussion from the budget presentation and approval process. Staff would appreciate guidance as to whether or not this meets Council's needs and expectations.

Connection to the General Plan: Attachment II lists each of the Goals under Council's approved SAFE priority for FY 2014 and attempts to show how the current structure of the General Plan supports each. It is possible Council will want to drop Goal S-6 (under SAFE) for the FY 2015 & FY 2016 period given Council's most recent tentative definitions of a priority as being something that isn't working or needs improvement, and Safe as relating primarily to the reduction in crime.

Progress in FY 2013: Attachment III identifies the metrics currently in place for each SAFE goal as defined and approved by Council for FY 2014. For further discussion of the performance of the organization in relationship to Goal S1, S3, and S4, Council is referred to the [1st Quarter Progress Report from HPD](#) that was presented to Council on November 5, 2013 and to the most recent City Manager's Weekly report to Council. In addition, HPD has been successful in securing a Federal grant for additional School Resource Officers, which will be coming to Council for approval because it requires a substantial financial match, which has not yet been budgeted or allocated. Items 7-12 pertain to non-crime related efforts of the organization.

Goal S-2 has been and continues to be addressed by almost the entire organization, including Council. Major progress in this area can be seen in such accomplishments as the passing of ordinances governing Illegal Dumping, Social Nuisance, Park Hours, and Public Feeding. It is further supported by SMASH activities, special Code Enforcement efforts; and the daily work of our Maintenance Services and Public Works-Engineering & Transportation departments. Five SMASH operations were conducted in FY 2013, one of which encompassed four separate addresses and one of which was the Green Shutter Hotel. Two have been completed in FY 2014, with another in planning stages.

Goal S-5 is under the leadership and implementation responsibility of the City Manager and the Fire Department respectively; and specifies clear coordination with our HLAC partners. A separate report will be forth coming from the Fire Chief as to progress in this area. In essence, it breaks down into two large components: (1) readiness of the community to sustain through and recover from a

disaster; and (2) preparedness of the organization to reduce the impact of the disaster on the organization and the community, respond to the health and safety impacts of the disaster, and lead the community and the organization in recovery from the disaster. We are making progress and still have a lot to do.

Performance Measures: In addition to Attachment III, Council also approved two overarching Community Metrics in FY 2014, one of which both directly (1-c) and indirectly applies to the priority of Safe and its supporting goals:

- 1) *On the bi-annual citizens' survey:*
 - a. *Increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with living in Hayward (2012 baseline = 79.6%).*
 - b. *Increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with the job the City is doing to provide resident services (2012 baseline = 70.2%).*
 - c. *Consistently decrease the percentage of respondents who indicate that crime/drugs/gangs contribute to their negative image of Hayward (2012 baseline: 46.2%).*
 - d. *Begin to measure the number of families who leave Hayward annually and their reason for leaving.*

Staff understands the value to Council and the community in setting clear, numeric performance measures related to the reduction of crime as was done for FY 2014 (See Attachment III); and understands that such numeric measures may well carry into the FY 2015 & FY 2016 budget. In considering which measures Council selects, staff notes that crime is cyclical and often the spikes and drops occur for reasons totally unrelated to the local jurisdiction or the efforts of its public safety personnel. Therefore, a discussion with the Police Chief of other possible performance measures may also be helpful to Council (e.g., the rate of arrests and/or convictions; if the community feels safe in their neighborhoods, shopping areas, and schools; the community perception of the members of the Police Department and their daily work and customer service; and community satisfaction with Police responsiveness). However, it should be noted most of the above possible performance measures do not necessarily relate directly to measuring the reduction of crime in the community, but rather to community perception of feeling safe and being positive about their police force.

The City Manager, the Police Chief, Fire Chief, and other department directors will be available to Council for additional information on performance in FY 2013 as well as discussion on goals and performance measures for FY 2015 & FY 2016.

ECONOMIC IMPACT/FISCAL IMPACT

Clearly, the actions taken by Council over the last few years and the work done by staff in response to Council direction have benefitted the organization financially and the community economically. Continued clarity of mission, focus on the right things, and effective operational implementation will only add to that.

PUBLIC CONTACT

Throughout this entire process, at the dates and times noticed, the public will have an opportunity to hear Council's deliberations and to comment.

NEXT STEPS

Once Council agrees upon the timeline and the general process, staff will schedule and confirm all meeting dates; and will assure preparation of all needed documents and materials to aide Council's discussion.

Prepared, recommended, and approved by:

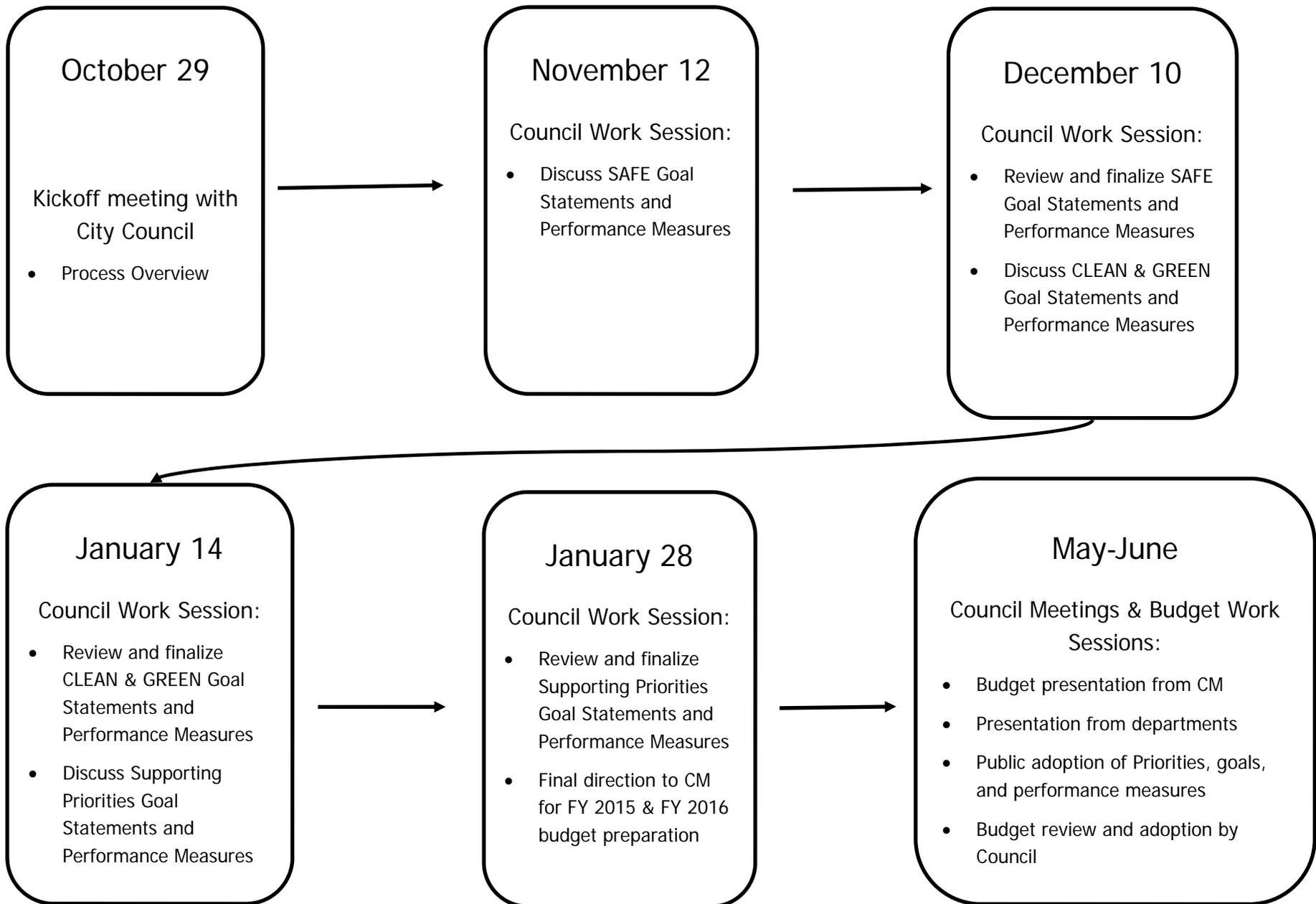


Fran David, City Manager

Attachments:

- | | |
|-----------------------|--|
| Attachment I | Suggested FY 2015 & FY 2016 Council Priority Schedule/Process |
| Attachment II | FY 2014 SAFE Priority Goals at A Glance: General Plan Update |
| Attachment III | FY 2014 SAFE Metrics |
| Attachment IV | Council's FY 2014 Goals and related metrics for all categories (for reference) |

FY 2015 & FY 2016 Council Priority-Setting Timeline



SAFE PRIORITIES AT A GLANCE: GPU

(General Plan Goals included in italics below each Council Priority Goal)

Priority 1: SAFE	
Goal S1	<p>Reduce all types of crime throughout the Hayward community.</p> <ul style="list-style-type: none"> • <i>CS-1: strengthen partnerships, develop strategies and programs to prevent crime</i> • <i>HQL-5: Assure safety in neighborhoods and public spaces</i>
Goal S2	<p>Improve the Hayward experience in retail areas, and public spaces, including significantly reducing unacceptable social behaviors such as aggressive panhandling, public intoxication, and related behaviors; and eliminating sources of problems in neighborhoods.</p> <ul style="list-style-type: none"> • <i>LU-2: Revitalize and enhance Hayward's Priority Development Areas</i> • <i>LU-4: Create attractive commercial and mixed-use corridors</i> • <i>LU-5: Promote community and regional centers for enhanced shopping opportunities</i> • <i>M-5: Provide integrated pedestrian system to promote walking</i> • <i>M-6: Maintain bicycle system to encourage bicycling</i> • <i>M-9: Manage parking to meet economic and sustainability goals</i> • <i>CS-2: Provide police service to promote safe and secure community</i> • <i>HQL-5: Assure safety in neighborhoods and public spaces</i>
Goal S3	<p>Improve safety of school campuses and routes to and from schools</p> <ul style="list-style-type: none"> • <i>CS-1: strengthen partnerships, develop strategies and programs to prevent crime</i> • <i>CS-2: Provide police service to promote safe and secure community</i> • <i>HQL-5: Assure safety in neighborhoods and public spaces</i> • <i>M-5: Provide integrated pedestrian system to promote walking</i> • <i>M-6: Maintain bicycle system to encourage bicycling</i> • <i>HQL-5: Assure safety in neighborhoods and public spaces</i> • <i>M-3: Provide Complete Streets</i>
Goal S4	<p>Reduce gang violence in Hayward</p> <ul style="list-style-type: none"> • <i>CS-2: Provide police service to promote safe and secure community</i> • <i>HQL-5: Assure safety in neighborhoods and public spaces</i>
Goal S5	<p>Improve disaster preparedness in the community; and the ability of the municipal organization to manage disaster response and recovery.</p> <ul style="list-style-type: none"> • <i>M-4: Maintain local access and circulation</i> • <i>CS-3: Take proactive action to minimize fire risks</i> • <i>CS-4: Coordinate fire protection and emergency medical services</i> • <i>CS-5: Prepare community for emergencies and disasters</i> • <i>HAZ-1: Promote disaster-resilient region</i> • <i>HAZ-2: Minimize damage from geologic and seismic hazards</i> • <i>HAZ-5: Protect property from wildfire hazards</i> • <i>HQL-9: Community resiliency</i>
Goal S6	<p>Assure a safe City infrastructure including safe drinking water; properly collected and disposed garbage and refuse; properly collected, treated, and discharged wastewater and sewage; and safe travel ways for all travelers.</p> <ul style="list-style-type: none"> • <i>M-1: Provide connected and integrated network of transportation facilities</i> • <i>M-2: Connection of regional transportation networks</i> • <i>M-3: Provide Complete Streets</i> • <i>NR-6: Improve overall water quality</i> • <i>PFS-1: Provide adequate and efficient facilities and services</i> • <i>PFS-3: Improve water system efficiency</i> • <i>PFS-4: Wastewater collection and disposal efficiency</i> • <i>PFS-5: Storm drainage system efficiency</i> • <i>PFS-6: Maintain flood control infrastructure</i> • <i>PFS-7: Minimize solid waste generation</i>

FY2014 Metrics for SAFE

- 1) Reduce the number of Uniform Crime Reports (UCR)¹ crime consistently over the next three years. These consist of:
 - a. Homicide
 - b. Rape
 - c. Robbery
 - d. Aggravated Assault
 - e. Burglary – reduce by 5%
 - f. Larceny
 - g. Motor Vehicle Theft – reduce by 5%
 - h. Arson
- 2) Continue programs and strategies to geographically reduce crime a minimum of 5% in the identified hot spot areas.
- 3) Reduce the number of traffic-related accidents citywide consistently over the next 3 years.
- 4) Continue with the traffic-related accident reduction program at the top 3 accident zones. Reduce accidents by a minimum of 10% within those zones.
- 5) Conduct a minimum of 9 SMASH Programs within each 12 month period.
- 6) Reduce the number of reportable gang crimes:²
 - a) Through proactive anti-gang enforcement, increase the number of gang-related:
 - i. arrests by 5%
 - ii. contacts by 10%
 - iii. probation/parole searches by 5%
 - b) Conduct a minimum of two intelligence-led, long term, & comprehensive investigations targeting the leadership of active and specific gangs to eliminate, dismantle and/or disrupt related criminal enterprise.
- 7) *Fire Department will maintain the current response time of five minutes or less to 93% of calls for service; and will continue progress toward goal of a response time of five minutes or less to 95% of calls for service.*
- 8) *Annually meet the requirements of the City's applicable federal and state permits for the provision of safe water distribution and sewer collection, treatment, and disposal services.*
- 9) *The number of reportable violations in the City's water distribution and sewer collection, treatment, and disposal services will stay within or be less than the range of performance as compared to neighboring water and sewer agencies.*
- 10) *Respond to and complete 90% of requests for streetlight repairs/replacements within ten business days after notification.*
- 11) *Repair six centerline miles of the City's total lane miles of roadway each fiscal year.*
- 12) *Repair 20,000 square feet of the City's sidewalk and install 100 new accessible curb ramps, with focus around schools and other high pedestrian use area.*

¹ The Uniform Crime Reports (UCR) is a nationwide, cooperative statistical effort of more than 16,000 city, county and state law enforcement agencies voluntarily reporting data on crimes brought to their attention.

² The definition of a gang-related crime is any person who participates in any criminal street gang and who engages in any criminal conduct in which the purpose is to promote or further the gang.

FY 2014 Adopted Council Priorities

Overarching Community Metrics:

- 1) On the bi-annual citizens' survey:
 - a. Increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with living in Hayward (2012 baseline = 79.6%).
 - b. Increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with the job the City is doing to provide resident services (2012 baseline = 70.2%).
 - c. Consistently decrease the percentage of respondents who indicate that crime/drugs/gangs contribute to their negative image of Hayward (2012 baseline: 46.2%).
 - d. Begin to measure the number of families who leave Hayward annually and their reason for leaving.
- 2) Improve Hayward Unified School District standardized test scores:
 - a. Standardized test score performance of students who participate in educational programs provided by the City will exceed test scores of comparable, non-participant students by 10% or more.
 - b. Increase the number of students being served by the Library and Community Services Department educational programs by at least 5% annually (2012 baseline: 1,100 unduplicated students; HUSD student population: 22,000).
 - c. Wherever possible, work with HUSD to raise average district wide API scores to 900 or above (2012 baseline: 718); and to achieve the goal that 100% of HUSD schools have API scores above 800

SAFE		
FY 2014 Priority Statements		Metrics for SAFE
1.a	Reduce all types of crime throughout the community; improve the Hayward experience in neighborhoods, retail areas, and public spaces, including significantly reducing unacceptable social behaviors such as aggressive panhandling, public intoxication, and related behaviors. Improve safety of school campuses and routes to and from schools.	<ol style="list-style-type: none"> 1) Reduce the number of Uniform Crime Reports (UCR)¹ crime consistently over the next three years. These consist of: <ol style="list-style-type: none"> a. Homicide b. Rape c. Robbery d. Aggravated Assault e. Burglary – reduce by 5% f. Larceny g. Motor Vehicle Theft – reduce by 5% h. Arson 2) Continue programs and strategies to geographically reduce crime a minimum of 5% in the identified hot spot areas. 3) Reduce the number of traffic-related accidents citywide consistently over the next 3 years. 4) Continue with the traffic-related accident reduction program at the top 3 accident zones. Reduce accidents by a minimum of 10% within those zones. 5) Conduct a minimum of 9 SMASH Programs within each 12 month period. 6) Reduce the number of reportable gang crimes:² <ol style="list-style-type: none"> a) Through proactive anti-gang enforcement, increase the number of gang-related: <ol style="list-style-type: none"> i. arrests by 5% ii. contacts by 10% iii. probation/parole searches by 5% b) Conduct a minimum of two intelligence-led, long
1.b	Eliminate sources of problems in neighborhoods, including the continued, consistent use of the SMASH Program	
1.c	Reduce gang violence in Hayward through aggressive and strategic law enforcement, use of all applicable legal initiatives (including gang injunctions), and implementation of prevention and intervention programs.	
1.d	Improve disaster preparedness in the community; and the ability of the municipal organization to manage disaster response and recovery (HLAC).	
1.e	Assure a safe infrastructure for the City including safe drinking	

¹ The Uniform Crime Reports (UCR) is a nationwide, cooperative statistical effort of more than 16,000 city, county and state law enforcement agencies voluntarily reporting data on crimes brought to their attention.

² The definition of a gang-related crime is any person who participates in any criminal street gang and who engages in any criminal conduct in which the purpose is to promote or further the gang.

<p>water; properly collected and disposed garbage and refuse; properly collected, treated, and discharged wastewater and sewage; and safe travel ways for all travelers, including implementing the Complete Streets policy.</p>	<p>term, & comprehensive investigations targeting the leadership of active and specific gangs to eliminate, dismantle and/or disrupt related criminal enterprise.</p> <ol style="list-style-type: none"> 7) Fire Department will maintain the current response time of five minutes or less to 93% of calls for service; and will continue progress toward goal of a response time of five minutes or less to 95% of calls for service. 8) Annually meet the requirements of the City’s applicable federal and state permits for the provision of safe water distribution and sewer collection, treatment, and disposal services. 9) The number of reportable violations in the City’s water distribution and sewer collection, treatment, and disposal services will stay within or be less than the range of performance as compared to neighboring water and sewer agencies. 10) Respond to and complete 90% of requests for streetlight repairs/replacements within ten business days after notification. 11) Repair six centerline miles of the City’s total lane miles of roadway each fiscal year. 12) Repair 20,000 square feet of the City’s sidewalk and install 100 new accessible curb ramps, with focus around schools and other high pedestrian use area.
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CLEAN	
FY 2014 Priority Statements	Metrics for CLEAN
<p>2.a Assure that Hayward is a community with minimum graffiti, litter, illegal dumping, and blight; and that the City provides and maintains attractive municipal spaces and buildings.</p>	<ol style="list-style-type: none"> 1) Reduce by at least 10% annually the cubic yards associated with dumping and collected debris, using FY 2012 as a baseline. 2) Remove all graffiti on either public or private property containing foul or offensive language and/or gang tags within 48 hours of the City becoming aware of it and remove all other graffiti within five business days of the City becoming aware of it. 3) Reduce the number of complaints received by the City Council regarding litter at fast food restaurants to zero annually. 4) Increase by at least 5% annually the number of blocks participating in the Adopt-a-Block program. 5) Repave and stripe one municipal parking lot every other year.
<p>2.b Continue, strengthen, and expand the Neighborhood Partnership Program</p>	
<p>2.c Continue, strengthen, and expand the KHCG Task Force</p>	

GREEN	
FY 2014 Priority Statements	Metrics for GREEN
3.a Continue implementation of the Climate Action Plan (CAP)	<ol style="list-style-type: none"> 1) Reduce greenhouse gas (GHG) emissions community wide according to the goals included in the CAP, with an annual reduction of at least 3%. 2) Increase diversion of waste by working with businesses to implement the Alameda County Waste Management Authority's mandatory recycling ordinance so that all businesses are in compliance by the end of CY 2014. 3) Reduce City energy usage from non-renewable sources by 50% or more over five years. 4) Continue to improve the City's Urban Forest by planting at least 400 new trees per year. 5) Work with appropriate community partners to create three new public-access community gardens over the next five years. 6) Develop and implement at least one new activity annually targeted at improving the physical activity of elementary-school age children.
3.b Increase Hayward's sustainability as a community in all aspects of urban life	
3.c Continue implementation of the "Healthy City" program and to gain national and state recognition; focus on reducing childhood obesity in Hayward; strengthen the City's urban agriculture program	
3.d Work to eliminate long-term homelessness in Hayward and identify housing for individuals when and where appropriate	

FISCAL STABILITY	
FY 2014 Priority Statements	Metrics for FISCAL STABILITY
<p>4.a Maintain a municipal corporation that is transparent to the public, and which operates annually within its revenue/income; assure that the organization is financially sustainable based on a rolling ten-year financial plan, with appropriate funding of all identifiable liabilities and areas of responsibility.</p>	<ol style="list-style-type: none"> 1) Close the structural budget deficit on a permanent and ongoing basis and develop plans to address unfunded liabilities and capital needs as part of the ten-year financial forecast. 2) Implement the Economic Development Strategic Plan and report regularly against the metrics identified therein.³ 3) Review potential revenue sources and develop recommendations to Council for additional or increased revenue streams. 4) Develop a plan to finance the City's long-term infrastructure needs.
<p>4.b Maintain a healthy and growing tax base in all major revenues, particularly property tax and sales tax.</p>	
<p>4.c In the wake of the demise of redevelopment, develop and implement a strategy to assure successful economic development and the development of quality housing in Hayward; protect and grow quality private sector jobs, particularly in the industrial sector.</p>	
<p>4.d Develop and support the necessary elements to provide high-quality educational opportunities for all, throughout the community; improve the academic performance of all K-12 students</p>	
<p>4.e Assure maximum efficiency in the use of organizational resources and physical assets, particularly as it relates to beneficial resource sharing among Hayward local agencies.</p>	

³ See adopted Economic Development Strategic Plan: http://www.hayward-ca.gov/haywardopenforbusiness/documents/2013/Economic_Development_Strategic_Plan.pdf

LAND USE	
FY 2014 Priority Statement	Metrics for LAND USE
<p>Maintain and implement land use policies that:</p> <ol style="list-style-type: none"> a. Support a safe, clean, and green community as defined by Council b. Support development of safe housing 5. c. Assure a thriving business community, strong retail base, and a healthy industrial sector d. Assure quality development and building projects in the City in all sectors and neighborhoods e. Assure continued development and expansion of Hayward’s parks and open space 	<ol style="list-style-type: none"> 1) Adopt the General Plan in FY 2014. 2) Ensure compliance with Economic Development Strategic Plan performance measures IS4.1 – IS4.3, IS5.1 – IS5.6, SR4.1 – SR4.3, and SR5.1 – SR5.6. 3) Complete the Mission Corridor Specific Plan.
ORGANIZATIONAL HEALTH	
FY 2014 Priority Statements	Metrics for ORGANIZATIONAL HEALTH
<p>Assure that the City of Hayward maintains an organization that delivers high-quality services to the community by attracting, employing , and retaining quality employees:</p> <ol style="list-style-type: none"> 6.a a. Hayward is viewed as a highly desirable place to work by people employed in the public sector throughout the Bay Area b. Hayward is able to retain and attract quality employees as vacancies and need arise The organization has good succession strategies into the future for all key positions. 	<ol style="list-style-type: none"> 1) Maintain employee turnover and retention rates that are in the top third of comparable surveyed cities. 2) Develop at least one additional strategic plan in a key programmatic area.
<p>6.b Assure that the organization employs quality strategic, long-range planning for a healthy and strong future.</p>	



DATE: November 12, 2013
TO: Mayor and City Council
FROM: Director of Public Works – Utilities & Environmental Services
SUBJECT: Summary of Community-Wide and Municipal Energy Use and Efforts to Improve Efficiency

RECOMMENDATION

That the City Council receives and comments on this report.

SUMMARY

This report has four main sections:

- Energy Efficiency Programs for the Community
- Energy Use by the Community
- Energy Efficiency at City Facilities
- Energy Use at City Facilities

Hayward has operated a variety of incentive programs to encourage energy efficiency throughout the community. As a result of the programs available in 2010 through 2012, which were made possible primarily due to federal grant funds and partnerships with PG&E, Hayward businesses and residents are saving more than 12.8 million kilowatt hours of electricity and more than 105,000 therms of natural gas every year. However, between 2005 and 2012, overall energy use (natural gas and electricity) increased by 1.1 percent.

Staff has also implemented many energy efficiency projects that are saving the City thousands of dollars in energy costs each year. Projects have included lighting upgrades and improvements to heating, ventilation and cooling systems at several facilities. In addition, a City-wide conversion of streetlights to LED technology and energy-saving improvements to the Water Pollution Control Facility have been completed. Hayward has been recognized by a statewide award program for reducing electricity use by more than ten percent between 2005 and 2011 in its City facilities.

BACKGROUND

The City's Climate Action Plan (CAP) was adopted by Council in July 2009; however, energy efficiency and generation of renewable energy have been a priority for much longer:

- On April 8, 2005, the City of Hayward became a participant in the U.S. Mayors Climate Protection Agreement and committed to reducing greenhouse gas (GHG) emissions seven percent below 1990 levels by 2012.

- In June 2006, the City of Hayward joined the Alameda County Climate Protection Project and ICLEI's Cities for Climate Protection Campaign.
- In 2007, the Council formed the City Council Sustainability Committee.
- In 2011, "Green" was moved from a supporting Council priority to a primary Council priority and the Public Works Department was reorganized into two Departments. Public Works – Utilities and Environmental Services was created with Environmental Services Division staff focused on CAP implementation, water conservation and energy efficiency, solid waste and recycling, and water pollution control programs.
- In 2013, jurisdictions throughout Alameda County worked with staff at StopWaste to establish the Alameda County Energy Council so that cities and the County may work together to secure grant funding and partner on CAP implementation programs.

Following is a list of key actions the City has taken to reduce energy use:

- In 2006, the first GHG emission inventory was completed for both community-wide activities and municipal operations.
- In 2008, the City adopted a Green Building Ordinance requiring LEED Silver certification for new municipal facilities.
- In 2008, the City adopted a Green Building Ordinance related to private development.
- In 2009, the City adopted a Climate Action Plan with GHG reduction targets for 2020 and 2050 and actions necessary to achieve those targets.

On October 2, 2013, a similar report¹ was presented to the City Council Sustainability Committee. Following are questions and comments raised by the Committee:

- Why did community-wide natural gas use go up between 2005 and 2012, but electricity use decreased over the same period?
 - Staff's response: There were many incentives offered by PG&E that targeted electricity and lighting. PG&E also gave away compact fluorescent light bulbs during this time. The increase in natural gas use may be due to its low cost as well as the weather.
- Why are we getting so few households participating in retrofit programs such as Energy Upgrade California?
 - As reflected by participation in the toilet rebates offered by the City of Hayward, it is very difficult to get residents to take on projects. The California Youth Energy Services (CYES) program has helped as some efficiency work is completed during green house calls.
- We need to get more people to participate by making more information available on the City's website, sending out inserts in water bills, etc.
 - Staff will review these options for implementation.
- We should brag about our accomplishments with the hope that other cities will follow our example.

¹ See Item # 6 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC100213full.pdf>
 Summary of Energy-Related Activities: 2003 – 2012
 November 12, 2013

- Staff will continue to promote the City’s accomplishments by submitting articles to newsletters and periodicals, speaking at professional conferences, and pursuing awards.
- Why did City Hall energy use increase significantly between 2003 and 2005?
 - Staff has not been able to pinpoint the reason for the increase that is visible in the graph on page 11 of this report; however, staff believes the cause may be that colder winters and warmer summers contributed to increases in energy use. The spike could also be an anomaly and related to the integrity of the data, especially since the spike is followed by a sharp decrease.

DISCUSSION

Energy Efficiency Programs for the Community – Staff has partnered with several entities including PG&E, the U. S. Department of Energy, StopWaste, and the East Bay Energy Watch to offer energy efficiency programs to homeowners and businesses in Hayward.

Energy Efficiency and Conservation Block Grant Programs – In 2009, Hayward was awarded a \$1,361,900 formula-based Energy Efficiency and Conservation Block Grant (EECBG) from the U.S. Department of Energy through the American Recovery and Reinvestment Act (ARRA). As required by terms of the program, grant funds were spent during calendar years 2010 through 2012. The City hired QuEST to serve as its contract Sustainability Coordinator to help administer the grant as well as assist with general CAP implementation.

Implementation of the CAP included a number of activities including exploration and initial development of a Residential Energy Conservation Ordinance (RECO) and Commercial Energy Conservation Ordinance (CECO), and implementation of a number of City sponsored energy efficiency programs. Energy efficiency program activities such as Large Energy Users, Non-profit and Government Agencies, Residential, and LED streetlights are covered in detail in a separate report by PG&E (see Attachment I). While Council ultimately decided to not adopt a RECO, addressing energy use by the City’s existing housing stock will be critical to meeting overall GHG reduction targets. Staff is still committed to addressing this issue and has included new policy language in the draft General Plan (see related report on the Committee’s October 2 agenda).

A total of \$618,425 in energy efficiency incentives were provided to business and homeowners through the EECBG. The programs assisted Large Energy Users, Non-profit and Government Agencies, and single-family homes. An additional \$136,085 in incentives was used by the City for installation of LED streetlights. When combined with matching incentives from PG&E, a total of \$1,182,867 in incentives were provided to business and home owners as well as the City. These incentives leveraged private funds to help drive more than \$1,918,500 in energy efficiency investments. As a result of these investments, participants are saving \$639,146 in energy expenses while reducing 1,176 tonnes of CO2 per year. Table 1 summarizes the spending, project costs, and energy savings for each of the programs funded by the EECBG.

Table 1. Summary of EECBG-Funded Programs

Programs	Savings		Cost/Incentives				Task Spending	
	Electricity Savings (kWh)	Natural Gas Savings (therms)	Cost Savings	Project Costs	Hayward Incentives	PG&E Incentives		Total Incentives
Large Energy Users	2,653,226	91,838	\$489,822	\$1,084,931	\$238,305	\$357,196	\$595,502	\$238,305
Non-Profits & Governmental Agencies	892,590	353	\$142,814	\$378,039	\$251,885	\$71,160	\$323,045	\$251,885
Residential	3,709	5,525	\$4,654	\$319,526	\$128,236		\$128,236	\$128,236
LED Streetlights	136,085	-	\$1,856	\$136,085	\$136,085		\$136,085	\$136,085
Energy Eff. & Conservation Strategy Development								\$21,189
Green Cities California Membership								\$6,750
Sustainability Coordinator								\$513,502
California Youth Energy Services (CYES) Program								\$15,000
Green Packages								\$49,948
Residential and Commercial Energy Audits								\$1,000
Totals	3,685,610	97,716	\$639,146	\$1,918,582	\$754,511	\$428,356	\$1,182,867	\$1,361,900

Energy Upgrade California – Hayward staff worked with other cities in Alameda County and StopWaste to support Energy Upgrade California². Each city in Alameda County contributed a portion of their EECBG funds (Hayward’s contribution of \$49,948 is listed in the above table as “Green Packages”) for StopWaste to provide contractor training, marketing, and technical assistance. In addition, Hayward spent \$128,236 to provide residential incentives matching those provided through PG&E. There were twenty-five residents who received Hayward’s matching incentives and the completed projects resulted in total energy savings for all program participants of 3,709 kWh and 5,525 therms. For comparison, the average California home uses approximately 6,000 kWh and 400 therms annually.

East Bay Energy Watch – The East Bay Energy Watch (EBEW) is a collaboration between PG&E, local governments, and non-profit and for-profit energy service providers in the East Bay dedicated to providing innovative energy efficiency solutions for residents and businesses in communities throughout Alameda and Contra Costa Counties. EBEW is administered by QuEST, the same firm hired as the City’s Sustainability Coordinator for 2009 through 2012. A summary of EBEW activities for the 2010 – 2012 program cycle is included as Attachment II. The programs, many of which were leveraged with the City’s EECBG funds, achieved reductions in electricity use of 9,206,775 kWh and natural gas use of 7,514 therms. Various programs served 190 non-residential customers including twenty-nine nonprofits and thirty-two schools. On the residential side, the California Youth Services (CYES) program served a total of 411 households in 2010 and 2011.

