CITY OF
HAYWARD
HEART OF THE BAY

City Council Agenda

December 10, 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

Approval of Minutes of the City Council Meeting on November 19, 2013

Draft Minutes 7

Introduction of Ordinance Amending the Hayward Municipal Code by Adding Article 16 to Chapter 4 Regarding Simulated Gambling Devices and Proposed Revisions to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500); the Project is Exempt from Environmental Impact Analysis, Per the California Environmental Quality Act; Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward (Report from Development Services Director Rizk and City Attorney Lawson)

Staff Report 15

Attachment I Resolution. 23

Attachment II Simulated Gambling Devices Ordinance 27

Attachment III Zoning Ordinance Definitions Amendments 33

Attachment IV November 7, 2013 Planning Commission Mtg Minutes. 36

Attachment V American Gambling Association Position on Internet Sweepstakes Cafes. 41

Attachment VI Letter from Hayward Chamber of Commerce 46

FY 2013 Preliminary Year-End General Fund Review (Report from Finance Director Vesely)

Staff Report 47

Council FY 2015 & FY 2016 Recommended Priorities (Report from City Manager David)

Staff Report 54

Attachment I. 58

Attachment II 65

Introduction of Ordinances to Adopt the 2013 California Fire Code, 2013 California Building Code (CBC), 2013 California Historical Building Code, 2013 California Existing Building Code, 2013 California Green Building Standards Code, 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and to Repeal Chapter 10, Article 22 of the Municipal Code (Green Building Requirements for Private Development). The Project is Exempt from Environmental Review pursuant to Section 15378(b)(1) of the CEQA Guidelines (Report from Development Services Director Rizk and Fire Chief Contreras)

Staff Report 71

Attachment I Fire Resolution 77

Attachment II Fire Ordinance 81

Attachment III Building Resolution 106

Attachment IV Building Ordinance 114

Attachment V Mechanical Resolution 135
Attachment VI Mechanical Ordinance 137
Attachment VII Electrical Resolution 140
Attachment VIII Electrical Ordinance 145
Attachment IX Plumbing Resolution 151
Attachment X Plumbing Ordinance 157
Attachment XI Codes Comparison Table 164

SPECIAL CITY COUNCIL MEETING FOR DECEMBER 10, 2013

777 B Street, Hayward, CA 94541

www.hayward-ca.gov

CLOSED SESSION
Closed Session Room 2B – 5:30 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; Senior Human Resources Analyst Collins; Senior Human Resources Analyst Monnastes; Jack Hughes, Liebert, Cassidy and Whitmore

   Under Negotiation: All Groups

3. Conference with Legal Counsel
   Pursuant to Government Code 54956.9
   - Anticipated Litigation (One Case)

4. Conference with Legal Counsel
   Pursuant to Government Code 54956.9
   - Pending Litigation: Net Connection Hayward, LLC v. City of Hayward U.S. District Court Case No. 13-1212; IBiz, LLC v. City of Hayward, U.S. District Court Case No. 13-1537; City of Hayward v. Chances Are, LLC et. al. Alameda County Superior Court Case No. RG 13681065; Chances Are, LLC v. City of Hayward, U.S. District Court Case No. 13-2383

5. Adjourn to Special City Council Meeting

SPECIAL CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER **Pledge of Allegiance** Council Member Peixoto

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.

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 any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

1. Approval of Minutes of the City Council Meeting on November 19, 2013
   Draft Minutes

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

2. Introduction of Ordinance Amending the Hayward Municipal Code by Adding Article 16 to Chapter 4 Regarding Simulated Gambling Devices and Proposed Revisions to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500); the Project is Exempt from Environmental Impact Analysis, Per the California Environmental Quality Act; Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward (Report from Development Services Director Rizk and City Attorney Lawson)
   Staff Report
   Attachment I Resolution
   Attachment II Simulated Gambling Devices Ordinance

Attachment III Zoning Ordinance Definitions Amendments
Attachment IV November 7, 2013 Planning Commission Mtg Minutes
Attachment V American Gambling Association Position on Internet Sweepstakes Cafes
Attachment VI Letter from Hayward Chamber of Commerce

LEGISLATIVE BUSINESS

3. FY 2013 Preliminary Year-End General Fund Review (Report from Finance Director Vesely)
   Staff Report

4. Council FY 2015 & FY 2016 Recommended Priorities (Report from City Manager David)
   Staff Report
   Attachment I
   Attachment II

5. Introduction of Ordinances to Adopt the 2013 California Fire Code, 2013 California Building Code (CBC), 2013 California Historical Building Code, 2013 California Existing Building Code, 2013 California Green Building Standards Code, 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and to Repeal Chapter 10, Article 22 of the Municipal Code (Green Building Requirements for Private Development). The Project is Exempt from Environmental Review pursuant to Section 15378(b)(1) of the CEQA Guidelines (Report from Development Services Director Rizk and Fire Chief Contreras)
   Staff Report
   Attachment I Fire Resolution
   Attachment II Fire Ordinance
   Attachment III Building Resolution
   Attachment IV Building Ordinance
   Attachment V Mechanical Resolution
   Attachment VI Mechanical Ordinance
   Attachment VII Electrical Resolution
   Attachment VIII Electrical Ordinance
   Attachment IX Plumbing Resolution
   Attachment X Plumbing Ordinance
   Attachment XI Codes Comparison Table

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT MEETING, TUESDAY, DECEMBER 17, 2013

PUBLIC COMMENT RULES: *The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*

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

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

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

MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 19, 2013, 7:00 p.m.

The Council meeting was called to order by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Halliday.

ROLL CALL

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

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson reported that the Council met with legal counsel pursuant to Government Code 54956.9, and unanimously approved the settlement of Alameda County Superior Court Case No. HG12636333, Meserve v. City of Hayward. Mr. Lawson added that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; met with legal counsel pursuant to Government Code 54956.9 regarding Rojas v. City of Hayward, Alameda County Superior Court Case No. RG12632415 and Oliveira v. City of Hayward, U.S.D.C., C-13-1664 MEJ; and met with legal counsel pursuant to Government Code 54956.9 regarding two anticipated cases. As to the three items, there was no reportable action.

PUBLIC COMMENTS

Ms. Wynn Grcich, Hayward resident, shared a presentation entitled, "A Challenge to Fluoridation Promoters in Sonoma County," regarding the dangers of water fluoridation.

Ms. Marcy Timberman, Hayward resident, noted that November 19, 2013, was World Toilet Day, provided information about access to toilets, and expressed the need for more public toilets in Hayward.

Mr. Kim Huggett, Hayward Chamber of Commerce President, announced the Downtown Hayward Light Up The Season event on December 5, 2013, and invited everyone to attend.

Mr. Jim Drake, Hayward resident, spoke about safety issues and noted that his neighborhood needed more police officers to patrol the streets.

CONSENT

Consent Item No. 7 was removed for further discussion.
1. Approval of Minutes of the City Council Meeting on November 5, 2013
It was moved by Council Member Zermeño, seconded by Council Member Jones, and carried unanimously, to approve the minutes of the City Council Meeting on November 5, 2013.

2. Adoption of an Ordinance Adding Article 15 to Chapter 4 of the Hayward Municipal Code Relating to Social Nuisances

> Staff report submitted by City Clerk Lens, dated November 19, 2013, was filed.

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

> Ordinance 13-11, "Ordinance of the City of Hayward, California adding Article 15 to Chapter 4 of the Hayward Municipal Code Relating to Social Nuisances"

3. Authorization for the City Manager to Execute an Amendment to the Memorandum of Understanding between the City of Hayward and Alameda County Transportation Commission (ACTC) for the Central County Same Day Transportation (Paratransit Taxi) Program

> Staff report submitted by Community Services Manager Jaeger, dated November 19, 2013, was filed.

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

> Resolution 13-170, "Resolution Authorizing the City Manager to Execute an Amendment to the Memorandum of Understanding Between the City of Hayward and Alameda County Transportation Commission for the Central County Same Day Transportation Program"

4. Park In-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Sorensdale Kitchen Renovation Project

> Staff report submitted by Landscape Architect Koo, dated November 19, 2013, was filed.

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

> Resolution 13-171, "Resolution Approving Request of Hayward Area Recreation and Park District for Appropriation of Park Dedication In-Lieu Fees for the Construction of Improvements Complying with Americans with Disabilities Act (ADA) at Sorensdale Recreation Center Kitchen"

5. Sewer Collection System Master Plan: Authorization for the City Manager to Execute an Amendment to the Existing Professional Services Agreement with RMC Water and Environment

> Staff report submitted by Senior Utilities Engineer Louie, dated November 19, 2013, was filed.

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

> Resolution 13-172, "Resolution Authorizing the City Manager to Execute an Amendment to the Existing Professional Services Agreement with RMC Water and Environment, and Appropriating $85,000 in the Sewer Improvement Fund for Additional Sewer Flow Monitoring and Recalibration of the Collection System Hydraulic Model for the Sewer Collection System Master Plan, Project No. 07522"

6. Authorization for the City Manager to Execute a Professional Services Agreement for Design and Construction Administration Services to Convert an Existing Gravity Thickener to a New Primary Clarifier at Water Pollution Control Facility

> Staff report submitted by Associate Civil Engineer Lam, dated November 19, 2013, was filed.

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

> Resolution 13-173, "Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Brown and Caldwell for Design and Engineering Services during Construction to Convert a Gravity Thickener to a New Primary Clarifier at Water Pollution Control Facility (WPCF), Project No. 7515"

7. Acceptance of the 2013 COPS Hiring Grant Award

> Staff report submitted by Administrative Analyst III Davis, dated November 19, 2013, was filed.

Council Member Salinas praised the efforts of the Police Department in acquiring the 2013 COPS Hiring Grant and for partnering with the Hayward Unified School District.

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

> Resolution 13-174, "Resolution Authorizing the City Manager to Accept the 2013 COPS Hiring Grant Award, Authorizing the City Manager to Execute a Memorandum of Understanding with the Hayward Unified School District for Sharing Costs Related to the Grant and Authorizing Expenditure of City Funds in the Amount of $581,357.49 over the Four-Year Grant Term Toward the Grant Match"

PUBLIC HEARING

8. Request for adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program associated with a Text Amendment Application (No. PL-2013-0097 TA) to add "Health Club" and "Kennel Ancillary to Pet Store" as primary uses and "Kennel (Pet Boarding and Day Care Only)" as an administrative use in the Central Business Zoning District (Hayward Municipal Code Section 10-1.1300); and approval of Site Plan Review for a 44,983 square-foot health club at 24518 Hesperian Boulevard (Southland Mall property). Sean Wood for Rouse Properties Inc. (Applicant/Owner)

> Staff report submitted by Associate Planner Camire, dated November 19, 2013, was filed.

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

Discussion ensued between Council and City staff. Council members offered the following suggestions related to the Southland Mall property: attract a full-service grocery store; preserve the mall's historical significance; explore a wall design alternative for the east elevation; and consider opportunities to improve lighting in the perimeter and parking areas surrounding the property.

Mayor Sweeney opened the public hearing at 7:40 p.m.

Mr. Sean Wood, Rouse Properties Inc. representative, responded to questions posed by Council.

Mr. Kim Huggett, Hayward Chamber of Commerce President, noted the Chamber supported the text amendment application and the site plan review as provided in his letter and urged the Council's support of the proposal.

Mr. Edward Bogue, Hayward resident and President of the Southgate Area Homeowners' Association, noted that the Association was in favor of a full-service grocery store, but also supported the proposed health club because it could be a catalyst and help reactivate the site. Mr. Bogue added that the Association requested that the driveway between the health club and Southland Drive be an entrance only because of its narrow space.

Mayor Sweeney closed the public hearing at 8:00 p.m.

Council Member Zermeño offered a motion to approve the staff recommendation.

Council Member Halliday seconded the motion and acknowledged the input from the Southgate Area Homeowners' Association and the Hayward Chamber of Commerce. Ms. Halliday noted the need for a full-service grocery store at the mall and cosmetic improvements to the main part of the mall, and also suggested improving other street frontages to create a modern outdoor shopping center.

Council Member Salinas disclosed he had spoken with Rouse Properties representatives and he was confident that they would improve the Southland Mall property and make it more viable.

Council Member Jones was pleased that the proposed site was remaining a commercial site.

Council Member Peixoto supported the motion and reiterated his support for a full-service grocery store and noted this was a top priority for the neighborhood.

Council Member Mendall concurred with the input provided by Mr. Edward Bogue and was pleased to support the motion and looked forward to the proposed improvements.

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

> Resolution 13-175, "Resolution Adopting Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Approving Text Amendment No. PL-2013-0097 and Site Plan Review No. PL-2013-0098 Regarding Health Club and Other New Uses at Southland Mall"
>
> Introduction of Ordinance 13-_, "An Ordinance Amending Hayward Municipal Code Sections 10-1.1315(a) and 10-1.1320(a) to Allow Health Clubs and Kennels as Permitted Uses in the Central Business (CB) Zoning District"

LEGISLATIVE BUSINESS

9. Adoption of an Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets

> Staff report submitted by City Clerk Lens, dated November 19, 2013, was filed.

Development Services Director Rizk summarized the ordinance's intent.

There being no public comments Mayor Sweeney opened and closed the public hearing at 8:07 p.m.

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

> Ordinance 13-12, "Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets"
>
> AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall MAYOR Sweeney
> NOES: Council Members Zermeño
> ABSENT: None
> ABSTAINED: None

10. Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City's Alcoholic Beverage Outlets Ordinance

> Staff report submitted by City Clerk Lens, dated November 19, 2013, was filed.

Development Services Director Rizk summarized the ordinance's intent.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:09 p.m.

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

> Ordinance 13-13, "Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, To Conform to the City's Alcoholic Beverage Outlets Ordinance"
>
> AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall MAYOR Sweeney
> NOES: Council Member Zermeño
> ABSENT: None
> ABSTAINED: None

11. Adoption of an 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

> Staff report submitted by City Clerk Lens, dated November 19, 2013, was filed.

Development Services Director Rizk provided a brief summary of the ordinance's intent.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:10 p.m.

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

> Ordinance 13-14, "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"
>
> AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall
> MAYOR Sweeney
> NOES: Council Member Zermeño
> ABSENT: None
> ABSTAINED: None

12. Adoption of an Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances

> Staff report submitted by City Clerk Lens, dated November 19, 2013, was filed.

Development Services Director Rizk summarized the ordinance's intent.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:11 p.m.

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

> Ordinance 13-15, "Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances"
>
> AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall
> MAYOR Sweeney
> NOES: Council Member Zermeño
> ABSENT: None
> ABSTAINED: None

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced and invited all to the Keep Hayward Clean and Green Task Force Litter Clean-Up & Graffiti Removal event at the Whitman-Mocine neighborhood on November 23, 2013.

Council Member Jones commended the Hayward Unified School District and Superintendent Dobbs for participating in the "Take a Veteran to School Day" initiative organized by Comcast and the History Channel at Anthony Ochoa Middle School on November 18, 2013.

Council Member Halliday noted Eden Housing celebrated its 45th Anniversary on November 14, 2013, at City Hall. Ms. Halliday also mentioned attending the Hayward Task Force to End Hunger and Homelessness on November 16, 2013, at the Southgate Community Center.

Mayor Sweeney noted the next meeting would be on December 3, 2013, and wished everyone a happy Thanksgiving.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 8:14 p.m.

APPROVED:
Michael Sweeney
Mayor, City of Hayward

ATTEST:
Miriam Lens
City Clerk, City of Hayward

CITY OF
HAYWARD
HEART OF THE BAY

DATE: December 10, 2013

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Introduction of Ordinance Amending the Hayward Municipal Code by Adding Article 16 to Chapter 4 Regarding Simulated Gambling Devices and Proposed Revisions to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500); the Project is Exempt from Environmental Impact Analysis, per the California Environmental Quality Act; Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I), making required findings and determining the proposed amendments are exempt from environmental impact analysis per California Environmental Quality Act (CEQA) Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment); and introduces the attached two ordinances (Attachments II and III), adding Article 16 to Chapter 4 related to simulated gambling devices and amending Hayward Municipal Code Section 10-1.3500 (Definitions), related to internet cafes.

SUMMARY

Staff recommends revisions to the City's regulations to address businesses that provide internet access to customers, and to distinguish between computer gaming that does not include cash prizes from the use of simulated gambling devices that include cash prizes. Businesses that provide simulated gambling devices attract undesirable activities that have significant negative impacts on the surrounding community.

BACKGROUND

On February 19, 2013, the City Council enacted Ordinance No. 13-03 ("Ordinance") as an interim urgency ordinance pursuant to California Government Code §65858. The express purpose of the ordinance was to establish a temporary moratorium on the development, establishment, and operation of Computer Gaming and Internet Access Businesses in the City of Hayward. A Computer Gaming and Internet Access Business was defined in the moratorium ordinance as an "establishment that provides one or more computers or other electronic devices for access to the World Wide Web, Internet, e-mail, video games, or computer software programs that operate alone

or are networked (via LAN, WAN or otherwise) or that function as a client/server program, and which seeks compensation or reimbursement in any form from users."

The ordinance imposed a 45-day moratorium on the issuance of all City approvals, including business licenses, use permits, variances, sign permits, building permits, and zoning text amendments for Computer Gaming and Internet Access Businesses. The ordinance also declared the establishment, maintenance, or operation of a Computer Gaming and Internet Access Business within the City limits of Hayward as a public nuisance. The moratorium was subsequently extended through the enactment of Ordinance No. 13-05 on April 2, 2013, after a duly noticed public hearing, and was to remain in force until no later than February 18, 2014.

The moratorium was enacted in response to the establishment of three businesses that ostensibly described themselves as "business centers" that rented computer time to patrons and provided other ancillary business-related services, such as facsimile and copy services. The three businesses were: Worldnet Business Center, LLC located at 22620 Vermont St; Net Connection Hayward, LLC located at 778 B Street; and I Biz, LLC located at 22466 Maple Court. These businesses obtained business licenses through the Finance Department, the applications for which did not indicate simulated internet gambling, and commenced operations in late 2012 and early 2013. However, based on complaints from citizens and upon investigation by Hayward Police officers, it was revealed that the businesses were engaged in activity that appeared to be online computer-based gambling.

Computer Gaming and Internet Access Businesses promote the sale of computer time by offering entries into a sweepstakes with every purchase. Based on the amount of computer time purchased, customers are provided a certain number of credits to play games on the computers. These games hold out the possibility of winning cash prizes. Frequently, the games have the appearance of Vegas-style games of chance, such as slot machines, thus creating a casino-like atmosphere. The operators of these establishments assert that although the games appear to be gambling games, which are highly restricted and regulated under state law, they are actually "sweepstakes" that are provided as a means of promoting the businesses of renting computer time in compliance with state law requirements relating to the operation of sweepstakes. That said, it appears that the resemblance of the games to casino-style games, and the possibility of winning cash prizes by playing them, is a driving factor for the customers that patronize these Computer Gaming and Internet Access Businesses.

The City Attorney's Office served cease and desist letters on three businesses in February 2013 and April 2013, requesting that the businesses cease the sweepstakes component of the businesses due to the fact that the use was not listed as a permitted use under the Zoning Ordinance, was of questionable legality under state gambling laws, and was in violation of the moratorium. Worldnet, LLC, closed its business in February 2013 after being evicted by the property owner for reasons unrelated to the City's actions. Net Connection Hayward, LLC and I Biz, LLC responded by initiating litigation in United States District Court challenging the validity of the moratorium and seeking a preliminary injunction against its enforcement, (*Net Connection Hayward, LLC v. City of Hayward* U.S. District Court Case No. 13-1212; *IBiz, LLC v. City of Hayward*, U.S. District Court Case No. 13-1537). During the course of the litigation, an additional business called Chances Are, LLC, which obtained a business license in January 2013, commenced operations at 22632 Main

Street. The City instituted a civil action against Chances Are, LLC in Alameda County Superior Court (*City of Hayward v. Chances Are, LLC et. al*. Alameda County Superior Court Case No. RG 13681065) and Chances Are, LLC responded with a suit in federal court, *Chances Are, LLC v. City of Hayward*, U.S. District Court Case No. 13-2383.

The U.S. District Judge in the *Net Connection* and *I Biz* matters concluded that the text of the moratorium was too broad and violated the First Amendment. The Court further concluded that the City would be better served by enacting a more narrowly focused ordinance directed specifically toward the sweepstakes activity in order to comply with the First Amendment.

The attached ordinance (Attachment II) and recommended revisions to the City's codes respond to the Court's direction.

November 7, 2013 Planning Commission hearing – The Planning Commission held a noticed public hearing on November 7, and recommended 6:0:1(one absent) that the City Council adopts the attached two ordinances. As the attached meeting minutes (Attachment IV) reflect, minor word edits were recommended by the Commission regarding the Simulated Gambling Device ordinance, which have been incorporated into the attached ordinance.

Every speaker at the November 7 hearing supported the proposed text amendments, including the owner of a business on Main Street next to one of three simulated gambling businesses. She expressed concerns with the customers of that business, and encouraged adoption of the proposed regulations. Hayward Chamber of Commerce President Kim Huggett indicated he believed the Chamber was supportive of the regulations. A Hayward resident also testified at the hearing in support of the regulations, and indicated the American Gaming Association opposed such establishments. Attachment V is a summary from the AGA regarding its position on these types of simulated gambling establishments.

Also, Hayward Police Department (HPD) Detective Aurel Agustin testified at the hearing that the HPD had received complaints associated with some of the customers of simulated gambling businesses in Hayward that included customers smoking in the parking lot, being a public nuisance, using the access area behind the downtown Lucky's store as a parking lot, and persons loitering late at night.

DISCUSSION

Staff has received numerous complaints from members of the public regarding the various internet gaming businesses. City Council members have a direct view from their City Hall offices of one of the internet gaming businesses, *Net Connection*, on B Street and have observed several men playing dice in front of the store. A local business owner has complained about loitering in front of the owner's business, use of the business' parking area by customers of *Net Connection*, and late night noise that disturbed residential tenants above the business. Staff has also received complaints from a local business owner on Foothill Boulevard regarding the *IBiz* business, regarding late-night noise, smoking, and gambling in the Maple Street-side parking lot. That owner also complained that people walked through the store from Foothill Boulevard to the Maple-side entrance to *IBiz* (which

does not have a Foothill entrance). Additionally, staff received anonymous tips that the *Chances Are* business on Main Street was robbed of cash.

Simulated Gambling Device Ordinance (New Chapter 4, Article 16 of the Hayward Municipal Code) - The proposed Simulated Gambling Device Ordinance would add Article 16 to Chapter 4 of the Hayward Municipal Code. The ordinance would make it unlawful "for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices." The term "simulated gambling device" is defined to mean "any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee." The ordinance further defines specific terms used to describe a simulated gambling device. The definitions are cumulative and every condition provided must be met for something to qualify as a simulated gambling device under the ordinance.

The first part of the definition requires that a person "connect" an "object" to a "device." A "device" is "any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games" and includes "any associated equipment necessary to conduct the operation of the device." An "object" is "a coin, bill, ticket, token, card or similar object, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration." The "connection" that must be made between the two can be an "insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting."

Once the connection is made, the device must make "a computer simulation" of a "game" available to "play or operate." A 'computer simulation' includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation. The definition of "game" under the ordinance includes "slot machines, poker, bingo, craps, keno, [or] any other type of game ordinarily played in a casino," and "a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, [or] sweepstakes" and "any other game associated with gambling or which could be associated with gambling." Playing or operating the computer simulation of a game "includes the use of skill, the application of the element of chance, or both." Finally, a "payoff" is defined as "cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually."

To illustrate, it is helpful to examine how the activities of the existing businesses in Hayward (i.e., Net Connection, LLC; I Biz, LLC; and Chances Are, LLC) fit within the context of the ordinance and would be prohibited by it. The businesses' computers (devices) are, upon swiping (connecting) an account card (object), available to play (utilizing skill and/or chance) a computer simulation of casino games (for example, a slot machine), which may entitle the player to a payoff (for example, cash) for winning the sweepstakes.

The model for this ordinance is Section 222.7 through 222.15 of the Seminole County, Florida Code of Ordinances. Seminole County enacted its ordinance in response to the proliferation within the County of businesses similar to those currently found in Hayward. Staff chose to model Hayward's

ordinance on the Seminole County ordinance because it is narrower in scope than the emergency moratorium adopted by the Hayward City Council and which is in line with the Federal judge's direction in the Net Connection and I Biz lawsuits. Additionally, the ordinance has withstood similar Constitutional challenges to those which were successful against Hayward's emergency moratorium (see *Allied Veterans of the World, Inc. v. Seminole County, Florida* U.S. District Court Case No. 6:11-cv-155-Orl-28DAB).

Revisions to Zoning Ordinance Definitions (see Attachment II) – Because internet usage is not specifically listed as being allowed in the Zoning Ordinance, and due to concerns with internet gaming/stimulated internet gambling, staff is also recommending that amendments to the Zoning Ordinance definitions section (Section 10-1.3500) be made to clarify and address such uses, as follows:

- "Commercial Amusement Facility" definition is amended to include or allow internet access usage, but specifically prohibits a Commercial Amusement Facility from having simulated gambling devices. A Commercial Amusement Facility is allowed with an administrative use permit in the General Commercial (CG), Central Business (CB, applicable to Southland Mall), and the Central City-Commercial (CC-C, applicable to downtown) zones and with a conditional use permit in the Central City-Plaza (CC-P, along front portions of major streets in downtown core) and Flood Plain zoning districts.
- "Copying or Reproduction Service" and "Mailing or Facsimile Service" definitions are amended to allow internet usage as an ancillary use, but specifically prohibit businesses from operating simulated gambling devices. Such uses are allowed in all commercial zones, the Industrial (I), Airport Terminal–Commercial (AT-C), and Airport Terminal–Industrial Park (AT-IP) zones; and with an administrative use permit in the Central City-Residential (CC-R) zone.
- "Office" definition is amended to prohibit the operation of simulated gambling devices.
- "Recreational Facility" is amended to specifically prohibit the operation of simulated gambling devices. Such facilities are allowed in the Open Space (OS) zone as a primary use; with administrative use permits in all residential and commercial zones, except the Limited Commercial (LC), Office Commercial (CO), and Regional Commercial (CR) zones; and with conditional use permits in the Agricultural (A), Central City-Plaza (CC-P), and Flood Plain (FP) zones.

Staff is not recommending that the zones where such uses are allowed be changed, but that the definition for these uses be changed to specifically address internet usage.

Text Amendment Findings – The City Council must make the following four findings in order for the proposed text amendments to be approved. Staff's responses to the findings are shown below and included in Attachment III.

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 amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated

gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Hayward Police Department reports that there have been approximately fifty calls for service since the beginning of 2013 to the three existing businesses in the City that engage in simulated gambling. The Alameda County Sheriff's Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators.

The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery, and possession of stolen property.

The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend's cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes. Thereby, reducing the threat to the public's health, safety, and welfare posed by these establishments.

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

The proposed text amendment is in conformance with City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance those assets and characteristics that make Hayward 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, in which the three existing simulated gambling establishments are located, 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 amendment will help eliminate undesirable uses that have a negative impact on the City and will thus help attract new desirable uses by enhancing safety and eliminating nuisances in the business environment.

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. New businesses are required to have adequate streets and facilities before operating, as currently mandated.

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 proposed regulations and text amendment would provide clarification regarding which types of electronic games are permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts on surrounding properties and neighborhoods.

Environmental Impact Analysis – As reflected in the attached resolution, the proposed text amendments are exempt from environmental impact analysis under the California Environmental Quality Act; CEQA Regulation 15321 (exemption for governmental regulatory activities) and CEQA Regulation 15061(b)(3). Section 15061(b)(3) from the CEQA Guidelines states "[t]he activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Staff concludes there is no possibility the text changes would cause a significant environmental impact.

PUBLIC CONTACT

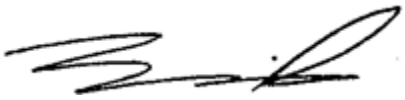
Notice of this hearing was published in *The Daily Review* newspaper on November 30, 2013. Also, notice of this hearing was sent on November 23 to the property owners and operators of the three existing simulated internet gambling businesses in Hayward and surrounding property owners and residents, as well as to the Hayward Chamber of Commerce. The Chamber President, Kim Huggett, submitted a letter in support of the proposed regulations (Attachment VI).

NEXT STEPS

Should Council adopt the attached resolution and introduce the attached two ordinances, staff will present the two ordinances for adoption at the next Council meeting on December 17. The ordinances would be effective upon adoption.

Prepared and recommended by: David Rizk, AICP, Development Services Director
Michael Lawson, City Attorney

Approved by:



_____
Fran David, City Manager

Attachments

Attachment I:	Draft Resolution
Attachment II:	Draft Ordinance Regarding Proposed New Regulations Regarding Simulated Gaming Devices (new Article 16 to Chapter 4 of the Hayward Municipal Code)
Attachment III:	Draft Ordinance Regarding Proposed Revisions to the Zoning Ordinance Definitions (showing proposed revisions) (Hayward Municipal Code Section 10-1.3500)
Attachment IV:	November 7, 2013 Planning Commission Meeting Minutes (partial)
Attachment V:	American Gambling Association Overview of Internet Sweepstakes Cafes
Attachment VI:	Letter from Hayward Chamber of Commerce President Kim Huggett

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Councilmember _____

RESOLUTION DETERMINING PROJECT IS EXEMPT FROM ENVIRONMENTAL IMPACT ANALYSIS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING THE ENACTMENT OF CHAPTER 4, ARTICLE 16 OF THE HAYWARD MUNICIPAL CODE PROHIBITING SIMULATED GAMBLING DEVICES AND RELATED AMENDMENTS TO THE DEFINITIONS SECTION OF THE HAYWARD ZONING ORDINANCE (SECTION 10-1.3500)

WHEREAS, on February 19, 2013, the City Council enacted Ordinance No. 13-03 as an interim urgency ordinance pursuant to California Government Code § 65858, in response to three internet sweepstakes businesses that had recently opened and in order to establish a temporary moratorium on the development, establishment, and operation of computer gaming and internet access businesses in the City of Hayward and to allow City staff the opportunity to conduct research and analyze the potential negative and positive impacts of such businesses; and

WHEREAS, the moratorium was subsequently extended through the enactment of Ordinance No. 13-05 on April 2, 2013, after a duly noticed public hearing, and is to remain in force until no later than February 18, 2014; and

WHEREAS, at the direction of the City Council, staff has prepared a new set of regulations to be codified as Chapter 4, Article 16 to the Hayward Municipal Code related to simulated gambling devices and corresponding amendments to the City's Definitions Section of the Zoning Ordinance (Section 10-1.3500) related to internet use (the "Project"); and

WHEREAS, internet sweepstakes activity at establishments in Hayward has created undesirable behavior, as evidenced by testimony from surrounding business owners and Hayward Police Department staff; and

WHEREAS, the Planning Commission considered the Project at a duly noticed public hearing held on November 7, 2013, and unanimously recommended, with one Commissioner absent, that the City Council find the Project exempt from CEQA and approve the proposed text amendments (Application No. PL-2013-0388 TA); and

WHEREAS, notice of a public hearing was published in the manner required by law and the hearing was duly held by the City Council on December 10, 2013.

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. The text amendment is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061(b)(3) (projects clearly not impacting the environment).

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 amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by ensuring that businesses that offer simulated gambling are not permitted to operate in the City. The simulated gambling businesses are a drain on scarce public resources and have an adverse impact on the quality of City life. The Alameda County Sheriff's Office had more than seventy calls for service and seventeen arrests through March 2013 related to a single establishment on Hesperian Boulevard in San Lorenzo that is owned by one of the Hayward simulated gambling business operators. The Hayward Police Department has received numerous complaints from local property and business owners regarding late night loitering, parking problems, illegal smoking, excessive noise, and other problems arising from the operation of the simulated gambling businesses. Security checks at the simulated gambling businesses in the City have resulted in arrests for, among other things, outstanding warrants, unlawful possession of concealed weapons, possession of methamphetamine and other controlled substances, theft, battery and possession of stolen property. The simulated gambling establishments are known to have large amounts of currency on the premises, which creates the opportunity for robberies. In one incident, a pregnant employee of a Hayward simulated gambling establishment was stopped at gunpoint while attempting to deliver the weekend's cash proceeds to the business owner. Law enforcement personnel report that these simulated gambling establishments are known to be frequented by persons on parole or probation. The proposed text amendment will allow legitimate video and/or electronic gaming businesses to operate in the City with a use permit, while prohibiting simulated gambling establishments that offer cash prizes and, thereby, reducing the threat to the public's health, safety and welfare posed by these establishments.

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

The proposed text amendment is conformance with city policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is 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, in which the three existing simulated gambling establishments are located, 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 amendment will help eliminate undesirable uses that have a negative impact on the City and, thus, attract new desirable uses.

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. New businesses are required to have adequate streets and facilities before operating, as currently mandated**.**

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 proposed regulations and text amendment would provide clarification regarding which types of electronic games are

permissible and which are not permissible, to help ensure that such establishments are operated in a manner that would not generate impacts to surrounding properties and neighborhoods.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts findings in support of the text amendments (Text Amendment Application No. PL-2013-0388 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

ORDINANCE NO.

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 16 TO CHAPTER 4 OF THE HAYWARD MUNICIPAL CODE REGARDING PROHIBITION OF SIMULATED GAMBLING DEVICES

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

Section 1. Article 16 is added to Chapter 4 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 16

PROHIBITION OF SIMULATED GAMBLING DEVICES

SEC. 4-16.00 FINDINGS AND PURPOSE. The City Council of the City of Hayward finds as follows:

A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs.

B. Pursuant to Article XI, Section 7 of the California Constitution the City of Hayward may make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

C. Pursuant to California Government Code Section 38771 the City Council may declare what activities or conditions may constitute a nuisance.

D. It is a goal of the City Council to establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.

E. In Hayward, businesses describing themselves variously as "business centers" and "internet cafes" have opened within the City. These businesses purport to offer customers access to personal computers, photocopy and facsimile services. In an apparent effort to promote the sale of such services the business offers entries into a sweepstakes, the results of which may be revealed in several ways, including by playing games on the business' computers. Patrons can select from multiple games,

many of which have the appearance of casino-style games of chance, such as slot machines. Winning sweepstakes entries may be redeemed at the business for cash payouts.

F. Businesses that utilize simulated gambling devices, such as those found in "business centers" and "internet cafes" in Hayward present unique challenges for local government. These businesses provide the allure of traditional gambling by offering casino-like computer games and cash prizes without facing the strict regulations imposed by the State on traditional gambling.

G. Many of the negative community impacts that might be expected from a gambling establishment have manifested themselves in relation to "business centers" and "Internet cafes" that provide simulated gambling devices in Hayward. At least one establishment was the target of a robbery and another was the site of multiple arrests by Alameda County Sheriff's deputies and California Department of Corrections and Rehabilitation parole officers.

H. The City Council and City offices have received numerous complaints from community members voicing concern over these businesses that they perceive as "gambling houses" operating within the City.

I. The intent of the City Council in adopting this ordinance is to protect public health, safety and welfare by prohibiting broadly the possession or use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices. Further, the City Council in prohibiting simulated gambling devices in no way intends to approve the use of actual slot machines, other forms of casino gambling or other types of gambling devices that may be regulated pursuant to California law In addition, this prohibition is aimed directly at devices that simulate gambling activity, regardless of whether the devices or the simulations in and of themselves can be said to constitute gambling as that term may be defined elsewhere.

<u>SEC. 4-16.10 DEFINITIONS.</u> For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

(a) "Person" means an individual, association, partnership, joint venture, corporation, or any other type of organization, whether conducted for profit or not for profit, or a director, executive, officer or manager of an association, partnership, joint venture, corporation or other organization.

(b) "Simulated gambling device" means any device that, upon connection with an object, is available to play or operate a computer simulation of any game, where the play or operation of the device may deliver or entitle the person or persons playing or operating the device to a payoff directly or indirectly from the owner or operator of the device or that person's designee. The following rules of construction apply to this definition of "simulated gambling device":

(1) The term "device" means any mechanical or electrical contrivance, computer, terminal, video or other equipment that may or may not be capable of downloading games from a central server system, machine, computer or other device or equipment. The term "device" also includes any associated equipment necessary to conduct the operation of the device.

(2) The term "upon connection with" means insertion, swiping, passing in range, or any other technical means of physically or electromagnetically connecting an object to a device, including by the manual input by any person of characters, numbers, or any combination thereof, or other code for the purpose of accessing or activating a device, or any other mechanism or method by which the object provides access to the device.