² <https://energyupgradeca.org/overview>
 Summary of Energy-Related Activities: 2003 – 2012
 November 12, 2013

Other Current and Future Energy Efficiency Programs – The following programs are currently available to Hayward residents, property owners, and businesses.

- Energy Upgrade California – The incentives currently available are the “Home Upgrade” and the “Advanced Home Upgrade” programs³. The Home Upgrade incentives involve installing three or more measures from a flexible menu of options. Different measures have different point values. A maximum of 250 points and \$2,500 in rebates are possible. The Advanced Home Upgrade requires a comprehensive energy assessment of the home and rebates and incentives depend on the energy savings of the project. Incentives can be up to \$4,500 for a 45% increase in efficiency.
- Home Energy Analyzer – This free online tool⁴ just became available to Alameda County residents in September 2013. People can log in using their PG&E login information and the website analyzes their PG&E data to provide detailed energy usage information and tips for reducing electricity and natural gas use.
- Energy Upgrade California Multifamily Program – This program, launched in July 2013, offers cash rebates and free energy consulting for multifamily properties that undertake energy upgrades. The program assists in planning energy saving improvements designed to save about 10% of a building’s energy usage and provides \$750 per unit in rebates to help pay for upgrades⁵.
- PAYS – Staff is currently developing a Pay As You Save (PAYS) program that will initially be offered to owners of multi-family properties. It will allow energy and water efficiency improvements to be installed with no upfront cost and with project costs paid for over time on water bills. An update on the PAYS program was presented to the Sustainability Committee on October 2 and to the Council on October 15⁶.
- East Bay Energy Watch – The East Bay Energy Watch serves commercial customers within Alameda and Contra Costa Counties. PG&E customers are eligible for a no-cost comprehensive energy assessment of their building. Energy Watch professionals perform assessments and make recommendations for cost effective retrofits and improvements that are designed to save money on utility bills⁷.

Energy Use by the Community – Overall energy use (electricity and natural gas) has increased by approximately 1% between 2005 and 2012. As shown below, electricity usage decreased by 1.1% between 2005 and 2012; and natural gas usage increased by 2.9% between 2005 and 2012.

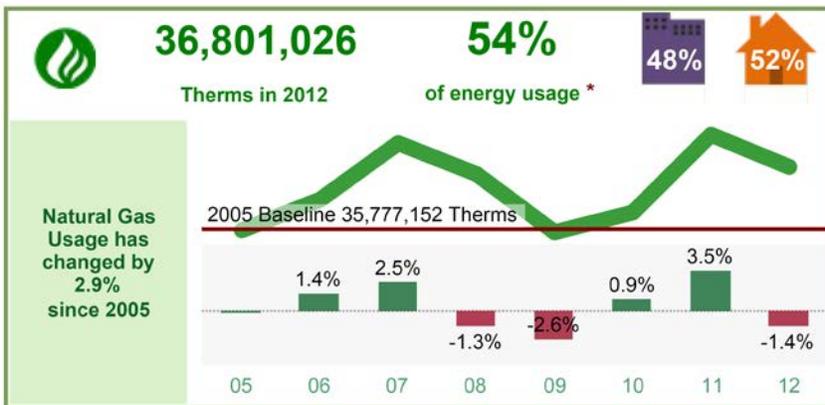
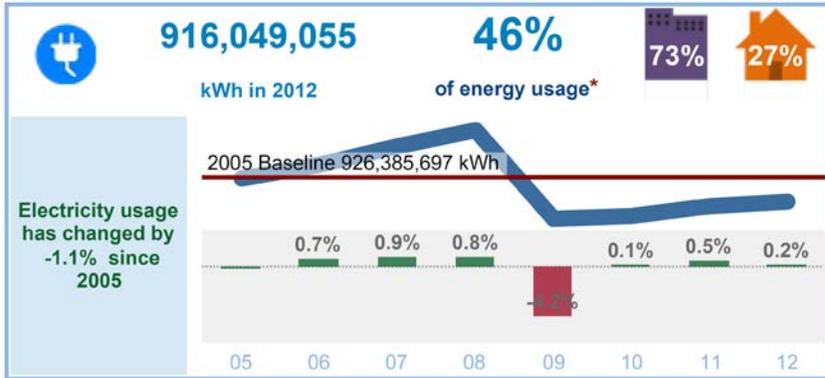
³ More details are at <http://www.pge.com/en/myhome/saveenergymoney/energysavingprograms/euca/index.page>

⁴ This site is available at <http://www.homeenergyanalyzer.org/>

⁵ More details are at <https://multifamily.energyupgradeca.org/local#bayarea>

⁶ See Item #4 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca101513full.pdf>

⁷ More information is available at <http://www.eastbayenergywatch.com/commercial>



Annual totals are provided in Attachment III and show that 926,390,000 kilowatt hours (kWh) of electricity were consumed in 2005 and 916,050,000 kWh were consumed in 2012. Community-wide, 35,780,000 therms of gas were consumed in 2005 and 36,800,000 were consumed in 2012.

Year-to-year changes do not reflect a trend as they are affected by changes in weather and economic activity. Staff will continue to analyze data over longer time periods to identify trends in use and conservation. As shown in Attachment IV, emissions related to residential natural gas use increased by 3.2% from 2010 to 2011 and then decreased by 3.8% in 2012. The decrease between 2011 and 2012 could be partially due to the fact that 2012 had fewer heating degree days⁸ compared to 2011. Non-residential natural gas use increased by 3.8% from 2010 to 2011 and increased again by 1.4% in 2012.

Residential natural gas use was approximately 19,136,534 therms in 2012. As noted above, during 2010 through 2012, 25 homes⁹ participated in Hayward’s incentive program and completed retrofits through the Energy Upgrade California program. These homes were

⁸ "Heating degree days", or "HDD", are a measure of how much (in degrees), and for how long (in days), outside air temperature was lower than a specific "base temperature" (or "balance point"). They are used for calculations relating to the energy consumption required to heat buildings. In 2011, Hayward experienced 3,170 HDD and in 2012, 3,146 HDD.

⁹ While 25 homes received incentives from the City of Hayward for completed retrofits, approximately 40 homes completed retrofits in total. Detailed energy savings for the additional 15 homes is not available.
Summary of Energy-Related Activities: 2003 – 2012
 November 12, 2013

responsible for 5,525 therms of natural gas savings, which is equal to a 0.03 percent of 2012 usage. Non-residential natural gas use was 17,664,492 in 2012. Efficiency programs, such as the Large Energy Users program, saved approximately 94,900 therms, or 0.54 percent in 2010 through 2012.

As shown in the Attachment IV, emissions associated with electricity increased from 2011 to 2012 by 14.6 percent and 15.9 percent respectively in the residential and non-residential sectors. However, overall electricity use increased by only 0.2 percent between 2011 and 2012. The increase is primarily due to the change in the emissions factor between 2011 and 2012. While emissions per unit of natural gas use remains constant from year to year, the GHG emission factor for electricity varies from year to year.

A GHG emission factor is a measure of the pounds of carbon dioxide (CO₂) emitted per kilowatt-hour of electricity or per therm of natural gas. The electricity that PG&E delivers to customers comes from a mix of generation sources, such as natural gas, coal, hydropower, wind, solar, and nuclear power. PG&E's emission factor for delivered electricity incorporates the annual energy and associated emissions from each generation source for the given year. Variance in PG&E's mix of electricity sources largely account for changes in PG&E's GHG emission factor from year to year.

Attachment V has a detailed breakdown of PG&E's energy mix for 2011 and also has the emission factor for 2003 through 2011. The exact emissions factor for 2012 has not yet been published, but it is estimated to be 453, which is a 15% increase over 2011. This Energy Summary also includes more information about Hayward's use of electricity and natural gas by the residential and non-residential sectors as well as numbers of photovoltaic installations per sector by year.

Energy Efficiency at City Facilities – This section summarizes recent electricity and natural gas efficiency improvements at City facilities. The City also has several renewable energy facilities, a summary of which was provided to the Committee on July 10, 2013¹⁰.

Peak Day Pricing – Hayward's water system participates in PG&E's peak day pricing program, which is available for customers who can modify their electricity needs to avoid daily and seasonal peak periods. The program runs from May through October each year. In 2012, the City saved \$8,613 by participating in the peak day pricing program. Many of Hayward's water pump station electricity meters were enrolled mid-way through the 2012 season. Savings in the 2013 season are expected to be significantly higher.

HVAC at City Hall – With assistance from the Municipal Implementation Team (MIT) program, a component of the East Bay Energy Watch, an efficiency project was completed in City Hall in 2013. The project included adjusting the heating, ventilation, and air conditioning (HVAC) operating schedule, installation of a computer control energy management system (EMS) upgrade, replacement of associated motor actuators for hot water valves and damper motors in the variable air boxes, which cuts down on the airflow in the building. This work is estimated to result in annual savings of \$77,813.

¹⁰ See <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC071013full.pdf>

Summary of Energy-Related Activities: 2003 – 2012
November 12, 2013

HVAC at Police Department – With assistance from the MIT program, a project with the same scope as above was completed in the Police Department in September 2013. The project also included repairing the economizer and resetting the chilled water setpoints and is estimated to save approximately \$35,000 per year.

LED Streetlights – In August 2011, City contractors completed installation of approximately 70 LED streetlights on Tennyson Road between Mission Boulevard and Tampa Avenue using EECBG funds. Since July 2013, City contractors have been replacing over 7,700 high pressure sodium streetlights (HPS) with light emitting diode (LED) throughout the City. The project is funded through a California Energy Commission (CEC) loan. Installation of the new fixtures began in early July and is expected to be completed by October 2013. The project has the potential to reduce energy costs by 60% and also realize a major savings in maintenance costs. In addition, the public will notice an improvement in the color and quality of light throughout the City. The CEC loan will be repaid through the energy savings, resulting in no upfront cost to the City.

Lighting Upgrades at Multiple Facilities – As authorized by the City Council on March 15, 2011, a California Energy Commission loan facilitated lighting system upgrades at the Police Department, City Hall, Fleet Maintenance building, City Hall parking garage, and the Cinema Place parking garage. The lighting upgrades in the offices included occupancy sensors, energy efficient fluorescent fixtures, a computer controlled light timer, and LED exit lights. The project was supported by \$138,111 in rebates from PG&E and will result in annual energy savings worth \$111,981. The CEC loan also supported the installation of solar photovoltaic panels at the Streets Building and Utilities Building.

Lighting Upgrades at Parking Structures – Lighting upgrades in the parking garages were supported by the California Energy Commission's Energy Technology Assistance Program (ETAP), which utilized funding from Federal American Recovery and Reinvestment Act. The new system in the parking garages utilizes wireless motion and photocell sensors with a wireless mesh network to turn on the lights when the garage is occupied, and turn them off when it is not. The high-pressure sodium light poles on the top of the garages were also replaced with low-draw LED lights.

Energy Efficiency in Water and Wastewater Systems – With support from PG&E, the Cal Poly Irrigation Training and Research Center (ITRC) recently completed an audit of the City's water distribution, wastewater collection, and wastewater treatment systems. Staff intends to use the results of the audit to complete efficiency improvements in these systems in the near future.

Energy Efficiency at the Water Pollution Control Facility – Staff at the Water Pollution Control Facility (WPCF) has a long history of making improvements to operations and equipment to save energy. Since 2007, staff has operated the trickling filters on a three-hour rotating schedule. This practice avoids the need to use two trickling filters in parallel and a 250-horsepower recirculation pump, which reduces electricity demand during peak periods. In August this year, a new air compressor was installed with a project cost of approximately \$10,500 and a PG&E incentive of approximately \$4,000. The new compressor will result in annual cost savings of approximately \$5,600. Over the last several years, variable frequency

drives have been installed on motors that drive the larger pumps. This equipment has resulted in significant savings as it replaced motors that operated either on or off.

Other Efficiency Improvements – Finally, the following improvements have been made to City facilities in the last few years:

- All urinals City-wide, were replaced with “pint” urinals, using sixteen ounces (1/8 of a gallon) of water per flush.
- Electric Hand Dryers were installed in all City Hall restrooms to replace paper towels.
- Illuminated “Exit” signs were replaced with LED signs.
- Stickers were added to light switches in City Hall to encourage conservation.
- Lighting in the shop at the Hesperian water pumping station was recently upgraded from sodium lights to LED fixtures, which will result in a 40% increase in efficiency.
- Cool roofs were installed on Fire Stations 2 and 4, and on the Streets building.

Upcoming Efficiency Improvements – Staff is currently working on developing the following efficiency projects:

- A cool roof is being installed on the Fleet building in September 2013.
- Staff is currently studying the feasibility of adding skylights to the Barnes Court building, which can reduce the need for artificial lights.
- Staff is currently studying the feasibility of adding photo sensors in the Weekes Branch Library so that lights near windows will automatically dim or turn off when there is adequate sunlight.

Energy Use at City Facilities – This section includes information about energy use at City facilities for 2003 through 2012.

Benchmarking of City Facilities – In 2011, staff began tracking energy use at City facilities using the Environmental Protection Agency’s ENERGY STAR Portfolio Manager online tool. On April 4, 2012, staff presented the Committee with a report¹¹ including energy data for 2005 through 2011. The Portfolio Manager program can measure and track energy and water consumption, as well as greenhouse gas emissions. Benchmarking building energy provides metrics that help inform and prioritize energy efficiency opportunities. Using the online tool, energy used in each municipal building is benchmarked, meaning it is compared to that of other similar buildings engaged in similar activities nationwide. The relative rank of a building’s energy consumption can be used to classify a building as more efficient, less efficient, or as efficient as an average building.

As noted in Attachment VI, energy data from 2012 reveals that most Hayward buildings were more efficient than the national median source energy intensity (*energy use intensity* or *EUI* is calculated using kBtu per foot² of floor area). This was derived by interpreting the percent difference of each building’s energy intensity from the national median energy intensity (for that particular type of building): a negative percent difference indicates lower energy use and better

¹¹ See Item #3 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2012/CSC-CCSC040412.pdf>
Summary of Energy-Related Activities: 2003 – 2012
November 12, 2013

energy performance than the national median, and a positive percent difference indicates higher energy use and poorer energy performance than the national median.

According to Portfolio Manager, the most efficient buildings are the City Hall Parking structure (99% below the national median), Cinema Place Parking structure (92% below the national median), Fire Station No. 8 (48% below), and Fire Station No. 6 (40% below). It is likely that the parking structures scored well because the national median may be based on underground garages with ventilation systems.

According to Portfolio Manager, the least efficient buildings are the Police Department (97% above the national median), Fire Station 7 (48% above), and Fire Station 3 (20% above). For the Police Department, the program uses a national median EUI of 154.4 kBtu/ft²; however, this is the same as that for used for the fire stations, so is not a very good comparison. Due to operations that occur in the Police Department, including the dispatch center, staff will investigate whether or not different standards should be used for the Police Department and the fire stations.

Clearly, there are some flaws in making national comparisons, but the program may be more useful in making year-to-year comparisons for each facility. Data from Portfolio Manager reveals that the Cinema Place parking structure's EUI decreased by almost half from 2011 to 2012. Fire Station No. 6 had a significant decrease from 2009 to 2010 and Stations 7 and 8 had significant increases from 2009 to 2010. Energy use at the Main Library has increased significantly over the years. This may be due to the 36 additional computers that were installed in 2006/2007. The computers serve as a public Internet access center, so they are all powered on 48 hours per week. Both the Fleet Management/Streets and the Utilities Buildings had significant decreases from 2011 to 2012, most likely because solar panels were installed on these buildings in 2012. City Hall had a significant increase in energy use from 2003 to 2005 and then has steadily decreased since 2005.

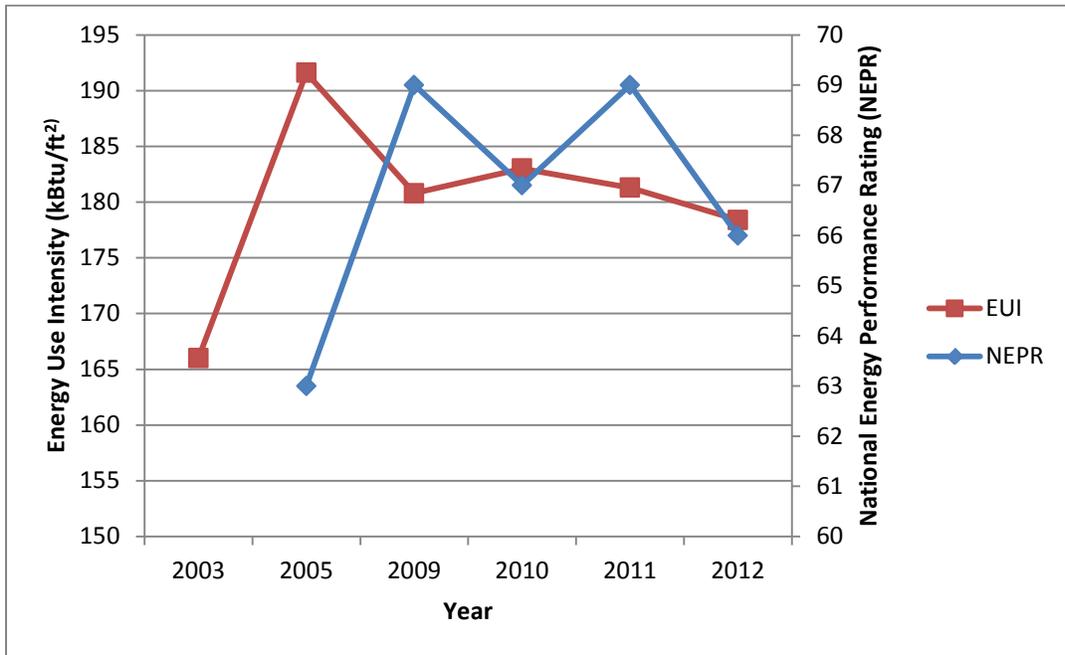
Energy Star Rating for City Hall – While all building types can be ranked using EUI, certain types of buildings are eligible to also receive a National Energy Performance Rating on a 1 to 100 scale. Office buildings are one of these types and City Hall is eligible for this rating since it is categorized as an office building in Portfolio Manager. City Hall received a National Energy Performance Rating of 67 in 2010 and a rating of 69 in 2011, but then decreased to 66 in 2012 (see following Figure 1). A rating of 66 indicates that City Hall is as energy efficient as other office buildings in the 66th percentile of surveyed buildings. This rating also means that City Hall is more efficient than 65% of other office buildings. Buildings receiving National Energy Performance Ratings of 75 or higher may be eligible to apply for an ENERGY STAR award¹².

According to Figure 1 below, while EUI has declined since 2010, City Hall's National Energy Performance Rating improved in 2011, but then went down in 2012. Because the Rating is based on a comparison to other similar buildings nationwide, City Hall will need to become more efficient at a pace that exceeds similar buildings. Staff anticipates that with the recent completion of lighting and HVAC improvements, the score for City Hall will improve during the next year.

¹² https://www.energystar.gov/istar/pmpam/help/Applying_ENERGY_STAR_Label.htm
Summary of Energy-Related Activities: 2003 – 2012
November 12, 2013

Staff is very interested in achieving a score of 75 and an ENERGY STAR designation for City Hall.

Figure 1. Energy Use Intensity and ENERGY STAR National Energy Performance Ratings of City Hall for 2003 - 2012



Beacon Award Program – Hayward has been recognized with a Spotlight Award for reducing electricity use in City facilities by more than 10%. In 2010, Hayward enrolled in the Beacon Award Program, which is sponsored by the Institute for Local Government and the Statewide Energy Efficiency Collaborative. It is a statewide program that recognizes California cities and counties that are working to reduce greenhouse gas emissions, save energy and adopt policies and programs that promote sustainability.

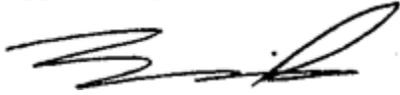
NEXT STEPS

Staff will continue to seek opportunities to improve efficiency at all City facilities as well as throughout the community. As noted above, it will be necessary to address energy efficiency in existing buildings in order to meet GHG emission reduction targets. Staff anticipates that, upon direction from the Committee and Council and direction provided in the new General Plan when it is adopted, the City will achieve emission reductions in existing buildings with increased disclosure of energy performance, financing for efficiency improvements, public awareness campaigns, and increases in the generation of renewable energy. Staff will also continue to monitor energy usage data and will provide annual updates to the Committee as data becomes available.

Prepared by: Erik J. Pearson, AICP, Environmental Services Manager

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

Approved by:



Fran David, City Manager

Attachments:

- Attachment I PG&E's Solutions & Service Activity Report
- Attachment II PG&E's East Bay Energy Watch Activity Report
- Attachment III Energy Usage Summary
- Attachment IV Energy Related Emissions Summary
- Attachment V PG&E's Energy Summary for Hayward: 2005 – 2012
- Attachment VI Energy Use by City Facilities: 2003 – 2012



Energy Solutions & Service Activity Report (2010-2012 Program Cycle) City of Hayward, CA Submitted June 13, 2013

1. Executive Summary

The City of Hayward began a community-wide energy reduction campaign in 2011 and were quite innovative in their approach to reduce energy and GHG emissions. Hayward enlisted the help of QuEST and PG&E for this targeted approach and by the end of 2012 their efforts resulted in over 1.75 MW of savings.

During the 2010-2012 program cycle, Hayward was a formula recipient of the ARRA program's EECBG (Energy Efficiency and Conservation Block Grant). Hayward decided to use its EECBG to fund three different energy efficiency incentive programs. These programs focused on 1) Large Energy Users, 2) Nonprofits and Governmental Agencies, and 3) Residential building owners. All results of the commercial-based programs were tracked in order to report energy savings and GHG reduction goals back to the US Department of Energy.

2. Large Energy Users (LEU) Program

- **The Large Energy Users (LEU)** program focused on Hayward's most "energy intensive" businesses that use a minimum of 1,500,000 kWh of electricity annually. In partnership with the PG&E East Bay Account Managers, Hayward awarded up to \$50,000 per business to match PG&E incentives for those projects that saved energy through PG&E's Customized Retrofit Incentive Program. The eight beneficiaries of this matching incentive program included Berkeley Farms, Shasta Beverage, California Auto Dealers Exchange, Thermo Fusion, General Growth Properties, Pepsi Beverage, Kaiser Foundation and Morgan Advanced Ceramics. The combined savings from the LEU program was 536 kW, 3,486,910 kWh and 84,735 therms.

3. Nonprofits and Governmental Agencies (NGA) Program

- **The Nonprofits and Governmental Agencies (NGA)** program awarded up to \$10,000 per agency to assist mostly in lighting retrofits and HVAC tune-ups. This program was successful in reducing 353 kW and 892,590 kWh. It ran through the East Bay Energy Watch program. Details are outlined in that report.

4. Hayward Residential / Energy Upgrade California™ (EUC) Program

- **The Hayward Residential/Energy Upgrade CA** program matched incentives that were available to home owners who incorporated qualifying home improvement projects to lower energy use.



Energy Upgrade California™ is a program of the California Public Utilities Commission in collaboration with the California Energy Commission, California counties, cities, nonprofit organizations, and the state's investor-owned utilities. Funding for the program comes from the utilities' ratepayers under the auspices of the California Public Utilities Commission in addition to incremental funding from the Department of Energy. There were 25 residents who received Hayward's matching incentives and the completed projects resulted in energy savings of 3,709 kWh and 5,525 therms.

5. Municipal Energy Efficiency Projects

- ENERGY TECHNOLOGY ASSISTANCE PROGRAM. Along with these ARRA funded programs, the City of Hayward completed several projects to further reduce energy at their municipal sites. They participated in the CEC-funded Energy Technology Assistance Program (ETAP) and installed bi-level lighting at two of the city parking garages, Foothill and Mission. This resulted in 23.5 kW and 231,000 kWh savings. Hayward also updated lighting at City Hall, Fleet Services and the main Police Facility which afforded another 47 kW and 188,000 kWh in savings.
- LED RETROFITS. Hayward updated over 140 of the City's streetlights to LED technology for an annual savings of 60,836 kWh. Hayward is in the process of retrofitting over 7,800 streetlights city-wide in 2013.
- CITY OF HAYWARD WATER POLLUTION CONTROL FACILITY.
 - The City of Hayward Water Pollution Control Facility has been very active in working with PG&E in upgrading their facility to be more efficient. They are planning to install a new cogeneration system and have already implemented a FOG (Fats, Oils & Greases) receiving station. PG&E assisted the WPCF staff with an audit of the facility and their application for Self-Generation Incentive Program (SGIP) funding to offset the costs of the new cogeneration technology.
 - In order to advise the staff on their decisions regarding these new technologies, meetings were coordinated between the WPCF Staff and the various Customer Generation and Tariff departments within PG&E. Through these discussions and much research regarding how the plant would fare on several different rate programs, Hayward chose to switch to the RES-BCT tariff. These RES-BCT tariffs allow local governments to generate electricity at one account and based on the value of any exported electricity, transfer bill credits (in dollars) to another account owned by the same local government within the same city or county.
 - The City of Hayward has projected annual savings of \$410,000 from the new cogenerator contribution for plant usage and excess energy of 1.66 million kWh. These savings are to be spread amongst four drinking water reservoir pump stations and one



sanitary sewer lift station. The City of Hayward is the first city in the PG&E service area to apply for the Renewable Energy Self-Generation Bill Credit Transfer RES-BCT tariff.

6. Conclusions and Looking Forward to 2013-2014

Hayward has been unique in regards to the decision the city made to use its ARRA funds to directly support the businesses in their city. This has resulted in a broad partnership between the city and the school district as well as the local businesses and Hayward Chamber of Commerce. The partnership between PG&E and the City of Hayward is strong and many more initiatives are in progress this 2013-14 program cycle to further the joint goal of creating a more efficient Hayward community.



East Bay Energy Watch¹ Activity Report (2010-2012 Program Cycle) City of Hayward, CA Submitted June 13, 2013

1. Executive Summary

From January 1, 2010, through December 31, 2012, Hayward reduced electricity use by 9,206,775 kWh and natural gas use by 2,714 therms through the East Bay Energy Watch (EBEW) in partnership with Pacific Gas and Electric Company (PG&E). The energy savings taken together represent a greenhouse gas (GHG) reduction of 1,680 MT CO₂.

Energy efficiency activities, including installation and outreach efforts this past program cycle, were the following:

- **Small business outreach campaigns** provided one-stop shopping for energy efficiency upgrades, making it easier for business owners to install energy improvements to their buildings and operations. More than 40 businesses received audits during these campaigns.
- The City of Hayward is currently working to make **municipal energy efficiency improvements** to the City Hall and Police Station. These projects will be completed with help from EBEW's Municipal Implementation Team in the upcoming year and therefore fall under the 2013-2014 program cycle.
- Many of **Hayward's residents** took advantage of 'green house calls' offered through the California Youth Energy Services (CYES) program, in which energy saving devices are installed or upgraded in homes by youth.
- **Energy Star benchmarking** was completed for most City buildings and facilities, allowing the City to track its energy reduction efforts and compare energy performance with peer buildings in other cities.
- Enrollment in **My Energy**, PG&E's online tool, was completed for City energy accounts, enabling the City to monitor energy use and costs, and to track its energy reduction efforts and progress toward goals.
- The City hosted two **solar outreach events** with help from EBEW's SmartSolar program, to educate Hayward residents about the energy and financial benefits of rooftop solar systems. Through these events, thirteen residents expressed interest in solar, and three requested and received solar assessments.

¹ The East Bay Energy Watch is a Local Government Partnership managed by Pacific Gas and Electric under the auspices of the California Public Utility Commission. The East Bay Energy Watch serves both Alameda and Contra Costa Counties as well as the municipalities within each county.



The remainder of the report provides details of energy- and GHG-related accomplishments and activities for the 2010-2012 EBEW program cycle.

2. Annual Highlights and Trends

Highlights for 2010-2012 program cycle include a comparison of energy savings throughout each year as well as savings across business sectors within Hayward.

- Total energy savings in 2010 equaled 2,535,221 kWh, 2,204,958 kWh in 2011, and 4,466,596 kWh for 2012 (Table 1).
- In 2010, Offices and Manufacturing / Transportation sectors accounted for the majority of the energy savings within Hayward, at 44% and 31% respectively. In 2011, the Offices sector accounted for 29% of the energy savings. In 2012, the Retail sector accounted for 17% of the energy savings.

3. Energy Efficiency Activities Update

- ENERGY EFFICIENCY FOR BUSINESS. In partnership with PG&E and EBEW, the City launched two energy efficiency outreach campaigns during the 2010-12 period, the Nonprofit and Governmental Agency campaign and the Green Hayward campaign.
 - **Nonprofit and Governmental Agency (NGA) Energy Efficiency Incentive Program:** This program was initiated by Hayward in 2011. The city allocated \$250,000 in Energy Efficiency and Conservation Block Grant (EECBG) funds to assist NGAs with energy efficiency programs that provide energy audits and financial incentives. The NGA program awarded up to \$10,000 per agency to assist mostly in lighting retrofits and HVAC tune-ups. The Best program, administered via Kema as part of the East Bay Energy Watch, was used to target these customers and encourage installation of more efficient technologies. From the efforts of this initiative, 29 Hayward NGAs participated and implemented projects for a savings of 892,590 kWh and 353 kW and 750 therms.
 - **Hayward Unified School District Projects:** One of the biggest successes to come out of the NGA program involved the Hayward Unified School District (HUSD). HUSD was considering some much-needed lighting retrofits but the District lacked the initial investment. The City of Hayward decided to allocate \$50,000 of the NGA program funds to the Hayward Unified School District to assist them in completing a gym lighting retrofit at Mt Eden High School. HUSD maintenance staff was so satisfied with the results of this initial project that they considered other lighting projects at the schools through PG&E's On Bill Financing program. In the summer of 2012, the District, in collaboration with PG&E's 3rd party Kema/Best lighting



program, completed lighting retrofits projects at 32 schools. The overall energy savings is over 2,000,000 kWh. The synergy that developed from these lighting projects furthered a partnership between PG&E, the City and School District to reach joint energy efficiency goals.

- **Green Hayward Campaign:** The goal of this campaign was to encourage Hayward’s small and medium businesses (electric demand less than 200 kW) to install energy saving retrofits. The program was designed to directly meet the needs of Hayward’s businesses by providing one-stop shopping for their energy efficiency needs. City Manager Fran David signed a letter of support for the program with hope of increasing participation and the letter was mailed to approximately 2,000 Hayward businesses. The businesses targeted were those that had not participated in PG&E rebate programs in the past. Special attention was paid to the industrial customers that had discontinued T12 lighting technology installed in their facility. Over the course of the campaign period from October through December, 572 businesses were contacted by PG&E reps and approximately 328 audits were performed. The PG&E visits included assistance with PG&E’s “My Energy” web-based usage tool, billing & rate questions. Through this effort, 41 projects were installed with savings over 1,379,207 kWh.
- Commercial energy savings resulting from EBEW audits and project installations for the 2010-2012 program cycle totaled 9,092,152 kWh and 190 non-residential customers were served. Overall, 286 projects (some customers had multiple projects) were installed via East Bay Energy Watch programs. *Campaign contacts: Andrea Schumer (PG&E), 925.459.8033 and Tim Bankroff (QuEST), 510.981.2030.*
- **RESIDENTIAL ENERGY EFFICIENCY CAMPAIGNS.** The Rising Sun Energy Center was active in Hayward during the summers of 2010 and 2011, providing no-cost energy efficiency home visits, or ‘Green House Calls’, to local residents through the California Youth Energy Services (CYES) program. Through this program, 18 local youth were trained in energy conservation, replacing incandescent light bulbs with CFLs and offering other energy conservation measures. A total of 411 units were served.
 - **2010 CYES Highlights:** In 2010, CYES provided employment and training to nine youth, ages 15-22. These youth provided 212 households with energy savings hardware and information, 93% of which were in Hayward proper. Energy Specialists installed the following materials in Hayward homes at no cost: 1,562 compact fluorescent lamps, 297 efficient-flow showerheads & aerators, 71 retractable clotheslines, 25 CFL torchiere lamps, and 106 power strips. Of the households served in Hayward, 45% were renters, 88% were low-moderate income



households, and 38% were primarily non-English speaking. The CYES Marketing team attended many community events throughout the spring and summer. The following events were season highlights: CSU East Bay Green Expo, City of Hayward Cinco de Mayo Celebration, Alameda 4C Children's Faire, Hayward Downtown Street Party, and Hayward Farmer's Markets.

- **2011 CYES Highlights:** In 2011, CYES provided employment and training to nine youth, ages 15-22. These youth provided 199 households with energy savings hardware and information, 94% of which were in Hayward proper. Energy Specialists installed the following materials in Hayward homes at no cost: 1,081 compact fluorescent lamps, 205 efficient-flow showerheads & aerators, 31 retractable clotheslines, 41 CFL torchiere lamps, and 133 power strips. Of the households served in Hayward, 62% were renters, 87% were low-moderate income households, and 48% were primarily non-English speaking. The CYES Marketing team attended many community events throughout the spring and summer. The following events were season highlights: City of Hayward Green Expo, South Hayward Community Festival, 4C Children's Faire, and Cinco de Mayo con Orgullo.
- *Program Contact: Julia Hatton (Rising Sun Energy Center), 510.665.1501; Andrea Schumer (PG&E), 925.459.8033.*
- **MUNICIPAL ENERGY PROJECTS.** Energy efficiency projects are to be completed at the City Hall and Police Station in 2013. Some of the measures associated with these projects include HVAC scheduling, supply air reset, HVAC controls-air flow reduction, economizer repair, and chilled water reset. The projects are expected to save the City over 430,000 kWh and 4,800 therms. *MIT Contact: Brendan Havenar-Daughton (QuEST), 510.981.2065; Andrea Schumer (PG&E), 925.459.8033.*
- **SMARTSOLAR.**² The City hosted several outreach events, including a Solar Fair in July 2012 and an Energy Upgrade California Workshop in November 2011. There were thirteen residents who expressed interest, six of whom were contacted through the Solar Fair and seven of whom were contacted through the EUC workshop. Three residents were enrolled and received a solar assessment. *Program Contact: Michael Denevan (Community Energy Services Corporation), 510.981.7765.*
- **BENCHMARKING CITY BUILDINGS.** EBEW staff benchmarked 18 buildings including City Hall, the Fire Stations, the Police Department and several others (Appendix A). In most cases, each

² SmartSolar, administered by Community Energy Services Corporation, exclusively served the City of Berkeley until July 2011 under a contract with the U.S. Department of Energy. In July 2011, SmartSolar's service territory expanded to include all jurisdictions served by EBEW throughout Alameda and Contra Costa Counties. The program is funded for the 2013-2014 program cycle.



building's EUI can be reliably compared to the national median EUI as an indicator of relative efficiency. EBEW delivered a presentation of benchmarking results to the City Council's Sustainability Task Force in April 2012. EPA ENERGY STAR Portfolio Manager should be used in concert with PG&E's My Energy tool to monitor energy use trends. *Benchmarking Contact: Tim Bankroff (QuEST), 510.981.2030; Andrea Schumer (PG&E), 925.459.8033.*

- ONLINE ENERGY MANAGEMENT. The City is currently enrolled in PG&E's My Energy online portal which allows users to pay energy bills and track energy consumption. The City has most of its accounts registered in the My Energy online tool. *My Energy Contact: Tim Bankroff (QuEST), 510.981.2030; Andrea Schumer (PG&E), 925.459.8033.*

4. Energy Efficiency Savings Update by Sector

i. RESIDENTIAL ENERGY EFFICIENCY PROJECTS

Residential energy savings installed by CYES equaled 114,622 kWh for the 2010-2012 program cycle; a total of 302 households were served.

Feedback for the program is positive. A recent participant stated,

"Very personable and helpful representatives of your organization. With their knowledge and the installation of new light bulbs, clothesline and faucet aerator I'm sure we'll be saving energy and reducing our PG&E bill and water, too!"



ii. COMMERCIAL ENERGY EFFICIENCY PROJECTS

Commercial energy savings resulting from EBEW audits and project installations for the 2010-2012 program cycle totaled 9,092,152 kWh and 190 non-residential customers served.

5. Summary of Energy Savings in Hayward

Table 1. Energy Savings & Greenhouse Gas Reductions by Year.

Year	Energy Savings (kWh)	GHGs Reduced (MT CO ₂)
2010	2,535,221	380
2011	2,204,958	440
2012	4,466,596	860

Over the course of the program cycle, EBEW installed projects in Hayward that achieved energy savings equivalent to emissions of 1,680 Metric Tons of CO₂. This is approximately equal to taking 280 passenger cars off of the road for one year³.

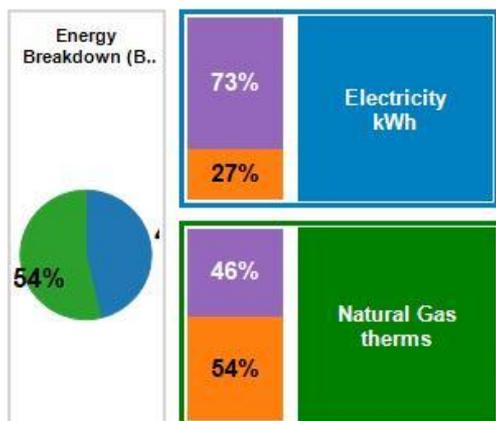
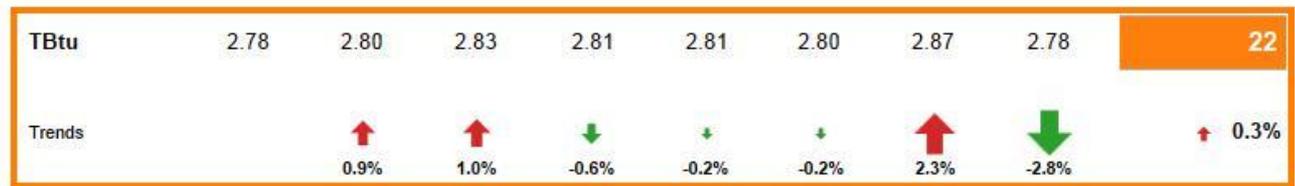
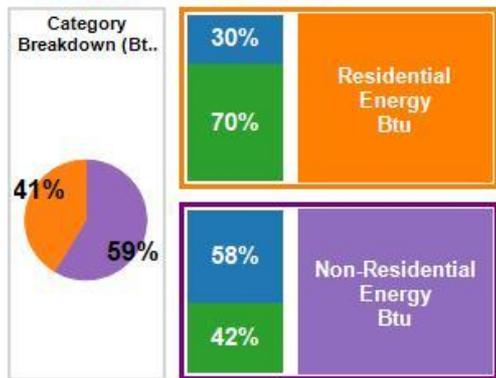
³ Assumptions: California Air Resource Board's EMFAC model, which indicates an average passenger car in California emits 5.96 metric tons of CO₂ per car per year. Based on 2010 scenario year and 12,000 miles per year per car. Avoided emissions based on PG&E average emissions factor. More information is available at <http://www.pgecurrents.com/2013/02/20/pge%E2%80%99s-clean-energy-reduces-greenhouse-gas-emissions/>

Incorporated City of HAYWARD PG&E Energy Overview 2005 to 2012

Energy Usage Summary



	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
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Incorporated City of HAYWARD PG&E Energy Overview 2005 to 2012

MAIN



Energy Related Emissions Summary

From 2005 to 2012

<div style="display: flex; justify-content: space-around;"> <div style="background-color: #0070C0; color: white; padding: 5px; text-align: center;">52.6%</div> <div style="background-color: #00A651; color: white; padding: 5px; text-align: center;">47.4%</div> </div>	14%	Overall Energy Related Emissions	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
	38%		395.35	385.37	468.60	470.31	426.63	375.01	361.01	383.53	3,265.81
	25%		Trends								
	22%			↓ -2.5%	↑ 21.6%	↓ 0.4%	↓ -9.3%	↓ -12.1%	↓ -3.7%	↑ 6.2%	↓ -3.0%

<div style="display: flex; justify-content: space-around;"> <div style="background-color: #0070C0; color: white; padding: 2px;">Natural Gas</div> <div style="background-color: #FF8C00; color: white; padding: 2px;">Residential</div> </div>	<div style="display: flex; justify-content: space-around;"> <div style="background-color: #00A651; color: white; padding: 2px;">Electricity</div> <div style="background-color: #8E44AD; color: white; padding: 2px;">Non-Residential</div> </div>	PG&E Emission Factors	Electricity EF	0.489	0.456	0.636	0.641	0.575	0.445	0.393	0.453	lbs CO2 per kWh
			Natural Gas	11.70	11.70	11.70	11.70	11.70	11.70	11.70	11.70	11.70
				↓ -7%	↑ 39%	↓ 1%	↓ -10%	↓ -23%	↓ -12%	↑ 15%	lbs CO2 per therm	

52.6%	Electricity Emissions	Residential Electricity Emissions	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
			53.77	51.08	71.58	73.08	66.20	50.95	45.11	51.70	463.48
			Trends								
				↓ -5.0%	↑ 40.1%	↓ 2.1%	↓ -9.4%	↓ -23.0%	↓ -11.5%	↑ 14.6%	↓ -3.9%

52.6%	Electricity Emissions	Non Residential Electricity Emissions	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
			151.71	141.79	199.68	202.53	170.72	132.66	117.83	136.53	1,253.44
			Trends								
				↓ -6.5%	↑ 40.8%	↓ 1.4%	↓ -15.7%	↓ -22.3%	↓ -11.2%	↑ 15.9%	↓ -10.0%

47.4%	Natural Gas Emissions	Residential Natural Gas Emissions	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
			103.43	103.92	105.22	103.75	103.03	102.96	106.29	102.23	830.82
			Trends								
				↓ 0.5%	↑ 1.2%	↓ -1.4%	↓ -0.7%	↓ -0.1%	↑ 3.2%	↓ -3.8%	↓ -1.2%

47.4%	Natural Gas Emissions	Non-Residential Natural Gas Emissions	2005	2006	2007	2008	2009	2010	2011	2012	2005 to 2012
			86.44	88.57	92.13	90.95	86.67	88.44	91.79	93.07	718.06
			Trends								
				↑ 44%	↑ 4.0%	↓ -1.3%	↓ -4.7%	↑ 2.0%	↑ 3.8%	↑ 1.4%	↑ 7.7%

This document will help you understand drivers of Hayward's energy usage and the ways the community and PG&E are partnering to decrease energy consumption.

Overall energy usage

This is the breakdown between **Non-Residential** and **Residential** energy usage in 2012 for Hayward.

6,805,662

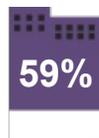
million British thermal units in 2012*

Energy usage has changed by **1.0%** since 2005

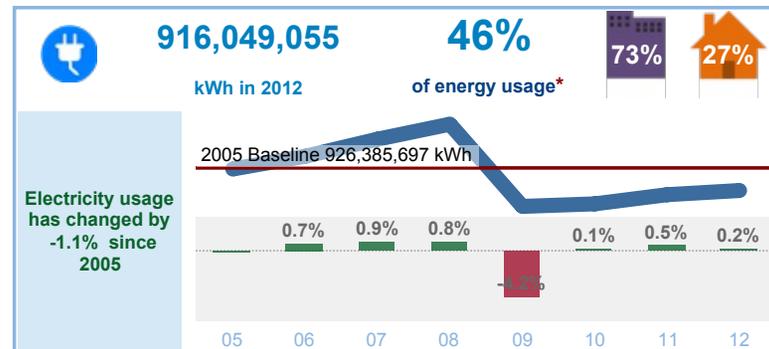
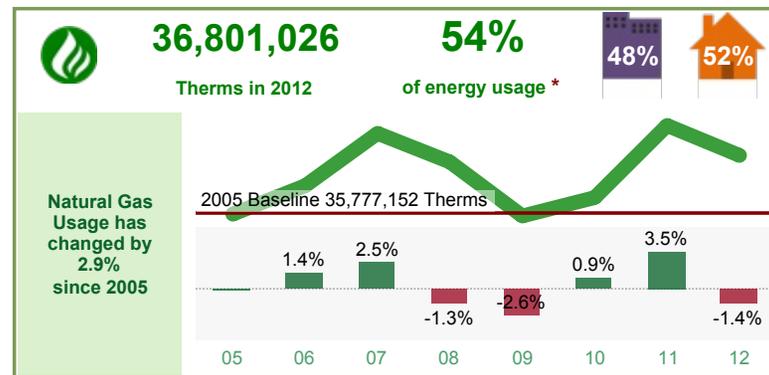
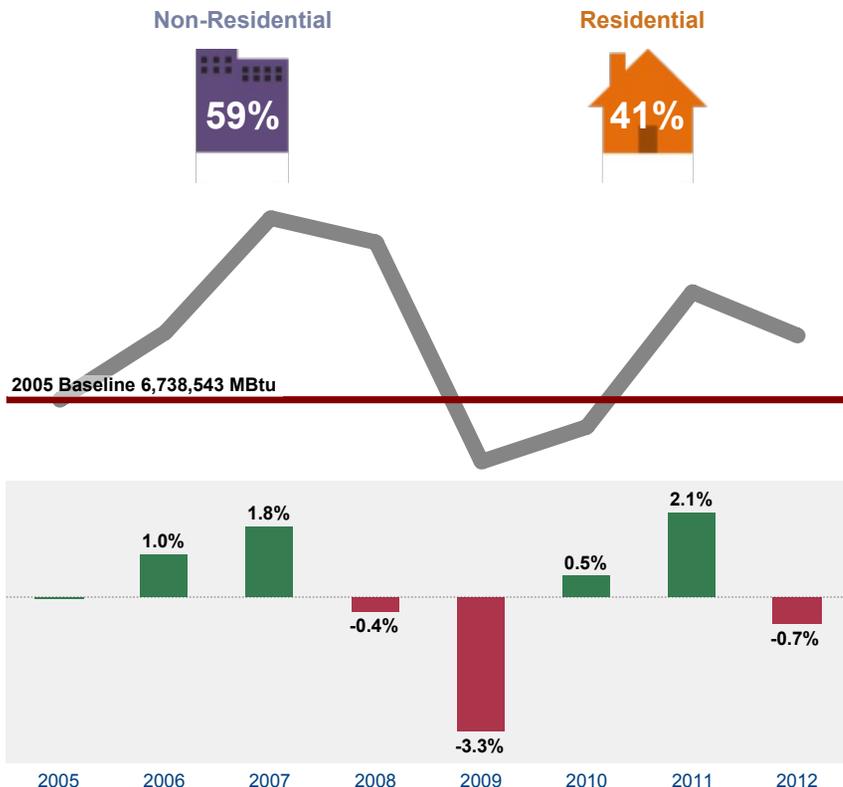
This is the Year over Year change in overall energy usage from the prior year

*Consumption has been converted to British thermal units (Btu) to compare electricity and natural gas usage

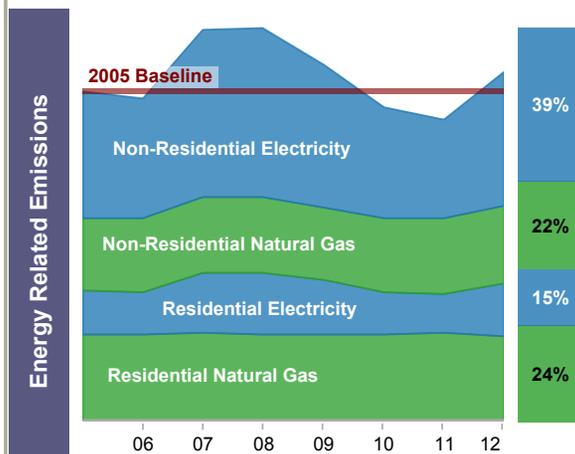
Non-Residential



Residential



CO2 Emissions from energy usage changed by 5.9% since 2005



418,827 MTCO2

GHG emissions from energy usage in Hayward 2012

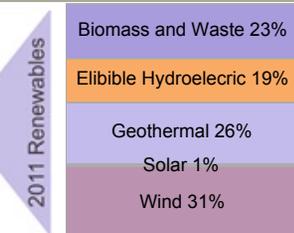
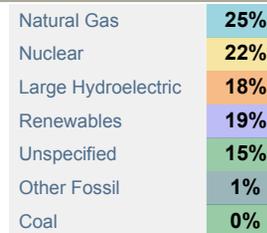


48,832 MTCO2 Avoided since 2006 through PG&E programs

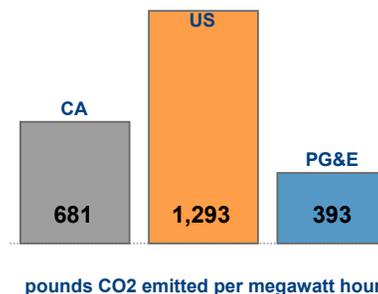
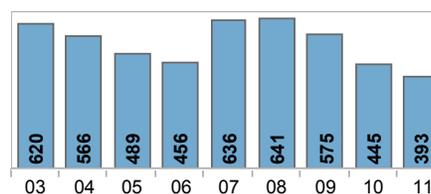
equivalent to **8,152 cars off the road for one year**



Where Electricity Comes From



PG&E's average emissions from delivered electricity was less than half the U.S. Average in 2011 (shown in lbs CO2 per MWh)





Residential Energy

Usage

41%

of community energy usage (Btu) is from residential customers



Energy usage has changed by 0.3% since 2005



30%



Residential electricity usage changed by 3.8% since 2005



70%



Residential natural gas usage has changed by -1.2% since 2005

Averages

Averages

Monthly Household Averages in 2012



Multi Family	344 kWh per month	-1.4% since 2005
Single Family	432 kWh per month	0.9% since 2005



Multi Family	24 therms per month	-6.3% since 2005
Single Family	35 therms per month	1.6% since 2005

Climate Zone Average: 410 kWh

Climate Zone Average: 36 therms

Climate Zone 03

By Season



Renewables

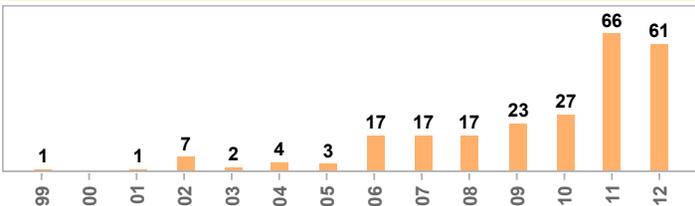
Photovoltaics

246 Sites

878 kW

CEC AC Capacity

Residential sites interconnected to the PG&E grid 99 to 12



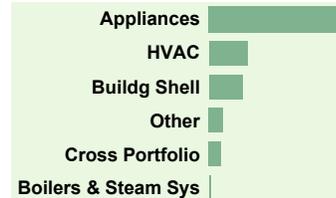
Energy Efficiency

3,444 MTCO2

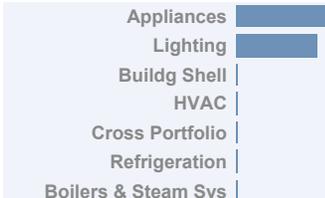
Annual avoided emissions since 2006 through PG&E programs



214,000 Therms Saved



8,995,000 kWh Saved



Non-Residential Energy Usage

59%

of Hayward energy usage (Btu) is from non-residential customers



Non-residential energy usage has changed by 1.5% since 2005



58%



Electricity usage has changed by -2.9% since 2005

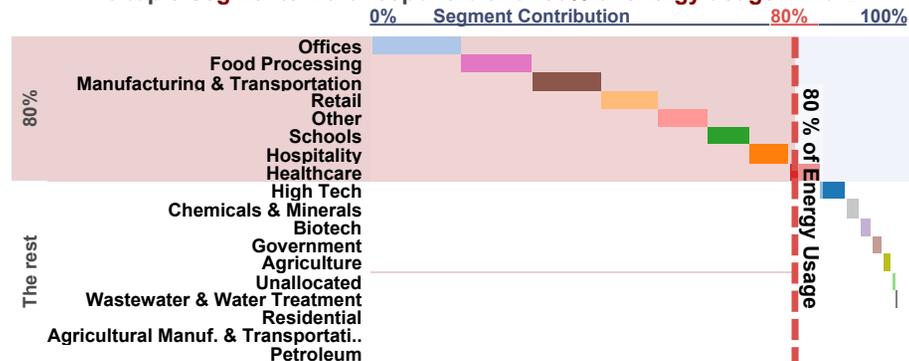


42%



Non-residential natural gas usage has changed by 7.7% since 2005

The top 8 Segments were responsible for 80% of energy usage in 2012



Renewables

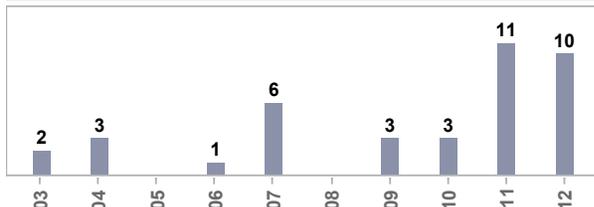
Photovoltaics

38 Sites

6,813 kW

CEC AC Capacity

Sites Interconnected to the PG&E grid 03 to 12



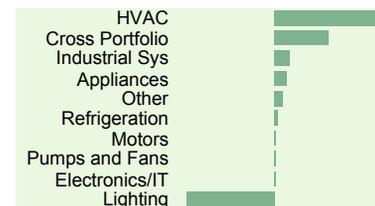
Energy Efficiency

26,863 MTCO2

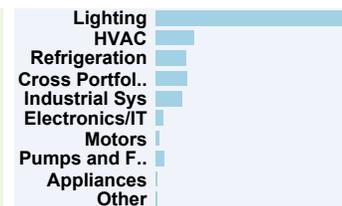
Annual avoided emissions since 2006 through PG&E programs



844,000 Therms Saved



94,309,000 kWh Saved



46

Energy Use by City Facilities - 2003 through 2012

Facility	Address	National Median Source EUI (kBtu/ft ²)	Year Ending 12/31/2003		Year Ending 12/31/2005		Year Ending 12/31/2009		Year Ending 12/31/2010		Year Ending 12/31/2011		Year Ending 12/31/2012	
			Source EUI (kBtu/ft ²)	% Difference from National Median	Source EUI (kBtu/ft ²)	% Difference from National Median	Source EUI (kBtu/ft ²)	% Difference from National Median	Source EUI (kBtu/ft ²)	% Difference from National Median	Source EUI (kBtu/ft ²)	% Difference from National Median	Source EUI (kBtu/ft ²)	% Difference from National Median
16 Barnes Court	16 Barnes Court	60	38.8	-35.3	38.3	-36.2	45.9	-23.5	48.1	-19.8	46	-23.3	44.6	-25.7
Cinema Place Parking Gar	22695 Foothill Blvd	123.1	Not Available	Not Available	Not Available	Not Available	18.5	-85	18.3	-85.1	18.2	-85.2	9.6	-92.2
City Hall	777 B Street	215.2	166	-22.3	191.6	-9.9	180.8	-16.1	183	-14.8	181.3	-16.3	178.4	-17.1
City Hall Parking Garage	22625 Mission	123.1	Not Available	Not Available	Not Available	Not Available	1.4	-98.9	1.6	-98.7	1.3	-98.9	1.3	-98.9
Fire Station 1	22700 Main St	154.4	151.3	-2	150.3	-2.7	153.9	-0.3	153.6	-0.5	150.6	-2.5	145.6	-5.7
Fire Station 2	360 W Harder Rd	154.4	120.5	-22	137.3	-11.1	105.3	-31.8	101.3	-34.4	104.3	-32.4	101.8	-34.1
Fire Station 3	31982 Medinah St	154.4	160.1	3.7	170.7	10.6	180.9	17.2	156.1	1.1	176	14	185.3	20
Fire Station 4	27836 Loyola Ave	154.4	153.1	-0.8	174.3	12.9	157.6	2.1	139.6	-9.6	135.9	-12	144.2	-6.6
Fire Station 5	28595 Hayward Blvd	154.4	102.1	-33.9	102.6	-33.5	118.9	-23	116.5	-24.5	118.1	-23.5	120.1	-22.2
Fire Station 6	1401 W Winton Ave	154.4	120.2	-22.2	127.9	-17.2	144.4	-6.5	87.2	-43.5	86.7	-43.8	92.8	-39.9
Fire Station 7	28270 Huntwood Ave	154.4	175.5	13.7	178.4	15.5	181.3	17.4	213.7	38.4	218.1	41.3	228.1	47.7
Fire Station 8	25862 Five Cynns Pkwy	154.4	49.8	-67.7	50.7	-67.2	60.2	-61	83.5	-45.9	84.2	-45.5	81.1	-47.5
Fire Station 9	24912 Second St	154.4	126.5	-18.1	81.8	-47	137.9	-10.7	133.3	-13.7	136.4	-11.7	136.8	-11.4
Fleet Mgmt/Streets	24505 Soto Rd	100.4	130.6	30.1	133.4	32.9	141.9	41.3	136.7	36.2	142.9	42.3	125.5	25
Main Library	835 C Street	235.6	196.7	-16.5	182.8	-22.4	207.9	-11.8	216.7	-8	255.7	8.5	244.3	3.7
Police Department	300 W Winton Ave	154.4	290.5	88.1	305.4	97.8	308.2	99.6	312.9	102.7	308.6	99.9	303.9	96.8
Utilities Building	24499 Soto Rd	123.1	95.5	-22.4	101.5	-17.5	103.1	-16.2	110.3	-10.4	112.9	-8.3	78.7	-36.1
Weekes Branch Library	27300 Patrick Ave	235.6	136.6	-42	126	-46.5	128.5	-45.5	129.7	-44.9	132.4	-43.8	129.7	-44.9

DATE: November 12, 2013

TO: Mayor and City Council

FROM: Director of Human Resources

SUBJECT: Report Regarding the Impact of the Patient Protection and Affordable Care Act to the City of Hayward

RECOMMENDATION

That the City Council reviews and comments on this report regarding the impacts of the Patient Protection and Affordable Care Act to the City of Hayward and its employees.

BACKGROUND

In March 2010, President Obama signed comprehensive healthcare reform, the [Patient Protection and Affordable Care Act \(PPACA\)](#)¹ into law. This law represents the most significant regulatory overhaul of the country's healthcare systems since the passage of Medicare and Medicaid in 1965. The intent of the law is to assure that all Americans have access to affordable health insurance by increasing the quality and affordability of health insurance. The PPACA is a long and complex bill comprised of nine titles, each addressing an essential component of the reform. The titles include regulations aimed at:

- Providing quality, affordable health care for all Americans;
- Expanding eligibility for Medicaid to lower income individuals and families;
- Improving the quality and efficiency of Medicare and Medicaid;
- Prevention of chronic disease and improving public health;
- Encouraging innovations in health workforce training, recruitment, and retention;
- Ensuring transparency and program integrity;
- Improving access to innovative medical therapies;
- Establishing a long-term care insurance program; and
- Revenue provisions.

¹ http://en.wikipedia.org/wiki/Affordable_Health_Care_for_America_Act
<http://www.hhs.gov/healthcare/rights/law/index.html>

The PPACA impacts Federal and State government (including Medicare, Medicaid, and numerous local government agencies), individuals, healthcare providers, and employers. For the purposes of this discussion, Title I - Quality, Affordable Health Care for all Americans, and the taxes assessed in Title IX - Revenue Provisions, will be discussed due to the direct impact these provisions have on the City of Hayward and its employees.

The goal of the PPACA is to achieve a fundamental transformation of health insurance in the United States. Three major elements have been identified to assist in achieving this reform: shared responsibility with employers; complete insurance market reform; and enrollment by all Americans in health coverage. In an effort to achieve this reform without increasing health insurance premiums, the federal government is mandating all Americans enroll in some form of health coverage. Tax credits for individuals and families, based on family size and income levels, have been established to help make insurance affordable for everyone.

Due to the complexity of healthcare and health insurance reform, a phased-in approach has been established for the implementation of the PPACA provisions. Insurance carriers, plan administrators, and employers all have a role in implementing provisions of PPACA. Beginning in 2011, insurance carriers were required to revise plan structures to increase participant access by removing restrictions on some services and aspects of coverage. Examples of these changes included: elimination of pre-existing conditions for children under nineteen; increased dependent coverage to age twenty-six; no-cost preventative care and screenings for plan participants; prohibition of lifetime limits on benefit payments and annual benefit maximums; and the requirement for insurance providers to publish easy-to-read summaries of benefit documents for participants.

Additional elements of the law required action by plan administrators and employers. The City of Hayward contracts with California Public Employees Retirement System (CalPERS) as their plan administrator to provide medical benefits for its nearly eight hundred employees and five hundred and sixty retirees and survivors enrolled in medical benefits. CalPERS has been actively monitoring the law and implementing requirements accordingly. For example, the PPACA contains three new fee requirements: Research Effectiveness Fee (2012-18), Reinsurance Fee (2014-16), and Health Insurance Industry Fee (2014-ongoing). CalPERS has factored these fees into the health plan premiums for 2014 so the employer does not need to take action related to these provisions. Based on the established fees incorporated into PPACA law, and current enrollment levels, CalPERS estimated these costs to equate to a two percent rate increase in 2014. That rate increase has been incorporated into the 2014 published medical plan rates. This was in addition to the average plan rate increase of five percent which resulted in a total rate increase in 2014 of an average of seven percent per plan.

In addition, the City of Hayward is responsible for monitoring and implementing additional elements of PPACA. Examples of already implemented provisions include: reporting of employer sponsored coverage costs on employee W2s; annual flexible spending limit for Flexible Spending Accounts reduced to \$2,500; Medicare tax increases for higher income earners; and notification requirements of the health care exchange.

The largest, and arguably most complicated and expensive components of the PPACA are fast approaching. Table 1 includes the provisions of the PPACA which have yet to be implemented. Those provisions with direct impact to the City of Hayward and its employees will be discussed further in this report.

Table-1 Additional PPACA Provisions with Future Implementation Deadlines

Item #	Provisions of Affordable Care Act	Responsible Party	Effective Date	Cost to City	Action Items
1	Pre-existing condition exclusions for individuals eliminated	Insurance Carriers	1/1/2014	Already Realized in Current Rates	None
2	Waiting periods for coverage to begin in excess of 90 days are prohibited	Insurance Carriers	1/1/2014	N/A	None; CalPERS Plans Already Compliant
3	Availability of Health Insurance Exchange	State of California	1/1/2014	Unknown	HR to Monitor Legislation
4	Individual Mandate - U.S. Residents must purchase health insurance, or pay an annual increasing schedule of tax penalties	Individuals	1/1/2014	N/A	Individuals to Enroll and Maintain Coverage
5	Pay or Play - Employers with more than 50 employees must offer "minimum essential coverage" to full-time employees and dependents or pay tax penalties	City of Hayward	1/1/2015	Up to \$2,000/Per Employee Per Month	Implement Procedures Around Staffing to Avoid Tax Penalty
6	Exchange can be opened to larger employers	State of California	2017	Unknown	HR to Monitor Legislation
7	Cadillac Tax - a 40% excise tax on the amount of total premiums over the government determined threshold in 2018 (\$10,200 Single/\$27,500 Family)	City of Hayward	2018	Approx. \$985,000 Annually	HR to Monitor Legislation; Add Projected Cost to Budget
8	Automatic enrollment of new employees into City's lowest cost plan if they do not elect coverage	City of Hayward	Delayed Until Further Notice	Unknown	None at this Time

DISCUSSION

There are four major components of the PPACA that will have a direct impact on the City and its employees. These include: Availability of Health Insurance Exchange (Table 1, Item 3); Individual Mandate (Table 1, Item 4); Pay or Play (Table 1, Item 5); and the Cadillac Tax (Table 1, Item 7).

Availability of Health Insurance Exchange (Table 1, Item 3)

Open enrollment for the Health Insurance Exchange in California, called Covered California, began on October 1, 2013, and will continue through March 1, 2014. Covered California is offering thirteen health insurance plans that they characterize as “affordable, quality health care coverage to millions of Californians.” Plans vary from commercial plans to large non-profit carriers along with Medi-Cal and other regional plans. Individuals, depending on family size and income levels, may be eligible for a federal subsidy if they participate in one of these plans. Premium assistance reduces the cost of an individual’s or family’s health insurance plan premium. Those eligible for premium assistance will not have to wait until they file their annual taxes to receive the benefit. Instead, the government will pay the subsidy directly to the insurance providers in order to lower the monthly premiums for the individual that qualifies.

In Alameda County, four plans are being offered through Covered California: Alameda Alliance for Health (HMO); Anthem (PPO); Kaiser Permanente (HMO); and Blue Shield (EPO). These carriers offer a variety of plans in each tier. The tiers are: bronze, silver, gold, and platinum. Each medal level defines the level of coverage a participant pays as a patient compared to what the plan pays. The medal plans are defined by the PPACA and can be found in Table-2.