(3) The term "object" means a coin, bill, ticket, token, card, characters, numbers, or any combination thereof, other code, or any other tangible or intangible access mechanism or method, obtained directly or indirectly through payment of consideration, or obtained as a bonus or supplement to another transaction involving the payment of consideration.

(4) The terms "play or operate" or "play or operation" includes the use of skill, the application of the element of chance, or both.

(5) The term "computer simulation" includes simulations by means of a computer, computer system, video display, video system or any other form of electronic video presentation.

(6) The term "game" includes slot machines, poker, bingo, craps, keno, any other type of game ordinarily played in a casino, a game involving the display of the results of a raffle, sweepstakes, drawing, contest or other promotion, lotto, and any other game associated with gambling or which could be associated with gambling, but the term "game" does not necessarily imply gambling as that term may be defined elsewhere.

(7) The term "payoff" means cash, monetary or other credit, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually.

(8) The use of the word "gambling" in the term "simulated gambling device" is for convenience of reference only. The term "simulated gambling device" as used in this Article is defined exclusively by this subsection and does not incorporate or imply any other legal definition or requirement applicable to gambling that may be found elsewhere.

(c) "Slot machine" has the same meaning as specified in Section 330b of the California Penal Code.

SEC. 4-16.20 SIMLUATED GAMBLING DEVICES PROHIBITED. It is unlawful for any person to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, possess or use a simulated gambling device constitutes a separate violation of this section.

SEC. 4-16.30 EXEMPTIONS. This Article does not prohibit an individual's personal, recreational, and non-commercial ownership, possession, play, operation or use of a device which could be construed to be a simulated gambling device.

SEC. 4-16.40 CONSTRUCTION WITH STATE LAW. Nothing in this Article is intended to conflict with the provisions of state law concerning gambling, slot machines, gambling devices or lotteries. In the event of a direct and express conflict between this Article and state

law, California law, as applicable, controls.

SEC. 4-16.50 VIOLATIONS.A violation of this Article shall be a misdemeanor subject to a fine of $1000 or imprisonment in County jail for six (6) months, or both a fine and imprisonment. A violation of this Article is also declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances.

SEC. 4-16.60 APPLICATION. The provisions of this Article shall apply retroactively to any person who commenced to manage, supervise, maintain, provide, produce, possess or use one or multiple simulated gambling devices prior to the effective date of this Article and engages in such activity after the effective date of this Article, regardless of whether that person was previously issued a permit or license by the City of Hayward.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the___day of_,_____2013, by Council Member_____ .

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____

City Attorney of the City of Hayward

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS, RELATING TO SIMULATED GAMBLING DEVICES

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-2013-0388 TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to Definitions, is hereby amended to add text (as indicated by underline) to the following definitions, to conform to the City's Simulated Gambling Devices ordinance introduced herewith.

The definition of "Commercial Amusement Facility" is hereby amended to read as follows: "A facility offering entertainment 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, internet access usage, 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 juke boxes) 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. Under no circumstance, as a primary, permitted or accessory use, shall any Commercial Amusement Facility be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Copying or Reproduction Service" is hereby amended to read as follows: "An establishment which provides printing services to customers. Typically includes blueprint machines, reproduction machines, paper goods and binding services (spiral binding, glue binding, staples, etc.), and may include as an ancillary use, access to the internet. Also see 'NEWSPAPER PRINTING FACILITY.' Under no circumstance, as a primary, permitted or accessory use, shall any Copy or Reproduction Service be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.) "

The definition of "Mailing or Facsimile Service" is hereby amended to read as follows: "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, as well as internet access as an ancillary use. Under no circumstance, as a primary, permitted or accessory use, shall any Mailing or Facsimile Service be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Office" is hereby amended to read as follows: "An establishment which provides administrative services such as business or professional services (i.e., law firm, stock broker, insurance or real estate office) or medical or travel agent services, to the public for a fee. Offices uses typically include copying and facsimile machines. Under no circumstance, as a primary, permitted or accessory use, shall any Office be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

The definition of "Recreational Facility" is hereby amended to read as follows: "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. Under no circumstance, as a primary, permitted or accessory use, shall any Recreational Facility be allowed to operate Simulated Gambling Devices as defined in the City's Municipal Code. (See HMC Chapter 4, Article 16.)"

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

requires that they not be treated differently than other residential dwellings of the same type in the same zone.

Senior Planner Buizer confirmed for Commissioner Lavelle that no comments were received from the public regarding the Text Amendment. In response to Commissioner Lavelle's question as to when "Reasonable Accommodation for Persons with Physical Disabilities" applies, she stated that reasonable accommodation provide someone with disability with an administrative process that allow them to be given access to housing that maybe otherwise a violation of the zoning regulations for a particular zone. She added that the reasonable accommodation is granted only to the household that needs accommodation and does not apply to successors of interest to the site.

Commissioner Lavelle noted a correction to the typographical error on Attachment IV, Letter F - Appeals, the word "fee" should be added after the word "prescribed" in the last sentence.

Commissioner Márquez asked if the City had funding to assist homeowners who needed modifications to their homes. Senior Planner Buizer responded that there were some programs for minor home repairs but she was not sure of the current status. Development Services Rizk added that the funds have been eliminated or significantly reduced.

Chair Faria opened and closed the Public Hearing at 8:21 p.m.

Commissioner Trivedi made a motion to adopt the Negative Declaration and approve the proposed text amendment, subject to the findings for approval, with an amendment to Chapter 10, Section 10-1.145 (F) (3) by adding the word "fee" after the word "prescribed" in the last sentence.

Commissioner Lavelle seconded the motion.

AYES:	Commissioners Loché, Trivedi, McDermott, Lamnin, Márquez, Lavelle Chair Faria
NOES:	None
ABSENT:	None
ABSTAINED:	None

Commissioner Márquez left the Council Chambers at 8:24 p.m.

3. Related to internet gaming establishments, proposed revisions to the definitions section of the Hayward Zoning Ordinance (Section 10-1.3500) and proposed amendment to the Hayward Municipal Code adding Article 16 to Chapter 4 regarding simulated gambling devices; the project is exempt from environmental impact analysis, per the California Environmental Quality Act (CEQA Guidelines Sections 15321 (exemption for governmental regulatory activities) and 15061 (b) (3) (projects clearly not impacting the environment)); Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

Development Services Director Rizk provided a synopsis of the staff report. Mr. Rizk referenced letters from representatives of two of the establishments and the letters have been distributed to

the Planning Commission. He noted that Assistant City Attorney Vigilia, Assistant City Attorney Conneely and Hayward Police Department Detective Agustin were available for questions.

Commissioner Loché asked about any written complaints from neighboring businesses. Development Services Director Rizk noted staff had received complaints via email. Detective Agustin added that staff had received two online complaints through the ACCESS Hayward; one for Net Connection Hayward, LLC located at 778 B Street and another for I Biz, LLC located at 22466 Maple Court. Detective Agustin stated that the complaints were: customers smoking in the parking lot; being a public nuisance; using the access area behind Lucky's as a parking lot and persons loitering late at night. He added that if citizen complaints came in without addresses, it was difficult to identify the problem establishments. Mr. Rizk noted that based on his personal observations, the majority of customers were sitting at computers playing the games. Mr. Rizk also noted that because the three establishments did not fully disclose their business use on their business license application, staff has been diligent in asking business license applicants what the nature of their business is.

In response to Commissioner McDermott's inquiry as to the age restriction, Assistant City Attorney Vigilia noted there were not age restrictions for patrons and it was at the discretion of the business owner to restrict the age to persons 18 years and older. Mr. Vigilia further stated that he did not agree with the Net Connection's attorney's position that the proposed retroactive application of the ordinance was illegal, and that if the City Council adopted the proposed amendments, the Council would be exercising its police power to declare it a public nuisance and it would be appropriate for the ordinance to be applied to the existing businesses. Mr. Vigilia noted it was important to recognize that the establishments characterize the use of the games as a promotional tool and compared it to McDonald's, Coke and/or Pepsi's, sweepstakes games and added the games were supposed to be secondary to the internet time and copy and fax services.

Commissioner Lavelle asked if the new regulations affected card clubs and non-profits such as churches that offer bingo games. Development Services Director Rizk responded that card clubs have separate City regulations, which were also State-regulated. Mr. Rizk stated that the prohibition was for establishments that offered the "simulated gambling devices" and there was separate language in the ordinance that addressed internet usage as an allowed use. Ms. Lavelle was glad there was language governing the other businesses that followed regulations and would not be impacted by the proposed language. Ms. Lavelle noted the Seminole County, Florida regulations could be a big help to other agencies that were having similar issues. Mr. Vigilia responded to Ms. Lavelle that the proposed language in sections 4-16.20 and 14-16.30 addressed the issue that private parties were not prohibited from engaging in computer activities in their own home. Ms. Lavelle offered amending Chapter 4, Article 16 Section 14-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward" and amending Chapter 4, Article 16, Section 14-16.00 (G) by changing the word "would" with "might" as not all gambling was negative.

In response to Commissioner Lamnin's question about persons bringing in their own computers to the establishments and the applications for conditional use permits, Assistant City Attorney Vigilia noted the language in the ordinance addressed the trends that currently existed and that staff was responding to the direction given by City Council that "simulated gambling devices" were undesirable uses. Development Services Director Rizk noted for Ms. Lamnin that staff conducted extensive noticing of tonight's meeting and that the information provided on the business licenses by the establishments in question were not a true reflection of the business being conducted. Ms. Lamnin noted she had visited two establishments: *Chances Are* on Main Street and *Satin Rose* on B Street. Mr. Rizk said the conditional use permit for Satin Rose was still valid but the internet portion would not be allowed because of the current moratorium.

Commissioner Trivedi thanked staff for explaining what was being transacted at the establishments that were conducting the "simulated gambling devices" activity. Staff noted payouts could be as high as $3,000. Detective Agustin spoke about the 50 calls for service with complaints ranging from smoking, parking, noise complaints, and fighting that started in the establishment and ended in the street. Mr. Trivedi appreciated the staff report and the well-written ordinance and agreed with Commissioner Lavelle's text changes.

Commissioner Lamnin provided the following information: the establishments she visited charged $5 to $6 per hour of computer time and the customers were required to initial a waiver stating that they are not gambling, but are playing a promotional game. Ms. Lamnin asked if the waiver would impact the ordinance. Assistant City Attorney Vigilia responded the ordinance did not address gambling and the waiver would not affect the applicability of the proposed ordinance.

Chair Faria opened the Public Hearing at 9:04 p.m.

Ms. Beneba Thomas, owner of Golden Tea Garden on Main Street, noted the business *Chances Are* was next door to her establishment, that this was a gambling establishment, and she observed that all of the computer screens looked like slot machines. She added that *Chances Are* provides food and drinks for their patrons to keep them buying more computer time, similar to a casino. She added that this type of business attracted a negative element and requested the Planning Commission to shut them down.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, pointed out that the three establishments were not members of the Chamber of Commerce and that there have been multiple complaints by business members about smoking, loitering, parking, and noise. Mr. Huggett said he believed the Chamber would be supportive of the proposed amendments to the Municipal Code. Mr. Huggett also noted the Chamber insists on integrity regarding disclosure of information on business license applications and that the referenced three establishments had not made any contributions to the community.

Mr. Scott Moore, Hayward resident, noted that he nor his neighbors received any notification about this hearing and that he supported the proposed amendments to the Municipal Code. He said that *Net Connection* was a public nuisance and cautioned staff to address the sweepstakes as the sweepstakes payout was determined at the time of computer time purchase. Mr. Moore also

shared that the American Gaming Association does not support these types of businesses and that they have literature that explains what can be done.

Chair Faria closed the Public Hearing at 9:12 p.m.

Commissioner Lavelle made a motion per staff recommendation with two amendments: change Chapter 4 Article 16 Section 4-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward", and change Chapter 4 Article 16 Section 4-16.00 (G) by changing the word "would" with "might."

Commissioner Trivedi seconded the motion.

Commissioner Lavelle noted that no one attended or spoke in support of the establishments and that the City Council was correct in responding to the multitude of complaints. Ms. Lavelle expressed her concern that Ms. Thomas was having such a bad experience and how it was negatively impacting Ms. Thomas. Ms. Lavelle hoped that the City Council will listen to the remarks of this meeting and enact the ordinance.

Assistant City Attorney Vigilia said staff would research language to address the sweepstakes payout aspect as noted by Mr. Moore. Commissioner Trivedi was in favor of legitimate internet cafes and it was a problem when a business was not truthful on their business license applications. Mr. Trivedi supported the motion and recommended that the City Council support the proposed amendments.

Commissioner Lamnin asked about the pending litigation with *Chances Are* in the hopes to provide Ms. Thomas relief from the negative activity she has been suffering. Ms. Lamnin noted that when it was brought to the attention of *I Biz* about the "simulated gambling devices", they made a concerted effort to improve. Ms. Lamnin reluctantly supported the motion.

Commissioner McDermott noted the owners of local businesses that she frequented have limited English and would not feel comfortable coming before the Commission to speak.

Commission Loché expressed concern that several speakers did not receive a notice of the hearing. Mr. Loché thanked the speakers who stayed through the entire meeting. He said it was important to support the businesses that abide by the regulations and they were suffering because of the businesses that misrepresented themselves. Mr. Loché supported the motion.

Chair Faria noted she had spoken to several businesses that had concerns about the establishments that misrepresented the type of business that were conducted. Ms. Faria supported the motion.

The motion to recommend to City Council to approve the ordinances adding Article 16 to Chapter 4 related to simulated gambling devices and amending Hayward Municipal Code Section 10-1.3500

related to internet cafes was approved with two amendments: change Chapter 4 Article 16 Section 4-16.00 (E) by removing "Within the past years" and replacing it with "In Hayward", and change Chapter 4 Article 16 Section 4-16.00 (G) by changing the word "would" with "might."

AYES:	Commissioners Loché, Trivedi, McDermott, Lamnin, Lavelle Chair Faria
NOES:	None
ABSENT:	Márquez
ABSTAINED:	None

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Development Services Director Rizk announced that one upcoming agenda item would be a work session on tobacco regulations and noted that staff had held one community meeting on this item. Mr. Rizk said that at the November 12, 2013, Council meeting, there would be an item concerning alcohol regulations related to fees.

5. Commissioners' Announcements, Referrals

Commissioner Lamnin reported that a community member made a comment about negative activity by an auto business. The auto business now works on one car at a time and the negative impacts have been resolved. Ms. Lamnin shared that the City Council had started the process of reviewing Council Priorities.

Commissioner Lavelle reminded everyone that Monday is Veteran's Day and hoped that everyone will take a moment to thank and honor those who served the country.

APPROVAL OF MINUTES

6. There were none.

ADJOURNMENT

Chair Faria adjourned the meeting at 9: 25 p.m.

APPROVED:

_____
Dianne McDermott, Secretary
Planning Commission

ATTEST:

_____
Yolanda Cruz, Deputy City Clerk
Office of the City Clerk

AMERICAN GAMING ASSOCIATION

Internet Sweepstakes Cafes

Background

In recent years, thousands of "Internet sweepstakes cafes" have sprung up in storefronts, gas stations and convenience stores in more than a dozen states. Carefully designed to take advantage of state sweepstakes laws and to avoid state antigambling laws and gambling licensing restrictions, Internet sweepstakes cafes are estimated to earn more than $10 billion a year with games that closely mimic the experience of traditional slot and video poker machines. The cafes advertise and sell a product — usually Internet time or long-distance telephone minutes — that the gambler does not actually want. Along with that unwanted product, the customer receives a supposed bonus of "entries" in the Internet sweepstakes. With those entries, the customer can participate in Internet-based games at the cafe's specially-programmed personal computers. Based on a random allocation of winning and losing entries, the customer may or may not win cash prizes through those games. According to the cafes that are reaping unregulated profits, this elaborate masquerade is not gambling, but a sweepstakes. According to every appellate court that has decided a case involving similar games, it is incontestably gambling.

Nevertheless, through aggressive litigation tactics and high-powered lobbying at state legislatures, the cafes have managed to forestall effective law enforcement against them in many jurisdictions. The result is that many neighborhoods now house gambling venues that are free of the legal restraints that Americans have traditionally demanded for gambling businesses.

For more information on Internet Sweepstakes Cafes, download the AGA white paper on the subject.

Status (as of 10/24/13)

California

In December, the California Bureau of Gaming Control issued an Advisory that state law prohibits "so-called 'Internet café's' that sell Internet time or phone cards in conjunction with a 'promotional sweepstakes.'" In response to the state Advisory, several local governments adopted ordinances or took enforcement measures to shut down local cafes. Sacramento police raided and closed two cafes and charged the business manager at each location with operating an illegal gambling business. Even before the state Advisory issued, Kern County (Bakersfield) prosecutors sued to stop sweepstakes

operators in nine location, and a Kern County judge granted an injunction against them. *State v. Collom*, No. S-1500-CV-276960.

Florida

In a headline-grabbing sweep in March, federal and Florida state agents arrested fifty-seven people associated with more than forty Internet sweepstakes cafes in that state operated by the Allied Veterans of the World & Affiliates, which purports to be a charity. The sweep, called Operation Reveal the Deal, also netted the principal of an Oklahoma business that provides software to the operation. Those arrested included three officials of Allied Veterans, the president and vice president of the Jacksonville Fraternal Order of Police, and a former president of the Jacksonville Bar Association who was described by authorities as the mastermind of a scheme to milk profits from the supposedly charitable gambling sites. Of roughly $300 million taken in by Allied Veterans, according to public accounts, two percent went to charity.

Those arrested were charged with multiple felony counts of illegal gambling, operating illegal slot machines, money laundering, fraud and racketeering. By court order, 292 bank accounts holding more than $64 million were frozen. By mid-October 2013, six individuals had accepted plea deals in the case and one who went to trial – a lawyer who helped design the cafés' business structure – was convicted by a jury on more than 100 counts of illegal gambling and racketeering. The sweep inflicted a political casualty, as well. Florida Lieutenant Governor Jennifer Carroll resigned from office the day after law enforcement agents interviewed her in connection with the investigation. Her public relations firm worked for Allied Veterans in 2009 and 2010, while she served in the state legislature.

Though Internet sweepstakes cafes have been banned by a number of local governments (the city of Tampa and Hillsborough, Polk, Pasco, and Pinellas counties), more than 1,000 now operate in the state. In its 2013 session, the Florida legislature will consider legislation to regulate the cafes.