Table-2 Coverage Levels of Medal Tiers

Medal Tier	% Cost of Care Paid by Health Plan	% Cost Paid of Care by Consumer
Bronze	60%	40%
Silver	70%	30%
Gold	80%	20%
Platinum	90%	10%

According to Covered California, it is estimated that nearly 80,000 individuals in Alameda County are eligible to receive a subsidy to help offset the cost of health benefit coverage. The 2010 Census listed the median City of Hayward household size as 3.12 individuals with an annual household income of \$75,594. Under the Covered California exchange, a Hayward resident with a three-member family, who has an annual household income of \$75,594 could purchase health insurance through the exchange with a subsidy of \$329 a month. Table-3 illustrates the range of plans and monthly health premiums available to similarly situated families through the California exchange.

Table-3 Monthly Subsidy and Family Cost for Plans Provided in California Exchange

Medal Tier	Least Expensive Plan			Most Expensive Plan		
	Plan Premium	Monthly Subsidy ¹	Cost to Family ²	Plan Premium	Monthly Subsidy ¹	Cost to Family ²
Bronze	\$670	\$329	\$341	\$707	\$329	\$378
Silver	\$824	\$329	\$495	\$947	\$329	\$618
Gold	\$970	\$329	\$641	\$1,152	\$329	\$823
Platinum	\$1,112	\$329	\$783	\$1,292	\$329	\$963

¹ Subsidy determined on zip code, household size, and household income.

² Monthly plan costs, after subsidy is applied to premiums.

The City of Hayward offers medical plans through CalPERS that would be equivalent, or better than, the “Platinum” plans offered through Covered California.

Employees who have access to affordable health care coverage through their employers will not be eligible for a tax credit if they enroll in coverage through the exchange. Regardless of income level and family size, if an individual is offered coverage from their employer that meets the requirements of “affordability” and “minimum value standards,” that individual does not have to enroll in their employer-sponsored plan and can choose to enroll in a plan offered through the exchange; however, that individual would not be eligible to receive a tax subsidy from the government.

While the community may benefit from the availability of the tax subsidy offered under PPACA, City of Hayward employees would not be able to take advantage of the subsidy because the benefits offered through City employment meet the “affordability” and “minimum value standards.”

Individual Mandate (Table 1, Item 4)

In conjunction with the availability of the Health Care Exchange, beginning January 1, 2014, all U.S. citizens and legal residents will be required to have “minimum essential coverage” or be faced with a tax penalty. Minimum essential coverage includes coverage under the following types of programs: an eligible employer-sponsored plan; an employer-sponsored retiree health plan; certain government programs, such as Medicare, Medicaid, the Children’s Health Insurance Program (CHIP) or TRICARE; coverage in the individual insurance market, including a plan offered by an Exchange; and other coverage recognized by Department of Health and Human Services (HHS), including self-funded student health coverage and coverage under Medicare Advantage plans.

It is important to note that not all coverage will satisfy the requirements set forth above. Specifically, coverage that consists of “excepted” benefits will not qualify as minimum essential coverage. Examples of excepted benefits include: accident only plans, disability income insurance, or workers’ compensation. In addition, plans that are offered separately or are not an integral part of the health plan, like limited-scope dental and vision coverage, most health Flexible Spending Arrangements and long-term care benefits, will not qualify.

If an individual or an individual’s spouse or dependent does not have minimum essential coverage, a penalty will be assessed against that individual (children included). The penalty is charged for each individual without coverage, capped at a family maximum, increasing annually. Penalties start at \$95 annually for an individual in 2014, and increase to \$695 in 2016. Family caps are \$285 in 2014, and increase to \$2,085 in 2016. Penalties in 2017 and beyond will be increased annually based on cost-of-living adjustments. Penalties will be incurred on tax returns annually.

City of Hayward employees who enroll in a medical plan through CalPERS will satisfy this requirement and not be subject to the tax penalties explained above.

Pay or Play – Employer Shared Responsibility (Table 1, Item 5)

Pay or play is a requirement for large employers. A large employer is defined as those employers with fifty or more full time equivalent (FTE) employees. The requirement is that large employers are required to offer minimum essential coverage which is “affordable” and provides “minimum value.” The coverage must be provided to all full-time employees and their dependents by the 91st day of employment to avoid penalties. For the purposes of the PPACA, full-time employees are defined as those employees working thirty hours or more per week, or 130 hours or more per month.

For a plan to be considered “Affordable” under the PPACA, it must pass a “Safe Harbor Test.” Safe harbor tests are all based on the cost of single coverage employee cost for the least expensive plan offered. To pass the safe harbor test, the employee cost of the plan must be less than 9.5% of either: 1) The Federal Poverty Level; 2) Employees hourly wage x 130; or 3) W-2 Earnings. The City has the right to determine what test to apply to its’ employees to determine affordability and can apply different tests to different employee groups. Table-4 shows examples of the various safe harbor calculations.

Table-4 Sample Safe Harbor Calculations³

Safe Harbor Test Methodology	Test Calculation	Max Annual Employee Contribution	Max Monthly Employee Contribution
Federal Poverty Line	\$11,490 x 9.5%	\$1,091.55	\$90.96
Rate of Pay	\$19.99 ⁴ x 130 x 9.5%		\$246.88
W-2 Earnings	\$42,359.20 ⁵ x 9.5%	\$4,024.12	\$335.34

³ Safe Harbor Tests only apply to employee only coverage; employee contributions to 2-party and family plans are not factored into affordability requirements of the PPACA.

⁴ Lowest paid, full-time City of Hayward position, step A.

⁵ Lowest paid, full-time City of Hayward position, Step A, bilingual pay, annualized.

With approximately 663 employees receiving their health benefits paid at 100% by the City, and the remaining fifty-six employees being required to pay on average \$78 a month for employee only coverage, the City could easily apply any of the three safe harbor tests and pass the affordability requirement set forth by the PPACA.

In addition to being affordable, an employer-based plan must offer coverage that meets “minimum value” standards. A health plan meets the minimum value standard if it is designed to pay at least sixty percent of medical costs; the individual paying the other forty percent. CalPERS plans are in the eighty to ninety percent minimum value range and thus far exceed the minimum value standard established by the PPACA.

The medical plans offered by the City of Hayward will meet all the requirements set forth under the PPACA and thus avoid a tax penalty.

Cadillac Tax (Table 1, Item 7)

In 2018, a Cadillac Tax for health benefit premiums in excess of the limits set forth by the PPACA will go into effect. The PPACA has set the 2018 individual plan threshold as \$10,200 and the family plan threshold to \$27,500. If an insurance company or Third Party Administrator (TPA) offers health care plans that exceed these thresholds, a tax will be assessed for forty percent of the difference in value between the actual plan cost and PPACA threshold. CalPERS, as the insurance carrier, will be assessed this tax. However, there is nothing in the legislation that restricts CalPERS from pushing the cost of this tax to Hayward as a plan participant of CalPERS. Tables-5 and Table-6 illustrate what the estimated annual tax penalty will be by plan in 2018.

Table-5 Estimated 2018 Annual Cadillac Tax Penalty – Employee Only Plan

CalPERS - Rates	Individual Monthly Premium ⁶					Annual	Subject to Tax ⁷	Annual Tax 40%
	2014	2015	2016	2017	2018	2018		
Monthly Rates for 2014								
Anthem HMO Select	\$657	\$723	\$795	\$875	\$962	\$11,549	\$1,349	\$540
Anthem HMO Traditional	\$728	\$801	\$881	\$970	\$1,066	\$12,798	\$2,598	\$1,039
Blue Shield Access +	\$837	\$920	\$1,012	\$1,114	\$1,225	\$14,698	\$4,498	\$1,799
Blue Shield NetValue	\$704	\$774	\$852	\$937	\$1,031	\$12,369	\$2,169	\$868
Kaiser HMO	\$743	\$817	\$899	\$989	\$1,087	\$13,049	\$2,849	\$1,140
UnitedHealthcare	\$764	\$841	\$925	\$1,017	\$1,119	\$13,427	\$3,227	\$1,291
PERS Choice	\$691	\$760	\$836	\$919	\$1,011	\$12,136	\$1,936	\$775
PERS Select	\$662	\$728	\$800	\$880	\$969	\$11,622	\$1,422	\$569
PERSCare	\$720	\$792	\$871	\$958	\$1,054	\$12,651	\$2,451	\$980
Individual Plan Cadillac Tax Threshold (2018)						\$10,200		

Table-6 Estimated 2018 Annual Cadillac Tax Penalty – Family Plan

CalPERS - Rates	Family Monthly Premium ⁶					Annual	Subject to Tax ⁷	Annual Tax 40%
	2014	2015	2016	2017	2018	2018		
Monthly Rates for 2014								
Anthem HMO Select	\$1,709	\$1,880	\$2,068	\$2,275	\$2,502	\$30,027	\$2,527	\$1,011
Anthem HMO Traditional	\$1,894	\$2,083	\$2,292	\$2,521	\$2,773	\$33,274	\$5,774	\$2,310
Blue Shield Access +	\$2,175	\$2,393	\$2,632	\$2,895	\$3,185	\$38,215	\$10,715	\$4,286
Blue Shield NetValue	\$1,830	\$2,013	\$2,215	\$2,436	\$2,680	\$32,159	\$4,659	\$1,864
Kaiser HMO	\$1,931	\$2,124	\$2,337	\$2,570	\$2,827	\$33,927	\$6,427	\$2,571
UnitedHealthcare	\$1,987	\$2,186	\$2,404	\$2,645	\$2,909	\$34,910	\$7,410	\$2,964
PERS Choice	\$1,796	\$1,976	\$2,173	\$2,390	\$2,630	\$31,554	\$4,054	\$1,622
PERS Select	\$1,720	\$1,892	\$2,081	\$2,289	\$2,518	\$30,218	\$2,718	\$1,087
PERSCare	\$1,872	\$2,059	\$2,265	\$2,492	\$2,741	\$32,891	\$5,391	\$2,157
Family Plan Cadillac Tax Threshold (2018)						\$27,500		

⁶ 2014 Actuals. Remaining years assumes 10% increase annually.

⁷ Only the difference between the annual maximum premium and 2018 threshold are subject to the 40% tax.

Based on the City's current enrollment and projected rate increases, and assuming CalPERS passes the tax on to the participants, it is estimated this tax will cost \$985,000 in 2018 and likely increase annually thereafter. This tax is in addition to any normal rate increases expected due to normal inflation. Currently, the City is projecting an annual ten percent year-over-year rate increase in the Ten-Year Plan. This amount will be included in the next update to the Ten-Year Plan.

In order to avoid this tax, CalPERS will need to restructure the plans it offers to reduce annual premiums. This could be achieved by lowering benefit levels, eliminating coverage of certain medical procedures (e.g. gastric bypass surgery), or increasing deductibles and copays, just to name a few. To date, CalPERS has not given any indication of how they might address the tax or adjust plan structures to avoid the tax.

FISCAL IMPACT

Exact fiscal impact of implementation of PPACA requirements cannot be assessed at this time. Currently, increased fees associated with funding PPACA have been rolled into medical rates for 2014. CalPERS estimated these cumulative fees accounted for an approximate two percent rate increase and incorporated that increase into the published 2014 CalPERS health insurance rates. This equated to annual cost to the City of \$288,600. There is no immediate General Fund impact because prior year projections had included potential cost increases associated with PPACA.

Due to the level of benefit provided by the City for health care coverage, it is not anticipated at this time that the City will be impacted by the "Pay or Play" tax penalty going into effect January 1, 2015.

On the contrary, due to the current cost of CalPERS benefits, and the projected ten percent annual increases to premiums, it is estimated that unless there is a significant restructuring by CalPERS related to the plans they offer participants, the plans will be subject to the Cadillac tax. While the City is not responsible for the tax, it is estimated that CalPERS will push any increased tax liability

down to the consumer through rate increases. It is estimated, with current enrollment levels, employee contribution rates, and a ten percent annual increase in medical premiums over the next four years that the City could pay approximately an additional \$985,000 annually as a result of the Cadillac Tax. Over a five-year period, this tax could cost the City as much as \$6 million. This estimated tax is not currently included in the Ten-Year Plan and will need to be included at the next update.

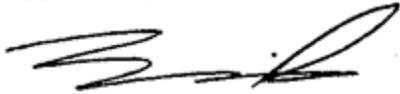
NEXT STEPS

Human Resources will continue to monitor legislation regarding this provision and work closely with the Finance Department to budget accordingly for any increased cost and report out to Council as needed.

Prepared by: Sarah Monnastes, Acting Senior Human Resources Analyst

Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 29, 2013, 5:30 p.m.**

The Special Work Session meeting was called to order by Mayor Sweeney at 5:30 p.m., followed by the Pledge of Allegiance led by Council Member Mendall.

ROLL CALL

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

PUBLIC COMMENTS

Council Member Zermeño commented that there was a flood at a bookstore.

Mayor Sweeney noted that the Alameda County Building Trades Council had asked that a report related to a Project Labor Agreement (PLA) be brought back to Council. There was Council consensus for staff to bring back a report to Council.

SPECIAL WORK SESSION

1. Council Priorities Discussion

Staff report submitted by City Manager David, dated October 29, 2013, was filed.

City Manager David announced the report and Assistant City Manager McAdoo provided a synopsis of the report and noted that there was a revised Attachment II which provided revised dates for the Council priorities process.

Discussion ensued among Council and City staff. Council noted the following suggestions would help in establishing the Council priorities process: having a simplified process; reviewing priorities at a policy level; concentrating on priorities from the community perspective and deriving information from processes such as the General Plan Update document, Neighborhood Partnership meetings, and resident surveys; reviewing results from FY 2014 would enable the Council to measure the effectiveness of the initiatives, focus on areas that need attention, and would help formulate priorities for the next two-year budget cycle. There were also the following suggestions: revising the language in the 2040 Vision by replacing “Hayward will...” with “Hayward is...;” designating a webpage for Council Priorities to generate community input; and exploring a fourth priority that would encompass initiatives that use resources and that the Council finds important.

The Council adjourned to Special City Council meeting at 6:20 p.m.

The Special 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 Mendall.

ROLL CALL

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

PUBLIC COMMENTS

There were none.

LEGISLATIVE BUSINESS

2. Introduction of Ordinances Amending the Hayward Municipal Code by Adding Article 13 to Chapter 4 Relating to Food Sharing Events and Article 14 to Chapter 4 Relating to Park Hours

Staff report submitted by Neighborhood Services Manager Korth, dated October 29, 2013, was filed.

Assistant City Manager McAdoo and Director of Library and Community Services Reinhart provided a synopsis of the report. It was noted that the proposed ordinances were introduced on October 1, 2013, and the Council had directed staff to revise the ordinances and to bring them back for further review.

Discussion ensued among the Council and City staff.

Mayor Sweeney opened the public hearing at 7:42 p.m.

The following individuals expressed concerns about the proposed ordinance related to Food Sharing Events. The concerns raised included: the proposed ordinance imposed restrictions and costs on food providers; the proposed ordinance would negatively impact the population in need and would create adverse problems; limiting one food sharing event per month would not help the needy; there were no alternate food providers identified as an option; and hunger was a problem that the City needed to address and solve.

Mr. Kevin Valley, Hayward resident
Mr. Robert Goodwill
Mr. Patrick Jerome Forte, Hayward resident
Ms. Sherry Blair, Hayward resident
Mr. Robert Lara, Hayward resident
Ms. Diane Fagalde, Hayward resident and Community Services Commission member
Ms. Karen Norell, Hayward resident and Community Action Network (CAN) volunteer
Mr. Jim Drake submitted a card but did not speak



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 29, 2013, 5:30 p.m.**

Mr. Eric Jenkinson, Hayward resident

Ms. Sara Lamnin, Hayward resident and CAN Program Director, requested that the Council delay introducing the ordinance to allow food sharing providers the time to find resources and develop a strategic solution.

The following individuals expressed support for the proposed ordinance related to Food Sharing Events and offered the following comments: an indoor facility where individuals could also attain skills to enable them to get back into society was preferred over outdoor feeding; the permitting process would help the city regulate outdoor food sharing events and would protect residents and downtown businesses; and the proposed ordinance would hold individuals accountable and thus improve the health, safety, and welfare of the city. United Merchants Downtown Hayward submitted a petition that had garnered signatures from United Merchants Downtown Hayward members and patrons in support of the proposed City's social nuisance ordinance.

Ms. Judy Green, Hayward resident

Mr. Kim Huggett, President of the Hayward Chamber of Commerce

Mr. Elie Goldstein and Ms. Renee Rettig, representing United Merchants Downtown Hayward

Mr. Chuck Horner, Hayward resident and Calvary Baptist Church Pastor, suggested that a sunset clause be added to the proposed ordinance to allow for its review and to measure its effectiveness.

Mr. Betty DeForest, Hayward resident and member of the Board of Directors of South Hayward Parish, noted that the City supports emergency shelters, but none of them take men. Ms. DeForest noted the City allocates funds for food programs, but there were not enough for the entire city.

Mayor Sweeney closed the public hearing at 8:21 p.m.

Mayor Sweeney offered a motion to introduce an ordinance adding Article 13 to Chapter 4 relating to Food Sharing Events and an ordinance adding Article 14 to Chapter 4 relating to Park Hours per staff recommendation 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.

Council Member Halliday seconded the motion.

Council Member Salinas suggested, as a short-term solution, exploring contracting with a catering company that could provide meals for the needy.

Council Member Zermeño suggested exploring growing fruit trees in public places. Mr. Zermeño offered a friendly amendment to the motion that included directing staff to return to Council in six months with a report on the progress and implementation of the ordinance.

Mayor Sweeney and Council Member Halliday were amenable to the friendly amendment.

Council Member Halliday noted the proposed ordinances were drafted to address public safety and quality of life, and added that the City partners with social service organizations to address and alleviate the needs in the community. Ms. Halliday suggested exploring if the food that schools do not consume could be shared with the needy.

Council Member Jones noted that the proposed ordinances would compel people and organizations to collaborate and find broader social solutions, including finding an indoor facility to feed those in need.

Council Member Peixoto noted he was willing to work with the community to find a central location where an array of social services could be provided to the needy community and to help them get self-sufficient.

Council Member Mendall noted the proposed ordinance may force all to find an indoor facility for feeding those in need.

It was moved by Mayor Sweeney, seconded by Council Member Halliday, and carried unanimously, to adopt the following per staff recommendation 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 progress and implementation of the ordinances.

Introduction of Ordinance 13-_, “Ordinance of the City of Hayward, California Adding Article 13 to Chapter 4 of the Hayward Municipal Code Regarding Food Sharing Events”

Introduction of Ordinance 13-_, “Ordinance of the City of Hayward, California Adding Article 14 to Chapter 4 of the Hayward Municipal Code Relating to Park Hours”

AYES: Council Members Zermeño, Jones, Halliday, Peixoto, Salinas, Mendall

MAYOR Sweeney

NOES: None

ABSENT: None

ABSTAINED: None

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

Staff report submitted by Lieutenant Koller and Assistant City Attorney Alvarado, dated October 29, 2013, was filed.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 29, 2013, 5:30 p.m.**

City Attorney Lawson referred to a supplemental report which was distributed prior to the meeting and included three attachments: one attachment comprised a list of twenty-four questions, concerns, and suggestions that were submitted by the Rental Housing Owners Association (RHA) in response to the outreach meeting held on October 18, 2013; the second attachment included the City Attorney's Office review and analysis of the document submitted by RHA; and a third attachment included the amended language for the proposed ordinance.

Assistant City Attorney Alvarado and Lieutenant Koller provided a synopsis of the report.

Council Member Zermeño requested that the item be continued to allow the Council to review the supplemental report and to give HRA the same opportunity.

The Council unanimously decided to continue the item to November 5, 2013.

4. Consideration of Continued Payment of National League of Cities Annual Membership Dues and Designation of Voting Delegates and Alternates for the National League of Cities 2013 Annual Congress of Cities Business Meeting

Staff report submitted by Assistant City Manager McAdoo, dated October 29, 2013, was filed.

Assistant City Manager McAdoo provided a synopsis of the report.

Discussion ensued among the Council and City staff.

There being no public comments Mayor Sweeney opened and closed the public hearing at 9:03 p.m.

Council Member Zermeño offered a motion to retain membership in the National League of Cities.

Council Member Salinas seconded the motion.

It was noted that there was no interest for attending the National League of Cities 2013 Annual Congress of Cities, and therefore no voting delegates were designated.

Council Member Mendall offered that he did not see a benefit of retaining membership if no Council member was attending the National League of Cities Annual Congress of Cities Business Meeting.

Council Member Halliday supported the motion noting the National League of Cities (NLC) lobbies on behalf of cities for legislation that benefits cities and provides programs to better serve.

Council Member Jones supported the motion noting the NLC membership would allow the City to have an advocate and would maintain the line of communication and relationship in Washington, D.C.

It was moved by Council Member Zermeño, seconded by Council Member Salinas, and carried with the following vote, to retain membership in the National League of Cities and pay annual membership dues.

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas reported that chef Tony Solorio from Tacos Uruapan and he represented Hayward at the 1st Annual Mayors' Healthy Cook-off Showdown Challenge on October 24, 2013, in Concord.

Council Member Halliday, Hayward's delegate to the Alameda-Contra Costa Transit District, Policy Advisory Committee, reported she attended an AC Transit public hearing that outlined a change in fare structure that would eliminate paper transfers, introduce a local day pass, and offer discounts on clipper card fares.

Council Member Peixoto reported he attended the Annual Matt Jimenez Golf Tournament at Stonebrae on October 28, 2013, which was organized by the Hayward Firefighters Local 1909.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 9:13 p.m.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: November 12, 2013

TO: Mayor and City Council

FROM: Director of Public Works - Engineering & Transportation

SUBJECT: Resolution Authorizing the City Manager to Negotiate and Execute a New Ground Lease Agreement with Meridian Aviation, Inc. for Lease of a Parcel of Land at Hayward Executive Airport

RECOMMENDATION

That Council approves a resolution authorizing the City Manager to negotiate and execute a ground lease with Meridian Aviation, Inc. for a parcel of land at the Hayward Executive Airport.

BACKGROUND

Development of the south side of the Airport is depicted on the official Airport Layout Plan (ALP), and securing tenants for this available space will help ensure the financial viability of the Airport and overall economic development of the City's industrial area. Within the past six years, two companies (Field Aviation and Hayward Airport Development) proposed construction projects for the south side that were given a high priority by the Council Airport Committee (CAC). Portions of the proposed Meridian leasehold include the area previously approved by Council for negotiations with Field Aviation for use as a Fixed Base Operator (FBO). However, due to adverse economic conditions and other factors, each company withdrew from consideration before lease negotiations could be completed.

In July 2012, staff was contacted by the [Meridian Companies](#) regarding their interest in establishing a FBO in California. Hayward Executive Airport was one of several airports under consideration. A series of meetings were subsequently held with senior company officials to discuss Meridian's business plan and the scope of the project. Staff received an email from Meridian dated July 23, 2012 expressing interest in further discussion. On November 28, 2012, a Letter of Intent was submitted to Airport staff, followed by the receipt of a Business Qualification Application on March 4, 2013.

DISCUSSION

As noted above, Meridian has expressed interest in establishing a FBO at the Airport. Meridian is a privately-held aviation company based in Teterboro, New Jersey. They own and operate businesses that provide air charter, corporate aircraft management, aircraft maintenance, fuel, and other services for private aircraft owners. Meridian has operated an FBO at Teterboro since 1958 and is

reportedly the longest continuously operating aviation services company in the New York area. Annual pilot surveys in various trade publications rank the company's services very highly, and for three consecutive years, respondents to the Pilots Choice Award survey have ranked Meridian Teterboro as the number one FBO in the United States (of approximately 3,100 FBOs).

As an indication of Meridian's financial capabilities and technical expertise, they have successfully financed and constructed numerous capital improvements at Teterboro, including a new 30,000 square foot three-story terminal building, two aircraft storage hangars totaling 60,000 square feet, and a fuel storage facility with a capacity of 180,000 gallons. Their total investment for all improvements at Teterboro exceeds \$15 million. In addition, Meridian has 198 full-time employees, owns or manages twenty-one jet aircraft, and annually sells over six million gallons of aviation fuel. In their Business Qualification Application, Meridian indicated that gross receipts from their current business in the most recent year were approximately \$84 million and that they anticipate a business volume of \$2.6 million in the first year of operation at Hayward. Meridian anticipates forming a separate corporation, Meridian Aviation, Inc., to manage the business at Hayward with essentially the same management staff who oversee the operations at Teterboro.

Lease Term – The term of the lease with Meridian will be six months, commencing on the effective date. The lessee shall have the single option to extend the term of lease forty-nine years and six months, predicated upon a minimum initial financial investment of at least \$4 million and compliance with all other lease provisions and notification requirements.

Proposed Meridian Facilities at Hayward – After considering various leasehold options at the Airport, including the former 24-acre California Air National Guard (CANG) site, Meridian has expressed interest in an undeveloped 15.13-acre leasehold on the south side of the Airport (Attachment II). Meridian believes this location offers a number of benefits, including the area necessary to construct an adequately-sized aircraft parking apron and convenient access to the Airport runway and taxiway system.

Meridian will develop the site in four phases, similar to the original proposals for the south side from Field Aviation and Hayward Airport Development (Attachment III). This will allow for an orderly expansion as customer demand increases and to better allocate capital. The four phases are outlined below. Sizes are approximate.

- Phase 1 – This phase is 7.23 acres in size and includes the construction of a 122,500 square foot aircraft parking apron, one 18,000 square foot aircraft storage hangar, and an attached 3,000 square foot passenger terminal. The passenger terminal will have a reception area, pilot lounge, weather briefing room, and administration offices. This phase also includes the construction of an above ground fuel storage facility with a capacity of 30,000 gallons, a two-lane entrance roadway connecting to West Winton Avenue, and a parking lot with a forty-vehicle capacity. Meridian has submitted artist's renderings of the proposed Phase I development (Attachment IV). These facilities meet the requirements set forth in the Airport minimum standards for full-service FBOs. Phase 1 must be completed no later than four years after the lease option is exercised. Meridian indicates it will make an investment of approximately \$5.6 million for this

phase. Should they not be successful, the City has the choice of cancelling the lease or giving Meridian a time extension for a good reason, such as poor economic climate.

- Phase 2 – This phase adds 2.78 acres to Phase 1. The type of facilities to be constructed will be based on market demand, but are anticipated to include a 10,000 square foot passenger terminal, a second 26,250 square foot hangar, approximately 57,000 square feet of additional aircraft parking apron, and parking for an additional forty-four vehicles. This phase will be completed within five years of the exercise of lease option.
- Phase 3 – This phase adds approximately 1.37 acres and is expected to include 15,000 square feet of additional hangar space and associated aircraft parking apron and vehicle parking space. This phase will be completed within fourteen years of the exercise of lease option.
- Phase 4 – This final phase adds approximately 3.75 acres for a total leasehold area of 15.13 acres and is anticipated to include an additional 50,000 square feet of hangar space and associated aircraft parking apron and vehicle parking space. This phase will be completed within twenty years from the exercise of lease option.

Competitive Factors/Fueling Activities – Pilots have typically had a choice of two or more FBOs at the Hayward Executive Airport (HWD) but since May 2011, APP Jet Center has been the sole FBO at the Airport. While APP offers a range of products and services comparable to other FBOs of its size, the presence of a second FBO at the Airport should provide a more competitive environment that will benefit based and transient customers.

Airports that receive grant funding from the Federal Aviation Administration (FAA) such as HWD are required to adhere to certain contractual provisions known as *grant assurances* as well as *Federal Aviation Regulations*, advisory circulars, and other written forms of guidance. These documents outline the factors an airport sponsor may take into consideration regarding competition among commercial tenants. For the benefit of the public, the FAA encourages competition and requires airport sponsors to make space available to qualified companies wishing to provide aeronautical services at the airport (*FAA Advisory Circular 150/5190-6, Paragraph 4*). This prohibits airport owners from arbitrarily limiting the number of aeronautical service providers at an airport, including FBOs. Provided that space is available at the airport, the only basis for denial of a proposal is in the event the activity is unsafe or if it affects the efficient operation of navigable airspace (*FAA Advisory Circular 150/5190-6, Section I, Paragraph 1.3 (a) 1*). It is staff's opinion that neither of these circumstances apply in this case.

According to the HWD Minimum Standards, prior to engaging in fueling activities, a prospective FBO must submit a business plan demonstrating, among other items, that revenue projections will be supported by incremental new business rather than just a dilution of market share from existing fuel suppliers. The air route between New York and San Francisco is heavily traveled by corporate aircraft, and Meridian is confident that many of their New York customers currently landing at other Bay Area airports will welcome the opportunity to patronize the Meridian Hayward FBO. In addition, Meridian already bases one jet charter aircraft at Hayward and there are plans to place

additional aircraft into service as demand increases. These activities would all contribute to incremental new business and revenue.

During lease negotiations with Field Aviation in 2007 for the establishment of an FBO on the south side of the Airport, a provision in the draft lease prohibited them from selling fuel on the north side of the Airport. It was the intent of staff to also modify the ground lease of each existing FBO located on the north side of the Airport to prohibit them from selling fuel on the south side, but this was never accomplished. In the current interest of maintaining an open and competitive environment as well as compliance with FAA standards, staff recommends that every FBO on the Airport be permitted to sell fuel in all common areas and on those private leaseholds that permit them access. The movement of fuel trucks between the north and south side of the Airport will be through use of the south perimeter road after it has been improved. The City will complete improvement of the south perimeter road consistent with the Phase I timelines of the Meridian improvements.

Request for Proposals – According to the City Attorney, under the California Government Code and provisions of the City Charter, the City has the option to either entertain new business proposals from individuals or companies that may be received from time to time or solicit public interest for development opportunities through a Request for Proposals (RFP). The FAA also permits airport sponsors to enter into long-term leases by negotiation or solicitation. The City has taken both approaches in the past. Ascend Development contacted the City in 2000 and their proposal for development of aircraft hangars was subsequently approved by Council, and the City also participated in lease negotiations for development of a FBO after being contacted by Field Aviation. In other instances, the City has issued a RFP, including one for development of the California Air National Guard site and, separately, for the lease of an existing commercial hangar. Because there is no other formal interest in the former Field Aviation site at this time and because of the demonstrated capabilities of Meridian, staff recommends that lease negotiations continue with Meridian.

FAA Approvals and Environmental Review – FAA approval is required for any proposed construction project through amendments to the Airport Layout Plan (ALP), and the FAA is also the lead agency for all National Environmental Policy Act (NEPA) requirements at the Airport. During a recent meeting with the FAA, staff provided an overview of the Meridian proposal. Once the Council authorizes negotiation of the ground lease, staff will submit a site plan to the FAA and officially request modification of the ALP, and this in turn will trigger a NEPA review of the project. Due to the similarities with the Field Aviation project, no issues are anticipated in receiving approval of the updated ALP or a Categorical Exclusion under NEPA, and the FAA has indicated they will provide an expeditious response. Staff will also review the proposed plan in accordance with the California Environmental Quality Act (CEQA) to ensure consistency with the Airport's Environmental Impact Report completed for the current Airport Master Plan.

FISCAL IMPACT

As noted earlier, Meridian's investment in the Airport for Phase 1 of the development is estimated at approximately \$5.6 million. Cost estimates for Phases 2 through 4 will depend on the exact nature of the development (hangars, office space, aircraft parking apron, or some combination of

these based upon customer demand), but will require Meridian to expend millions of additional dollars. Meridian will also be initially creating ten new full-time jobs at HWD, such as customer service representatives, line service technicians, and two supervisory positions, with additional positions anticipated in the future as business expands. Per a key goal contained within the City's recently adopted Economic Development Strategic Plan, Meridian will adhere to the City's efforts to support, to the greatest extent possible, the hiring of Hayward residents for these new positions.

The FAA requires that airport owners maintain a fee and rental structure that makes the Airport as financially self-sustaining as possible. The positive revenue impact to the Airport of the proposed Meridian FBO would be significant. The estimated annual revenue from ground rent from each phase of construction when fully developed is as follows:

- Phase 1 - \$100,789
- Phase 2 - \$37,876
- Phase 3 - \$19,023
- Phase 4 - \$52,297

The total annual revenue from ground rent once all four phases are developed is approximately \$209,985. As an inducement to select Hayward over competing airports, reduced ground rent has been negotiated during the initial term of the lease and during construction. During the initial term of the lease, ground rent will be \$0.10 per square foot. The amount per square foot increases to \$0.16 during the construction phase, and then reaches the full amount of \$0.32 per square foot once Meridian receives its certificate of occupancy.

Meridian will be subject to fuel flowage or percentage gross fees as stated in Paragraph 2 (e) of the Hayward Executive Airport Rates and Charges. Based on first year estimates, this represents an additional \$80,000 of annual revenue to the Airport. In addition, Meridian will be assessed a fee of \$1 per square foot of new hangar construction to support ongoing Aircraft Rescue and Firefighting (ARFF) operations at the Airport. As the new hangar space within the first phase is approximately 18,000 square feet, revenue from this fee is estimated at \$18,000.

Outside of the revenues to be generated by their occupancy as a FBO at the Airport, staff anticipates that Meridian will be an active participant at community events. Most recently, Meridian set up a static airplane display for the public to view at the Airport's Open House event. Future efforts during this event will be focused on inspiring the community's youth to pursue careers in aviation by advising them of the array of educational opportunities available in this field. Meridian will also provide part-time and summer employment and be encouraged to hire from local schools and colleges, as well as residents who have aviation-related experience.

PUBLIC CONTACT

On October 31, 2013, the Council Airport Committee (CAC) reviewed information regarding the proposal and recommended that the item be forwarded to Council for approval consistent with the terms outlined in this report (Attachment I).

NEXT STEPS

The schedule through the construction of the Phase 1 improvements is summarized below:

Complete Environmental Approval
Complete Phase 1 Construction

March 2014
September 2015

Prepared by: Douglas McNeeley, Airport Manager

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution
Attachment II: Leasehold Plat
Attachment III: Site Plan
Attachment IV: Phase I Artist Renderings

HAYWARD CITY COUNCIL

RESOLUTION NO. 13- ____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A GROUND LEASE WITH MERIDIAN AVIATION, INC. FOR A PARCEL OF LAND AT HAYWARD EXECUTIVE AIRPORT

WHEREAS, the City of Hayward (“City”) owns and operates the Hayward Executive Airport; and

WHEREAS, the City wishes to lease certain property on the south side of the Airport; and

WHEREAS, Meridian Aviation, Inc. has expressed interest in an undeveloped 15.13 acre property on the south side of the Airport; and

WHEREAS, as there is no other formal interest in the site at this time and because of the demonstrated capabilities of Meridian Aviation, Inc., staff recommends that the City enter into a ground lease with Meridian Aviation, Inc.; and

WHEREAS, the Federal Aviation Administration permits airport sponsors to enter into long-term leases by negotiation or solicitation.

NOW, THEREFORE, BE IT RESOLVED, that the City Manager is authorized to negotiate and execute a ground lease with Meridian Aviation, Inc. for a 15.13 acre property located on the south side of the Airport, in a form approved by the City Attorney.

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



37,987 SQ.FT.
0.87 ACRES
(PART OF PHASE I)

DETAIL "A"
(NTS)

PHASE 4
201,419 SQ.FT.
4.62 ACRES
NET 3.75 ACRES

L=253.56'
R=188.48'
D=77°04'50"

PHASE 3
59,448 SQ.FT.
1.37 ACRES

PHASE 2
118,363 SQ.FT.
2.78 ACRES

PHASE 1
314,965 SQ.FT.
7.23 ACRES

**TOTAL
LEASE AREA**
659,208 sq.ft. +/-
15.13 Acres

WINTON AVENUE

TAXIWAY "Z"

TAXIWAY "Z"

P.O.C.
MONUMENT "RUSS-CLAW"
Y(N)=423,929.67
X(E)=1,531,267.19

N11°34'04"E
145.47'
354.47'
210.82'

P.O.B.

CLAWITER ROAD

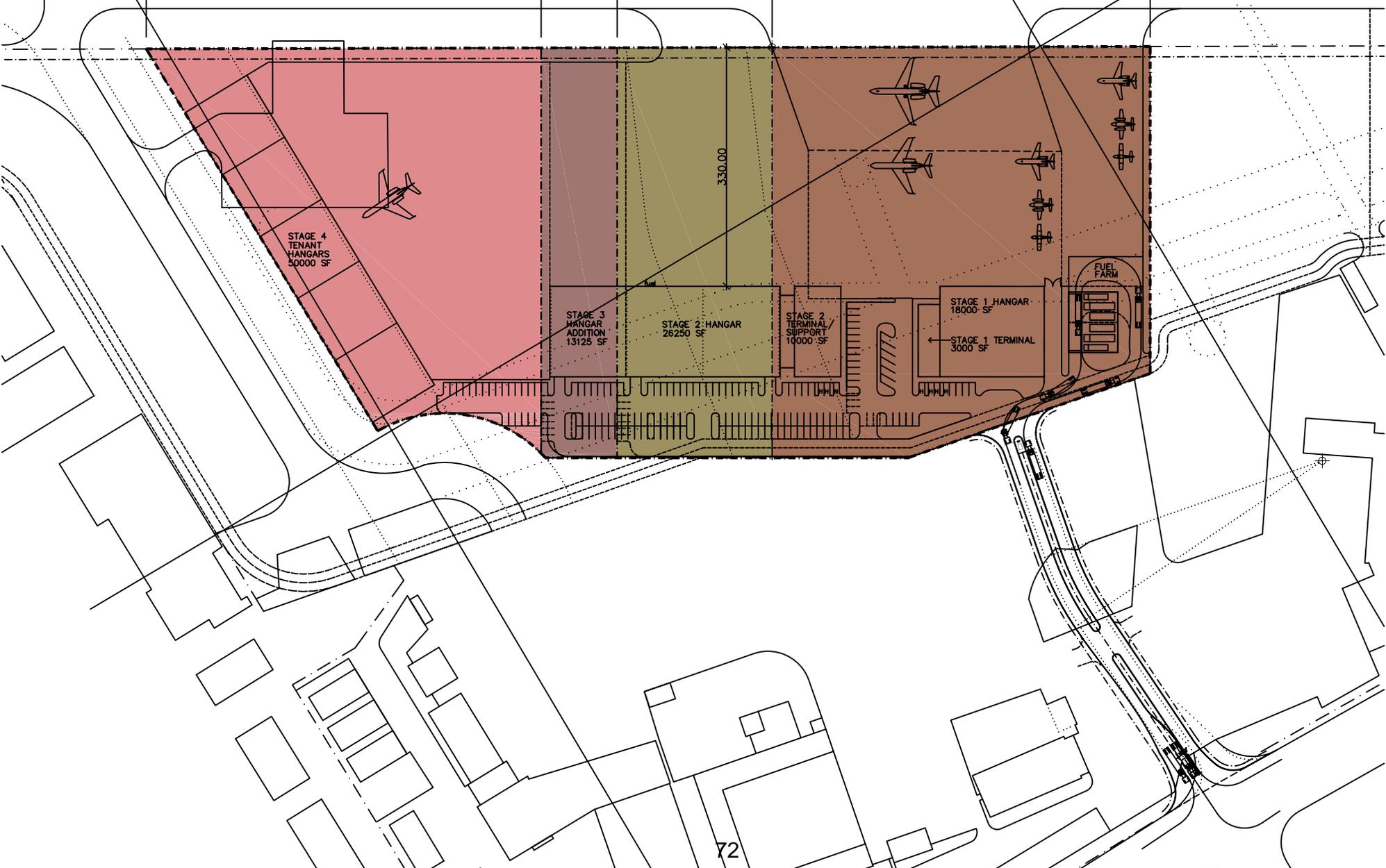
			CITY OF HAYWARD ENGINEERING DIVISION		MERIDIAN HAYWARD LEASE AREA		DWG. NO. 13005	
			DRAWN BY: BDS	DATE 10/18/2013			FILED	
			CHECKED BY:	SCALE: 1"=200'	SHT. 1 OF 1			
			APPD. BY	APPROVED				
REV	DATE	BY	CITY ENGINEER	DIR. PUBLIC WORKS				

PHASE 4 15.13 ACRE FULL LEASEHOLD AREA

PHASE 3 11.38 ACRE NET LEASEHOLD AREA

PHASE 2 10.01 ACRE NET LEASEHOLD AREA

PHASE 1 7.23 ACRE NET LEASEHOLD AREA
5.34 ACRE TOTAL USED AREA



STAGE 4
TENANT
HANGARS
50000 SF

STAGE 3
HANGAR
ADDITION
13125 SF

STAGE 2 HANGAR
26250 SF

STAGE 2
TERMINAL
SUPPORT
10000 SF

STAGE 1 HANGAR
18000 SF

STAGE 1 TERMINAL
3000 SF

FUEL
FARM





DATE: November 12, 2013

TO: Mayor and City Council

FROM: Chief of Police
Director of Development Services

SUBJECT: Related to City Council Action Taken on September 24, 2013, 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

Staff recommends that Council:

- a. Introduces the attached new ordinance (Attachment II) related to revisions to Hayward's Alcoholic Beverage Outlet Regulations that incorporates amendments as directed by City Council on September 24, 2013;
- a. Re-introduces the attached ordinance (Attachment III) associated with revisions to Zoning Ordinance definitions (no changes made to version presented to City Council on September 24);
- b. Re-introduces the attached ordinance (Attachment IV) associated with revisions to the General Commercial (CG) and Central City-Commercial (CC-C) Zoning District regulations (no changes made to version presented to City Council on September 24);
- c. Re-introduces the attached ordinance (Attachment V) related to new regulations for Cabarets and Dances (no changes made to version presented to City Council on September 24);
- d. Re-adopts the attached resolution (Attachment VI) approving a Negative Declaration/Initial Study and adopting findings in support of the proposed ordinances (no changes made to version presented to City Council on September 24); and
- e. Adopts the attached resolution (Attachment VII) that proposes revisions to the Fiscal Year 2014 Master Fee Schedule (no changes made to version presented to City Council on September 24).

SUMMARY

Staff has incorporated revisions to proposed new regulations regarding alcohol establishments, as directed by City Council on September 24, 2013. However, as explained further in this report, staff is not recommending that fees presented on September 24 be changed, based on the number of calls for service (versus state Alcohol Beverage Control Department (ABC) license type), primarily because data on which to base such fees is not available.

The Planning Commission and staff recommend new fees and fines as shown in Attachment VII, which would support greater oversight by the Hayward Police Department (HPD) and assurance of compliance with new regulations without additional impacts to the General Fund, while deterring irresponsible management of establishments via penalties and fines.

Although staff is not recommending changes to fees previously presented, it is providing Council options in this report to consider, as previously directed.

BACKGROUND

A public hearing was held before the City Council on September 24, 2013. The staff report with attachments is available on the City's website at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca092413full.pdf> as agenda item number eight.

As indicated in the attached September 24, 2013 meeting minutes (Attachment VIII), City Council supported the previous recommendations from the Planning Commission and staff, but directed staff to:

- Bring back revised fees that more relate to how establishments are operated, versus based on ABC license type, with a higher fee to be assessed for poorly-managed businesses;
- Incorporate amendments that:
 - Allows the City to revoke a full-service restaurant's right to happy hours and/or live music for bad behavior;
 - Provides a mechanism that would allow the Council to approve new bars in oversaturated census tract with a super-majority vote; and
 - Provides an annual report to the Council regarding the implementation of the new provisions.

DISCUSSION

Staff has incorporated the three bulleted items above into the attached ordinance regarding alcohol regulations (Attachment I is a red-lined version showing such changes). Also, in response to testimony and comments at the September 24 hearing, staff has also made revisions to Section 10-1.2766 of the ordinance regarding the critical incident response fee provisions. Those changes indicate that those responsible for such incidents (versus responsible parties and/or ABC licensees) would be responsible for paying such fees, as determined via investigation by HPD, and such fees would also include costs incurred by the Hayward Fire Department (HFD), in addition to the HPD.

Council also directed staff to develop revised fees based on performance/number of calls for service, versus on ABC license type, as presented previously. Unfortunately, the available data from HPD does not provide that level of detail. Specifically, one cannot tell from the data which incidents involve undesirable behavior associated with alcohol consumption and/or sales and which do not. A review of each incident report may provide such information, but it is not guaranteed, and such review would take a substantial amount of time. Also, it is not clear sometimes which specific establishment is linked to an incident.

To illustrate the challenges regarding data, the following eight establishments (in no specific order) had the highest number of calls for service between January through June of this year of any establishment with a license to sell liquor in Hayward: Lucky's downtown, FoodMaxx on Hesperian, Kaiser on Hesperian, Vua Pho motel/restaurant on A Street near the freeway, CVS Pharmacy on Foothill, Lucky's on Jackson/Santa Clara, K-Mart on Mission, and the 7-11 Store on Aldengate. HPD staff indicates these establishments anecdotally do not generally have a high number of incidents involving undesirable behavior associated with alcohol.

The Hayward Police Department is developing the capability to track alcohol-related calls for service at retail alcohol establishments beginning in January 2014. This will allow staff to provide Council with an annual report containing calls for service and proactive oversight activity conducted by the HPD. The City Council has the opportunity every fiscal year to adopt new fees.

Policy Framework - There are three key policy questions for Council's consideration, as discussed in the following paragraphs.

1. What level of oversight does Council desire on alcohol establishments?

From previous Council discussion, it appears that the Council and community desire strong oversight of establishments selling liquor to the general public in order to preserve a positive and inviting business atmosphere for customers and the surrounding and adjacent neighborhoods.

Oversight is proactive and if implemented well, a positive resource to the business owners. Calls for service are made when there is a serious behavioral issue or crime. In the past, many communities, including Hayward, have relied on the State Alcohol Beverage Control to provide oversight based on their enforcement leverage of a license. ABC currently has limited staffing to conduct regular checks and to ensure establishments are operating in compliance with their ABC licenses. Current ABC staff includes six field enforcement agents covering five counties (Alameda, Contra Costa, Solano, SF, and San Mateo) and one supervisor. Two ABC agents (if available) get assigned to assist in proactive enforcement in Hayward.

Therefore, in order for HPD to provide the quality and frequency of oversight desired by the Council and the community, they need resources, which do not yet exist.

Staff supports having regular checks of establishments by HPD, with costs fully supported by ABC licensees, to enhance communication between HPD officers and establishments' security personnel, and to ensure establishments are operated responsibly and in conformance with the basic operating standards for which Council previously indicated support (see Section 10-1.2752 in Attachment II). In staff's opinion, it would not be advisable to directly base fees on calls for service, since such fee structure could discourage businesses from calling HPD when needed. Therefore, if Council desires this level of oversight, it is imperative that a fee structure be established that supports this objective.

2. What funding source(s) are available for such HPD oversight?

Staff recommends establishing fees to support the following oversight activities by the Hayward Police Department and not have such fees based on type of license or level of service. These fees would cover the following oversight activities:

- Coordination of Licensee Education on Alcohol and Drugs (LEADS) training for ABC licensed establishments' personnel;
- Compliance operations at ABC establishments (e.g. Minor Decoy - where minor is sent into establishment to purchase alcohol, and Shoulder Tap - minor loitering outside asking patrons to buy them alcohol);
- Alcohol establishment inspection/compliance checks (average of one per year for Level I fee establishments and four per year for Level II fee establishments) - detectives inspect premises to ensure license is valid, compliance with all conditions of ABC licenses and conditional use permits, to include no minor consumption, service to intoxicated patrons, compliance with security conditions, etc.;
- Attend community meetings (e.g., Alcohol, Tobacco and Other Drugs (ATOD) and Hayward Coalition for Healthy Youth (HCHY) programs) promoting a healthy community; and
- Community education (sober graduation), facilitate ABC training to patrol officers.

Per the above discussion and as previously recommended, staff is proposing the following fees:

- An annual alcohol beverage outlet fee of \$280 (\$5.39 per week) for full-service restaurants; wine shops, breweries/distilleries (note distilleries and breweries are new uses proposed by staff to be subject to this lower fee, to encourage such uses); and general retail stores that use no more than five percent of their floor area for alcohol sales, storage, and display (Level I fee); and
- An annual fee of \$1,120 (\$21.54 per week) for all other alcohol establishments (Level II fee).

The fees would generate an estimated \$110,000 annually and support one community safety officer (equal to 0.5 full-time equivalent sworn officer), who would be responsible for coordinating and conducting both the above activities and regular compliance checks.

Other Options for Annual Alcohol Establishment Fees, which Staff Does Not Recommend:

1. \$130 annual fee for all establishments (\$27,000 annually), to fund two detectives working overtime for ten hours per month (this will result in less oversight by HPD than is proposed in option #1); or
2. Current conditions/no change (no annual fees and limited HPD oversight).

Fees of Nearby Jurisdictions – Based on research by HPD staff, most jurisdictions do not have fees specifically related to alcohol establishments, though staff from other jurisdictions have indicated to HPD staff that such fees make sense, given limited budgets. Below are two jurisdictions that do have such fees.

- Oakland Police Department (OPD) - Annual alcohol retail license fee of \$1,500; re-inspection fee is \$200; Full service restaurants are exempt from the program.
- Alameda County Sheriff's Department (ALCO) - Each alcohol licensee has to pay an annual fee of \$800 to cover the implementation of the County's ordinance.

3. What impacts will revised regulations and fees have on discouraging undesirable/poorly managed locations?

Another key issue that is important to note is that the proposed regulations and amendments to the City's master fee schedule include fines and penalties that can be assessed against establishments that violate operating standards and laws, as follows:

1. Administrative Citation Fines (Attachment VII and Section 10-1.2775 of Attachment I)
In accordance with [Chapter 1, Article 7 of the Hayward Municipal Code](#), fines may be assessed as follows: \$750 for first offense; \$1,500 for second offense; and \$2,500 for third and subsequent offense. As stated in the Hayward Municipal Code, such provisions exist:
 - a) To protect the public health, safety, and welfare of the citizens of the City of Hayward;
 - b) To gain compliance with the Municipal Code and State Codes, Ordinances, and regulations in a timely and efficient manner;
 - c) To provide for an administrative process to appeal the imposition of Administrative Citations and fines;
 - d) To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements; and
 - e) To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.
2. Reinspection Fees (Attachment VII and Section 10-1.2772 of Attachment I)
Such fees equal the actual costs of such inspections and can be assessed towards the property owner if violations are not resolved and re-inspections are required.

3. Critical Incident Response Fee (Section 10-1.2766 of Attachment I)

Such incidents are defined as “any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment.” Staff has made slight grammatical edits to the definition, as reflected in Attachment I, to clarify that such incidents can either entail a crime of violence (regardless of the number of responding officers) or necessitating a response of five or more officers.

PUBLIC CONTACT

Regarding the previously scheduled November 5 hearing for this item, over 210 notices were sent on October 25 to the same group of people that previous notices were sent, to include all ABC licensees in Hayward and other interested parties. Also, a notice of the previously scheduled November 5 hearing was published in *The Daily Review* on Saturday, October 26, 2013.

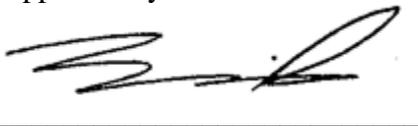
Staff also sent notices to the same group of interested parties informing of this hearing on November 1 and published again a notice for this hearing in *The Daily Review* on November 5. Staff has not received comments on such notices, other than a handful of interested members of the community wishing to know the proposed new fees.

NEXT STEPS

Should the Council adopt the attached two resolutions and re/introduce the attached four ordinances, staff will bring back the ordinances for adoption at the next City Council meeting on November 19, 2013. Once Council adopts the ordinances, staff will send out notices to all ABC licensees informing them of the new regulations and their deemed approved status. Staff envisions being able to start collecting fees at the beginning of CY 2014, and each January thereafter. However, the exact administrative structure and timeframe needs yet to be finalized. Staff will also hold workshops for owners and operators of existing establishments to answer questions and work toward a smooth implementation.

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

Approved by:



Fran David
City Manager

Attachments

- Attachment I: Revised Draft Ordinance Regarding Proposed Revisions to Alcohol Beverage Outlet Regulations (**red-lined version**) – new HMC Sections 10-1.2750 *et seq.*
- Attachment II: Revised Draft Ordinance Regarding Proposed Revisions to Alcohol Beverage Outlet Regulations (**clean version**) – new HMC Sections 10-1.2750 *et seq.*
- Attachment III: Draft Ordinance Regarding Proposed Revisions to the Zoning Ordinance Definitions (**red-lined version**) - HMC Section 10-1.3500 (*presented to Council on September 24, 2013*)
- Attachment IV: Draft Ordinance Regarding Proposed Revisions to the Central City-Commercial and General Commercial Zoning District Regulations (**red-lined version**) (*presented to Council on September 24, 2013*)
- Attachment V: Draft Ordinance Regarding Proposed new Cabarets and Dances Regulations - Chapter 6, Article 2 of the Hayward Municipal Code (*presented to Council on September 24, 2013*)
- Attachment VI: Draft Resolution Regarding Proposed Ordinances and the Negative Declaration/Initial Study (*presented to Council on September 24, 2013*)
- Attachment VII: Draft Resolution Regarding Proposed Revisions to the Fiscal Year 2014 Master Fee Schedule (*presented to Council on September 24, 2013*)
- Attachment VIII: September 24, 2013 City Council Meeting Minutes

November 12, 2013

ORDINANCE NO. __

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE
HAYWARD MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGE OUTLETS

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

Section 1. Upon the adoption of this Ordinance, Sections 10-1.2735b(1)-(13) of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 10-1.2750 through 10-1.2775, entitled “Alcoholic Beverage Outlets,” are hereby enacted to read as follows. The City Clerk is hereby directed to renumber Sections 10-1.2735c through 10-1.2735k sequentially to reflect the repeal of Section 10-1-2735b. The City Clerk is further directed to revise section references, as appropriate, throughout the City’s Zoning Ordinance to reflect the change in sequencing, resulting from the repeal of Sections 10-1.2735b(1)-(13) and the renumbering of Sections 10-1.2735c through 10-1.2735k.

“SECTION 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS”

Sections:

Section 10-1.2750	Purpose
Section 10-1.2751	Definitions
Section 10-1.2752	Performance Standards for Alcoholic Beverage Sales Establishments
Section 10-1.2753	Security Requirements for New On-Sale Alcohol-Related Establishments with Cabaret Licenses
Section 10-1.2754	Conditional Use Permits for New Alcoholic Beverage Sales Establishments
Section 10-1.2755	Posting of Conditions of Approval
Section 10-1.2756	Findings
Section 10-1.2757	Application for Conditional Use Permit
Section 10-1.2758	Requirements for New On-Sale Alcohol-Related Establishments
Section 10-1.2759	Requirements for New Off-Sale Alcohol-Related Establishments
Section 10-1.2760	Conditions of Approval
Section 10-1.2761	Existing Establishments Selling Alcoholic Beverages
Section 10-1.2762	Modifications Permitted in Alcoholic Beverage Sales Establishments
Section 10-1.2763	Notice
Section 10-1.2764	Letter of Public Convenience or Necessity
Section 10-1.2765	Emergency Action to Abate Imminent Threats to Public Health, Safety or Welfare; Summary Suspension Procedures
Section 10-1.2766	Critical Incident Response Fee for Alcoholic Beverage Sales Establishments
Section 10-1.2767	Legal Nonconforming Alcoholic Beverage Sales Establishments; Deemed Approved Status
Section 10-1.2768	Notification to Owners of Deemed Approved Status
Section 10-1.2769	Deemed Approved Performance Standards
Section 10-1.2770	Procedure for Enforcement of Deemed Approved Performance Standards
Section 10-1.2771	Revocation of Deemed Approved Status

November 12, 2013

Section 10-1.2772	Liability for Expenses
Section 10-1.2773	Inspection and Right of Entry
Section 10-1.2774	Nuisance
Section 10-1.2775	Cumulative Remedies
<u>Section 10-1.2776</u>	<u>Annual Report</u>

SEC. 10-1.2750 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers in Hayward. At the same time, it is also recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.
- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

SEC. 10-1.2751 DEFINITIONS.

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

- a. "Alcoholic Beverage Sales Establishment" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages. All alcoholic beverage sales establishments are required to obtain the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual

November 12, 2013

alcoholic beverage retail license and a conditional use permit from the City, unless otherwise indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.

- i. "On-Sale Alcohol-Related Establishment" means any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
- ii. "Off-Sale Alcohol-Related Establishment" means any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- b. "Cabaret" is defined in Chapter 6, Article 2 of this Code. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
- c. "Critical Incident" means any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
- d. "Deemed Approved Alcoholic Beverage Establishments" means those establishments identified in Section 10-1.2767.
- e. "Downtown Entertainment Area" means that area generally between A and D Streets and between Second Street and Grand Street.
- f. "Licensee" means the holder of an ABC license, an alcoholic beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
- g. "Liquor store" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
- h. "Night Club" – see definition of "Bar" in Section 10-1.3500 of this Ordinance ("Definitions"). All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article

November 12, 2013

2 of this code, in addition to a conditional use permit.

- i. **Restaurant - Full Service.** A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.

- (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
- (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.

- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine

November 12, 2013

shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
- c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
- d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
- e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
- g. The establishment complies with all of ABC's Retail Operating Standards; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances."

SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC

November 12, 2013

BEVERAGE SALES ESTABLISHMENTS.

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

- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale ABC license for each of the dates the event will be held; and
 - (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year, such as the Russell City Blues Festival and the summer street parties sponsored by the Chamber of Commerce.

SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.

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

SEC. 10-1.2756 FINDINGS.

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.

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

- a. The type of ABC license the applicant is seeking for the establishment; and

November 12, 2013

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

SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED ESTABLISHMENTS.

- a. With the exception of the Downtown Entertainment Area, no new on-sale alcohol-related establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.
- b. Notwithstanding the above:
 - (1) Outside the Downtown Entertainment Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to sale and use of alcoholic beverages.
 - (2) Within the Downtown Entertainment Area, no on-sale alcohol-related establishment shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related establishments that front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
 - (3) Within the Downtown Entertainment Area, no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face, with the exception of new or existing establishments that are exempted under Section 10-1.2754. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related establishments on a block between the two immediate cross streets.

SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED ESTABLISHMENTS.

With the exception of the Downtown Entertainment Area, no new off-sale alcohol-related establishment will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are

November 12, 2013

exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

SEC. 10-1.2760 CONDITIONS OF APPROVAL.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and Section 10-1.2750, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise are independent grounds for permit revocation. These conditions may include, but are not limited to:

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

November 12, 2013

right-of-way.

SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

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

- a. The alcoholic beverage sales establishment changes its type of ABC license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" includes, but is not limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

Any licensed alcoholic beverage sales establishment operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- a. The alcoholic beverage sales establishment changes its type of ABC license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales establishment as defined in Section 10-1.2761.

SEC. 10-1.2763 NOTICE.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (500) feet of the perimeter of the subject property for which use permit approval is sought.

SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Director is authorized to issue letters of public convenience or necessity to ABC for alcoholic beverage establishments that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit. No finding of public convenience or necessity shall be made to ABC in connection with the

November 12, 2013

licensing of bars or liquor stores in any Census tract in which ABC indicates that there is an over-concentration of ABC licenses, unless the Planning Commission, or City Council on appeal or call-up, makes the findings contained in Section 10-1.2756 and approves new bars with a super-majority vote of at least five members (i.e., at least two-thirds of its members).

SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.

Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
 - (1) The attempt to contact the licensee fails; or
 - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
 - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
 - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.
- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:
 - (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
 - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit

November 12, 2013

- or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or
- (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment.
- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
 - (2) The grounds and reasons upon which the summary suspension is based; and
 - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the “Summary Suspension Reviewing Officials”) to appeal the summary suspension; and
 - (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
- (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
 - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
 - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
- e. Appeal of Summary Suspension.
- (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.

November 12, 2013

- (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee's request for the hearing, unless the licensee requests an extension of time.
- (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact information provided by the licensee.
- (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
- (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
- (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
- (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.
- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident ~~and/or the~~

November 12, 2013

~~licensee of any alcoholic beverage sales establishment~~, including those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment, and determines through investigation such party is responsible for such incident. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police and fire department services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident and/or the licensee with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

SEC 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the “deemed approved performance standards” set forth in Section 10-1.2769.

SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment’s deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering,

November 12, 2013

graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;

- d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
- e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
- g. The establishment complies with all of ABC's Retail Operating Standards; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.
- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
 - (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
 - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the

establishment's deemed approved status should be revoked, the Planning Commission must find that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.

- d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:
 - (1) The length of time the establishment has been in violation of the deemed approved performance standards;
 - (2) The nature and impact of the violation of the performance standards on the community;
 - (3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. "Reasonable steps" to remedy a violation include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment's property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.
- e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.
- f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

SEC. 10-1.2772 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to

ascertain compliance with previously noticed violations shall be charged to the owner of the ~~deemed approved~~ establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2774 NUISANCE.

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

SEC. 10-1.2775 CUMULATIVE REMEDIES.

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.”

SECTION 10-1.2776 ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.”

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

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

November 12, 2013

ORDINANCE NO. __

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE
HAYWARD MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGE OUTLETS

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

Section 1. Upon the adoption of this Ordinance, Sections 10-1.2735b(1)-(13) of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 10-1.2750 through 10-1.2775, entitled “Alcoholic Beverage Outlets,” are hereby enacted to read as follows. The City Clerk is hereby directed to renumber Sections 10-1.2735c through 10-1.2735k sequentially to reflect the repeal of Section 10-1-2735b. The City Clerk is further directed to revise section references, as appropriate, throughout the City’s Zoning Ordinance to reflect the change in sequencing, resulting from the repeal of Sections 10-1.2735b(1)-(13) and the renumbering of Sections 10-1.2735c through 10-1.2735k.

“SECTION 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS”

Sections:

Section 10-1.2750	Purpose
Section 10-1.2751	Definitions
Section 10-1.2752	Performance Standards for Alcoholic Beverage Sales Establishments
Section 10-1.2753	Security Requirements for New On-Sale Alcohol-Related Establishments with Cabaret Licenses
Section 10-1.2754	Conditional Use Permits for New Alcoholic Beverage Sales Establishments
Section 10-1.2755	Posting of Conditions of Approval
Section 10-1.2756	Findings
Section 10-1.2757	Application for Conditional Use Permit
Section 10-1.2758	Requirements for New On-Sale Alcohol-Related Establishments
Section 10-1.2759	Requirements for New Off-Sale Alcohol-Related Establishments
Section 10-1.2760	Conditions of Approval
Section 10-1.2761	Existing Establishments Selling Alcoholic Beverages
Section 10-1.2762	Modifications Permitted in Alcoholic Beverage Sales Establishments
Section 10-1.2763	Notice
Section 10-1.2764	Letter of Public Convenience or Necessity
Section 10-1.2765	Emergency Action to Abate Imminent Threats to Public Health, Safety or Welfare; Summary Suspension Procedures
Section 10-1.2766	Critical Incident Response Fee for Alcoholic Beverage Sales Establishments
Section 10-1.2767	Legal Nonconforming Alcoholic Beverage Sales Establishments; Deemed Approved Status
Section 10-1.2768	Notification to Owners of Deemed Approved Status
Section 10-1.2769	Deemed Approved Performance Standards
Section 10-1.2770	Procedure for Enforcement of Deemed Approved Performance Standards
Section 10-1.2771	Revocation of Deemed Approved Status

November 12, 2013

Section 10-1.2772	Liability for Expenses
Section 10-1.2773	Inspection and Right of Entry
Section 10-1.2774	Nuisance
Section 10-1.2775	Cumulative Remedies
Section 10-1.2776	Annual Report

SEC. 10-1.2750 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers in Hayward. At the same time, it is also recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.
- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

SEC. 10-1.2751 DEFINITIONS.

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

- a. "Alcoholic Beverage Sales Establishment" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages. All alcoholic beverage sales establishments are required to obtain the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual

November 12, 2013

alcoholic beverage retail license and a conditional use permit from the City, unless otherwise indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.

- i. "On-Sale Alcohol-Related Establishment" means any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
 - ii. "Off-Sale Alcohol-Related Establishment" means any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- b. "Cabaret" is defined in Chapter 6, Article 2 of this Code. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
 - c. "Critical Incident" means any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
 - d. "Deemed Approved Alcoholic Beverage Establishments" means those establishments identified in Section 10-1.2767.
 - e. "Downtown Entertainment Area" means that area generally between A and D Streets and between Second Street and Grand Street.
 - f. "Licensee" means the holder of an ABC license, an alcoholic beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
 - g. "Liquor store" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
 - h. "Night Club" – see definition of "Bar" in Section 10-1.3500 of this Ordinance ("Definitions"). All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article

November 12, 2013

2 of this code, in addition to a conditional use permit.

- i. **Restaurant - Full Service.** A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.
 - (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
 - (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
 - (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
 - (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.

- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine

November 12, 2013

shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
- c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
- d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
- e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
- g. The establishment complies with all of ABC's Retail Operating Standards; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances."

SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC

November 12, 2013

BEVERAGE SALES ESTABLISHMENTS.