Georgia

DeKalb County prosecutors have leveled racketeering charges against three people who operate eight "Big Dawg" locations that offer Internet sweepstakes. The criminal charges allege that the games are illegal because (i) that Big Dawg makes no effort to advertise services and products other than sweepstakes game, (ii) that Big Dawg's sweepstakes run perpetually, unlike the sweepstakes promotions of other companies, and (iii) Big Dawg's revenues almost entirely come from sweepstakes, not other services or products.

Mississippi

In March 2013, the Mississippi Legislature adopted a new law declaring that Internet sweepstakes cafes represent illegal gambling activity in that state. The new Mississippi law bars any person from offering a "simulated gambling program" on an "electronic video monitor" in return for direct or

indirect consideration "including consideration associated with a product, service or activity other than the simulated gambling program." House Bill 974 (March 6, 2013).

New Jersey

In February, a New Jersey resident was sentenced to probation for operating Internet sweepstakes cafés in Pequannock and Parsippany. After concluding that Chester Ward had operated illegal casino resorts, the Morris County Superior Court also imposed a forfeiture of $89,000 in cash and 87 computers.

New York

In June 2013, the New York legislature adopted broad new legislation providing that anyone operating an Internet sweepstakes machine is guilty of a Class E felony.

North Carolina

Internet café owners in this state pursued a novel legal strategy: to claim that their businesses are engaging in protected First Amendment speech that cannot be shut down under state anti-gambling laws. Because the state statute at issue barred the promotion of sweepstakes that employ an "entertaining display," sweepstakes advocates claimed a constitutional right to link those displays to sweepstakes games. A divided panel of the North Carolina Court of Appeals accepted this argument in March 2012, but on December 14, the North Carolina Supreme Court unanimously reversed that decision and reinstated the state anti-sweepstakes law. Holding that the statute "primarily regulates noncommunicative conduct rather than protected speech," Justice Robin Hudson ruled that the café operators could not "'skillfully disguise[]' conduct with a façade of speech to gain First Amendment protection." Ironically, Texas recently arrested the senior executives of the company that is challenging the North Carolina prohibition. The defendants face charges of felony gambling, money laundering, and organized criminal activity.

Based on the Supreme Court ruling, a number of local law enforcement agencies have begun to shut down North Carolina's Internet sweepstakes cafés. In Waynesboro, the manager of a café was convicted in Morris County District Court of violating the state law, though he promptly appealed his conviction. State v. James Locker, (Morris County District Court). Some café operators are arguing in court that the state statute does not reach machines that have been modified to comply with the state law. On that theory, two defendants have been acquitted in district court cases in both Catawba and Macon Counties, and a lawsuit in Macon County seeks an injunction declaring that specific machines do not violate the North Carolina statute. Until there is a further definitive ruling from an authoritative state court, these disputes are likely to continue.

Ohio

In early June, Ohio Governor John Kasich signed into law new legislation (HB 7), which will impose a ceiling of $10 on the payouts that can be made by Internet sweepstakes cafes. The new

requirement, which took effect in October, is expected to force the shutdown of the more than eight hundred Internet sweepstakes cafes in the state. The cafes mounted a referendum drive to repeal the law but failed to collect the necessary signatures. A coalition of political, law enforcement and business groups that includes the Fraternal Order of Police of Ohio, the Buckeye State Sheriffs' Association, County Commissioners Association of Ohio and the Ohio Council of Retail Merchants supported House Bill 7. The state's action followed an investigative report by the Columbus Dispatch reported that a majority of the cafes in Ohio flouted a requirement that they provide full business information to the state attorney general, while barely 20 percent of the Ohio cafes identified the people who own and operate them.

In March, the Ohio Court of Appeals affirmed criminal convictions against cafe operators in City of Cleveland v. Thorne, No. 2010-CRB-04521 (8th Dist., March 22, 2013). The appellate court impatiently rejected the defendants' claim that their customers truly bought Internet time or other business services, and thus paid no consideration to gamble. The computer games at the cafe, the court added, represented a "patently obvious gambling scheme." In October, two corporations and three individuals who supplied software to Internet sweepstakes cafes in Cuyahoga County pled guilty to criminal racketeering and gambling charges and agreed to cease operations in Ohio.

Pennsylvania

A federal trial court upheld Pennsylvania's ban on Internet sweepstakes cafés in early October. Judge Robert D. Mariani of the Middle District of Pennsylvania refused to enter a preliminary injunction against the statute, which was adopted on June 30. He rejected the claim that the law violated the First Amendment rights of café owners. Intervening in support of the statute were three Pennsylvania casinos: Mohegan Sun at Pocono Downs, Sands Bethworks Gaming, LLC, and Greenwood Gaming and Entertainment, Inc., d/b/a Parx Casino. *Telesweeps of Butler Valley, Inc. v. Kelly,* No. 3:12-CV-1374 (M.D. Pa.) (October 10, 2012).

AGA Position

States have longstanding policies that gambling businesses must be specifically authorized, strictly regulated to protect consumers, kept free of crime and fairly taxed to contribute resources for the public good. In recent years, thousands of "Internet Sweepstakes Cafes" with estimated annual revenues exceeding $10 billion have sprung up in more than a dozen states in total circumvention of state antigambling laws and gambling license requirements. After making very little investment, these rogue businesses spread quickly and become entrenched, posing a threat to existing state-licensed businesses and the thousands of jobs they create.

Although they often claim otherwise, Internet sweepstakes cafes sell games that involve prize, consideration and chance and, thus, are engaged in the business of gambling. In the vast majority of communities where they operate, cafes lack regulation of (1) the integrity of the owners and operators, (2) the fairness of the games, (3) the exclusion of customers too young to gamble, and (4) their location, including the proximity to schools or churches. They do not educate customers about

responsible gaming or contribute funds to combat problem gambling. In addition, neither the cafes nor the software companies that support them pay state or local gaming taxes. To the contrary, their largely unreported profits may siphon revenues from state-authorized businesses.

The American Gaming Association believes that strict regulation to protect consumers is the cornerstone of gambling policy and should apply to all forms of gambling. Responsible public policy should prohibit Internet sweepstakes cafes, as numerous states have done.

HAYWARD
CHAMBER *of*
COMMERCE

Nov. 25, 2013

Hayward City Council
777 B Street
Hayward, California, 94541

Members of the Council,

The Hayward Chamber of Commerce endorses revisions to the Hayward Zoning Ordinance and the proposed amendment to the Hayward Municipal Code regarding simulated gambling devices in businesses that have located in our downtown area by falsely claiming their purpose to be that of "business centers."

None of the three internet gaming operations in operation are members of the chamber and our downtown members have profound concerns about the loitering, smoking, noise, and parking-related issues.

We support the city's legal efforts to shut down these operations because these "business centers" have found a loophole that goes to the integrity of the business license process. These are not business centers as purported in their license application. Instead of offering fax, copier, and business internet services, they are little more than fronts for so-called "sweepstakes" operations where customers sit and play simulated slot machines on computer monitors for hours on end.

Copy Mat, Copy Pacific and Quick Printing Service are reputable downtown business centers, and our members, that meet the "business center" description. The internet gaming operations don't even have signage denoting their purpose and certainly make no contribution to the community expected of responsible businesses, such as contributions to nonprofits.

The chamber urges that you support the recommendation of city staff, also endorsed by the Hayward Planning Commission.

Sincerely,

Kim Huggett
President & CEO

22561 Main Street, Hayward, CA 94541 Tel (510)537-2424 Fax (510)537-2730 www.hayward.org

CITY OF
HAYWARD
HEART OF THE BAY

___3___

DATE: December 10, 2013

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: FY 2013 Preliminary Year-End General Fund Review

RECOMMENDATION

No action required. Staff is requesting that Council reviews and comments on this report.

BACKGROUND

The Finance Department is currently working with the City's outside auditor to develop and finalize the financial statements for the period ending June 30, 2013 (FY 2013). The full results of the audit and the FY 2013 Comprehensive Annual Financial Report (CAFR) are currently scheduled to be presented to City Council in February 2014. This report contains preliminary, unaudited year-end results for the General Fund,

Although it is tempting to focus on City revenues, both revenues *and* expenditures influence the City's projected bottom-line. The budget picture is neither complete nor accurate without considering both of these influencing factors. When the City Council adopted the FY 2013 budget on June 26, 2012, the projected General Fund gap (and use of the General Fund Reserve) was $5.6 million. Staff modified revenue and expenditure projections over the course of the fiscal year, with a revised third quarter projected gap of $3.3 million discussed with the Council Budget & Finance Committee on May 22, 2013. While the City is seeing improvement in some key recurring revenue categories (e.g., property tax and sales tax), the continuing pressure of rising operating costs and the need to adequately fund inexorably rising benefit liabilities temper optimism regarding revenue growth.

Early FY 2013 results indicate that the General Fund will end with a positive balance of $297,000 (refer to Table 4). However, the only reason the City will not need to dip into its General Fund Reserve to balance the FY 2013 budget, is because of the inclusion of $1.9 million in one-time revenue and the deferral of some expenditures to FY 2014. Without the one-time revenue, the year-end result for FY 2013 would be a deficit of $1.6 million.

It is important to note that the General Fund FY 2013 year-end results and the current General Fund Ten-Year Plan do *not* include adequate funding for many of the City's critical expenses, such as benefit liabilities. In addition, the forecast assumes that certain levels of employee concessions will continue and provide projected savings; – failure to realize these concession savings will further increase the deficit gap.

Table 1 provides a "What-if" look at the General Fund forecast. Even with positive adjustments to revenue projections to reflect possible new and improved revenues, the inclusion of OPEB costs, and the possible loss of employee concessions by several bargaining units results in a significant increase in the General Fund gap. The values cited in Table 1 for the possible loss of HPOA concessions if an agreement is not reached are estimates and will likely vary slightly. Variables not reflected in Table 1 such as increased funding toward critical capital infrastructure needs and increased funding toward restoring staffing resources will add to the growing deficit projection.

Table 1 – General Fund Forecast "What-if" Assumptions

(in 1,000's)	Adopted FY 2014	Forecast FY 2015	Forecast FY 2016	Forecast FY 2017
FY 2014 Adopted General Fund Gap	**(2,579)**	**(2,758)**	**(5,704)**	**(10,220)**
Possible Adjustments to Projections				
Possible new revenue based on FY 2013 results	2,000	2,000	2,000	2,000
Loss of assumed SEIU & Local 21 concessions (1)	(1,114)	(1,114)	(1,114)	(1,114)
Loss of HPOA concessions (no current agreement for FY 2015+)	-	(3,000)	(3,000)	(3,000)
Fund full OPEB Retiree Medical annual required contribution	(3,142)	(3,142)	(3,142)	(3,142)
Subtotal Net Change	(2,956)	(5,656)	(5,656)	(5,656)
Possible Revised Gap Projections	**(5,535)**	**(8,414)**	**(11,360)**	**(15,876)**

(1) The FY 2014 Adopted budget assumed additional SEIU and Local 21 concessions of about 5% to bring total concessions to 17%

While the City may not need to expend its General Fund Reserve funds to balance FY 2013 operational expenditures as originally projected, the broader budget picture including appropriate funding for OPEB, continues to tell the story of a growing budget deficit. The City faces funding challenges with its other benefit liabilities (retirement, workers compensation, accrued leave), yet the table above displays only the OPEB liability as an example of the impact of funding the annual required contribution (ARC). Of course, inclusion of other benefit liability funding will further increase the deficit. Therefore, even with improved revenues, the City's expenditure budget will continue to drive growing annual shortfalls in the absence of additional, long-term balancing measures.

DISCUSSION

Preliminary Year-end FY 2013 Revenue Performance

The initial revenue projections for FY 2013 were appropriately conservative, given the volatile economy and the rapid loss of General Fund revenues in the preceding years. Fortunately, as the fiscal year progressed, the City began seeing increased revenues from an improving local economy and staff provided Council with quarterly budget updates with recommended adjustments to FY 2013 revenues. Table 2 provides a summary of the key variances in year-end revenue from these revised third quarter projections.

Table 2 – FY 2013 General Fund Revenue Summary

	A Adopted (6/26/12)	B Q2 (3/5/13)	C Q3 (5/22/13)	D Year-End (11/4/13)	E Change $ (D-C)	F Change % (D-C)
Revenue						
Property Tax - recurring (1)	35,768	35,768	36,330	37,211	881	2.4%
Property Tax - one-time (1)	0	0	870	1,970	1,100	126.4%
Property Tax Total	35,768	35,768	37,200	39,181	1,981	5.3%
Sales Tax	26,590	27,940	28,600	28,534	(66)	-0.2%
UUT	15,096	15,096	15,096	14,940	(156)	-1.0%
Franchise Fees	9,686	9,686	9,686	9,688	2	0.0%
Property Transfer Tax (2)	3,525	4,000	4,000	4,596	596	14.9%
Business License Tax	2,448	2,448	2,448	2,493	45	1.8%
Transient Occupancy Tax (3)	1,418	1,418	1,300	1,679	379	29.2%
Other Taxes - Emergency Facilities Tax	1,754	1,754	1,754	1,869	115	6.6%
Charges for Services	8,190	8,140	8,140	7,844	(296)	-3.6%
Other Revenue	3,850	3,850	2,589	174	(2,415)	-93.3%
Intergovernmental	2,713	3,302	3,302	5,363	2,061	62.4%
Fines and Forfeitures	2,570	2,770	2,770	2,913	143	5.2%
Interest and Rents	453	453	368	405	37	10.1%
Total Revenue	**114,061**	**116,625**	**117,253**	**119,679**	**2,426**	**2.1%**
Transfers in	3,867	3,836	3,836	4,064	228	6.0%
Total Revenue/Resources	**117,928**	**120,461**	**121,089**	**123,743**	**2,654**	**2.2%**

(1) Property Tax revenue as displayed in Column D includes $1.97M of one-time revenues ($880K from Alameda County and $1.1M from RDA dissolution)
(2) Extremely volitile revenue source - linked to real estate market performance
(3) Not expected to continue growth beyond FY 2013 performance

Overall General Fund revenues improved over third quarter projections by $2.65 million or 2.2%. While many revenues reflect minor variances over third quarter projections (positive and negative), several revenue categories ended the year with more significant variances, some one-time in nature, as discussed below. Sales Tax revenues are not included in the variance analysis because the year-end performance does not vary from the third quarter projection. However, as the City's second largest General Fund revenue source, it should be noted that staff did increase projections by $2 million due to improvements in sales tax receipts. The majority of these adjustments occurred during the mid-year review in February 2013 and this growth is already included in the General Fund Ten-Year Plan forecast for FY 2014 and beyond.

Property Tax – Adjustments made at third quarter (Table 2, Column C) included increased recurring revenues of $562,000 based on improved real estate market activity as seen during the third quarter review and a one-time payment of $870,000 for over-charged Property Tax Administrative Fees by Alameda County. Preliminary year-end revenues (Table 2, Column E) indicate an additional variance of $1.98 million (5.3%) over third quarter projections, which emanated from:

1. Improved Secured Property Tax revenues. Approximately $531,000 of the variance is attributable to improvements in secured property tax revenues. Future secured property tax revenue projections will be adjusted as appropriate based on actual year-end results.

2. Redevelopment Property Tax Trust Fund (RPTTF) – former Redevelopment Agency distribution. $1.45 million of this year-end variance is attributed to redistributions of property tax as part of the redevelopment agency dissolution, with $1.1 million being one-time distributions and are not anticipated to reoccur. The RPTTF represents reallocated property tax increment previously allocated to the former Hayward Redevelopment Agency. With the dissolution of the agency, tax increment funds are now redistributed to all taxing entities in the County. These funds were not budgeted in FY 2013 due to the uncertain nature of the dissolution process by the State of California. Below is a summary of the composition of the unanticipated $1.45 million in RPTTF revenue:

   Recurring ($350K)
   - Recurring, annual redistribution amount not budgeted in FY 2013.

   One-time ($1.1M)
   - $483,000 – a one-time redistribution due to the Due Diligence Review (audit) of the Low-Moderate Income Housing Fund.
   - $617,000 – a one-time adjustment to the RPTTF distribution by the State Department of Finance (DOF). The DOF adjusted the amount of RPTTF that the Successor Agency received so that fund balance was used to pay enforceable obligations, resulting in additional RPTTF being distributed to all of the taxing entities in FY 2013, of which the City is one.

These one-time RDA related funds are essentially balancing the FY 2013 budget. If these funds were to be set aside for one-time expenses per existing Council policy, the FY 2013 budget would realize a deficit and would require use of the General Fund Reserve. Consistent with existing Council policy, staff will be recommending that City Council set aside future one-time revenues for one-time purposes – and specifically set aside any one-time redistribution of funds from the RDA dissolution process into a separate capital project fund that could be utilized for economic development initiatives or other capital projects, consistent with the one-time nature of these funds. For FY 2014, staff is already aware of several occurrences that will result in one-time redistributions of property tax revenues as well as a one-time transfer out of the General Fund. Staff will provide additional updates to City Council during the FY 2014 Mid-year Review.

As the RDA dissolution process continues, the RPTTF distributions should begin to stabilize by FY 2015, as many of the one-time dissolution adjustments will conclude (e.g. audits, property disposition, etc.). Effective FY 2014, staff projected approximately $350,000 annually in recurring RPTTF redistributions that would be used to fund the Economic Development budget, consistent with the Strategic Plan as adopted by City Council. This projection still holds, although it is possible the ongoing redistribution may be slightly higher once stabilized. Staff will continue to monitor the remittances and expenses to refine this projection.

Property Transfer Tax – this revenue category demonstrates improvement over third quarter projections of $596,000 (14.9%) and is a reflection of increased sales activity and housing prices in the Hayward market. Staff is currently reviewing the details of the various real estate transactions (commercial and residential) to better determine the recurring or one-time nature of this improved revenue. Real Property Transfer Tax is a highly volatile revenue source and is directly subject to market fluctuations. The City's recent history provides a cautionary tale in this respect: After reaching a high of $10 million in FY 2006, the revenue stream plummeted by 62% in just four

years, finally settling at $3.8 million in FY 2010. Staff is reviewing possible responsible and cautious adjustments to future projections of the Property Transfer Tax revenues.

Transient Occupancy Tax – TOT improved over third quarter projections by $379,000 (29.2%) and is a direct reflection of increased hotel activity. Since the City is not seeing any significant improvements to its hotel market or the expansion of hotel beds, staff does not foresee this revenue stream continuing to grow at this rate.