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

- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale ABC license for each of the dates the event will be held; and
 - (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year, such as the Russell City Blues Festival and the summer street parties sponsored by the Chamber of Commerce.

SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.

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

SEC. 10-1.2756 FINDINGS.

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.

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

- a. The type of ABC license the applicant is seeking for the establishment; and

November 12, 2013

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

SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED ESTABLISHMENTS.

- a. With the exception of the Downtown Entertainment Area, no new on-sale alcohol-related establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.
- b. Notwithstanding the above:
 - (1) Outside the Downtown Entertainment Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to sale and use of alcoholic beverages.
 - (2) Within the Downtown Entertainment Area, no on-sale alcohol-related establishment shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related establishments that front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
 - (3) Within the Downtown Entertainment Area, no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face, with the exception of new or existing establishments that are exempted under Section 10-1.2754. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related establishments on a block between the two immediate cross streets.

SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED ESTABLISHMENTS.

With the exception of the Downtown Entertainment Area, no new off-sale alcohol-related establishment will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are

November 12, 2013

exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

SEC. 10-1.2760 CONDITIONS OF APPROVAL.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and Section 10-1.2750, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise are independent grounds for permit revocation. These conditions may include, but are not limited to:

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

November 12, 2013

right-of-way.

SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

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

- a. The alcoholic beverage sales establishment changes its type of ABC license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" includes, but is not limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

Any licensed alcoholic beverage sales establishment operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- a. The alcoholic beverage sales establishment changes its type of ABC license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales establishment as defined in Section 10-1.2761.

SEC. 10-1.2763 NOTICE.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (500) feet of the perimeter of the subject property for which use permit approval is sought.

SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Director is authorized to issue letters of public convenience or necessity to ABC for alcoholic beverage establishments that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit. No finding of public convenience or necessity shall be made to ABC in connection with the

November 12, 2013

licensing of bars or liquor stores in any Census tract in which ABC indicates that there is an over-concentration of ABC licenses, unless the Planning Commission, or City Council on appeal or call-up, makes the findings contained in Section 10-1.2756 and approves new bars with a super-majority vote of at least five members (i.e., at least two-thirds of its members).

SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.

Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
 - (1) The attempt to contact the licensee fails; or
 - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
 - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
 - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.
- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:
 - (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
 - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit

November 12, 2013

or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or

- (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment.
- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
 - (2) The grounds and reasons upon which the summary suspension is based; and
 - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the “Summary Suspension Reviewing Officials”) to appeal the summary suspension; and
 - (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
- (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
 - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
 - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
- e. Appeal of Summary Suspension.
- (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.

November 12, 2013

- (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee's request for the hearing, unless the licensee requests an extension of time.
- (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact information provided by the licensee.
- (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
- (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
- (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
- (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.
- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident, including

November 12, 2013

those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment, and determines through investigation such party is responsible for such incident. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police and fire department services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

SEC 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the “deemed approved performance standards” set forth in Section 10-1.2769.

SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment’s deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours,

November 12, 2013

- traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
 - e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
 - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
 - g. The establishment complies with all of ABC's Retail Operating Standards; and
 - h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.
- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
 - (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
 - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the establishment's deemed approved status should be revoked, the Planning Commission must find

that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.

- d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:
 - (1) The length of time the establishment has been in violation of the deemed approved performance standards;
 - (2) The nature and impact of the violation of the performance standards on the community;
 - (3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. “Reasonable steps” to remedy a violation include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment’s property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.
- e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.
- f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

SEC. 10-1.2772 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the

establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2774 NUISANCE.

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

SEC. 10-1.2775 CUMULATIVE REMEDIES.

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.

SECTION 10-1.2776 ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.”

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

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

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS,
TO CONFORM TO THE CITY’S ALCOHOLIC BEVERAGE
OUTLETS ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution
, approving the text changes requested in Zone Change Application PL-2013-0175TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to definitions, is hereby amended
to add certain text (as indicated by underline) and delete certain text (as indicated by strikeout), to
conform to the City’s Alcoholic Beverage Outlets ordinance introduced herewith and as such
amendments are more specifically shown on Attachment “A” hereto.

Section 3. Severance. Should any part of this ordinance be declared by a final decision
by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the
authority of the City, such decision shall not affect the validity of the remainder of this ordinance,
which shall continue in full force and effect, provided that the remainder of the ordinance, absent the
unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this
ordinance shall become effective immediately upon adoption.

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

Attachment A

AUTOMOBILE REPAIR

- a. Automobile Repair - Minor. Minor automotive servicing and replacement of parts for passenger automobiles and/or motorcycles, usually in the same day. Services include, but are not limited to, engine tune-up, lubrication, and tire, muffler, brake, and electrical.
- b. Automobile Repair - Major. Repair garages and specialty establishments for motorcycles, and passenger automobiles and trucks of all sizes, such as machine, tire, body and fender, auto glass, radiator, transmission, motor tune-up, vehicle upholstery, and muffler shops. May also include repair of machinery and equipment.
- c. Home repair - minor adjustments or the replacement of vehicle parts where such adjustments or replacement may reasonably be expected to be accomplished within a forty-eight (48) hour period. No permit is required for such minor adjustments or replacement. Also see Section 10-1.2735.kj. "Vehicle Parking, Repair, Display and Storage Requirements."

AUTOMOBILE SALES. An establishment engaged in the retail sales and services of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies. May include farm or industrial equipment, machinery, and supplies.

AUTOMOBILE SERVICE STATION. A structure or area primarily designed and used for the retail sale of motor vehicle fuel and lubricants to the public by direct delivery into the user's vehicle and may include incidental motor vehicular services such as tire repair, battery charging, brake adjustment, motor tune-up and washing where no conveyor, blower or steam cleaning device is used. Sale of food, beverages and related items as determined by the Planning Director is permitted in conjunction with an automobile service station within commercial zoning districts.

AUTOMOBILE STORAGE FACILITY. An establishment engaged in the storage of new passenger automobiles, passenger trucks, motorcycles, or similar vehicles for the purposes of future retail sales at a separate location.

BANK. See "FINANCIAL INSTITUTION."

BANQUET HALL. An establishment engaged in periodic events such as weddings, dances, and potlucks. Typically is rented out to private parties and/or special interest groups. Usually includes food preparation and/or serving, and live entertainment or recorded music.

BAR, COCKTAIL LOUNGE. Any on-sale alcohol-related establishment that engages primarily in the sale of alcoholic beverages and where food service, if any, is subordinate or incidental to the sale of alcoholic beverages. Bars include night clubs, taverns, pubs, cocktail lounges and similar establishments. ~~An establishment where alcoholic beverages are sold for consumption on the premises, not including restaurants where the principal business is serving~~

~~food. Also referred to as a night club or tavern.~~ Please see Section 10-1.275035.b. “Alcoholic Beverage Outlets” for regulations.

BARBER, BEAUTY SHOP. An establishment where hair is washed, cut, dyed, and/or styled. May include ancillary services such as manicures or pedicures. Does not include massage or tanning services.

BATCH PLANTS. Any operation that involves sorting, crushing, reducing, refining, mixing, packaging or other processing of minerals for intermediate or final consumption.

BEDROOM. An enclosed space in a structure which is designed such that it could be used for sleeping purposes as determined by the Planning Director. A bedroom typically meets the room dimension requirements of the most recent edition of the Uniform Building Code, is not accessed directly from the garage, and has one or more windows.

BICYCLE SHOP. An establishment engaged in the retail sales and/or repair of bicycles. Does not include motorcycles or mopeds.

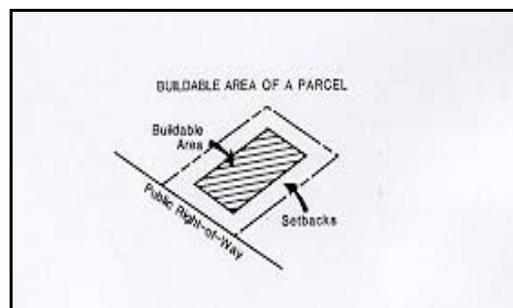
BOARDING HOME. A building where lodging or meals are provided for compensation for residents not functioning as a common household, usually for compensation.

BOOKSTORE. An establishment engaged in the retail sales of books, either used and/or new. May include a small area for coffee and bakery items (10 percent or less of floor area).

~~BREWERY—LIQUOR—DISTILLERY.~~ An establishment-plant where malt liquors or wines are manufactured and stored. Also see "MICRO-BREWERY." Please see Section 10-1.2750 “Alcoholic Beverage Outlets” for regulations regarding alcohol.

BROADCASTING STUDIO. An establishment where sound or images are transmitted by radio or television to the public.

BUILDABLE AREA. The space remaining on a zoning plot within which a building may be erected after the minimum lot and yard requirements of this Ordinance have been satisfied, notwithstanding all other applicable guidelines and Subdivision Map Act requirements of steeply sloped or unstable areas.



BUILDING. Any structure with substantial walls and roof securely affixed to the land and entirely separated on all sides from any other structure by space or by walls in which there are no communicating doors, windows or opening, and which is designed or intended for the shelter, enclosure or protection of persons, animals or property of any kind. Also defined as follows:

- a. "Completely enclosed building" means a building separated on all sides from the adjacent open space, or from other buildings or other structures, by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance or exit doors.
- b. "Detached or accessory building" means a building separated by at least six feet of space open to the sky from any other building on the same zoning plot.
- c. "Existing building" means a building erected prior to the effective date of this title, or one for which a legal building permit has been issued.
- d. "Primary building" means a building in which is conducted the primary use of the lot on which it is situated.
- e. "Public building" means a building principally occupied by the federal, state, county, or city government, or any political subdivision agency, or instrumentally thereof.
- f. "Temporary building" means a building not permanently attached to the ground by fixed foundation, piers or substructure.

BUILDING HEIGHT. The vertical distance at any point from the finished grade or existing grade, whichever is lower, to the highest point of the coping of a flat roof, to the top roof line of a mansard roof, or to the midpoint of the highest gable of a pitched or hip roof. Where unusual deviations occur on the existing grade, such as a small swale, the Planning Director may make minor adjustments in the building height envelope to permit reasonable building design consistent with the intent and purpose of the building height standard. Graded area entirely under a building and not visible from the exterior of the building, such as underground garages and basements, shall not be included for purposes of calculating height.

BUILDING MATERIALS (SALES). An establishment engaged in the retail and wholesale sales of building materials such as lumber, masonry products, rock, soil, tile, and other similar materials needed to construct a structure and/or accessory structures and uses (fences, paved areas, retaining walls).

BUSINESS PARK DISTRICT (BP). A land use zoning district intended to provide for establishment of high quality business office parks in a campus environment at key locations within the Industrial Corridor. See Section 10-1.1700.

CABARET. Any establishment, event or place where live entertainment is provided by or for any patron or guest, including but not limited to singing, playing music, dancing, performing karaoke, acting, conducting a fashion show, performing pantomime, performing comedy or other act or performance, either as the main purpose for such gathering or as an ancillary activity to some other purpose. Please refer to Chapter 6, Article 2 of this Code for regulations regarding cabarets and to Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding

alcohol.

CAMERA STORE. An establishment engaged in the retail sales of cameras and photographic supplies. May include ancillary repair.

CARD CLUB. Any building or structure, or any portion of a building or structure, wherein any person or persons are permitted to play a card game in return for a fee, charge, or other compensation. Refer to Chapter 4, Article 3 of the Hayward Municipal Code for regulations.

CARNIVAL. An establishment providing one or more non-coin-operated powered amusement rides, or providing two or more uses such as a tent, freak, or side show, a feat of daring, or an exhibition of two or more wild animals except within a public park or zoo, or providing other similar uses.

CARPET/DRAPERY STORE. An establishment engaged in the retail or wholesale sales of carpets and drapes. Does not include on-site manufacturing.

CARPORT. A permanent roofed structure not completely enclosed on the sides and used for vehicle parking.

CAR WASH. An establishment engaged in the washing of passenger vehicles for a fee.

CATERING FACILITY. An establishment engaged in the preparation of food to be served at an event held off-site, usually at a banquet hall or private facility.

CATERING TRUCK. A commercially licensed motor vehicle, approved by the Alameda County 111, Department of Environmental Health Services, and the City of Hayward Police Department, from which food and beverages are sold, distributed, or otherwise provided to consumers on private property and which travels from place to place to conduct its operation. Does not include a Food Vendor cart. See Section 10-1.2735.[eb](#). for regulations.

CENTRAL BUSINESS DISTRICT (CB). A land use zoning district within which commercial and retail land uses may develop which provide a principal downtown area of regional importance, and several outlying areas of more than neighborhood importance, where concentrations of comparison shopping facilities, financial and business services, and amusement or recreation may be found in quantity. See Section 10-1.1300.

CENTRAL CITY DISTRICT (CC). A land use zoning district in the center of the City, within which land uses may develop which promote the development of the downtown. These land uses include business, government, cultural, financial, residential, office, and entertainment uses. See Section 10-1.1500. This District includes the following Subdistricts:

- a. Central City - Commercial (CC-C).

- b. Central City - Residential (CC-R).
- c. Central City - Plaza (CC-P).

CHECK CASHING STORE. An establishment primarily engaged in the cashing of checks for customers who usually do not have a checking account at a bank or other financial institution. Is commonly found in areas with easy access and high visibility.

CHRISTMAS TREE AND PUMPKIN PATCH LOTS. Seasonal establishments engaged in the retail sales of Christmas trees and pumpkins. See Section 10-1.2735 [d.c.](#) for standards.

CITY COUNCIL. The City Council of the City of Hayward, California.

CLOTHING STORE ("APPAREL"). An establishment engaged in the retail sales of new clothing, such as shoes, hats, dresses, shirts, etc. For used clothing, see "THRIFT STORE."

COMMERCIAL AMUSEMENT FACILITY. A facility offering entertainment open to the public for a fee or by membership subscription, for example, ticket, door charge, amusement device fee. Said facility shall include, but not be limited to, theaters, arcades (place of business containing five or more amusement devices), billiard parlors, golf courses (including miniature golf), water slides, indoor soccer, batting cages, and bowling facilities. Four (4) or less manually or coin- or token- or slug-operated viewing or electronic or video game machines or other amusement devices (excluding jukeboxes) located in association with other permitted uses and activities such as, but not limited to, taverns, restaurants, book stores, grocery stores, motels, hobby shops or toy stores, music or stereo stores, laundromats, barber or beauty shops, or computer stores shall be considered accessory to the permitted use.

CONCESSION STAND. A small, ancillary retail use that provides food and beverages to a primary land use. May include light cooking and heating of food commodities.

COMMERCIAL OFFICE (CO). A land use zoning district within which administrative, professional, businesses and financial office land uses may exist, yet which are not detrimental to the residential use of adjacent properties. See Section 10-1.1100.

COMMERCIAL RETAIL DISTRICT (BP). A land use zoning district intended to provide for limited retail, service, and office commercial uses which serve the needs of workers within the Industrial Corridor. See Section 10-1.1400.

CONSIGNMENT STORE. A retail establishment that sells good quality merchandise (for example, clean, not damaged, stained or frayed) that has been provided to the proprietor on a consignment basis as well as new merchandise. Sale of donated or otherwise second-hand merchandise is prohibited.

CONVALESCENT HOME. An establishment in which nursing, dietary and other personal services are furnished twenty-four (24) hours a day to convalescents, invalids, or the aged who are unable to or no longer want to care for themselves in a more traditional setting. Also referred to as nursing homes or intermediate care facilities. Does not include institutions which care for persons suffering from a mental disorder or communicable disease, or which offers surgery, maternity or other primary treatments.

CONVENIENCE MARKET. A retail food market which is typically less than 2,500 square feet in gross floor area and which caters to customers who buy a small number of items, is typically part of a larger chain or franchise system, often with long hours of operation, and as determined by the Planning Director.

CONSTRUCTION TRAILER. A temporary trailer used as an office, or an office/quarters combination with quarters for one security guard in connection with ongoing construction work associated with new construction of industrial, commercial, or multi-family development. See Section 10-1.2735.[be](#).

COPYING OR REPRODUCTION SERVICE. An establishment which provides printing services to customers. Typically includes blueprint machines, reproduction machines, paper goods, and binding services (spiral binding, glue binding, stapling, etc.) Also see "NEWSPAPER PRINTING FACILITY."

COURTYARD. The word "courtyard" shall mean an open unoccupied space bounded on two or more sides by the walls of a building. An inner courtyard is a court entirely within the exterior walls of a building. All other courts are outer courts.

CULTURAL FACILITY. Facilities maintained to develop, promote, or foster the arts or literature, as well as a clubhouse, lodge hall, and fraternal society meeting places, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses.

DANCE STUDIO. An establishment where dance classes and dance recitals are performed to recorded music.

DAY CARE CENTER A facility which provides non-medical care to 15 or more children and/or adults in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. May include pre-schools, infant centers, and extended day care facilities.

DAY CARE HOME. A single family residence which is occupied and used as such and provides non-medical day care on less than a 24-hour basis to children and/or adults. Day care home must be State-licensed, and may be either one of the following:

SEC. 10-13500 DEFINITIONS

- a. Small Day Care Home. The use of a single-family residence to provide day care to eight (8) or fewer persons, including any children under the age of 10 years who reside at the home.
- b. Large Day Care Home. The use of a single-family residence to provide day care to 8- 14 persons, including any children under the age of 10 years who reside at the home.

DISTILLERY. An alcoholic beverage sales establishment where distilled spirits are made. Tasting distilled spirits may be included as an accessory use, but the distillery cannot operate as a bar. Please see Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding alcohol.

DISTRIBUTION FACILITY. An establishment which distributes, stores and warehouses commodities and goods for the purposes of marketing or merchandising at wholesale or retail.

DISTRICT. Means a zoning district established under the provisions of the Zoning Ordinance.

SEC. 10-13500 DEFINITIONS

KENNEL. A lot, building, structure, enclosure or premises where one or more dogs, cats, or other household pets are kept for commercial purposes, including boarding, breeding of more than one litter per year and/or a litter every year, sale of goods or animals, or the rendering of services for profit. For the purposes hereof, the breeding and sale of the litter of animals kept and maintained as household pets and/or maintained by an animal fancier, shall not be deemed and considered a commercial kennel, provided they are less than one litter per year and litters do not occur every year.

KITCHEN. A definable area or room for food preparation, typically consisting of a permanent cooking appliance for use in food preparation, a refrigerator, cabinets, and a sink, usually in close proximity to one another.

LABORATORY. See "RESEARCH LABORATORY."

LANDSCAPING. An area devoted to or developed and maintained predominantly with native or exotic plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT

DISTRICT (LM). A land use zoning district intended to provide limited manufacturing and other light industrial uses within the Industrial Corridor which are compatible with business parks and adjacent residential areas. See Section 10-1.1800.

LIMITED ACCESS COMMERCIAL (CL). A land use zoning district within which commercial uses may develop which normally tend to locate apart from standard commercial areas or service industries, or uses on highways of major importance. See Section 10-1.1200.

LIQUOR STORE. ~~An establishment which sells to the public at retail, alcoholic beverages in original, unopened packages for consumption off of the premises where sold. See Section 10-1.2735.b. for regulations of alcohol.~~ "Liquor store" shall mean any alcoholic beverage sales establishment primarily involving the sale of alcohol where beer, wine or distilled spirits are sold for off-sale consumption and where more than five (5) percent of the floor area of the establishment is devoted to the sale, display or storage of beer, wine or distilled spirits. Please see Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding alcohol.

LIVESTOCK. Domesticated farm animals kept for use or profit (See Section 10-1.2735.f. for regulations of livestock) and further defined as follows:

- a. Large Livestock. Horses, cattle or similar large animals, as determined by the Planning Director.
- b. Medium Livestock. Sheep, goats, and pigs, or similar medium animals, as determined

by the Planning Director.

- c. Small Livestock. Chickens, ducks, pigeons, five (5) or more rabbits, potbelly pigs, or similar small animals, as determined by the Planning Director.

MAILING OR FACSIMILE SERVICE. An establishment which provides postal services and a facsimile machine available to the public for a fee. Typically includes packaging and weighing facilities, and may include related copy work or wrapping paper and greeting cards for sale at retail as an ancillary use.

MANUFACTURED HOME. A factory built or manufactured home including mobile homes, as permitted by State of California and Federal laws. A manufactured home is synonymous with the definition of a “single family dwelling.”

MANUFACTURING. Repair, maintenance, preparation, compounding, processing, packing, treating, fabricating or assembling of items of any kind (i.e., electronics assembly.) May involve certain hazardous materials as defined herein (see "HAZARDOUS MATERIALS.")

MANUFACTURER'S REPRESENTATIVE OFFICE. An office from which a representative of a manufactured product sells that product at wholesale or retail via telephone, mail, and/or facsimile.

MARKET. See "SUPERMARKET."

MARTIAL ARTS STUDIO. An establishment where martial arts classes, private lessons, and demonstrations are provided to the public for a fee.

MASSAGE PARLOR. An establishment where body massage is provided to members of the public for a fee. Refer to Chapter 6, Article 10 of the Hayward Municipal Code for regulations.

MEDICAL/DENTAL LABORATORY. A facility which custom manufactures and distributes false teeth, dental crowns, braces, and other related dental equipment to dentists.

MEDIUM DENSITY RESIDENTIAL (RM). A land use zoning district which primarily allows the development of multiple-family dwellings at a set density and in a suitable environment for family life in areas where a compatible mingling of single-family and multiple-family dwellings is possible. See Section 10-1.400.

MICRO-BREWERY. A retail establishment where alcoholic beverages are produced and sold for consumption either on or off premises. Refer to Section 10-1.275035.b. “Alcoholic Beverage Outlets” for regulations.

MISSION BOULEVARD RESIDENTIAL DISTRICT (MBR).

Repealed by Ordinance 11-12, Adopted October 11, 2011

MOBILE HOME Same as "Manufactured Home," but subject to the National Manufactured

Housing Construction and Safety Act of 1974.

MOBILE HOME PARK (MH). A land use zoning district designed for, used or intended to be used for the parking and occupancy of two or more mobile homes for dwelling or sleeping purposes. See Section 10-1.700.

MORTUARY. An establishment engaged in the preparation of human bodies and the arrangement and holding of funeral services prior to burial or final disposition. For the purposes of this Ordinance, a mortuary may include a crematory.

MOTEL. A group of attached or detached buildings containing individual sleeping or living units designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit where a maximum continuous length of stay is no longer than that established for transiency pursuant to Chapter 8, Article 4 (Transient Occupancy Tax) of the City of Hayward Municipal Code.

MULTIPLE-FAMILY DWELLING. See "DWELLING, MULTIPLE-FAMILY."

MUSIC STORE. An establishment which sells musical instruments, sheet music, and related commodities to the public at retail. Typically includes repair of musical instruments.

MUSIC STUDIO. An establishment which provides music classes and private music lessons to the public for a fee. Typically involves piano lessons and/or guitar lessons, both acoustical and amplified, and includes occasional music recitals by the studio students.

NAIL SALON. An establishment which provides nail manicures and pedicures to the public at retail for a fee. Does not include massage or tanning services.

NEIGHBORHOOD COMMERCIAL DISTRICT (CN). A land use zoning district which is carefully located in areas throughout the City in relationship to other commercial districts and in relationship to nearby residential districts. Land uses created in the CN district are general commercial and retail uses which provide convenience goods and services purchased frequently, serving nearby residences. See Section 10-1.800.

NEIGHBORHOOD COMMERCIAL - RESIDENTIAL DISTRICT (CN-R). A land use zoning district with a mix of neighborhood serving businesses and residences along portions of certain arterials in order to provide options for housing with ready access to shops and transit. See Section 10-1.900.

NEWSPAPER PRINTING FACILITY. A facility which prepares, assembles, prints, and distributes a newspaper publication, typically on a daily basis. Typically includes offices from

which publication articles are written and edited, and includes a printing press operation.

NIGHT CLUB. See definition for “Bar”. ~~“Night Club” shall mean any alcoholic beverage sales establishment that provides dancing or live entertainment (including the playing of recorded music by a disc jockey) between the hours of 6:00 p.m. to 2:00 a.m., regardless of whether such establishment is simultaneously offering full restaurant meal service, or charges an entrance fee, or increases the sales price of beverages. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article 2 of this Code. Please see Section 10-1.2750 “Alcoholic Beverage Outlets” for regulations regarding alcohol.~~

SEC. 10-13500 DEFINITIONS

PUBLIC FACILITIES DISTRICT (PF). A land use zoning district within which typical land uses include public government buildings, public libraries, public community centers, and public parking lots, whether a fee is charged or not. See Section 10-1.2300.

PUBLISHING FACILITY. A facility which prepares, assembles and distributes books and magazines. Typically includes offices where articles are written and edited, and includes printing press facilities.

QUARRY. Any premises from which any rock, sand, gravel, earth, or mineral is removed or excavated for the purpose of disposition away from the immediate premises, whether the disposition is immediate or in the future, and excepting excavations within public roads and highway rights-of-way.

RADIO TRANSMISSION TOWER. See "ANTENNA."

RAILROAD YARD. A facility where railroad cars and engines are stored, repaired, and transferred to different trains. Also includes a freight station where items carried by train are transported onto and/or from trucks for transport. Also see "PASSENGER TRANSPORTATION TERMINAL."

RECREATIONAL FACILITY. Those facilities maintained to provide a pastime, sport or exercise as a means to refresh one's body or mind, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses. May be a commercial or non-commercial facility.

RECREATIONAL VEHICLE. A vehicle primarily designed as temporary living quarters for recreational, camping, or travel use.

RECREATIONAL VEHICLE (RV) STORAGE FACILITY. A parcel or group of contiguous parcels upon which two or more recreational vehicles, camper trailers and boats may be stored for a fee when not in use.

RECYCLING CENTER. A facility for the collection of large quantities of recyclable materials such as metals, glass, plastic, and paper. Such a facility shall not do processing except limited bailing, batching and sorting of materials. Recycling facilities include: bins, boxes, cans, kiosk type structures, bulk reverse vending machines, trucks, trailers, or vans. See General Regulations Section 10-1.2735.ji "Recycling Facilities" for regulations.

RECYCLING COLLECTION AREA. Any indoor or outdoor space allocated to collecting and loading recyclable materials to be transported to a recycling center. May include bins, boxes, cans, kiosk type structures, and reverse vending machines. See General Regulations Section 10-1.2735.ji "Recycling Facilities" for regulations.

RELIGIOUS FACILITY. Those facilities maintained by a tax-exempt religious institution, a government agency, or other non-profit organization exempt from taxation under the Internal Revenue laws as an organized system of belief in or the worship of God or gods or an institutionalized system of religious attitudes, beliefs and practices, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses.

RESEARCH AND DEVELOPMENT. A facility where research and on-site product creation and development is done. May also include computer centers, involving record storage and retrieval systems, data processing, and microfilming.

RESEARCH LABORATORY. A facility where research in a laboratory environment is done. Typically, but not always, involves the use of chemicals and heating products.

RESIDENTIAL NATURAL PRESERVATION DISTRICT (RNP). A land use zoning

district within which topographic configuration is a major consideration in determining the most appropriate physical development of the land. This district primarily allows the development of single-family homes only where they are subservient to and compatible with the preservation of major natural features of the land. See Section 10-1.300.

RESIDENTIAL-OFFICE (RO). A land use zoning district which allows the mix of office land uses with residential, the scale and form of which does not detract from adjacent or future residential land use in the same zone. See Section 10-1.600.

RESTAURANT Any establishment, other than a boarding house or dormitory, where food and beverages are provided for consumption on-premises or off-premises, and where typically, but not necessarily, there are tables, counters, benches, or other public seating facilities provided, or where food is taken off-premises, disposal containers are provided. Examples include a sit-down dining facility, fast-food restaurant (no drive-through window), donut shop, pizza shop, cafe, bakery, cafeteria, coffee shop, lunchroom, delicatessen, and ice cream parlor. The serving of alcoholic beverages is subject to the regulations in [the “Alcohol Beverage Outlets” General Regulations](#), Section 10-1.27~~5035-b.~~ of this Ordinance.

RESTAURANT - DRIVE-THROUGH Any high-volume establishment serving food or beverages which utilizes a building design, site layout, or operating procedure whereby customers can drive onto the premises and remain in their vehicles while food or beverages are sold or dispensed. For regulations of drive-through restaurants see the “Drive-in Establishments-Special Standards and Conditions” contained in the Design and Performance Standards of various Sections of this Ordinance, including Sections 10-1.800 and 10-1.1000.

RETAIL. The sale of commodities or goods to ultimate consumers.

REVERSE VENDING MACHINES. A mechanical device which accepts one or more types of empty beverage containers, including aluminum cans, glass and plastic bottles, and cartons, and issues a cash refund or a redeemable credit slip. "Bulk reverse vending machines" are those machines which exceed 50 cubic feet in size or exceed 8 feet in height. See Section 10-1.2735.[b.i.](#)
"RECYCLING FACILITIES."

VEHICLE RENTAL. See "AUTOMOBILE RENTAL."

VEHICLE REPAIR. See "AUTOMOBILE REPAIR."

VEHICLE SALES. See "AUTOMOBILE SALES."

VEHICLE SERVICING. For vehicle servicing such as same-day lube, oil, and filter, see "Automobile Repair - Minor." For major vehicle repairs such as engine overhauls, vehicle upholstery, auto glass, mufflers, etc., see "Automobile Repair - Major."

VIDEO SALES AND RENTAL STORE. An establishment which sells at retail and/or rents video tapes to the public.

VOCATIONAL SCHOOL. An educational facility providing training in a skill or trade to be pursued as a career.

WAREHOUSE. A facility where goods are stored. Typically, items are stored and awaiting distribution to an off-site wholesale and/or retail facility. Does not include public storage facilities (also "DISTRIBUTION FACILITY.")

WHOLESALE ESTABLISHMENT. The sale of commodities and goods to an establishment for resale to the consumer.

WIND ENERGY CONVERSION SYSTEM. A machine that converts the kinetic energy in the wind into a usable form. A wind energy conversion system is commonly known as a windmill or wind turbine, and includes all parts of the system including the tower and the transmission equipment.

WINE SHOP. "Wine Shop" shall mean an alcoholic beverage sales establishment, managed by a certified sommelier or oenologist, primarily for the retail sales of wine from multiple wineries and distributors that involves no sales of liquor or distilled spirits. Wine tasting may be included as an accessory use, but the wine shop cannot operate as a bar.

YARD. The word "yard" shall mean an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward except as otherwise provided herein. A yard extends along a lot line or official plan line to a depth or width specified in the yard regulations for the District in which such lot is located.

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTIONS 10-1.1520 ET SEQ. AND 10-1.1000 ET SEQ.,
REGULATING THE CITY'S CENTRAL CITY COMMERCIAL
(CC-C) SUBDISTRICT AND GENERAL COMMERCIAL (CG)
DISTRICT, TO IMPLEMENT THE ALCOHOLIC BEVERAGE
OUTLETS ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution
, approving the text changes requested in Zone Change Application PL-2013-0175TA.

Section 2. Zoning Ordinance Sections 10-1.1520 through 10-1.1523, relating to the Central
City Commercial (CC-C) Subdistrict, are hereby amended to add certain text (as indicated by
underline) and delete certain text (as indicated by strikeout), to implement the City's Alcoholic
Beverage Outlets ordinance introduced herewith and as such amendments are more specifically
shown on Attachment "A" hereto.

Section 3. Zoning Ordinance Sections 10-1.1000 through 10-1.1020, relating to the
General Commercial (CG) District, are hereby amended to add certain text (as indicated by
underline) and delete certain text (as indicated by strikeout), to implement the City's Alcoholic
Beverage Outlets ordinance introduced herewith and as such amendments are more specifically
shown on Attachment "B" hereto.

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

Section 5. In accordance with the provisions of Section 620 of the City Charter, this
ordinance shall become effective immediately upon adoption.

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

 SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

Sections:

Section 10-1.1005	Purpose.
Section 10-1.1010	Subdistricts.
Section 10-1.1015	Uses Permitted.
Section 10-1.1020	Conditionally Permitted Uses.
Section 10-1.1025	Lot Requirements.
Section 10-1.1030	Yard Requirements.
Section 10-1.1035	Height Limit.
Section 10-1.1040	Site Plan Review Required.
Section 10-1.1045	Minimum Design and Performance Standards.

SEC. 10-1.1005 PURPOSE.

The CG District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained in order to provide services for the support of primary business activities in the CB District or CC Districts.

SEC. 10-1.1010 SUBDISTRICTS.

Any combining B or SD District (See Sections 10-1.2400 and 10-1.2600).

SEC. 10-1.1015 USES PERMITTED.

- a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District as primary uses.
- (1) **Administrative and Professional Offices/Services.**
 - (a) Accounting and financial offices. (Excluding check cashing stores)
 - (b) Architectural and engineering offices.
 - (c) Banks and financial institutions.
 - (d) Chiropractic and acupuncture offices.
 - (e) Insurance and real estate offices.
 - (f) Law offices.
 - (g) Medical and dental offices.
 - (h) Travel and airline agency offices.
 - (2) **Automobile Related Uses.**

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (a) Automobile parts store.
- (b) Automobile dealership. (Dealership selling primarily new vehicles, when all minimum design standards are met and when located along Mission Blvd. between Highland/Sycamore and 700 feet south of Harder Road.)
- (3) Personal Services.
- (a) Barber or beauty shop.
- (b) Dance studio.
- (c) Dry cleaner/laundry.
- (d) Health club.
- (e) Martial arts studio.
- (f) Music studio.
- (g) Nail salon.
- (h) Palm reading service.
- (i) Photography studio.
- (j) Physical fitness studio.
- (k) Shoe repair shop.
- (l) Tailor/seamstress shop.
- (4) Residential Uses.
Residential dwelling unit(s). (Above first floor commercial uses only)
- (5) Retail Commercial Uses.
- (a) Antique store.
- (b) Appliance store.
- (c) Art and art supplies store.
- (d) Bakery.
- (e) Bicycle store.
- (f) Bookstore.
- (g) Camera store.
- (h) Card shop.
- (i) Carpet/drapery store.
- (j) Clothing store.
- (k) Consignment store.
- (l) Coffee/Esspresso shop.
- (m) Delicatessen.
- (n) Fabric store.
- (o) Floral shop.
- (p) Furniture store.
- (q) Gift shop.
- (r) Hardware store.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (s) Jewelry store.
 - (t) Locksmith shop.
 - (u) Music store.
 - (v) Nursery (plant).
 - (w) Paint/wallpaper store.
 - (x) Pet grooming shop.
 - (y) Pet store.
 - (z) Plumbing and heating store.
 - (aa) Restaurant. (Where not abutting a residential district or property and with no bar)
 - (bb) Sporting goods store.
 - (cc) Stationary store.
 - (dd) Supermarket.
 - (ee) Theater (Small Motion Picture or Live Performance only.)
 - (ff) Thrift shop.
 - (gg) Toy store.
 - (hh) Variety store.
 - (ii) Video sales and rental store.
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop. (Not ancillary to a primary use.)
 - (b) Copying or reproduction facility.
 - (c) Equipment rental.
 - (d) Hotel or motel.
 - (e) Mailing or facsimile service.
 - (f) *Not Used*
 - (g) Reverse vending machine(s). (When located within a convenience zone.)
 - (h) Upholstery shop (furniture).
- (7) Other Uses.
- (a) Broadcasting studio.
 - (b) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served.)
 - (c) Catering facility. (Where not abutting a residential district or property.)
 - (d) Christmas tree or pumpkin patch lot. (See ~~General Regulations~~ Section 10-1.2735d.50 et seq. for standards)
 - (e) Day Care Home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
 - (f) Educational facility. (Small, generally less than 2000 square feet,

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

designed to augment the learning process of elementary and secondary school students.)

(g) Public agency facilities.

b. **Secondary Uses.** The following uses are permitted as secondary or subordinate uses to the uses permitted in the CG District:

- | | |
|-----------------------------------|--|
| (1) Accessory buildings and uses. | (See section 10-1.1045.) |
| (2) Garage sales. | (4 per year per dwelling. See General Regulations —Section 10-1.2735e.d.) |
| (3) Home Occupation. | (See definitions) |
| (4) Household pets. | |

Sec. 10-1.1020 CONDITIONALLY PERMITTED USES

a. **Administrative Uses.** The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit :

- | | |
|--|---|
| (1) <u>Administrative and Professional Office/Services.</u>
Medical/dental laboratory . | |
| (2) <u>Automobile Related Uses.</u> | |
| (a) Automobile brokerage office. (See definitions.) | |
| (b) Automobile repair
(minor and major). | (See Section 10-1.1045h. for special requirements.) |
| (c) Automobile service station. | “ “ |
| (d) Automobile storage facility. | “ “ |
| (e) Car wash. | “ “ |
| (f) Drive-in establishments. | “ “ |
| (g) Parking lot. | |
| (3) <u>Personal Services.</u> | |
| (a) Suntan parlor. | |
| (4) <u>Residential Uses.</u> | |
| None. | |
| (5) <u>Retail Commercial Uses.</u> | |
| (a) Wine Shop | |
| (a)(b) Convenience market. (See General Regulations — | |

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- Section 10-1.2735b.50 et seq. for regulations of alcohol.)
- (b)(c) Restaurant. (Where abutting a residential district or property with no bar.)
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop.(Not ancillary to a primary use)
- (b) Equipment rental.
- (c) Hotel or motel. (Where abutting a residential district or property)
- (d) Recycling collection area. (When located within a convenience zone)
- (e) Sign shop.
- (7) Other Uses.
- (a) Ambulance service.
- (b) Animal grooming service.
- (c) Animal hospital.
- (d) Auction.
- (e) Banquet hall. (Where abutting a residential district or property but not where alcohol is served)
- (f) Carnival.
- (g) Catering facility. (Where abutting a residential district or property)
- (h) Commercial amusement facility.
- (i) Cultural facility.
- (j) Day care center. (state-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions)
- (k) Educational facility.
- (l) Flea market.
- (m) Kennel.
- (n) Mortuary.
- (o) Outdoor gathering. (Refer to General Regulations Section 10-.2735h.g.)
- (p) Passenger terminal.
- (q) Recreational facility.
- (r) Religious facility.
- (s) Sign shop.
- (t) Temporary use. (i.e., parking lot or tent sale)
- (u) Wind energy conversion system.

b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District subject to approval of a conditional use permit:

- (1) Administrative and Professional Offices/Services.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (a) Check cashing store.
 (b) Payday loan facilities.
- (2) Automobile Related Uses.
 Automobile sales and rental. Except as provided for under Sec.
 10-1.1015a.(2)(b)
- (3) Personal Services.
 (a) Massage parlor.
 (b) Tattoo parlor.
- (4) Residential
 Uses. None.
- (5) Retail Commercial Uses. (See ~~General Regulations~~ Section
 10-1.2735b.50 et seq. for regulations of
 alcohol.)
- (a) Bar, Cocktail lounge.
 (b) Brewery or Distillery.
 (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 (b)(d) Dance or night club.
 (e)(e) Liquor store
- ~~(d)(f)~~ Theater, Large Motion Picture.
- (6) Service Commercial Uses.
 None.
- (7) Other Uses.
 (a) Homeless shelter.
 (b) Warehouse. (When located behind and ancillary to primary
 uses.)
 (c) Wholesale establishment.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)**SEC. 10-1.1521 CC-C PURPOSE.**

The purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.

SEC. 10-1.1522 CC-C PERMITTED USES.

- a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-C D as primary uses.
- (1) Administrative and Professional Offices/Services.
 - (a) Accounting and financial offices. (Excluding check cashing stores)
 - (b) Architectural and engineering offices.
 - (c) Banks and financial institutions.
 - (d) Chiropractic and acupuncture offices.
 - (e) Insurance and real estate offices.
 - (f) Law offices.
 - (g) Medical and dental offices.
 - (h) Travel and airline agency offices.
 - (2) Automobile Related Uses. Automobile parts store.
 - (3) Personal Services.
 - (a) Barber or beauty shop. (Excluding college)
 - (b) Dance studio.
 - (c) Dry cleaner/laundry.
 - (d) Health club.
 - (e) Martial arts studio.
 - (f) Music studio.
 - (g) Nail salon.
 - (h) Palm reading.
 - (i) Photography studio.
 - (j) Physical fitness studio.
 - (k) Shoe repair shop.
 - (l) Tailor/seamstress shop.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (4) Residential Uses.
- (a) Residential dwelling unit(s). (Above first floor commercial only.)
 - (b) Single-family dwelling. (Existing as of May 4, 1993, including accessory structures and uses)
- (5) Retail Commercial Uses.
- (a) Antique store.
 - (b) Appliance store.
 - (c) Art and art supplies store.
 - (d) Bicycle store.
 - (e) Bookstore.
 - (f) Camera store.
 - (g) Card shop.
 - (h) Carpet/drapery store.
 - (i) Clothing store.
 - (j) Consignment store.
 - (k) Fabric store.
 - (l) Floral shop.
 - (m) Furniture store.
 - (n) Garden supplies store.
 - (o) Gift shop.
 - (p) Grocer.
 - (q) Hardware store.
 - (r) Jewelry store.
 - (s) Locksmith shop.
 - (t) Music store.
 - (u) Paint/wallpaper store.
 - (v) Pet grooming shop.
 - (w) Pet store.
 - (x) Plumbing and heating store.
 - (y) Restaurant. (No bar)
 - (z) Sporting goods store.
 - (aa) Stationary store.
 - (bb) Supermarket.
 - (cc) Theater. (Small Motion Picture or Live Performance. Large Motion Picture Theater located between A and D Streets and Grand and Second Streets.)
 - (dd) Toy store.
 - (ee) Variety store.
 - (ff) Video sales and rental.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (6) Service Commercial Uses.
- (a) Appliance repair shop.
 - (b) Copying or reproduction facility.
 - (c) Mailing or facsimile service.
 - (d) Reverse vending machines. (When located within a convenience zone.)
- (7) Other Uses.
- (a) Broadcasting studio.
 - (b) Christmas tree or pumpkin patch lot. (See General Regulations Section 10-1.2735cd for standards)
 - (c) Day care home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions.)
 - (d) Educational facilities.
 - (e) Public agency facilities. Small, generally less than 2,000 square feet and designed to augment the learning process of elementary and secondary students.

b. **Secondary Uses.** The following uses are permitted as secondary or subordinate uses to the uses permitted in the CC-C Subdistrict:

- (1) Accessory buildings and uses. (See Section 10.1.845a-d.)
- (2) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735ed.)
- (3) Home occupation. (See definitions)
- (4) Household pets.
- (5) Indoor storage. (clearly subordinate to a primary or conditional use that is open to the public and which conforms to the policies and goals of the Redevelopment Agency and the Central City-Commercial Subdistrict.)

SEC. 10-1.1523 CC-C CONDITIONALLY PERMITTED USES.

a. **Administrative Uses.** The following uses are permitted in the CC-C Subdistrict, subject to approval of an administrative use permit:

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (1) Administrative and Professional Offices/Services.
None.
- (2) Automobile Related Uses.
Parking lot or parking structure.
- (3) Personal Services.
 (a) Massage parlor (When ancillary to a primary use, such as a beauty shop.)
 (b) Suntan parlor.
- (4) Residential Uses.
None.
- (5) Retail Commercial Uses.
~~None.~~ Wine shop. ([See General Regulations Section 10-1.2750 et seq. for regulations of alcohol](#))
- (6) Service Commercial Uses.
 (a) Recycling collection area. (When located within a convenience zone)
 (b) Upholstery shop. (Furniture only)
- (7) Other Uses.
 (a) Ambulance service.
 (b) Banquet hall. (Where no alcohol is served)
 (c) Catering facility. (Where no alcohol is served)
 (d) Day care center. (State-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions.)
 (e) Educational facility.
 (f) Fanner's market.
 (g) Home occupation - expanded.
 (h) Temporary use.
 (i) Cultural facility.
 (j) Commercial amusement facility.
 (k) Educational facility.
 (l) Hospital or convalescent home.
 (m) Mortuary.
 (n) Passenger transportation terminal.
 (o) Recreational facility.
 (p) Religious facility.
 (q) Taxi company.

SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- b. **Conditional Uses.** The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
- (1) Administrative and Professional Offices/Services.
Check cashing store.
 - (2) Automobile Related Uses. (Refer to Section 10-1.1045h. for special requirements.)
 - (a) Automobile sales and rental.
 - (b) Automobile repair (minor and major).
 - (c) Automobile service station.
 - (d) Automobile storage facility. (See definitions)
 - (e) Car wash. Drive-in establishments.
 - (3) Personal Services.
Massage parlor.
 - (4) Residential Uses.
Multiple-family dwelling. (With dwelling units on first floor)
 - (5) Retail Commercial Uses. (See ~~General Regulations~~ Section 10-1.2735b.50 et seq. for regulations of alcohol.)
 - (a) Bar, cocktail lounge.
 - ~~(b) Brewery or Distillery.~~
 - ~~(c) Cabaret, Dance or Night club.~~ (See Chapter 6, Article 2 for regulations.)
 - ~~(d)~~ Convenience Market.
 - ~~(e)~~ Liquor Store.
 - ~~(f)~~ Pawn Shop.
 - ~~(g)~~ Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See Section 10-1.1045 for special requirements.)
 - (6) Service Commercial Uses. Hotel or motel.
 - (7) Other Uses.
 - (a) Auctions.
 - (b) Banquet hall. (Where alcohol is served. See ~~General Regulations~~, Section 10-1.2735b.50 et seq for regulations of alcohol)
 - (c) Card club. (Subject to Regulations in Chapter 4, Article 3 of the Hayward Municipal Code, "Card Club

SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

Regulations")

(d) Catering facility.

(Where alcohol is served. See [General Regulations](#) Section 10-1.2735 [b50 et seq](#) for regulations of alcohol)

ORDINANCE NO. ____

ORDINANCE AMENDING CHAPTER 6, ARTICLE 2 OF THE
HAYWARD MUNICIPAL CODE RELATING TO CABARETS
AND DANCES

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

Section 1. Purpose and Intent. The operation of ongoing cabarets, as well as one-time cabaret and dance events, have the demonstrated potential for generating noise, crowd and traffic problems, interference with neighbors' enjoyment and use of their property, disorderly conduct, vandalism and other nuisance activity. Such uses thus require close coordination with the Development Service Department and the Hayward Police Department. Therefore, the City Council determines that the public health, safety and welfare of the residents or and visitors to Hayward requires the establishment of regulations for the operation of ongoing cabarets, as well as for one-time cabaret and public dancing events. The City Council finds it necessary to regulate the persons who own and/or operate cabarets, as well as those person who may conduct occasional cabaret or public dance events; the location and operation of cabarets and public dances in the City, including noise, hours of operation and patron security and safety; and the issuance of permits and licenses, including limitations on transfer and assignment, for cabarets and public dances.

Section 2. Upon the adoption of this Ordinance, Sections 6-2.10 through 6-2.17, entitled "Public Dances," of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 6-2.10 through 6-2.35, entitled "Cabarets and Dances," are hereby enacted to read as follows:

SECTION 6-2.10 CABARETS AND DANCES

Sections:

Section 6-2.10	Title
Section 6-2.11	Definitions
Section 6-2.12	Cabaret License Required
Section 6-2.13	Exception to License or Permit Requirements for Certain Pubic Dances_
Section 6-2.14	Application for a License
Section 6-2.15	License Application Fee
Section 6-2.16	License Application, Acceptance, Referral, Investigation and Report
Section 6-2.17	License Issuance
Section 6-2.18	Suspension and Revocation of License
Section 6-2.19	Procedures for the Suspension and Revocation of Cabaret and Dance Licenses
Section 6-2.20	Expiration of Licenses

Section 6-2.21	Renewal Procedures and Fees for Licenses
Section 6-2.22	Licenses Non –Assignable
Section 6-2.23	Commencement of Operations
Section 6-2.24	Obligation to Inform of Certain Changes Concerning Licensees
Section 6-2.25	Record and Video Systems
Section 6-2.26	Permits for Single Cabaret or Public Dance Events
Section 6-2.27	Operating Regulations for all Cabarets and Dances
Section 6-2.28	Licensee/Permittee Responsible for Violations
Section 6-2.29	Violation of State and City Laws
Section 6-2.30	Patron Safety and Security
Section 6-2.31	Posting Operating Regulations
Section 6-2.32	Inspection for Enforcement; Summary Suspension
Section 6-2.33	Powers of Chief of Police and Officers
Section 6-2.34	Injunctive Relief; Administrative Citation
Section 6-2.35	Violations; Penalties

SEC. 6-2.10 TITLE. These provisions, relating to cabaret and dances as those terms are hereinafter defined, may be referred to as the “Cabarets and Dances Regulations.”

SEC. 6-2.11 DEFINITIONS. For the purposes of these regulations, unless otherwise apparent from the context, certain words and phrases are defined as follows:

- a. “Applicant” shall mean a living person, corporation, partnership or other business entity that applies for a license to establish, operate, manage or maintain a cabaret or public dance or applies for a permit for a specific, one-time cabaret or public dance event.
- b. “Application” shall mean the form submitted by the owner or operator that, when completed by the applicant, contains information requested by the City of Hayward upon which the Chief of Police or designee may base his or her approval or denial of such application.
- c. “Cabaret” shall mean any establishment, event, or place where live entertainment is provided by or for any patron or guest, including but not limited to: singing, playing music, dancing, performing karaoke, acting, holding a fashion show, performing pantomime, performing comedy or other act or performance and to which admission:
 - (1) may be gained by the public generally with or without the payment of a fee or cover charge or the purchase or presentation of a ticket or token; or
 - (2) may be gained by a person without invitation or by anyone who cannot be identified at the time of the issuance of the invitation by the sender.

- d. “Day” shall mean a working day during which the City’s administrative departments are open and available to the general public.
- e. “Employee” shall mean any person employed by a licensee or permittee, with or without compensation, in a cabaret.
- f. “License” shall mean an annual license granted by the Chief of Police to an applicant to operate a cabaret in the City of Hayward.
- g. “Licensee” shall mean any person who holds a current, valid license, issued by the City of Hayward to operate an on-going cabaret.
- h. “Owner” shall mean any person, persons, corporation, partnership or any other business entity, or any combination of these, who has any interest, legal or equitable, in any cabaret or any one-time cabaret or public dance permit, excepting a bona fide lending institution licensed by the State of California or the federal government.
- i. “Permit” shall mean a permit granted by the Chief of Police to an applicant to hold a specific, one-time cabaret or public dance event in the City of Hayward.
- j. “Person” shall mean and include any individual, firm, association, partnership, joint venture or corporation (whether for-profit or nonprofit), or other business entity.
- k. “Premises” shall mean any structure or portion of a structure to be licensed or permitted, or for which a license or permit has been granted in accordance with the provisions of the Cabarets and Dances Regulations.
- l. “Public Dance” shall mean any event where guests, patrons or persons attending the event are permitted to dance, not including a licensed cabaret, and to which admission:
 - (1) may be gained by the public generally with or without the payment of a fee or cover charge or the purchase or presentation of a ticket or token; or
 - (2) may be gained by a person without invitation or by anyone who cannot be identified at the time of issuance of the invitation by the sender.
- m. “Revenue Division” shall mean the Revenue Division of the Finance Department for the City of Hayward.

SEC. 6-2.12 CABARET LICENSE REQUIRED. No person shall establish, maintain, manage or operate any cabaret or allow any cabaret to be established, maintained, managed or operated within any building or structure, or any portion of a building or structure, owned, occupied or controlled by him/her, unless such cabaret is maintained and operated pursuant to a

valid, unexpired, unsuspended and unrevoked cabaret license issued pursuant to the provisions of the Cabarets and Dances Regulations. The holder of any such license or his/her designated representative, which representative must have been disclosed in writing to the Chief of Police, shall be required to exercise personal control and direction over the operation of the cabaret and shall be available at reasonable times, during regular operating hours, to the Chief of Police or designee. The requirement for a cabaret license is in addition to any other license or permit required by the Hayward Municipal Code, including but not limited to a business license pursuant to Article 1 of Chapter 8 or any use permit or variance pursuant to Article 1 of Chapter 10.

SEC. 6-2.13 EXCEPTION TO LICENSE OR PERMIT REQUIREMENTS FOR CERTAIN PUBLIC DANCES. No cabaret permit or license shall be required for dances held by public recreational or educational agencies, or bona fide patriotic, religious, or fraternal associations or organizations, or for dances held in connection with patriotic, holiday, or school celebrations or festivals, where such dances are casual or for one such occasion only, and are not conducted more often than once a month.

SEC. 6-2.14 APPLICATION FOR A LICENSE. An application for a cabaret license shall be completed by the applicant and filed with the Police Department upon such form as may be furnished by that department. The Police Department shall forward copies of the application to the Director of the Finance Department and the Planning Manager of the Development Services Department. The application shall set forth and include the following:

- a. The location of the cabaret for which the license is required, including a specific description of the place, building, structure or portion of the building, structure or place, where the cabaret is to be situated. If the entire building, structure or place is proposed to be used as a cabaret, the application shall so state and shall request a license for the entire building, structure or place. If only a portion of the building, structure or place is proposed to be used as a cabaret, the applicant shall so state, shall describe such portion and shall request a license for only such portion. No license shall be deemed issued for any portion of any building, structure or place which the application fails to state is to be used for cabaret purposes or for which the application fails to specifically request a license.
- b. The true and complete name and address of each owner or owners of the building, structure or place within which the cabaret is proposed to be maintained.
- c. The true and complete name and address of the person or persons to whom it is requested that a cabaret license be issued as follows:
 - (1) If the proposed licensee is an individual, the application shall set forth the name, residence and business address of the individual;
 - (2) If the proposed licensee is a corporation, the application shall set forth the complete name of the corporation and the state within which it is incorporated, together with its home address and also its local address, as well as the names and addresses of the board of directors, the names and

- addresses of all of the corporate officers, and the name and addresses of each shareholder for a non-publicly traded corporation;
- (3) If the proposed licensee is a partnership, the application shall set forth the full names of all partners and the firm name under which the partnership operates, together with the addresses of all partners.
- d. A set of clearly identifiable fingerprints and photographs of each person to whom a license is to be granted; or in the case of a partnership, fingerprints and photograph of the managing partner; or in the case of a corporation, fingerprints and photograph of the president or chief executive officer. The fingerprints and photographs shall be in the form and manner and by an agency approved by the Chief of Police. Each person shall have paid to the Police Department the current fee set by the City of Hayward's Master Fee Schedule for receiving and processing fingerprints so taken.
- e. A statement as to whether or not any of the persons required to be named in the application have at any time been convicted of any crime or crimes and if so, the nature of the crime for which they were convicted, the date and jurisdiction of the conviction.
- f. A statement describing any previous permit or license, including conditional use permit, obtained by the applicant for the sale of alcohol or any entertainment or dancing activities with a statement as to whether any permit or license previously granted to the applicant has been denied, revoked or suspended, and also, the type of permit or license which was denied, suspended or revoked, the time of denial, revocation or suspension, the jurisdiction denying, suspending or revoking the permit or license and the reasons for such action;
- g. A statement that the applicant understands and agrees that the cabaret established or maintained under any license issued pursuant to the application filed shall be established, operated, managed and maintained in full conformity with all the laws of the State of California and the applicable laws and regulations of the City of Hayward, and that any violation of any such laws in or in connection with the cabaret shall render any license subject to immediate suspension or revocation and the ongoing operation of the cabaret a nuisance;
- h. A full and complete financial statement of the applicant (the individual, partnership, corporation or other business entity);
- i. A statement that the applicant understands and agrees that City representatives, including the Chief of Police or designee, shall have access to the proposed cabaret premises and to the business records of the applicant for the purpose of investigating compliance with the provisions of these regulations and all other

applicable state and federal laws and regulations, and the applicant consents to any such search and consequential seizure;

- j. A statement that the applicant understands and consents for itself and any individuals named in the application and thereby authorizes the Hayward Police Department to conduct background investigations and obtain criminal history information for each individual named in the application and further to include in any report to the City Manager and City Council any information, including but not limited to any criminal convictions, that the Chief of Police considers relevant and necessary concerning any person named in the application;
- k. A detailed description of the proposed activities to be conducted including whether an admission fee or cover charge will be charged or whether tickets will be issued and the identity of all on-site managers;
- l. A description of security measures the applicant has or will take or cause to be taken, including security personnel staffing, training and provision of security in and around off-street parking areas and whether security personnel will be armed. If the cabaret serves alcoholic beverages, such security measures shall be consistent with the provisions contained herein;
- m. A statement regarding the days and hours of operation to which the licensee will adhere;
- n. The building and floor plan of the premises, which shall have no hidden rooms or screens and which once the license is issued shall not be modified without the prior written approval of the City;
- o. A statement regarding whether alcohol will be served and whether the applicant has or will be applying for a license from the Department of Alcoholic Beverage Control;
- p. Such other information that the applicant or the City may consider pertinent; and
- q. The contents of the application shall be certified under penalty of perjury as follows:
 - (1) By the proposed licensee if an individual;
 - (2) By a general partner if the proposed licensee is a partnership; or
 - (3) By the president of the corporation if the proposed licensee is a corporation;
 - (4) By the controlling owner/manager/executive of any other business entity.

SEC. 6-2.15 LICENSE APPLICATION FEE. A nonrefundable application fee, the amount of which is set in the City of Hayward's Master Fee Schedule, shall accompany the application and shall be retained by the City for the cost of investigating and processing of the application, whether or not the application is approved. The application fee shall be paid to the Revenue Department before the application is submitted to the Police Department.

SEC. 6-2.16 LICENSE APPLICATION, ACCEPTANCE, REFERRAL, INVESTIGATION AND REPORT.

- a. Upon receipt of an application for a cabaret license, the Police Department shall examine it, and if it is determined that it fails to comply with the requirements of these regulations or does not contain all the information required by these regulations, the application shall be returned to the applicant for proper completion of the application, together with a statement indicating the deficiencies. If the application does comply, the Police Department shall refer copies to other City offices as needed, including the Planning Division of the Development Services Department.
- b. The Chief of Police shall investigate or cause to be investigated, the contents of the application. The Chief of Police, or designee, is hereby authorized to conduct background investigations and obtain criminal history information for each person required to be named in the application for determining whether any such person should be disqualified for any of the following reasons:
 - (1) Applicant has been convicted of any crime punishable as a felony or any misdemeanor involving dishonesty or moral turpitude or has entered a plea of nolo contendere to any lesser or included offense, including but not limited to crimes involving battery, assault, robbery, burglary, gambling, larceny, fraud, sale or possession for sale of a controlled substance, prostitution, pimping, pandering, or lewd conduct.
 - (2) Applicant has associated with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

The Chief of Police, within sixty (60) days of receipt of a complete application, shall render a decision on the application, and shall give reasons for the decision.

SEC. 6-2.17 LICENSE ISSUANCE.

- a. Within ten (10) days of the decision by the Chief of Police, the license may be approved subject to such conditions, limitations and restrictions as may be deemed reasonably necessary. Each license approved by the Chief of Police shall be subject to the licensee's compliance with all applicable provisions of these regulations, in addition to such conditions, limitations and restrictions as the Development Services Department may deem reasonably necessary.

- b. No license shall be approved if it appears that any one (1) of the following facts exists:
- (1) The applicant for the license has not obtained approval of a conditional use permit for the cabaret, if required by Article 1 of Chapter 10 of the Hayward Municipal Code; or
 - (2) The operation of a cabaret at the proposed location will aggravate the crime problems in the area, or otherwise be detrimental to crime prevention or be detrimental to the public peace, health, welfare or safety in the area; or
 - (3) The Fire Chief, Building Official or Planning Director indicates that the license would result in a violation of the laws or regulations such officials administer; or
 - (4) That the applicant, or its owners, officers or employees, are unfit to operate a cabaret business. In making such determination, the Chief of Police may consider:
 - (i) The commission of any acts by the applicant, its owners, officers, or employees involving dishonesty, fraud or deceit with the intent to benefit substantially oneself or another, or substantially injure another; or
 - (ii) The license and permit history of the applicant, its owners, officers and employees, and whether such person in previously operating in this or another state under a license or permit has had such license or permit revoked, denied or suspended, the reasons for such action, and the resulting actions of such persons;
 - (iii) The applicant does not have, in the judgment of the Chief of Police, the financial capability or business experience to operate a cabaret in a manner that would protect its patrons and the citizens of the community.
 - (5) That the applicant has failed to comply with any of the provisions of the Hayward Municipal Code or other applicable laws applicable to the premises, equipment or operation of the business for which a permit is requested; or
 - (6) That the applicant has knowingly made false statements in the application.
- c. Upon the approval or conditional approval of a license by the Chief of Police, the

license shall be issued to the applicant within ten (10) days of such approval, pursuant to such conditions, limitations and restrictions required by the Chief of Police. In the case of a partnership, a license shall be issued in the name of all the partners.

- d. In the event an application is denied, the Chief of Police shall notify the applicant within ten (10) days of such denial and the reasons for the denial. The decision of the Chief of Police may be appealed to the Planning Commission in accordance with the provisions of Section 10-1.2845 of this Code.
- e. Under no circumstances shall any conditions attached to any license be construed to convert such license into any kind of transferable, conditional use permit.
- f. Every licensee under these regulations shall pay a business license tax as set forth in Article 1 of Chapter 8 of the Hayward Municipal Code.

SEC. 6-2.18 SUSPENSION AND REVOCATION OF LICENSE. All licenses authorized and issued under the provisions of the Cabarets and Dances regulations shall be subject to suspension or revocation by the Chief of Police under any of the following conditions:

- a. The licensee, or any employee or agent of such licensee has knowingly failed to comply with any of the provisions of these regulations; or
- b. The licensee, or any employee or agent of such licensee, has knowingly breached any term or condition upon which the cabaret license was issued; or
- c. Facts exist which would justify denial of an application for such license pursuant to these regulations; or
- d. The cabaret is conducted in such a manner as to constitute a nuisance, or to disturb the peace of persons in the vicinity or to be deleterious to the public peace, morals, health, safety or welfare; or
- e. The conditional use permit approved for the cabaret has been suspended or revoked; or
- f. The licensee has failed or refuses to pay such fees or taxes imposed under the Hayward Municipal Code when due and payable.

SEC. 6-2.19 PROCEDURES FOR THE SUSPENSION AND REVOCATION OF CABARET AND DANCE LICENSES. Cabaret and dance licenses or permits may be suspended or revoked pursuant to Article 1 of Chapter 6.

SEC. 6-2.20 EXPIRATION DATE OF LICENSES. All cabaret licenses issued pursuant to

these regulations shall automatically expire one year after such license was issued or renewed.

SEC. 6-2.21 RENEWAL PROCEDURES AND FEES FOR LICENSES. A valid license issued pursuant to the provisions of these regulations, or its predecessor regulations, which has not been surrendered, suspended or revoked, may be renewed for respective periods of not longer than one (1) year upon the following terms and conditions:

- a. An application for renewal of any such license shall be filed sixty (60) days prior to the expiration of the existing license with the Police Department on forms provided by that Department.
- b. Applications for renewal shall indicate whether any information required by Section 6-2.14 herein has changed, and shall be accepted, referred, investigated, reported, issued and dated as provided in Sections 6-2.16 and 6-2.17 hereinabove. If the completed application for renewal is submitted in a timely manner as required under subsection (a) above, then pending the completion of such investigations and reports, the existing cabaret license shall not expire pursuant to Section 6-2.20.
- c. If such application for renewal is not filed, or the application fee is not paid within the time specified by subsection (a) above, the license shall be deemed surrendered at the expiration date of such license.
- d. Renewal fees for licenses shall be the same as those fees charged for new licenses.
- e. Any current cabaret licensee who desires to physically relocate their cabaret must file an application for renewal pursuant to Sections 6-2.14 through 6-2.17 hereinabove and obtain a conditional use permit for such new location, if same is required by Chapter 10, Article 1 of the Hayward Municipal Code.

SEC. 6-2.22 LICENSES NON –ASSIGNABLE.

- a. Except as otherwise provided for in these regulations, no cabaret license may be sold, transferred or assigned by the licensee, or by operation of law, to any person, persons or legal entity without the prior approval of the Chief of Police, which approval shall be conditioned upon the proposed transferee's compliance with the Cabarets and Dances regulations. Any sale, transfer or assignment, or attempted sale, transfer or assignment without such prior approval shall be deemed a voluntary surrender of such license, which license shall immediately be deemed terminated and void.
- b. A license issued to an individual who dies during the calendar year shall terminate one year after the license was issued, except that the personal representative of the estate of that individual may apply for renewal of the license for one (1) year providing the representative has complied with all requirements of these regulations.

- c. If the licensee is a partnership and one (1) or more of the partners dies, the surviving partners, or partner, may, with prior approval of the Chief of Police, acquire, by purchase or otherwise, the interest of the deceased partner, or partners, without affecting a surrender or termination of the license.
- d. Any change in the board of directors of a corporation which holds a license or in the managing partners of a partnership or the ownership of any other business entity that holds a license shall require the prior approval of the Chief of Police, which may condition such approval on any appropriate basis.
- e. Any change of legal status of a licensee (such as a change from individual to corporate status) not otherwise provided in this section, shall require the prior approval of the Chief of Police, who may condition such approval on any appropriate basis.