Charges for Services – this revenue category includes a variety of police and fire fees, permits, and licenses; as well as building fees and permits. The overall reduction of $296,000 (-3.6%) is largely driven by decreases in developer review fees, hazardous materials permits, fire prevention permits, and a decrease in supplemental improvement tax revenues. It should be noted that while this overall revenue category shows a decline, building permits and some related activities are beginning to show improvement with year-end activity exceeding projections.

Intergovernmental & Other Revenues –As part of the implementation of the City's new financial system, some revenues were re-classified and basically switched between these two categories. As part of the third quarter update, the Other Revenue category was updated to eliminate the annual transfer to the General Fund from the Workers' Compensation Fund. This transfer was essentially established to "reimburse" departments for the loss of employees that are off work due to a Workers' Compensation claim and is above and beyond the funding already provided in department budgets for these expenses. The Workers' Compensation Fund will realize a budgetary savings of $1.2 million by not transferring these funds, which will be put towards the current Workers' Compensation unfunded liability that is currently approximately $7.7 million.

Preliminary Year-end FY 2013 Expenditure Performance

Overall General Fund expenditures improved over third quarter projections with net expenditure reductions of approximately $919,000 or -0.7%.

Table 3 – Preliminary Year-end FY 2013 Expenditure Performance

	A Adopted (6/26/12)	B Q2 (3/5/13)	C Q3 (5/22/13)	D Year-End (11/4/13)	E Change $ (D-C)	F Change % (D-C)
Expenditures						
Salary & Benefits Subtotal	99,467	99,607	99,313	96,752	(2,561)	-2.6%
Target Vacancy Savings	(1,500)	(2,735)	(2,735)	0	2,735	-100.0%
Overtime	5,384	6,513	6,513	6,879	366	5.6%
Interdepartmental (ID) Charges	(5,113)	(5,300)	(5,300)	(5,399)	(99)	1.9%
Net Staffing Expense	**98,238**	**98,085**	**97,791**	**98,232**	**441**	**0.5%**
Non-personnel Operating Expenses	16,686	17,758	17,778	16,412	(1,366)	
Transfers Out (1)	8,600	8,600	8,800	8,806	6	0.1%
Net Non-Personnel Expenses	**25,286**	**26,358**	**26,578**	**25,218**	**(1,360)**	**-5.1%**
Total Expenditures	**123,524**	**124,443**	**124,369**	**123,450**	**(919)**	**-0.7%**

(1) Transfers Out includes debt service, liability insurance, and capital funding

Net Staffing Expense –This is a small net variance caused by a variety of factors across all department budgets. The budget included a large projected vacancy savings of $2.74 million that

fell short of projections by $174,000. The remaining overage in this category is due to increased overtime beyond the adjusted budget, mainly attributed to the large number of position vacancies in the City.

Non-personnel Expenses –This is largely a one-time savings – with costs being deferred to FY 2014. Two issues are driving this one-time savings.

- In implementing the City's new financial system, substantial expenditure encumbrances in FY 2013 were released on purchase orders where goods and services had not yet been purchased, but are still planned. Many of these expenditures will be re-encumbered in FY 2014 as part of the mid-year budget review to account for future purchases.

- In addition, the FY 2013 mid-year adjustments included appropriations for several Police Department grants totaling over $500,000 (e.g., Cal-Grip Grant, Office of Traffic Safety Avoid DUI Campaign, Byrne Memorial grant) that were not expended in FY 2013 but will be in FY 2014.

Hayward Continues to Face a Budget Gap

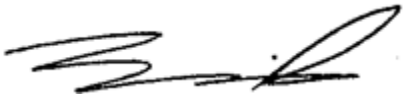
The City continues to face rising operating costs, largely related to employee benefit costs. In addition, in order to achieve a balanced budget these past few years – even with the use of the General Fund Reserve – a number of essential expenses have been excluded from budget consideration (e.g., increased staffing in some essential program areas, funding for benefit liabilities, and funding for infrastructure improvements). The City is now at a critical juncture where these expenses can no longer be deferred and must be considered as part of the overall fiscal picture. Inclusion of these costs will negatively impact the bottom line in future years, requiring the continued need for recurring budget balancing measures.

NEXT STEPS

Staff will present the FY 2013 Comprehensive Annual Financial Report to City Council upon conclusion of the annual audit in early February 2014. Staff will also be presenting an FY 2014 mid-year report in late February/early March that will include an update to the General Fund Ten-Year Plan based on audited FY 2013 year-end numbers.

Prepared and Recommended by: Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Table 4 – Preliminary FY 2013 Statement of Revenues & Expenditures

DRAFT 12.10.13

CITY OF HAYWARD
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCES
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2013

	Budgeted Amounts			Variance with Adjusted Budget
	Adopted	Adjusted	Actual Amounts Budgetary Basis	Positive (Negative)
REVENUES:				
Property Tax	$35,768,000	$37,200,000	$39,181,000	$1,981,000
Real Property Transfer Tax	3,525,000	4,000,000	4,596,000	596,000
Sales taxes	26,590,000	28,600,000	28,534,000	(66,000)
Utility users tax	15,096,000	15,096,000	14,940,000	(156,000)
Business Lciense Tax	2,448,000	2,448,000	2,493,000	45,000
Other taxes	3,172,000	3,054,000	3,548,000	494,000
Franchise Fees	9,686,000	9,686,000	9,688,000	2,000
Fines and forfeitures	2,570,000	2,770,000	2,913,000	143,000
Investment & Rental Income	453,000	368,000	405,000	37,000
Intergovernmental	2,713,000	3,302,000	5,363,000	2,061,000
Fees and charges for services	8,190,000	8,140,000	7,844,000	(296,000)
Other revenue	3,850,000	2,589,000	174,000	(2,415,000)
Total Revenues	114,061,000	117,253,000	119,679,000	2,426,000
EXPENDITURES:				
Current:				
General government	10,951,307	10,876,276	10,036,000	840,276
Public safety	89,575,625	90,099,469	90,494,000	(394,531)
Public works and transportation	1,532,769	1,529,805	1,290,000	239,805
Library and community services	4,606,357	4,597,237	4,687,000	(89,763)
Planning and building	4,391,140	4,462,248	4,367,000	95,248
Maintenance services	3,867,644	4,035,105	3,646,000	389,105
Capital outlay				0
Debt Service:				0
Principal				0
Interest and fiscal charges	0	0	120,000	(120,000)
Total Expenditures	114,924,842	115,600,140	114,640,000	960,140
EXCESS (DEFICIENCY) OF OPERATING REVENUES OVER (UNDER) OPERATING EXPENDITURES	(863,842)	1,652,860	5,039,000	3,386,140
OTHER FINANCING SOURCES (USES):				
Proceeds from sale of capital assets	0	0	0	0
Transfers in	3,867,000	3,867,000	4,064,000	197,000
Transfers (out)	(8,600,000)	(8,800,000)	(8,806,000)	(6,000)
Total Other Financing Sources (Uses)	(4,733,000)	(4,933,000)	(4,742,000)	191,000
NET CHANGE IN FUND BALANCE - BUDGET BASIS	**(5,596,842)**	**(3,280,140)**	**297,000**	**$3,577,140**

CITY OF HAYWARD
HEART OF THE BAY

DATE: December 10, 2013

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Council FY 2015 & FY 2016 Recommended Priorities

RECOMMENDATION

That Council, based on Attachment II and Council's subsequent discussion:

1. Identifies and adopts the recommended Council priorities for FY 2015 & FY 2016 (i.e., July 2014 through June 2016);
2. Approves the preliminary performance measures associated with each priority as may be adjusted by Council discussion; and
3. Approves of the process whereby staff will refine performance measures throughout the budget development process for Council's final approval with adoption of the FY 2015 & FY 2016 budget.

BACKGROUND

Each year, Council reviews Council priorities and establishes those things important to the community, which they direct staff to use in preparing the next budget document for the upcoming year(s). This process is particularly critical when approaching the next full, two-year budget, as we are now.

Council has been focused and clear on three main priorities for the last several years, "Safe", "Clean" and "Green". Council has also been generally consistent in identifying three supporting activities of "Fiscal Stability", "Organizational Health", and "Land Use". During the FY 2014 priorities and budget development process, Council made some changes in how the priorities were defined and presented, and began to add performance measurements to each (See Attachment I).

Council conducted two previous discussions on FY 2015 & FY 2016 Council priorities on October 29, 2013 and November 12, 2013. As a result, Council directed staff to return with recommended priorities for FY 2015 and FY 2016 using both the approved FY 2014 Council priorities and the results of Council's most recent discussions as a basis.

Through discussions on October 29 and November 12, Council provided staff with the following direction:

- Defined a priority as a service area or program that needs to be fixed or improved in the organization or the community.
- Reaffirmed SAFE, CLEAN, and GREEN as major priorities, and Land Use, Fiscal Sustainability, and Organizational Health as continuing supporting activities.
- Defined SAFE as a measurable reduction in crime, and residents and businesses defining Hayward as a safe community.
- Priorities presented to Council for adoption are to be simple and clear, and are to be supportive of the Vision statement in the General Plan and the elements contained therein. [1]
- The ultimate "priorities document" that goes out to the public must also be succinct and clear.
- There must be meaningful performance measures developed, presented, and adopted for each priority area that focus on measuring output as much as possible; and which incorporate comparative data[2] wherever appropriate and meaningful.
- Directed staff to report more regularly on progress toward each priority throughout the year, and most importantly, at year-end.
- Based on Council's previous deliberations on the topic and the above identified direction, directed staff to return with a set of priorities, supporting activities, and performance measures for Council's consideration, discussion, and vote.

DISCUSSION

Based on Council's previous discussions and resulting direction, staff presents the priorities, supporting activities, and associated basic performance measures for Council review and adoption as shown in Attachment II. Additional recommended performance measures may evolve through the FY 2015 & FY 2016 budget adoption process, which begins in May 2014.

In this construct, other areas obviously critical to Council and which meet Council's definition of a priority[3], such as educational improvement, economic development, and community health do not yet appear to have an obvious place in the structure of SAFE, CLEAN, and GREEN, or within the supporting activities of Land Use, Fiscal Sustainability, and Organizational Health. They are incorporated herein where ever possible.

As important as they are to Council, it is unclear what role the City has in the areas of educational improvement or community health. In the case of educational improvement, while it is a high priority for the entire community and impacts many of the areas for which Council has direct responsibility (e.g., economic development and improving revenues), Council has no direct control

---

[1] See the current draft of the **General Plan** at http://www.ci.hayward.ca.us/GENERALPLAN .

[2] **Comparative Data** = Council has expressed deep interest in seeing data that compares the performance of Hayward to other similar or similarly situated municipal jurisdictions in a way that Council can judge "comparative ranking". Such data must be on an "apples-to-apples" basis (e.g. activity or expenditure per 1,000 population.)

[3] **A Priority** is defined by Council as a service area or program that needs to be fixed or improved.

over the community's public school system or any other administrative or policy avenue through which to make direct change. Health and health-related issues are more the purview of both the County and local community agencies, although of great importance to Council. Clearly, childhood obesity, family hunger, and overall health of families and children are factors in academic performance and in the overall success of the community as a whole.

Given the conditions identified above related to the academic performance of HUSD students and schools and overall health of our residents, it does not seem productive to directly include either of these items in Council's priorities, or, most particularly, to assign any kind of performance measure to them for which City staff is responsible. Therefore, HUSD academic improvement is called out in the "Overarching Performance Measures" section indicating that staff is to support HUSD wherever and whenever possible in attaining this goal and identifying two main "support" activities that can be tracked by Council: (1) Increasing the number of students participating in the homework help programs and other Library & Community Services departmental educational programs, and tracking student progress related to academic improvement; and (2) supporting and encouraging the success of the Hayward Promise Neighborhood program led by California State University- East Bay. Those aspects of "community health" within Council's direct control and staff's capacity to handle are within the draft performance measures associated with the main Council priorities of SAFE and GREEN.

In preparing Attachment II for Council's consideration, staff has made every effort to keep both priorities and supporting activities simple and inclusive as directed by Council. Specifics are reflected in the performance measures and will be further detailed in departmental work plans and the FY 2015 & FY 2016 recommended budget.

Performance measures in each area should not be viewed as departmental, but rather as all elements of the organization having responsibility to accomplish them. For example, closing the structural deficit involves all departments, including Mayor and Council; as does the mandate to increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with living in Hayward. Staff will continue to develop applicable and measurable performance goals throughout the budget development process, and assure that each one has an identifiable baseline against which to measure progress.

Some of the elements of the biannual community satisfaction survey that were previously shown in "overarching performance measures" are now incorporated into the body of the goals document as appropriate. In addition, staff will be strengthening existing customer feedback mechanisms (e.g., feedback from customers at the Permit Center), and developing additional ways to more frequently test resident and business feedback to the City (e.g., on-line "sample" surveys and other mechanisms).

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.

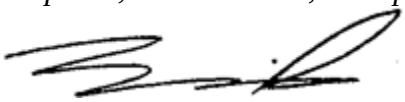
PUBLIC CONTACT

The public will have an opportunity to comment and discuss Council priorities at this meeting and throughout the FY 2015 & FY 2016 budget adoption process in the spring beginning in May 2014.

NEXT STEPS

Once Council adopts priorities and preliminary performance measures, the City Manager will utilize these to compile the recommended FY 2015 & FY 2016 budget for Council consideration.

Prepared, recommended, and approved by:



Fran David, City Manager

Attachments:

Attachment I	FY 2014 Adopted Council priorities for reference
Attachment II	Recommended FY 2015 & FY 2016 Council priorities and preliminary performance measures

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.	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
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.

	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.	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.

CLEAN		
FY 2014 Priority Statements		**Metrics for CLEAN**
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.	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.
2.b	Continue, strengthen, and expand the Neighborhood Partnership Program	
2.c	Continue, strengthen, and expand the KHCG Task Force	

GREEN		
FY 2014 Priority Statements		**Metrics for GREEN**
3.a	Continue implementation of the Climate Action Plan (CAP)	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**
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.	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.
4.b	Maintain a healthy and growing tax base in all major revenues, particularly property tax and sales tax.	
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.	
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	
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.	

[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**
5.	Maintain and implement land use policies that: a. Support a safe, clean, and green community as defined by Council b. Support development of safe housing 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	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**
6.a	Assure that the City of Hayward maintains an organization that delivers high-quality services to the community by attracting, employing , and retaining quality employees: 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.	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.
6.b	Assure that the organization employs quality strategic, long-range planning for a healthy and strong future.	

Suggested Council Priorities and Preliminary Performance Measurements for FY 2015 & FY 2016

I. **Main Priorities**: SAFE, CLEAN, and GREEN

II. **Supporting Activities**: Fiscal Stability, Land Use, and Organizational Health

III. Overarching Performance Measures

A. Develop comparative data for Hayward against applicable cities within the state and cities of interest within the region; submit to Council; once adopted by Council, fully implement use of the data in public reports to assess Hayward's comparative performance no later than FY 2015. For example:
   i. Crime stats
   ii. Citizen satisfaction ratings
   iii. Infrastructure maintenance
   iv. Sustainability initiatives and programs
   v. Other key areas as appropriate and available

B. Support performance improvement of Hayward Unified School District:[1]
   i. Increase the number of students being served by the Library and Community Services Department educational programs by at least 10% annually (*2013 baseline: 1,500 unduplicated students; HUSD student population: 20,700*).[2]
   ii. Wherever possible, support HUSD's initiatives to raise average district-wide API test scores to 900 or above (*2013 baseline: 721*; and to achieve the goal that 100% of HUSD schools have API scores above 800 (*2013 baseline: 9%).*
   iii. Ensure that the Hayward Promise Neighborhood program is successful and supports the goal of raising the performance of HUSD schools participating in the program at a faster rate than other HUSD schools.

[1] Standardized test scores (i.e., API Scores) may be abandoned by the State educational system in the near future. In that case, these performance measures will be adjusted to reflect the relevant system used to measure comparative academic performance.

[2] A performance measure will be developed that also measures the academic improvement of students participating in the programs. This performance measure will be presented during the adoption process for the biannual budget.

IV. Main Priorities and Preliminary Performance Measures

Priority 1: SAFE		
	GOALS	**PERFORMANCE MEASUREMENTS**
S1	Reduce all types of crime throughout the Hayward community, with emphasis on violent crimes; reduce gang activity of all kinds in Hayward.	• Reduce the number of Uniform Crime Reports (UCR)[3] crime consistently over the next two years. These consist of: ▪ Homicide ▪ Rape ▪ Robbery ▪ Aggravated Assault ▪ Burglary ▪ Larceny ▪ Motor Vehicle Theft ▪ Arson • Specifically, reduce burglary and auto theft by 5% annually *(Baseline data is FY 2014).* • Reduce the number of reportable gang crimes by 5% annually [4] *(Baseline is FY 2014 data).*
S2[5]	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.	• Improve the reality and perception of the Hayward experience as measured through the bi-annual citizens' survey: ▪ Increase the total percentage of residents who indicate they are very satisfied or somewhat satisfied with living in Hayward *(2012 baseline = 79.6%).* ▪ Consistently decrease the percentage of respondents who indicate that crime/drugs/gangs contribute to their negative image of Hayward *(2012 baseline: 46.2%).* • Report annually to Council on implementation success and issues related to key Ordinances (e.g., Social Nuisance, Public Feeding, Alcohol, etc.) • Complete a minimum of nine SMASH Programs annually. • Complete at least three classes of Multi-family Safe Housing training for 60-80 participants annually.

[3] 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.
[4] 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.
[5] Last resident satisfaction survey was conducted in 2012, thereby creating the base year for these measurements.