SEC. 6-2.23 COMMENCEMENT OF OPERATIONS.

- a. An applicant who has received approval for a cabaret or license and paid all appropriate fees must commence operation of the cabaret within ninety (90) days following issuance of the license.
- b. A license becomes void upon a ninety (90) day absence or suspension of operations allowed by it, regardless of the reasons for the absence or suspension of operations; except that the Chief of Police may, during the ninety (90) days, extend the time for an additional sixty (60) days, for good cause shown.

SEC. 6-2.24 OBLIGATION TO INFORM OF CERTAIN CHANGES CONCERNING LICENSEES.

- a. The licensee shall notify the Police Department in writing within fourteen (14) days of any change in the information required in an application for license issuance or renewal as provided in Section 6-2.14, except that no such change need be reported if such change occurs within thirty (30) days immediately preceding the expiration of such license. At the discretion of the City, a new or amended application for a license may be required.
- b. The Chief of Police shall promptly inform the relevant City departments of any notification received pursuant to the provisions of subsection (a) above.

SEC. 6-2.25 RECORD AND VIDEO SYSTEMS. The licensee shall keep and maintain all cabaret books, documents, records and accounts (whether in printed form or as electronic media) in accordance with recognized business accounting principles. Any and all video recordings made for security in the cabaret shall be marked with the date and time made and shall

be kept, in an unaltered state, for a period of seven (7) days, unless longer or shorter periods of time are ordered by the Chief of Police or designee. All video recordings must be made available to any law enforcement agency for duplication upon demand.

SEC. 6-2.26 PERMITS FOR SINGLE CABARET OR PUBLIC DANCE EVENTS.

- a. A single cabaret event or public dance event may be conducted in the City of Hayward upon the issuance of a permit by the Chief of Police.
- b. An applicant shall file an application with the Chief of Police at least two weeks prior to the proposed event with the application fee set forth in the City's Master Fee Schedule. The application shall include:
 - (1) The location of the cabaret or public dance event.
 - (2) The true and complete name and address of the person or persons to whom it is requested that a cabaret permit be issued, as follows:
 - (i) If the proposed permit is an individual, the application shall set forth the name, residence and business address of the applicant;
 - (ii) If the proposed licensee is a corporation, the application shall set forth the complete name of the corporation and the state within which it is incorporated, together with its home address and also its local address, as well as the names and addresses of the board of directors, the names and addresses of all of the corporate officers, and the names and addresses of each shareholder; and
 - (iii) If the proposed licensee is a partnership or other business, the application shall set forth the full names of all partners, owners and managers and the firm name under which the partnership or other business entity operates, together with the addresses of all partners.
 - (3) The true and complete name and address of each owner or owners of the building, place or structure within which the cabaret or public dance is proposed to be conducted.
 - (4) A description of the event including date and times of the event, number of people expected to attend, and whether alcohol will be served and if so whether the appropriate approval has been received by the State Department of Alcoholic Beverage Control.
 - (5) A description of the security measures that will be taken, both at the event and in and around off-street parking areas. If alcohol will be served at the event, the security measures shall meet the requirements contained herein.

- (6) Any further information the Chief of Police deems necessary in reviewing the application.
- c. Any such permit for a single cabaret or public dance event shall only be approved if the event will occur in a zoning district that permits such an activity pursuant to the Zoning Ordinance set forth in Chapter 10 of the Hayward Municipal Code.
 - d. In granting or denying such permit, the Chief of Police shall give consideration to the public health, safety and welfare, particularly for those persons living in the surrounding area.
 - e. Only one permit for a single cabaret or public dance event will be issued for a particular applicant or for a particular location within a three (3) month period.
 - f. Permits issued for a single cabaret event or a public dance event are nontransferable and non-assignable.
 - g. If both cabaret and dance activities are intended, only one permit under this section will be required, depending on the primary activity to be conducted.

SEC. 6-2.27 OPERATING REGULATIONS FOR ALL CABARETS AND DANCES. It shall be unlawful for any person operating a cabaret or conducting a dance or entertainment event, or any agent, employee, or representative or such person, to permit any breach of the peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct or otherwise, or to violate or permit the violation of any of the following regulations:

- a. The area in which any dancing is being done shall be kept well lighted.
- b. No obscene or illegal conduct or behavior shall be permitted.
- c. No person under the age of eighteen (18) years shall be admitted unless accompanied by his parent, guardian or other person having the care and custody of such person. The Chief of Police may approve a permit to allow younger participants, if the event is planned specifically for youth.
- d. No dancing shall be permitted between the hours of 2:00 am and 10:00 am.
- e. All persons shall be fully clothed.
- f. No person under the influence of intoxicating liquor shall be admitted or permitted to remain in or upon the premises.

- g. At all times during the holding of any dance or event, all doors leading from or opening into the place where the dance is held, are to remain unlocked, unbarred, or unfastened.
- h. No return check shall be issued.

SEC. 6-2.28 LICENSEE/PERMITTEE RESPONSIBLE FOR VIOLATIONS.

The licensee of any cabaret or permittee for any cabaret or public dance event shall be responsible for all violations of the laws of the State of California, or of the ordinances, regulations and conditions of the City of Hayward, which occur within the cabaret, whether or not the violations occur within the licensee's/permittee's presence or with the licensee's/permittee's knowledge. The licensee/permittee agrees that allowing more patrons on the premises than that authorized by the Hayward Fire Marshal constitutes a violation of the license and may be enforced by the Police Department.

SEC. 6-2.29 VIOLATION OF STATE AND CITY LAWS. No licensee (or its agents or employees) nor permittee (or its agents or employees) shall engage in or permit any other person on such premises to engage in any act in violation of the laws of the State of California or of the ordinances, regulations and conditions of the City of Hayward.

SEC. 6-2.30 PATRON SAFETY AND SECURITY. The licensee/permittee shall be responsible for the security and safety of patrons in the cabaret in and around off-street parking areas. Security shall meet the following performance standards:

- a. There shall be a minimum of one security personnel on duty for the first fifty (50) patrons on site. Once the number of patrons exceeds fifty (50), there shall be one additional security personnel on duty for up to and including each additional fifty (50) patrons on site. "On-site" means all patrons within the establishment and waiting in line to enter the establishment.
- b. The security personnel shall be on duty when the entertainment begins or 9:00 p.m., whichever is earlier, and shall remain on duty for at least one-half hour after the establishment closes or until all patrons have vacated the area immediately surrounding the establishment and the parking sites used by the patrons.
- c. The security personnel shall provide security inside the establishment, along the outer perimeter of the establishment and parking sites immediately adjacent to the establishment and used by the patrons.
- d. The security personnel shall remove all illegal contraband that may be found on patrons, report the existence of the contraband to the Hayward Police Department, identify the person in possession of the contraband and immediately turn the contraband over to the proper law enforcement authorities.
- e. All security personnel shall be registered and maintain valid registration status with

the State of California's Department of Consumer Affairs. All security personnel shall be registered at a level that is equivalent to or greater than a proprietary private security officer. Proof of registration for all security personnel shall be maintained by the establishment's operator and shall consist of application forms, receipts for application fees and live scan fees and any other document showing evidence of valid registration.

- f. At closing time, the security personnel shall ensure that the establishment's patrons have been cleared from the sidewalk and street areas in front of the establishment, from other areas around the perimeter of the establishment and from areas within one hundred fifty (150) feet of the establishment.
- g. While on duty, all security personnel shall wear a nameplate containing the security personnel's full name and the word "Security" printed in bold, capital letters that are at least three-fourths of one inch high and in contrasting color. The nameplate shall be exhibited prominently on the clothing, at chest level, and shall be visible and easily read at all times. The nameplate shall be a minimum of two inches high and four inches wide. As an alternative to a nameplate, the security personnel's name and the word "Security" may be embroidered on the security personnel's outermost garment with the required information meeting the above specifications and located at chest level.
- h. The establishment's operator shall not allow any security personnel to, and no security personnel shall, sit at the bar, or consume alcoholic beverages or any controlled substance, be under the influence of alcoholic beverages or any controlled substance, or engage in any violations of the law while on duty.
- i. The establishment's operator shall not allow any security personnel to be, and no security personnel shall be, in possession of any firearm while on the establishment's premises without the security personnel having first obtained a license from the appropriate state or local agency authorizing the security personnel to be in possession of a firearm.
- j. If the establishment employs or otherwise engages security personnel who will be in possession of a firearm while on the establishment's premises, the security personnel shall provide the Chief of Police with the following documentation no less than fourteen (14) days prior to the date the security personnel will begin performing services at the establishment:
 - (1) A copy of the license issued to the security personnel authorizing the possession of such firearm;
 - (2) A copy of the security personnel's law enforcement identification if employed by a law enforcement agency; and
 - (3) A copy of the security personnel's California driver's license or California identification card.

- k. The establishment's operator shall at all times manage waiting lines outside the establishment to ensure that there are no impediments to pedestrian travel in the pedestrian walkway, no blockage of neighboring businesses, and no disturbance of the public peace.
- l. At least one person in possession of a valid cabaret license shall be present at the establishment at all times when entertainment requiring a cabaret license is being provided. Said licensee shall cooperate fully with the Chief of Police, or any City official responsible for enforcing the Alcoholic Beverage Outlet regulations, with any inquiry, inspection reasonable request or investigation necessary to implement the requirements of these regulations or to enforce any other state, local or federal law.

SEC. 6-2.31 POSTING OPERATING REGULATIONS. A set of operating regulations in a form approved by the Chief of Police and containing the provisions of Sections 6-2.27 through 6-2.33 herein, as well as any relevant operating conditions that may be imposed by the Chief of Police, City Council or the Planning Commission, shall be prominently posted by licensee/permittee in at least one (1) conspicuous location within every cabaret, as determined by the Chief of Police.

SEC. 6-2.32 INSPECTION FOR ENFORCEMENT; SUMMARY SUSPENSION. All premises operating pursuant to the terms of these regulations may be inspected for violations of these regulations at any time during normal operating hours by the Chief of Police of the City of Hayward or designee. Any evidence of any violation of the terms of these regulations may be seized without warrant provided that such evidence shall be specifically identified and a receipt shall be given to the owner of such evidence and to the licensee of such premises or his agent. At all times, a designated manager or person in charge shall be on the premises and available to the Police Department. A violation of these Cabarets and Dances regulations may result in immediate closure by the Police Department, pursuant to the summary suspension provisions set forth in the Alcoholic Beverage Outlets regulations (Hayward Municipal Code Sections 10-1.2750 *et seq.*).

SEC. 6-2.33 POWERS OF CHIEF OF POLICE AND OFFICERS. The Chief of Police and his/her sworn officers shall have the power to stop any public dance or close any premises, whether a permit is issued hereunder or not, for disturbing the peace, disorderly conduct, obscene or indecent behavior, or for violation of any law or ordinance.

SEC. 6-2.34 INJUNCTIVE RELIEF; ADMINISTRATIVE CITATION. In addition to the legal remedies provided for in this Code, the operation of any cabaret in violation of the provisions of these regulations or other applicable laws and regulations shall be deemed a public nuisance, and the City of Hayward may bring an action in any court of competent jurisdiction to enjoin such nuisance or issue an administrative citation pursuant to Chapter 1, Article 7 of this Code.

SEC. 6-2.35 VIOLATIONS; PENALTIES. Any person violating any provision of these

regulations or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring the license or permit shall be punishable as set forth in Article 3 of Chapter 1 of this Code.”

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective thirty days after adoption.

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

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Councilmember _____

RESOLUTION APPROVING NEGATIVE DECLARATION AND ADOPTING FINDINGS SUPPORTING TEXT AMENDMENTS RELATED TO PROPOSED, NEW ALCOHOLIC BEVERAGE OUTLETS ORDINANCE AND CABARETS AND DANCES ORDINANCE

WHEREAS, at the direction of the City Council, staff has prepared a comprehensive package of administrative regulations governing establishments selling alcoholic beverages and establishments offering nightclub-type entertainment in the City of Hayward, including an Alcoholic Beverage Outlets Ordinance, a Cabarets and Dances Ordinance, and related amendments to the City’s Zoning Ordinance and Master Fee Schedule implementing the proposed regulatory framework (the “Project”); and

WHEREAS, a Negative Declaration and Initial Study have been prepared and circulated for public review and comment, in accordance with the California Environmental Quality Act (CEQA) and its Guidelines, which conclude that the proposed Project would not have a significant environmental impact; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 5, 2013, and unanimously recommended, with one Commissioner abstaining, that the City Council approve the Negative Declaration and the proposed text amendments (Application No. PL-2013-0175 TA), including revisions to the City’s alcoholic beverage outlet regulations (new Section 10-1.2750 *et seq.* of the Hayward Municipal Code), the Definitions section of the Zoning Ordinance (Section 10-1.3500 of the Hayward Municipal Code), and the General Commercial (CG) and Central City-Commercial (CC-C) Zoning Districts (Section 10-1.1000 *et seq.* and Section 10-1.1520 *et seq.* of the Hayward Municipal Code); and

WHEREAS, amendments to the City of Hayward Fiscal Year 2014 Master Fee Schedule are proposed related to the text amendments, to offset costs to the City from the enforcement and administration of the proposed regulations; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on September 24, 2013.

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- A. The proposed Project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and a Negative Declaration and Initial Study have been prepared, which conclude that no significant environmental impacts will occur as a result of the Project.

AMENDMENTS TO THE MUNICIPAL CODE RELATED TO ALCOHOLIC BEVERAGE OUTLETS AND CABARETS AND DANCES (COLLECTIVELY REFERRED TO AS THE "TEXT AMENDMENTS")**A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed Text Amendments will promote the public health, safety, convenience, and general welfare of the residents of Hayward by:

- a. allowing happy hours and music at full-service restaurants that will help existing Hayward restaurants be more competitive with restaurants in surrounding cities and will help attract new restaurants to Hayward, which is underserved with such restaurants;
- b. establishing performance standards for all alcoholic beverage establishments that will help ensure such establishments are operated in a manner so as not to constitute a public nuisance;
- c. prohibiting more liquor stores or bars, which are typically establishments generating more calls for service for the Hayward Police Department, in areas of the City that have an overconcentration of such establishments, as defined by the State Department of Alcohol Beverage Control;
- d. establishing "Summary Suspension" provisions to allow the City to quickly and effectively shut down an alcoholic beverage establishment where an imminent threat to public health and safety exists;
- e. creating cost recovery mechanisms through new fees, including critical incident response fees, which will help ensure more oversight of alcoholic beverage establishments by the Hayward Police Department;
- f. establishing "Deemed Approved" performance standards for nonconforming uses, which typically generate more calls for service for the Hayward Police Department, which will help ensure such uses are operated in a manner so as not to create a public nuisance or negatively impact the public health, safety and welfare; and
- g. creating new operating standards for all cabarets and public dances, including security standards and license/permit suspension provisions to help ensure such businesses are operated responsibly with minimal impacts to the public, and to provide a process that allows the City to respond expeditiously to incidents at cabarets or dance events that represent an imminent threat to public health and safety.

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed Text Amendments conform to City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the Text Amendments, as described in the preceding finding, are aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

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

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

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses. The proposed Text Amendments will help attract new desirable uses and help ensure existing uses are operated in a responsible manner.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. Any new alcoholic beverage establishments or cabarets or dance halls will be required to have adequate streets and facilities before operating, as currently required.

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

No properties are proposed to be reclassified. The Text Amendments will provide additional standards to help ensure alcoholic beverage establishments and cabarets and dances are operated in a manner that do not generate impacts to surrounding properties and neighborhoods. In addition, the proposed Text Amendments will provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Police Department.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Negative Declaration and the findings in support of Text Amendment Application No. PL-2011-0175 TA, subject to the adoption of the companion ordinances.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

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 _____

Introduced by Council Member _____

RESOLUTION AMENDING THE CITY OF HAYWARD FISCAL YEAR 2014
MASTER FEE SCHEDULE ASSOCIATED WITH REVISIONS TO ALCOHOLIC
BEVERAGE OUTLETS ORDINANCE AND CABARETS AND DANCES
ORDINANCE

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

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

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

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

WHEREAS, the City and Hayward Police Department is not achieving cost recovery associated with review and oversight alcohol beverage outlets and cabaret and dance establishments and events.

NOT, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Master Fee Schedule relating to fees and charges for the Finance and Police Departments, as reflected in Attachment A.

BE IT RESOLVED that this resolution shall become effective on the date that the last of the companion four ordinances (Ordinances No. 13- , No. 13- , No. 13- , and No. 13-) becomes effective.

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

Attachment A

FinanceA. **ASSESSMENT DISTRICT FEES**

- | | | |
|----|---|------------------------------------|
| 1. | <u>Establishment Fee</u> (applicable to all districts petitioned or requested after September 9, 1988) | \$3,084.00 |
| 2. | <u>Annual Administration Fee</u> (applicable to all districts) | \$2,934.00 |
| 3. | <u>Bond Call Fee</u> (applicable to all districts) | \$302.00 |
| 4. | <u>Annual Adjustment</u> : The 3 fees listed above shall be adjusted annually. Each fee shall increase by the lesser of: (1) 5% or (2) the percentage of increase, if any, in the San Francisco Bay Area Consumer Price Index (CPI-U) or (3) the City's actual incremental cost. When the 3 fees are so adjusted, the adjusted fees shall become the new base. The CPI for the San Francisco Bay Area in effect at the time of each annual updating of the Master Fee Resolution shall be used in determining each set of annual adjustments. | Calculated
Adjustment |
| 5. | <u>Irrevocability of the Establishment Fee</u> : Whether or not a proposed local improvement district becomes legally established, the Establishment Fee applies as the City's charge for initiating the transaction. | Same as
amount paid
in A (1) |
| 6. | <u>Special Assessment Inquiries</u> | \$26.00 each |
| 7. | <u>Secondary Disclosure Reporting</u> | \$256.00/
District |

B. OPERATING PERMITS

- | | | |
|----|---|----------------------|
| 1. | <u>Bingo Permit</u> (Reference HMC 4-3) | |
| | a. Initial or renewal Fee | \$50.00 |
| 2. | <u>Card Club Permit</u> (Reference HMC 4-3) | |
| | a. Application Fee | \$40.00 |
| | b. Annual Table Fee | \$8,693.00 per table |
| 3. | <u>Closeout Sale Permit</u> (Reference HMC 6-4) | |
| | a. Initial Fee | \$76.00 |
| | b. Renewal | \$67.00 |
| 4. | <u>Cabarets and Dance Licenses and Permits</u> (Reference HMC 6-2) | |
| | a. Annual License (payable quarterly in advance) | \$103.00/year |
| | b. Single Event Permit | \$42.00 |
| 5. | <u>Preferential Parking Permit</u> (Reference Hayward Traffic Regulations Section 3.95 and Hayward Traffic Code 6.36) | |
| | a. Initial Fee and Biennial Renewal Fee (for up to two residential or visitor permits) | \$50.00 |
| | b. Each additional residential permit | \$25.00 |
| | c. Each additional visitor permit | \$25.00 |
| 6. | <u>Peep Show Permit</u> (Reference HMC 6-9) | |
| | a. Peep Show Device | Time & Material |
| | b. Investigation Fee | Time & Material |

C. MISCELLANEOUS FEES

- | | | |
|----|---|-----------------|
| 1. | Monthly Listing of New Hayward Based Businesses | \$5.50/month |
| 2. | Business Verification/Ownership Research | \$8.00/business |
| 3. | Parking Tax Offset Fee | \$2.50 |

Police Department**B. POLICE ADMINISTRATION**

Any charges not specified below shall be established by State and/or Federal statutes.

1. Photocopying of Reports:
 - a. Traffic Accident Reports \$12.00 per report
 - b. Other Reports \$5.50 per report
2. Photographs Time & Motion
3. Fingerprinting \$23.00 each
(Fingerprint processing fees established by Federal or State agencies shall be additional charge.)
4. Traffic & Police Security Services
 - a. Traffic control and police security services for pre-planned, non-city sponsored events Time & Motion
 - b. Planned traffic control for contractors and utilities Time & Motion
5. Permit Processing
(Fees are for processing only, fingerprint and Department of Justice fees are not included)
 - a. Taxi Drivers
 - (1) Initial Permit \$260.00
 - (2) Annual renewal \$186.00
 - (3) Annual taxi operating sticker \$247.00
 - (4) Lost permit replacement \$91.00
 - b. Tow Permits
 - (1) Company 1st License \$297.00
 - (2) Company Annual Renewal \$297.00
 - (3) Driver 1st License \$297.00
 - (4) Driver Annual Renewal \$297.00
 - (5) Lost Permit Replacement \$74.00
 - c. Massage Establishment/technician permit

- | | | |
|-----|---|-------------------------|
| (1) | Establishment permit | |
| | (a) one owner | \$614.00 |
| | (b) two owners | \$845.00 |
| | (c) three owners | \$1,076.00 |
| (2) | Technician Permit | |
| | (a) Initial permit | \$230.00 |
| | (b) Annual renewal | \$76.00 |
| | (c) Lost permit replacement | \$76.00 |
| d. | Card clubs employee permit | |
| | (a) Initial permit | \$153.00 |
| | (b) Annual renewal | \$153.00 |
| | (c) Lost permit replacement | \$76.00 |
| e. | Auto Sales/Repair Permit | \$175.00 |
| f. | Background investigation | Time & Motion |
| g. | Firearm dealers annual permit | \$513.00 |
| h. | Diversion program | Time & Motion |
| i. | Petty Theft Workshop | \$80.00/per participant |
| j. | Other permit processing | Time & Motion |
| 6. | <u>Alarm Permit Fee</u> | |
| | a. new and annual renewal: | \$32.00 |
| | b. for Low income or persons in a temporary or permanent disabled status who: | \$15.00 |
| | (1) meet the City income guidelines as defined in the All City Department section of the Master Fee Schedule and | |
| | (2) file with the Revenue Division of the Finance Department a discount application and adequate documentary evidence showing that the Permit applicant comes within the provision of subparagraph (a). | |
| 7. | <u>False Alarm Fees</u> (for instances of false alarms within any one-year period): | |

a.	First False Alarm Fee	No Charge
b.	Second False Alarm Fee	\$182.00
c.	Third False Alarm Fee	\$182.00
	Penalty	\$ 50.00
d.	Fourth False Alarm Fee	\$182.00
	Penalty	\$200.00
e.	Fifth and Each Fee	\$182.00
	Subsequent False Alarm Penalty	\$400.00
8.	<u>Vehicle Release Fee</u>	\$235.00
9.	<u>Vehicle Verification or Administrative Fee</u>	
a.	Onsite verification	\$43.00
b.	Offsite verification	\$175.00
c.	Sign off of citation not issued by Hayward P.D.	\$ 20.00
10.	<u>Communication Tapes</u>	\$103.00 per tape
11.	<u>Clearance Letters</u>	\$43.00 per letter
12.	<u>Vehicle Abatement</u>	\$263.00 per vehicle
13.	<u>Prisoner Booking Fee</u>	per prisoner
a.	Cite & Release	\$ 89.00
b.	Hold for Court	\$ 180.00
c.	Transfer to Santa Rita	\$ 199.00
14.	<u>Driving Under the Influence</u>	Time & Motion
	Recovery of the cost of the public safety response to a DUI violation using the fully burdened cost allocation rate.	
	The following is authorized by sec 4-11.20 HMC	
a.	First Violation	\$ 750.00
b.	Second Violation	\$ 1,500.00
c.	Third & Subsequent Violations	\$ 2,500.00
	The following is authorized by sec 4-11.25 HMC	
d.	Administrative Citation – recovery of the cost of the public safety response to a violation of this ordinance using the fully burdened cost allocation rate.	Time & Motion

- | | | |
|-----|--|---------------|
| 15. | <u>Firearms Range Maintenance Fees</u> – apportions the upkeep of the firearms range among user law enforcement agencies over a <u>fiscal year</u> period: | \$ 750.00 |
| 16. | Alcoholic Beverage Outlets Fees (HMC sec 10-1.2750) | |
| a. | Level I - Alcoholic Beverage Establishment Retail License Fee - Full service restaurants, wine shops, breweries, distilleries; and retail stores using no more than 5% of their floor area for alcohol sales, storage and display. | \$ 280.00 |
| b. | Level II - Alcoholic Beverage Establishment Retail License Fee - All alcoholic beverage outlets other than Level I. | \$ 1,120.00 |
| c. | Critical Incident Fee | Time & Motion |
| d. | Violation of Alcoholic Beverage Outlets Ordinance | |
| | (1) First offense | \$ 750.00 |
| | (2) Second offense | \$ 1,500.00 |
| | (3) Third and subsequent Offenses | \$ 2,500.00 |
| e. | Reinspection Fee | Time & Motion |
| f. | Alcohol Sales – Special Event Permit | \$ 42.00 |



**MINUTES OF THE CITY COUNCIL MEETING
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City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.

PUBLIC HEARING

8. 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

Staff report submitted by Traffic Sergeant Olthoff, dated September 24, 2013, was filed.

Development Services Director Rizk provided a synopsis of the report.

Discussion ensued among Mayor Sweeney, Council Members, and City staff.

Mayor Sweeney opened the public hearing at 9:30 p.m.

The following speakers expressed opposition to the revisions of the alcohol-related ordinances noting the following concerns: the alcoholic beverage establishment retail license fees discriminate against small businesses; the critical incident responsibility places a burden on businesses; recovery costs should come from law violators; the language in the ordinances should be simpler to understand; and the ordinances, as proposed, would hinder business growth.

Ms. Joeann Pepperell, owner of The Funky Monkey

Mr. Allen Chang, representing Curley's Place

Mr. Kim Huggett, Hayward Chamber of Commerce President

Mr. Darren Guillaume, owner of Doc's Wine Shop

Mr. Aric Yevevino, Hayward resident and owner of the Dirty Bird Lounge

Mr. Paul Schaffer, Hayward business and property owner

Mr. Javier González, California Restaurant Association representative

Mr. Larry Gray, Turf Club owner

Mr. Jim Sommer, Dark Horse Lounge General Manager

Ms. Aya Tang, Dirty Bird Lounge employee

Ms. Jennifer Sommer, Dark Horse Lounge owner

The following speakers expressed support for the proposed revisions to the alcohol-related ordinances noting that: the annual cost-recovery fee would serve to enforce laws; the deemed approved ordinance would protect public safety; the proposed fines would hold establishments accountable and would serve as a deterrent for future violations; and the standards outlined would create a safer environment for the youth and conducive for quality businesses to come to Hayward.

Mr. Pratt asked the Council to request an annual report on the implementation of the ordinance as the data collected could help assess the fee structure.

Mr. Richard Ersted, Hayward property owner

Mr. Robert Goodwill

Ms. Deisy Bates, Hayward resident and Hayward Coalition for Healthy Youth (HCHY) Chair

Ms. Tiffany Neira, Hayward resident and HCHY representative

Ms. Stephanie Aldridge, HCHY representative

Ms. Linda Pratt, Community Prevention of Alcohol-Related Problems (CommPre) Program Director and HCHY representative

Ms. Minane Jameson, Hayward resident and HCHY representative

Mayor Sweeney closed the public hearing at 10:19 p.m.

Discussion among City Council and City staff ensued.

Council Member Salinas offered a motion to: introduce the ordinance related to revisions to Hayward's Alcoholic Beverage Outlet regulations; introduce the ordinance associated with revisions to Zoning Ordinance definitions; introduce the ordinance associated with revisions to General Commercial, Central City-Commercial, and Zoning District regulations; introduce the ordinance related to new regulations for Cabarets and Dances; adopt the resolution approving a Negative Declaration/Initial Study; and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted.

Council Member Mendall seconded the motion and offered amendments to the ordinances directing staff to bring them back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments included: adding a provision that would allow the City to revoke a restaurant's right to happy hours and/or live and amplified music for bad behavior; setting up a mechanism by which the Council could approve a bar in an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

Council Member Salinas accepted Council Member Mendall's amendments.

Council Member Zermeño noted he agreed with having healthy youth, promoting healthy establishments, closing noncompliant establishments, and preventing more liquor stores that only sell liquor. Mr. Zermeño suggested the City could meet with restaurant and bar owners and assist businesses that are noncompliant. He expressed he would not support the motion because he did not believe it was conducive to a vibrant economy and would discourage new establishments from coming to Hayward.

Council Member Jones expressed that while he agreed with the majority of the ordinances' content, he would not support the recommendation as written. Mr. Jones recommended that the revisions to the Master Fee Schedule associated with revisions to alcohol beverage outlet fees consider the fine



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structure as a mechanism to impose additional inspection on establishments that violate the ordinance; expressed concern on how the critical incident fee was structured and how it would get applied; suggested adding language to the ordinance about a rating report card that alcohol establishments would be required to post in public places to indicate compliance with the City's regulations; and favored liberalizing the approval process in the downtown entertainment area to allow uses based on administrative use permit basis.

Council Member Halliday expressed she would support the motion. Ms. Halliday noted the proposed annual fees would provide an enforcement mechanism for problematic bars, but agreed the fees needed adjusting; recommended establishing a benchmark for establishments; favored having a nexus to critical incident fees; agreed with deemed approved provisions; and supported having an annual report on the implementation of the recommended provisions.

Council Member Peixoto noted he was in support of the proposed ordinances with reservations about the fee structure and he requested that the suggestions offered by Mr. Richard Ersted be considered. Mr. Peixoto expressed he was concerned about the critical incident fee and was concerned that some establishments would be reluctant to call the police. He recommended that budget information be provided to indicate whether or not the fee structure would produce the site visits.

Mayor Sweeney offered an amendment to the main motion, seconded by Council Member Zermeño, and defeated by the following roll call vote to remove the happy hour provisions from the staff recommendation:

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

Mayor Sweeney expressed he would be supporting the main motion on the floor noting the proposal was a step forward to address problems with bars that drain Police Department resources and impact the operations of surrounding businesses.

It was moved by Council Member Salinas, seconded by Council Member Mendall, and carried by the following roll call vote to introduce the following ordinances, adopt the resolution, and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted. There were amendments to the ordinances that would come back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments to the ordinances consisted of: adding a provision that would allow the City to revoke a restaurant's right

to happy hours and/or live and amplified music for bad behavior; setting-up a mechanism by which the Council could approve a bar in an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

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

Introduction of Ordinance 13-__, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets”

Introduction of Ordinance 13-__, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City’s Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-__, “Ordinance Amending Hayward Municipal Code Sections 10-1.1520 Et Seq. and 10-1.1000 Et Seq., Regulating the City’s Central City Commercial (CC-C) Subdistrict and General Commercial (CG) District, to Implement the Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-__, “Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances”

Resolution 13-157, “Resolution Approving Negative Declaration and Adopted Findings Supporting Text Amendments Related to Proposed, New Alcoholic Beverage Outlets Ordinance and Cabarets and Dances Ordinance”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force Litter Clean-Up and Graffiti Removal event on September 28, 2013, at the Burbank neighborhood. Mr. Zermeño recommended that the Council send a letter to Measure A Blue Ribbon Task Force to reauthorize Measure A funds to support St. Rose Hospital. There was consensus to add the item to a future Council meeting. Mr. Zermeño also announced that at the League of California Cities the Healthy Eating Active Living Cities Campaign recognized the City of Hayward as an Active HEAL City.

Council Member Salinas announced that Tony Solorio, owner of Tacos Uruapan, and he would be representing the City at the Contra Costa County Mayors’ Healthy Cook-off on October 24, 2013.



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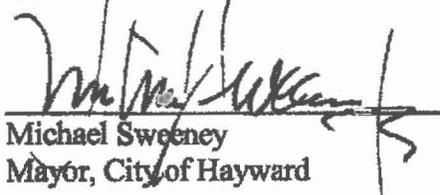
Council Member Peixoto announced the National Public Lands Day event along the Juan Bautista de Anza National Historic Trail on September 28, 2013.

Council Member Halliday shared information from the Alameda County Mosquito Abatement newsletter with the Council.

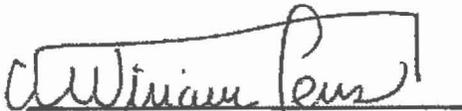
ADJOURNMENT

Mayor Sweeney adjourned the meeting at 11:09 p.m.

APPROVED:


Michael Sweeney
Mayor, City of Hayward

ATTEST:


Miriam Lens
City Clerk, City of Hayward