S3	Reduce all types of traffic accidents throughout Hayward, particularly at "key" intersections.	• Reduce annually the number of traffic-related accidents citywide *(Baseline is number of accidents in FY 2014).* • Continue with the traffic-related accident reduction program at the top three accident intersections. Reduce accidents by a minimum of 10% annually within those zones *(Baseline is number of accidents in FY 2014).*
S4	Improve disaster preparedness in the community; and the ability of the municipal organization to manage disaster response and recovery.	• Ensure that all current City employees have completed required training by end of FY 2015; and that all new employees to which training is applicable complete training within six months of employment. • Complete a robust "table top" exercise by end of second quarter FY 2015 and report results to Council; conduct at least one more table top exercise within the two-year period. • Complete at least one full field exercise involving the City, HARD, and HUSD. Report results to Council. Conduct a minimum of one full field exercise at least every three years.
S5	Ensure a City infrastructure that supports crime reduction efforts, particularly good lighting in all public places and on public travel ways.	• Respond to and complete 90% of requests for streetlight repairs/replacements within ten business days after notification. • Proactively assess where new and upgraded street lights are needed in the higher demand areas of the community such as Downtown and complete upgrades and installations. • Respond to resident/business requests for new or upgraded street lights within ten business days after notification; and complete installation of 50% of identified sites within nine months of site identification/request.
Priority 2: CLEAN		
	GOALS	**PERFORMANCE MEASUREMENTS**
C1	Ensure that Hayward is a community with minimum graffiti, litter, illegal dumping, and blight.	• Reduce by at least 10% annually the cubic yards associated with dumping and collected debris *(Baseline is number of cubic yards picked up in FY 2013).* • Incidences of illegal dumping are reduced by 5% *(Baseline is number of pickups in FY 2014).* • 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. • Repave and stripe one municipal parking lot every other year. • There are at least nine SMASH operations in each fiscal year. • Along with consistent and regular efforts throughout the community, at least three major efforts are made each year to conduct comprehensive blight enforcement in other specified neighborhoods or areas.

C2	Ensure that garbage is kept in containers and off the streets.	• All "fast food" locations have and appropriately maintain their own adequate litter cans; substantiated complaints to the City about litter coming from "fast food" restaurants is reduced to zero.
C3	Ensure that the City provides and maintains attractive municipal spaces and buildings.	• All City parks, plazas, and open spaces are open to the public and attractively maintained year-round; the public uses these amenities. • The new Mission Blvd. median landscaping is successfully maintained, matures as planned, and is kept free of litter. • Landscaping in the public right-of-way of all critical corridors is maintained and kept free of litter. • All in-use City facilities are properly and cost-efficiently maintained (e.g., appearance, leak-free, habitable, and attractive.) • Existing City-owned parks and open space are consistently open to the public and well-maintained.
C4	Continue, strengthen, and expand the Keep Hayward Clean and Green Task Force. (KHCG-TF)	• The KHCG-TF continues to exist and function effectively, holding well-attended monthly clean-ups. • More neighborhoods are engaged in the KHCG-TF program and hold their own regular neighborhood clean-ups *(Base line is number of neighborhood programs functioning in FY 2014).* • The Adopt-a-Block program continues to expand by at least 5% annually *(Base line is number of Adopt-a-Block programs functioning in FY 2014).*
Priority 3: GREEN (Sustainable)		
	GOALS	**PERFORMANCE MEASUREMENTS**
G1	Continue implementation of the Climate Action Plan (CAP).	• Reduce greenhouse gas (GHG) emissions community wide according to the goals included in the CAP. • Reduce municipal energy use by at least 8% or more over the next five years (*The draft General Plan policy is to reduce emissions 7.7% by 2020*). • Reduce City energy usage from non-renewable sources by 20% or more over five years *(Baseline year is FY 2012).* • Increase the use of alternative energy throughout the community by at least 30% *(Baseline is data at end of FY 2012)*[6]. • Continue to improve the City's Urban Forest by planting 400 additional (non-replacement) trees per year (i.e., approximately 34 trees a month).
G2	Increase Hayward's sustainability as a community in all aspects of urban life.	• A strong and innovative urban agriculture program is implemented. • Demonstrated partnership with community agencies to make progress on addressing chronic homelessness in Hayward, and eliminating associated negative impacts on businesses and neighborhoods. • Full implementation of the Everyone Home program, and at least six Hayward homeless residents have been placed in appropriate shelter through the program annually.

[6] Staff currently only has data for Photo Voltaic. Will need to check with PG&E to see if staff can begin tracking other technologies.

V. Supporting Activities and Preliminary Performance Measures

Activity 1: FISCAL STABILITY		
	GOAL	**PERFORMANCE MEASUREMENTS**
FS1	Maintain a municipal corporation that is transparent to the public; operates annually within its revenue/income; and is financially sustainable based on a rolling ten-year financial plan that incorporates appropriate funding of all identifiable liabilities and areas of responsibility.	• Where within the control of the City, maintain a healthy and growing recurring tax base in all major revenues, particularly recurring property tax and sales tax (*Baseline FY 2014 year-end revenues*). • Continue to close the structural budget deficit on a permanent and ongoing basis, and strengthen specific plans to address unfunded liabilities and capital needs as part of the ten-year financial forecast; with target date of end of FY 2016 *(Baseline is structural gap at end of FY 2014).* • Continue implementation of the Economic Development Strategic Plan and report progress regularly against the metrics identified therein.[7]
Activity 2: LAND USE		
	GOAL	**PERFORMANCE MEASUREMENTS**
LU1	Maintain and implement land use policies and practices that support a safe, clean, and green community as defined by Council.	• Performance measures for "Land Use" are contained within the three main Council priorities above. It is expected that land use policies and practices will support all of Council's priorities and performance measures.
LU2	Improve the operations of the Permit Center, with emphasis on the development review and approval process.	• Current customers view Hayward as having the most thorough, professional, timely, and facilitated development process within Alameda County (*Baseline will be developed through the biannual budget process using measurements in the Economic Development Strategic Plan as a base*).

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

Activity 3: ORGANIZATIONAL HEALTH		
	GOAL	**PERFORMANCE MEASUREMENTS**
OH1	Ensure that the City of Hayward maintains an organization that delivers high-quality services to the community by attracting, employing, and retaining quality employees.	• Performance measures will be developed through the biannual budget process and will address employee morale, retention, and productivity. • Improve 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 as measured in the bi-annual residents' satisfaction survey (*2012 baseline =70.2%*).
OH2	Ensure a healthy and strong future for the organization by employing quality strategic, long-range planning.	• Existing Strategic Plans are updated regularly and annually reported on to the public ▪ Police ▪ Economic Development • Annual public reports are presented to the public on progress towards the General Plan implementation beginning one year after adoption. • By end of FY 2016, strategic plans are developed in all applicable areas of the organization. For example: ▪ Communications ▪ Housing

CITY OF
HAYWARD
HEART OF THE BAY

5

DATE: December 10, 2013

TO: Mayor and City Council

FROM: Director of Development Services
Fire Chief

SUBJECT: Introduction of Ordinances to Adopt the 2013 California Fire Code, 2013 California Building Code (CBC), 2013 California Historical Building Code, 2013 California Existing Building Code, 2013 California Green Building Standards Code, 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and to Repeal Chapter 10, Article 22 of the Municipal Code (Green Building Requirements for Private Development). The Project is Exempt from Environmental Review pursuant to Section 15378(b)(1) of the CEQA Guidelines.

RECOMMENDATION

That the Council adopts the attached resolutions of findings and introduces the attached ordinances adopting the 2013 California Fire Code, 2013 California Building Code (CBC), 2013 California Historical Building Code, 2013 California Existing Building Code, 2013 California Green Building Standards Code (Cal Green), 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and repealing Chapter 10, Article 22 of the Municipal Code (Green Building Requirements for Private Development).

SUMMARY

This is the first reading of the ordinances adopting the new codes, and related local amendments and associated resolutions with supporting findings of fact to support the need for local amendments, and repealing Hayward's Green Building Requirements for Private Development, due to the new 2013 California Green Building Standards Code. The new codes become effective on January 1, 2014, per California State law.

BACKGROUND

The State of California Building Standards Commission tri-annually reviews and amends the model Uniform Codes. In July of this year, the Building Standards Commission published the 2013 California Codes, and local jurisdictions are mandated to begin enforcement six months after the

publication date. During this six-month period, local jurisdictions are allowed to make amendments to the codes. Such amendments can only make the codes more restrictive than the published codes and must be based on specific findings that such modifications are necessary, due to local climatic, geological, or topographical conditions.

DISCUSSION

Staff is suggesting only a minimum of local amendments to the new codes. The supporting climatic, topographical, or geological reasons for the findings are identified in the attached resolutions. The amendments and findings of fact that make such amendments necessary must be submitted to the California Building Standards Commission before they can become effective. The following sections summarize the proposed City amendments.

Fire Prevention Code (Attachments I and II): The City of Hayward Fire Chief is recommending that City Council approves the State Fire Prevention Code with local amendments that the Chief proposes in an effort to maintain the current level of life safety and to further strengthen the 2013 Hayward Fire Ordinance. This includes adopting previously adopted amendments, such as designating a Hazardous Fire Area in the Hayward Hills, east of Mission Boulevard and south of D Street; and amendments to clarify construction method requirements within the Hazardous Fire Area and the Photo Voltaic ("Solar") Systems Installation Guidelines. Additional amendments include a continuation of the prohibition of flammable and combustible liquids in aboveground storage tanks with minor exceptions; and the adoption into code of currently implemented standards of secondary containment to capture potential releases of hazardous materials if a primary container were to fail.

Building Code (Attachments III and IV): Amendments recommended to the State Building Code are either related to administrative changes, which do not have to be justified by findings to the State Building Standards Commission, or they are for increased seismic standards. The majority of the administrative changes maintains and further clarifies the previously adopted ordinance amendments. The increased seismic changes, with which staff concurs, have been recommended by the Tri-Chapter Uniform Code Committee (East Bay, Peninsula and Monterey Chapters of the International Code Council). These amendments include reinforcing bar to be required in residential foundations and not counting sheet rock as providing structural support.

Historical Building Code, Green Building Code, Existing Building Code, Property Maintenance Code (Attachments III and IV): There are no recommended changes to these other parts of the State Building Codes (see discussion below regarding green building standards). They are recommended to be adopted per the State's mandated adoption matrices.

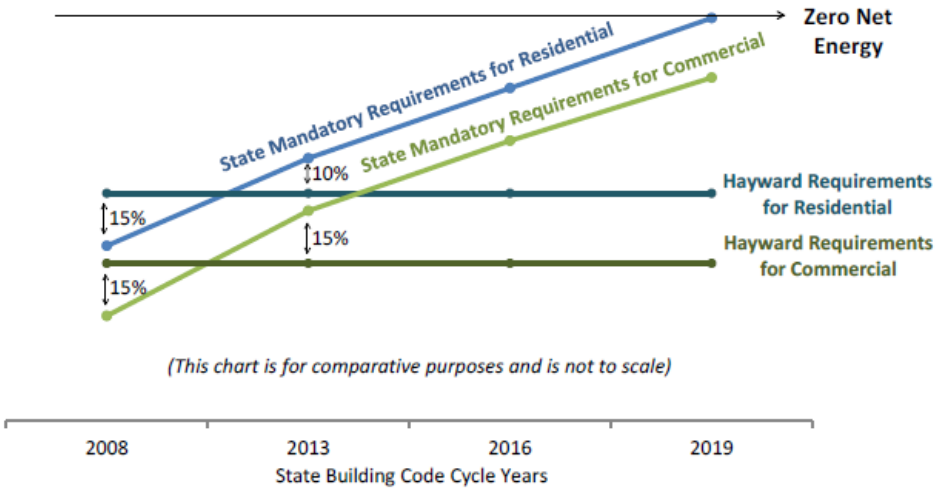
The City's Council Sustainability Committee during its April 3, 2013, meeting recommended that Hayward abandon its local Green Building Requirements for Private Development in lieu of adopting the State Green Building Standards Code, because the State has and would enhance required green building standards (see staff report and attachments as agenda item #5 at: http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC040313full.pdf and meeting minutes as agenda item #2 at http://www.hayward-ca.gov/CITY-

GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2013/CSC-CCSC040313full.pdf). The Sustainability Committee also acknowledged the value from an economic perspective of having green building standards similar to most other jurisdictions, and further recommended to Council that developers for residential projects of at least twenty units be required to offer solar systems as an optional upgrade. Staff will include such requirement as a condition for such projects, associated with discretionary planning applications, and will present information in the future regarding this and other options to promote renewable energy use.

As the part of the first phase of the State's push toward Zero Net Energy Buildings (all new residential by 2020 and non-residential by 2030), the 2013 Energy Code will incorporate extensive solar ready requirements into the mandatory measures. These apply to newly constructed single family residences located in subdivisions with ten or more dwellings, multifamily dwellings of any height and new non-residential buildings. The solar ready standards also apply to existing non-residential buildings when an addition will increase the roof area by 2,000 square feet or more. The regulations primarily involve establishing a "solar zone" on the roof that is properly oriented towards the sun and that is not obstructed by building elements or shadows. In addition to architectural design measures, there are a series of electrical requirements that promote an easy connection of a future PV system with minimal alterations.

Staff is recommending repealing Hayward's local ordinance in lieu of the CalGreen because the State standards for green building have and will increase significantly above what existed at the State level when the City adopted its local green building provisions in 2009. For example, Hayward's local ordinance requires new single-family residential projects to be Green Point Rated (score of at least 50 on Build-It-Green's green-point rated checklist that addresses items like community (land use/zoning), water conservation, resource conservation, indoor air quality/health, and energy efficiency) and new commercial projects to exceed the 2008 State Building Energy Efficiency Standards (Title 24, Part 6) of the California Building Code requirements by at least 15% using the performance method. The new 2013 Green Building Code will require energy efficiency of approximately 20% greater efficiency than the current energy code; and 10% greater energy efficiency for residential projects and 15% greater energy efficiency for commercial projects in comparison to Hayward's current local requirements.

The City's plan checkers and inspectors will ensure compliance with Cal Green standards, versus outside independent contractors with associated additional costs, which is done for Green Point Rated certification. Below is a chart showing current and proposed energy efficiency regulations/standards and Attachment XI includes a table that shows current and proposed green building standards for Hayward.



Mechanical Code (Attachments V and VI): The amendments to the Mechanical Code are administrative in nature.

Electrical Code (Attachments VII and VIII): Local amendments to the Electrical Code provide additional safety features by requiring additional supports for cabling and wiring, due to the probability of seismic activity in the area and to better identify multi-wire branch circuits.

Plumbing Code (Attachments IX and X): Local amendments to Plumbing Code maintain the prohibition of plastic piping as an approved material for plumbing systems installed in the City of Hayward. Such recommendations are made because plastic and similar piping is combustible, emits toxic gases and acids, and generates large amounts of smoke when ignited, which if used for interior water distribution or drain waste and vent systems, would increase the threat to life and property in the event of a seismic disturbance.

Environmental Review: This action is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15378(b) (1) of the CEQA guidelines, which is an exemption for legislative action as required by the state. In this case, the adoption of the state building codes is mandated.

ECONOMIC IMPACT

The economic impact of the amendments to the codes will be minimal in materials and labor costs, particularly given the recommendation to comply with State green building standards. According to the California Energy Commission (CEC) and as relayed to the Council Sustainability Committee in April, the new 2013 State Energy Code standards will increase the cost of constructing a new home by an average of $2,290 above the 2008 State standards (the current standards). The cost of construction for non-residential projects will also increase, but the CEC has not released an estimate for these projects.

Under Hayward's current Green Building Ordinance, the additional cost of construction for a new single-family home is approximately $3,661 above the 2008 State standards. Built into this is the cost of Green Points rating and inspection services, which are roughly $1,300. The Hayward Green Building Ordinance is also estimated to cost an additional $15,000 above 2008 State standards for a 10,580 square foot low-rise office building, according to a 2009 cost-effectiveness study by Gable and Associates that was used by the City in adopting its Green Building Ordinance. The table below summarizes these additional costs. The projected $2,290 additional cost of the new standards listed in the table below replaces the Hayward Green Building costs. Staff estimates that the recommended amendment to the Plumbing Code continuing the prohibition on plastic type piping would add twenty-five to thirty percent (including materials and labor) to the plumbing costs for projects. The City of Hayward will maintain the quality and standards for construction that our residents and business owners have come to expect, while at the same time increase the level of life safety requirements.

	Avg. Additional Costs Above 2008 State Standards for 2013 State Code (old)	Avg. Additional Costs Above 2008 State Standards for Hayward's Green Building Ordinance (new)
Residential (2,050 sf home)	$2,290	$3,661
Non-Residential (10,500 sf low-rise office building)	NA	$15,000

FISCAL IMPACT

The fiscal impact to the City of Hayward related to the new Codes has been approximately $29,000. This cost includes the cost for new Code books; electronic codes and tablets to access them from the field; books on standards, specifications and references; study guides; interpretive manuals; Code Check flip books; code hand books and illustrated guides; as well as any other materials to assist field and plan check staff to understand and explain the new codes; and there is approximately $5,000 allotted for required staff code training classes. There will also be minimal costs associated with putting ordinances and resolutions reflecting local amendments to the codes on the City of Hayward's website, and noticing for this meeting. All of these costs are included in the current FY 2014 approved budget.

PUBLIC CONTACT

Handouts about the adoption of the new codes have been placed in the Permit Center at City Hall. Once the ordinance repealing the City's Green Building Requirements for Private Development (Attachment IV) is adopted, handouts will also be placed in the Permit Center informing potential applicants of that ordinance and plans to simply utilize the State's green building standards.

SCHEDULE

The ordinances will be presented for adoption at the next Council meeting on December 17.

Prepared by: Gary Lepori, Building Official
Steve Osborne, Senior Plan Checker
Andrew Westfield, Fire Marshal

Recommended by: David Rizk, Director of Development Services
Garrett Contreras, Fire Chief

Approved by:

Fran David, City Manager

Attachments:

Attachment I: Fire Code Resolution
Attachment II: Fire Code Ordinance
Attachment III: Building Code Resolution
Attachment IV: Building Code Ordinance
Attachment V: Mechanical Code Resolution
Attachment VI: Mechanical Code Ordinance
Attachment VII: Electrical Code Resolution
Attachment VIII: Electrical Code Ordinance
Attachment IX: Plumbing Code Resolution
Attachment X: Plumbing Code Ordinance
Attachment XI: Comparison of Existing and Proposed Green Building Standards

HAYWARD CITY COUNCIL

RESOLUTION NO. ___

Introduced by Council Member ___

RESOLUTION FINDING AND DETERMINING THE NEED FOR CHANGES OR MODIFICATION TO THE CALIFORNIA FIRE CODE, 2013 EDITION

WHEREAS, California Health and Safety Code sections 13143.2 and 13143.5 permit a city to make such changes or modifications as deemed reasonably necessary because of local conditions to be made in specified uniform industry codes; and

WHEREAS, it is necessary that the City's Fire Code be revised to conform with parallel provisions in the City's Building Code as well as to address specialized needs presented by local conditions.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby find and determine as follows:

1. In connection with the adoption by reference of the California Fire Code, 2013 Edition, the City needs to adopt changes or modifications to the following sections of the California Fire Code, 2013 Edition, by reason of local conditions: 1, 2, 3, 4, 5, 6, 7, 8,104.10, 104.10.1, 104.12, 105.2.2, 105.8, 108.1, 202, 503.1.4, 507.5.1, 603.4, 605.11 through 605.11.6, 901.4.2, 901.4.5, 903.2, 903.2.19, 903.2.20, 903.3.1.1, 903.4.2, 905.1, 905.3, 905.4, 1413.1, 2703.1.5, 2905.3, 3401.4.1, 3403.1.4, 3404.1.1, 3406.2, 3406.2.8, 4901.3, 4902, 4905.2, 4905.2.1, 4905.2.2, 4905.2.3, 4906, 4907, APPENDIX B SectionB105.1 and B 105.2, APPENDIX C TABLE C105.1, 9, 10, 11, 12, 13, and 14.

2. The amendments to the California Fire Code, 2013 Edition (published by the International Code Council) have been recognized by the City of Hayward to address the fire problems, concerns, and future directions by which this City can establish and maintain an environment which will afford an acceptable level of fire and life safety to its citizens and guests.

3. The "Findings of Facts" contained herein addresses present local conditions which either singularly or in combination cause the aforesaid amendments to be adopted. The following local conditions have an adverse effect on the prevention and control of major loss fires, thereby making it necessary to adopt the above changes or modifications in the California Fire Code in order to provide a reasonable degree of fire and life safety in this community.

CLIMATIC

(a) Precipitation: Precipitation ranges from 15 to 24 inches per year with an average of approximately 17.58 inches per year. Ninety-five percent falls during the months of October through April, and five percent from May through September.

(b) Relative Humidity: Humidity during May through November ranges from 20 to 40 percent going as low as 10 percent on an average of 10 days during this period. During December through April, the humidity ranges from 41 to 68 percent.

(c) Temperatures: High temperatures have been recorded in the low 100's F. Average summer highs are in the 73 F. range with an average annual maximum temperature of 66 F.

(d) Winds: Prevailing winds are from the west, northwest (WNW). However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the 14 to 23 miles-per-hour range, gusting to 25 to 35 miles-per-hour. Forty miles-per-hour winds are experienced occasionally, and higher have been registered. During the winter half of the year, strong, dry, gusty winds from the north move through the area for several days, creating extremely dry conditions.

(e) Summary: These local climatic conditions effect the acceleration, intensity, and size of fires in the community. Times of little or no rainfall, of low humidity, and high temperatures create extremely hazardous conditions, particularly as they relate to wood shake and shingle roof fires and fires involving buildings. During wildland and wood shake and shingle roof fires, winds can carry sparks and burning brands to other roofs, thus spreading the fire and causing conflagrations. In building fires, winds can literally force fire back into buildings and can create a blowtorch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

GEOLOGICAL AND TOPOGRAPHIC

(a) Vegetation: Dry grass and brush are common in the hills and open-space areas adjacent to built-up locations during six to eight months of each year. Many of these areas frequently experience wildland fires which threaten nearby buildings, particularly those with wood roofs or sidings.

(b) Hills, Creeks, Canals, Freeways, Railways, Housing Tracts, Large Buildings, Building Complexes, and the Airport: All of these surface features, both natural and man-made, have a major adverse effect upon the road and street layout in the City including major traffic routes. These conditions limit the number, and cause indirect routing of major arterial streets for normal traffic as well as emergency vehicle response.

(c) Terrain: Areas with buildings include level, sloping, and rolling terrain. This terrain is not dissimilar to terrain in other locations which have experienced major conflagrations.

(d) Roads and Streets: As noted above, the limited number, and the indirect routing of roads and streets in the City create heavy, slow traffic conditions and excessively long travel routes from point to point.

(e) Population: The current and rapidly growing population in the City creates two fire protection problems:

(1) The more people, the more emergency incidents requiring Fire Department response. The greater the frequency of alarms, the greater the chance there will be simultaneous emergency incidents requiring Fire Department response. This results in longer response times and/or fewer fire companies to respond to any emergency within the City; and

(2) The more people, the more traffic congestion during a greater part of the day. Such traffic congestion not only slows Fire Department response but often restricts access to fire scenes.

(f) Buildings, Landscaping, and Clearances: Many building complexes are of designs which greatly limit the approach to and accessibility by Fire Department resources. Many houses and other buildings with wood roofs or sidings are close together, and fire will readily spread from one to another by both radiation and convection of flying brands.

(g) Summary: Essentially, the above local geological and topographical conditions present fire frequency, magnitude, exposures, and accessibility problems and have a negative impact upon the response capability of the Fire Department. The quantity of Fire Department resources that can arrive within an effective time is limited. The time in which they can respond is extended due to lengthy travel distances and traffic congestion.

4. CONCLUSION. Local climatic, geological, and topographic conditions have a definite impact upon the frequency, spread, acceleration, intensity and size of fire involving buildings in Hayward. Furthermore, they have an adverse impact upon the number of Fire Department resources which can be brought to bear upon such fires within an expeditious period of time. Therefore, it is found to be reasonably necessary that the California Fire Code be changed or modified to adopt more stringent requirements to mitigate the effects of the above conditions.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of this resolution, together with the modifications or changes to the California Fire Code, to be filed with the State of California Department of Housing and Community Development, the state Building Standards Commission, and the state Fire Marshal, by registered mail.

BE IT FURTHER RESOLVED that, should any finding contained herein be declared for any reason invalid, it is the intent of the City Council that it would have passed all remaining portions of this resolution.

IN COUNCIL, HAYWARD, CALIFORNIA _____

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

_____
City Clerk of the City Of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A FIRE PREVENTION CODE FOR THE CITY OF HAYWARD; ADOPTING THE CALIFORNIA FIRE CODE, 2013 EDITION, PRESCRIBING REGULATIONS GOVERNING CONDITIONS HAZARDOUS TO LIFE AND PROPERTY FROM FIRE OR EXPLOSION; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES; PROVIDING FOR PENALTIES FOR VIOLATION, AND REPEALING ORDINANCE NO. 10-14, AS AMENDED, AND ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH

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

Section 1. Effective January 1, 2014, Ordinance No. 10-14, and all amendments thereto, is hereby repealed and in substitution thereof a new fire code for the City of Hayward is hereby enacted to read as follows:

SEC. 1. FIRE PREVENTION CODE OF THE CITY OF HAYWARD, ADOPTION OF CALIFORNIA FIRE CODE. The City Council of the City of Hayward for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, hereby adopts that certain code and standards known as the 2013 California Fire Code and based on the International Fire Code being particularly the 2012 edition thereof and the whole thereof (including Appendices Chapter 4, B, C, D, E, F, G, H, I, J, K) save and except such portions as are hereunder deleted, modified, or amended as set forth hereinafter, as the Fire Code of the City of Hayward. A copy of each said California Fire Code is on file in the office of the City Clerk, to which reference is hereby made for further particulars.

Said code is adopted by reference pursuant to Section 50022.2 et seq. of the Government Code of the State of California, and the same is hereby adopted and incorporated as fully as if set out at length herein and, from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the City of Hayward except as otherwise noted herein.

SEC. 2. ESTABLISHMENT AND DUTIES OF THE FIRE PREVENTION OFFICE.

2.1 The California Fire Code shall be enforced by the Fire Prevention Bureau and the Operations Division in the Fire Department of the City of Hayward.

2.2 The chief officer in charge of the Fire Prevention Bureau shall be appointed by the Fire Chief.

2.3 The Chief of the Fire Department shall recommend to the City Manager the employment of technical personnel responsible for code enforcement. The Chief of the Fire Department may also detail such members of the Fire Department as inspectors as shall from time to time be necessary.

SEC. 3. DEFINITIONS.

3.1 Whenever the word "jurisdiction" is used in the California Fire Code, it shall be held to mean the City of Hayward.

3.2 Whenever the term "Corporation Counsel" is used in the California Fire Code, it shall be held to mean the City Attorney of the City of Hayward.

3.3 Whenever the term "Fire Code Official" or “Fire Marshal” is used, it shall be held to mean the Chief Officer in charge of the Fire Prevention Bureau for the Fire Department or his or her designated representative.

SEC. 4. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS IN ABOVEGROUND TANKS IS TO BE PROHIBITED.

4.1 The storage and use of flammable or combustible liquids (including flammable cryogenic liquids) in aboveground tanks is prohibited, within the city limits of Hayward unless approved by the Fire Chief upon a finding that such an approval would minimize a danger to the health, safety, and welfare of the population of Hayward or to neighboring properties.

4.2 New bulk plants for flammable or combustible liquids are prohibited within the city limits of Hayward unless approved by the Fire Chief upon a finding that such an approval would minimize a danger to the health, safety, and welfare of the population of Hayward or to neighboring properties.

SEC. 5. ESTABLISHMENT OF LIMITS IN WHICH BULK STORAGE OF LIQUEFIED PETROLEUM GASES IS TO BE RESTRICTED. The limits referred to in Section 6104.2 of the California Fire Code, in which bulk storage of liquefied petroleum gas is restricted, are hereby established as follows: Within the city limits of Hayward, unless approved by the Fire Chief upon a finding that such an approval would minimize the danger to the health, safety, and welfare of the population of Hayward or to neighboring properties.

SEC. 6. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVES AND BLASTING AGENTS IS TO BE PROHIBITED. The storage and use of explosives and blasting agents is prohibited within the city limits of Hayward, unless approved by the Fire Chief upon a finding that such an approval would minimize the danger to the health, safety, and welfare of the population of Hayward or to neighboring properties.

SEC. 7. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH THE STORAGE OF COMPRESSED NATURAL GAS IS TO BE PROHIBITED. The storage of compressed natural gas is prohibited within the city limits of Hayward, unless approved by the Fire Chief upon a finding that such an approval would minimize the danger to the health, safety, and welfare of the population of Hayward or to neighboring properties.

SEC. 8. AMENDMENTS MADE IN THE CALIFORNIA FIRE CODE. The California Fire Code is amended in the following respects, with the reference numbers being taken from the California Fire Code, including deletions, additions and text changes.

GENERAL
CHAPTER 1 – SCOPE AND ADMINISTRATION
DIVISION II ADMINISTRATION

SECTION 104 - GENERAL AUTHORITY AND RESPONSIBILITIES

104.10 FIRE INVESTIGATIONS. Amend section to read:

104.10 FIRE INVESTIGATIONS. The Fire Department shall investigate promptly the cause, origin, and circumstances of each and every fire occurring in the jurisdiction involving loss of life or injury to person or destruction or damage to property and, if it appears that such fire is of suspicious origin, the department shall then initiate efforts for the immediate collection of all physical evidence relating to the cause of the fire.

The Fire Chief is authorized to investigate the cause, origin, and circumstances of unauthorized releases of hazardous materials.

104.10.1 ASSISTANCE FROM OTHER AGENCY. Amend subsection to read:

104.10.1 ASSISTANCE FROM OTHER AGENCY. The Police Department shall assist the Fire Department in its investigations whenever requested to do so, unless otherwise directed by the Chief of Police.

Add new Section 104.12 to read:

104.12 FIRE PROTECTION. The Fire Chief shall designate the type and number of fire appliances to be installed and maintained in and upon all buildings and premises in the jurisdiction. This shall be done according to the relative severity of probable fire, including the rapidity with which it may spread. Such appliances shall be of a type suitable for the probable class of fire associated with such buildings or premises and shall have approval of the Fire Chief.

SECTION 105 - PERMITS.

105.2.2 INSPECTION AUTHORIZED Amend section to read:

105.2.2 INSPECTION AUTHORIZED. Before a permit is issued, the Fire Chief or his or her designated representative is authorized to inspect and approve the receptacles, vehicles, buildings, devices, premises, storage spaces, or areas to be used. In instances where laws or regulations are enforceable by departments other than the Fire Department, joint approval shall be obtained from all departments concerned.

105.8 PERMIT FEES. Add new subsection 105.8 to read:

105.8 PERMIT FEES. The City Council of the City of Hayward may, if it so desires establish by resolution, permit fees in connection with any permits required or authorized to be issued by the Fire Chief or any other authorized representative of the Fire Department.

SECTION 108 - BOARD OF APPEALS.

108.1 BOARD OF APPEALS ESTABLISHED Amend section to read:

108.1. BOARD OF APPEALS ESTABLISHED. In order to determine the suitability of alternate materials and type of construction, there shall be and hereby is created an appropriate board consisting of five members who are qualified by experience and training to pass judgment upon pertinent matters. The Fire Chief shall be an ex-officio member and shall act as secretary of the board. The Fire Appeal Board shall be appointed by the City Manager and shall hold office at his or her pleasure. The Board shall adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the Fire Chief, with a duplicate copy to the appellant, and may recommend to the executive body such new legislation as is consistent therewith.

CHAPTER 2 – DEFINITIONS

SECTION 202 - GENERAL DEFINITIONS.

HIGH-RISE BUILDING. Add a paragraph to read:

The Fire Chief may determine that a building is a “high-rise structure” based on site/building configuration and the lack of viable exterior access to the upper floors for firefighting, rescue operations and where firefighters must place almost complete reliance on the building’s life safety features, fire protection systems and components of building construction.

CHAPTER 5 - FIRE SERVICE FEATURES

SECTION 503 - FIRE APPARATUS ACCESS ROADS.

503.1 WHERE REQUIRED. Add new subsection 503.1.4 to read:

503.1.4 FIRE LANES. Where necessary to maintain adequate emergency vehicle approaches to buildings or fire apparatus access roads, the Fire Chief may establish designated "Fire Lanes."

1. Restrictions and requirements as specified in the California Vehicle Code sections 22500.1 and 22658 shall apply to fire lanes established by this section.

SECTION 503 - FIRE APPARATUS ACCESS ROADS

Add new subsection 503.6.1 to read:

503.6.1 KEY SWITCHES. A key switch shall be provided and mounted on a stationary place on the outside of the security gate. The key switch shall be mounted on a permanently affixed monument three (3) to five (5) feet above ground.

SECTION 505 – PREMISES IDENTIFICATION

505.1 ADDRESS IDENTIFICATION. Amend section to read:

505.1 ADDRESS IDENTIFICATION. New and existing buildings shall have approved address numbers, building numbers or approved building identification plate in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Where required by the Fire Department, address numbers shall be provided in additional approved locations to facilitate emergency response. Address numbers shall be numbers or alphabetical letters. Numbers shall be a minimum of 4 inches (101.6) high with a minimum stroke width of 0.5 inch (12.7 mm) and installed on the front of the dwelling (R-3, R-3.1 and R-4) in a location so as to be visible from the street. Otherwise, a minimum 6-inch address shall be installed in a location approved by the Fire Department. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address numbers shall be maintained.

SECTION 507 - FIRE PROTECTION WATER SUPPLIES.

507.5 FIRE HYDRANT SYSTEMS.

507.5.1 WHERE REQUIRED. Amend subsection to read:

507.5.1 WHERE REQUIRED. Fire hydrant systems and fire hydrants shall be in accordance with Section 507.5. Hydrants shall be of the type approved in the City of Hayward and have not less than a six-inch connection with the mains. A shutoff valve shall be installed in the hydrant connection, a minimum distance of five feet from the hydrant. Hydrants should be tested annually for proper functioning in accordance with the requirements of the authority having jurisdiction or upon request of the Fire Chief.

Hydrants shall be placed at least 40 feet from the buildings to be protected. Where it is not feasible to place them at that distance, they may be in closer proximity in locations approved by the Fire Chief.

CHAPTER 6 – BUILDING SERVICES AND SYSTEMS

SECTION 603 FUEL FIRED APPLIANCES.

603.4 PORTABLE UNVENTED HEATERS. Amend section to read:

603.4. PORTABLE UNVENTED HEATERS. The use of listed portable unvented oil-burning heating appliances shall be limited to supplemental heating in Group U Occupancies.

EXCEPTION: When approved by the Fire Chief, portable unvented oil-burning heating appliances may be used in any occupancy during construction when such use is necessary for the construction and the use does not represent a hazard to life or property.

SECTION 605 ELECTRICAL EQUIPMENT, WIRING AND HAZARDS

605.11 SOLAR PHOTOVOLTAIC POWER SYSTEMS.

605.11.1.2 MARKING CONTENT. Amend section to read:

605.11.1.2 MARKING CONTENT. Marking content shall be provided in accordance with Section 605.11.1.2.1 and 605.11.1.2.2.

605.11.1.2.1 MARKING AND LABELING OF DISCONNECTING MEANS. Each photovoltaic system disconnecting means shall be permanently labeled to identify it as a photovoltaic system disconnect. A warning sign shall be placed adjacent to the power disconnect in a location clearly visible from the location where the power disconnect is operated. The marking shall contain the words:

WARNING: ELECTRIC SHOCK HAZARD.
DO NOT TOUCH TERMINAL.
TERMINALS ON BOTH THE LINE AND LOAD SIDES MAY BE ENERGIZED IN THE OPEN POSITION.

605.11.1.2.2 MARKING OF DC CONDUIT, RACEWAYS, ENCLOSURES AND CABLE ASSEMBLIES. The marking shall contain the words:

WARNING: PHOTOVOLTAIC POWER SOURCE.

Add new subsections 605.11.5 through 605.11.5.2 to read:

605.11.5 PHOTOVOLTAIC SYSTEM DISCONNECTING MEANS.

Photovoltaic system disconnecting means shall be provided in the locations described in Section 605.11.5.1 through 605.11.5.2.

605.11.5.1 MAIN SERVICE DISCONNECTS. A main service disconnect shall be provided to disconnect all conductors in a building or other structures from the photovoltaic system conductors. The power disconnect shall be installed at a readily accessible location on the outside of a building or structure.

605.11.5.2 ROOF DC POWER DISCONNECTS. A roof power disconnect shall be provided in proximity of the photovoltaic array to de-energize the DC circuits from the array to the mains service disconnect and inverter. Power disconnects on the one- and two- family residential roof shall be located within 3 feet of the photovoltaic array along roof access and pathways and located together when possible. Power disconnects on roof other than the one- and two- family residential shall be located as close as practically possible to the photovoltaic array and installed along the center line axis pathways when possible.

Add new subsection 605.11.6 to read:

605.11.6 NON-HABITABLE BUILDINGS OR STRUCTURES. Detached Group U non-habitable structures, such as parking shade structures, carports, solar trellises, and similar type structures shall comply with Section 605.11 through 605.11.3.

CHAPTER – 9 FIRE PROTECTION SYSTEMS

SECTION 901 - GENERAL.

901.4 INSTALLATION.

Add new subsection 901.4.7 to read:

901.4.7 FIRE SPRINKLER CONTRACTORS. All design and on-site installation work for automatic sprinkler systems shall be done by people whose qualifications satisfy applicable State of California requirements and whose expertise in the field is demonstrable through documentation of their appropriate education, experience, or license to the Fire Chief's satisfaction.

SECTION 903 - AUTOMATIC SPRINKLER SYSTEMS.

903.2 WHERE REQUIRED. Amend 903.2 to read

903.2 WHERE REQUIRED. An automatic sprinkler system shall be installed in all new construction, regardless of occupancy classification, where the total floor area is 5,000 square feet (465 m^2) or more (area separation walls may not be used in lieu of a sprinkler system except when buildings are separated by fire wall constructed in accordance with Section 706 FIRE WALLS of the 2013 California Building Code), building height exceeds two stories, or floor heights exceed 15feet (4,572 mm) from the lowest level of Fire Department access and

locations described in Section 903.2.1 through 903.2.21. In cases where multiple requirements may apply, the most restrictive requirement shall prevail. Floor areas of mezzanines shall be included in calculating the total floor area to be used in determining automatic fire-extinguishing requirements.

903.3 INSTALLATION REQUIREMENTS

Add new subsection 903.2.8.2 to read:

903.2.8.2 GROUP R-3 TOWNHOUSE OR R-2 MULTI-FAMILY RESIDENTIAL. In buildings with 3 or more Group R-3 dwelling units, the automatic fire sprinkler systems shall be installed in accordance with Section 903.3.1.1.

903.3.1.2 NFPA 13R SPRINKLER SYSTEM. Deleted.

903.3.1.2.1 BALCONIES AND DECKS. Deleted.

903.3.1.3 NFPA 13D SPRINKLER SYSTEMS. Amend 903.3.1.3 to read:

903.3.1.3 NFPA 13D SPRINKLER SYSTEMS. Automatic sprinkler systems installed in one- and two-family dwellings (R-3) and R-3.1 shall be permitted to be installed throughout in accordance with NFPA 13D. Multipurpose sprinkler systems shall be permitted provided the systems are installed in accordance with NFPA 13D and City of Hayward Standard Details. Sprinkler systems in Group R-3.1 facilities shall be installed in accordance with this section, Section 903.2.8 and NFPA 13D with modifications listed in Section 903.3.1.3.1.

903.3.1.3.1 MODIFIED NFPA 13D SPRINKLER SYSTEMS.

When a modified NFPA 13D system is required, the system shall be installed to meet the following requirements.

1. Complete sprinkler coverage shall be provided in attics, garages, decks, porches, foyers and crawl spaces 3 feet or higher or having storage.

2. For sprinkler systems in buildings with R-3.1 use, sprinkler coverage shall be provided in bathrooms and closets.

3. An interior audible alarm device shall be installed within the dwelling in a location so as to be heard throughout the home. The device shall activate upon any water flow activity in the fire sprinkler system.

4. Provide a minimum of two replacement sprinklers for emergency replacement along with an appropriate wrench for changing sprinkler heads.

5. Control valve shall be secured with a chain and breakaway lock.

Add new subsection 903.2.20 to read:

903.2.20 EXISTING BUILDINGS. An automatic sprinkler system shall be installed in an existing building when cumulative additions, repairs, or alterations are made to the building and such additions, repairs, or alterations meet any of the following conditions:

1. Alteration is any construction or renovation or modification to an existing structure other than repair or addition, a change in occupancy or use, or structural repair to an existing building or facility. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

2. Additions, repairs, or alterations are valued at 50 percent or more of the current assessed value of the building. (Value is based only on the structure involved. If owner disputes valuation, an appraisal can be performed at the owner's expense, by an appraiser acceptable to the Fire Chief.)

3. Any addition or additions to the original building which will add 10 percent or more to the total floor area of the existing building and the resulting floor area is 5,000 square feet (465 m2). The floor area shall be calculated in accordance with Section 903.2.

4. Additions, repairs, or alterations that will result in a change in occupancy or use and with the resulting floor area is 5,000 square feet (465 m2) or more and shall comply with the most current CBC and CFC edition. The floor area shall be calculated in accordance with Section 903.2.

5. Accumulative area of alteration, addition or repair is 5,000 square feet (465 m2) or more. The floor area shall be calculated in accordance with Section 903.2. Building owners are to be held responsible.

6. Extensive remodeling in existing one- and two-family dwellings and townhouses, where roofs/ceilings are reconstructed or altered, and new sprinkler systems can be installed without inconvenience upon the Fire Chief’s determination.

Add new subsection 903.2.21 to read:

903.2.20.1 EXISTING BUILDINGS IN HAYWARD DOWNTOWN CORE AREA. Alternative design in lieu of fire sprinkler systems in Hayward's Downtown Core Area shall be permitted when it satisfies all provisions established by the Hayward Fire Department.

1. The Hayward Downtown Core is bounded by A St., Foothill Blvd., D St., and Grand St. and includes a four- block strip along the south side of D St. and a two-block area west of Grand St.

2. The alternative design option is only available to a renovation, improvement, or redevelopment project on an existing building used as Group A, B, E, F, M, R and S.

3. The alternative design is not applicable to newly constructed projects.

4. The project shall satisfy all provisions listed in the supplemental document - *Alternative Design in Lieu of Fire Sprinkler Systems in Hayward's Downtown Core.*

Add new subsection 903.2.21 to read:

903.2.21 HILLSIDE DESIGN AND URBAN/WILDLAND INTERFACE. Developments located in the hillside urban/wildland interface zone identified in Section 4901.3 of the ordinance shall be fully sprinkler per NFPA 13. Single family residence fire sprinkler system shall be installed in accordance with NFPA 13D with modifications listed in Section 903.3.1.3.1.

903.3.1.1 NFPA 13 SPRINKLER SYSTEMS. Add to the end of this section to read:

"When automatic sprinkler systems are required in buildings of undetermined use, they shall be designed and installed to have a sprinkler density of 0.33 GPM for 3,750 square feet with a maximum coverage of 100 square feet per head. Use is considered undetermined if not classified at time permit is issued. Where subsequent use requires a system with greater capability, the system shall be reinforced to the required code in order to obtain clearance for the new use."

903.3.5 WATER SUPPLY. Amend 903.3.5 to read:

903.3.5 WATER SUPPLY. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. Water supplies for automatic sprinkler systems shall be connected to the city water main. The potable water supply shall be protected against backflow in accordance with *Health and Safety Code, Section 13114.7* and the City of Hayward installation standards.

Add new subsections 903.3.5.3 to 903.3.5.4.2 to read:

903.3.5.3 FIRE SERVICE CONNECTIONS. Each fire service shall have installed therein a detector check valve of such pattern and design in accordance with City of Hayward Standard Details.

903.3.5.3.1 FIRE SERVICE MAINS SUPPLYING HYDRANTS. Pipe smaller than six inches in diameter shall not be installed as private fire service main supplying hydrants.

903.3.5.3.2 FIRE SERVICE MAINS NOT SUPPLYING HYDRANTS. For a fire service main that does not supply hydrants, diameter smaller than 6 inches shall be permitted to be used when all the following conditions are met:

- It supplies fire suppression systems only, including automatic fire suppression systems, water spray fixed systems, foam systems and standpipe systems; and

- Hydraulic calculations shall show that the main is able to supply the total demand at the appropriate pressure.

903.3.5.3.3 COMMERCIAL OR INDUSTRIAL OR MULTI-FAMILY RESIDENTIAL BUILDINGS. When an application is made for commercial or industrial/multi-family residential fire service connections, such fire service installation shall be not less than four inches in diameter. Fire service line smaller than four inches in diameter shall be permitted when all the following conditions are met:

- A fire service main is dedicated to supplying a single automatic fire sprinkler system in one building; and

- Hydraulic calculations shall show that the fire service line is able to supply the demand at the appropriate pressure for automatic fire sprinkler systems.

903.3.5.3.4 ONE- AND TWO- FAMILY RESIDENTIAL BUIDLINGS. When an application is made for one- and two- family residential fire service connection serving residential fire sprinkler systems installed in accordance with NFPA 13D including modified NFPA 13D, such fire service installation shall not be less than one inch in diameter. For an application utilizing existing underground water line, a minimum ¾ inch in diameter shall be permitted.

903.3.5.4 WATER FLOW TEST DATA. Water flow test data applied in automatic fire sprinkler system design shall be less than five years old. Adjustments shall be made to the flow test results in order to take into account daily and seasonal fluctuations and uncertainties of overall water supply.

903.3.5.4.1 SAFETY MARGIN. A safety margin of 10% or 10 PSI may be used as a guideline. The projections prepared by the water utility shall be used when they are available.

Add new subsections 903.3.9 to 903.3.9.2 to read:

903.3.9 POST INDICATOR VALVES. One dedicated post indicator valve shall be provided for each sprinkler system water supply.

903.3.9.1 CONTROL INDICATOR VALVES. Use of control indicator valves which are parts of a backflow preventer assembly in lieu of the dedicated post indicator valve shall be allowed, subject to the approval of the Fire Department, when all of the following conditions are met:

1. The city water main is the only source of water supply to the fire service line.

2. The underground fire service line serves the wet fire sprinkler system(s) for only one (1) building.

3. The control valves of the backflow preventers are indicator valves, such as OS&Y valves.

4. A backflow preventer has at least one indicator valve not less than 40 feet away from the building, except in the following circumstances:

   - For buildings less than 40 feet in height, a backflow preventer with at least one indicator valve shall be permitted to be installed closer than 40 feet, but at least as far from the building as the height of the wall facing the backflow preventer.

   - For buildings located in the Hayward Downtown Area, a backflow preventer with at least one indicator valve shall be permitted to be installed closer than 40 feet, but shall be at the farthest possible location from the building.

5. The backflow preventer is located no farther than 150 feet away from the building, measured by underground fire service line. The backflow preventer shall be located in a way to avoid confusion in the field.

903.3.9.2 OTHER TYPE POST INDICATOR VALVES. The following valves controlling fire service water supply shall also be allowed in lieu of the dedicated post indicator valves.

1. An approved wall-type post indicator valve; or

2. Control valves installed in a fire-rated room accessible from the exterior.

903.4.1 MONITORING. Amend 903.4.1 to read:

903.4.1 MONITORING. Alarm, supervisory and trouble signals shall be distinctly different from one another and shall be automatically transmitted to an approved central supervising station and shall sound an audible signal at a constantly attended location in accordance with Section 903.4.2. This system shall have a supervised alarm and local alarm signaling capability.

903.4.2 - ALARMS. Add new subsection 903.4.2.1 and 903.4.2.2 to this section to read:

903.4.2.1 COMMERCIAL OR INDUSTRIAL BUILDINGS. At least one interior audible alarm device shall be installed within each tenant space of the building at a constantly attended location in the building and shall be placed in a location so as to be heard throughout the constantly attended areas in accordance with NFPA 72. The device shall activate upon any water flow activity in the fire sprinkler system.

903.4.2.2 ONE- AND TWO- AND MULTI-FAMILY RESIDENTIAL BUILDINGS. At least one interior audible alarm device shall be installed within the dwelling units in a location so as to be heard throughout the home with bedroom doors closed. The device shall activate upon any water flow activity in the fire sprinkler system.

SECTION 904 – ALTERNATIVE AUTOMATIC FIRE-EXTINGUISHING SYSTEMS

904.3.5 MONITORING. Amend 904.3.5 to read:

904.3.5 MONITORING. Where a building fire alarm system or fire sprinkler monitoring system is installed, automatic fire-extinguishing systems shall be monitored by the building fire alarm system or the fire sprinkler monitoring system in accordance with NFPA 72. This system shall have a supervised alarm and local alarm signaling capability. Central station monitoring is required, which shall be done by an approved and/or listed central station monitoring company.

SECTION 905 - STANDPIPES

905.1 GENERAL. Add sentence to the end of this section to read: “Buildings three stories or more in height shall have an approved standpipe system.”

905.3 REQUIRED INSTALLATIONS. Amend to substitute any reference to "4 Stories” with “3 Stories.”

905.4 LOCATION OF CLASS I STANDPIPE HOSE CONNECTIONS. Add new number 6 to read:

6. DUAL OUTLETS. All Class I standpipe outlets located as required in Section 905.3 shall have added outlets located in enclosed corridors adjacent to enclosed stairway access doors at each level of every required stairway.

CHAPTER 33 – FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION

SECTION 3301 - GENERAL.

3313 STANDPIPES. Amend subsection 3313.1 to read:

3313.1 WHERE REQUIRED. Every building three stories or more in height shall be provided with not less than one standpipe for use during construction. Such standpipe shall be provided with Fire Department hose connections at accessible locations adjacent to usable stairs and the standpipe outlets shall be located adjacent to such usable stairs. Such standpipe systems shall be extended as construction progresses to within one floor of the highest point of construction having secured decking or flooring.

In each floor there shall be provided a 2 ½-inch (64 mm) valve outlet for Fire Department use. Where construction height requires installation of a Class I standpipe, fire pumps and water main connections shall be provided to serve the standpipe.

CHAPTER 49 – WILDLAND-URBAN INTERFACE FIRE AREA

Add new subsection 4901.3 to read:

4901.3 WHERE REQUIRED. Development in the area east of Mission Boulevard from the south side of D Street to the city limits south to Union City shall be constructed in accordance with this chapter.

SECTION 4902 - DEFINITIONS

Amend “WILDLAND-URBAN INTERFACE FIRE AREA” definition to read:

“WILDLAND-URBAN INTERFACE FIRE AREA” is land designated which is covered with grass, grain, brush or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon such land would present an abnormally difficult job of suppression or would result in great and unusual damage through fire or resulting erosion. Such areas are designated by the Fire Chief on a map maintained in the office of the Fire Chief. The “WILDLAND-URBAN INTERFACE FIRE AREA” has been defined as:

> "The areas east of Mission Boulevard Blvd. from the south side of D Street to the city limits south to Union City."

SECTION 4905.2. Amend Section 4905.2 to read:

4905.2 CONSTRUCTION METHODS AND REQUIREMENTS WITHIN ESTABLISHED LIMITS. Within the limits established by Section 4901.3, construction methods intended to mitigate wildfire exposure shall comply with the

wildfire protection building construction requirements described in Section 4905.2.1, 4905.2.2 and 4905.2.3. In cases where multiple requirements may apply, the most restrictive requirement shall prevail.

Add new subsection 4905.2.1 to read:

4905.2.1 The building construction shall comply with the requirements contained in the California Building Standards Code including the following:

1. California Building Code Chapter 7A,

2. California Residential Code Section R327,

3. California Reference Standards Code Chapter 12-7A

Add new subsection 4905.2.2

4905.2.2 The building constructed shall comply with the following requirements:

1. Within ten feet of a structure, construct fences with an open wire mesh or non-combustible material to prevent fire from spreading to the structure.

2. Design roofs shall comply with a 'Class A" non-combustible roof rating as outlined in the California Building Code. (Do not use wood shake or treated wood shake roofs.)

3. Provide spark arrestors with1/4" metal mesh screens on all chimneys. Homeowners should inspect spark arrestors every year to ensure mesh screen integrity.

4. Additions to existing decks are subject to review by the Fire Marshal and may be required to meet building construction and fire protection standards.

6. Restrict outdoor storage of firewood, kindling, or compost material within 30 feet of any structure, unless the material is stored in an approved bin or enclosure.

7. Locate chimney at least ten feet away from existing tree canopies.

8. Enclose all roof eaves.

Add new subsection 4905.2.3 to read:

4905.2.3 In addition, the building construction shall comply with other City standards and regulations including but not limited to the Zoning Ordinance, Subdivision Ordinance, Building Ordinance, Fire Code Ordinances, Grading Ordinance, Tree Preservation Ordinance, and Water Efficient Landscape Ordinance.

SECTION 4906. Amend Section 4906 to read:

SECTION 4906 - CITY OF HAYWARD HILLSIDE DESIGN AND URBAN/WILDLAND INTERFACE GUIDELINES. As adopted by Resolution No. 93-037.

CHAPTER 50 – HAZARDOUS MATERIALS - GENERAL PROVISIONS

SECTION 5003 - GENERAL REQUIREMENTS.

Add new subsection 2703.1.5 to read:

SECTION 5003.1.5 - PROHIBITED LOCATION. – Hazardous materials are not allowed below grade plane in buildings.

SECTION 5004.2.2 – SECONDARY CONTAINMENT FOR HAZARDOUS MATERIALS LIQUIDS AND SOLIDS. Where required by Table 5004.2.2, buildings, rooms or areas used for the storage of hazardous materials liquids or solids shall be provided with secondary containment in accordance with this section when the capacity of an individual vessel or aggregate capacity of multiple vessels equals or exceeds 55 gallons. Additionally, the Fire Chief or his designee may require secondary containment at quantities less than 55 gallons or as specified in Chapter 50 in order to protect life safety, emergency responders, or the environment.

CHAPTER 52 – COMBUSTIBLE FIBERS

SECTION 5205 - BALED STORAGE.

Add new subsection 5205.3 to read:

5205.3 FIRE PROTECTION. Baled storage under any roof or overhang shall be protected by an approved automatic sprinkler system.

CHAPTER 57 – FLAMMABLE AND COMBUSTIBLE LIQUIDS

SECTION 5701 - GENERAL.

5701.4 PERMITS.

Add new subsection 5701.4.1 to read:

5701.4.1 PLANS. Plans shall be submitted with each application for a permit to store more than 60 gallons of flammable and combustible liquids in drums or tanks. The plans shall indicate the methods of storage, quantities to be stored, distances from buildings and property lines, access ways, fire-protection facilities, and provisions for drainage and runoff. Storage shall be in accordance with approved plans.

SECTION 5703 - GENERAL REQUIREMENTS.

Add new subsection 5703.1.4 to read:

SECTION 5703.1.4 - PROHIBITED LOCATION. Flammable and combustible liquids are not allowed below grade plane in buildings.

SECTION 5704 - STORAGE.

Add new subsection 5704.1.1 to read:

5704.1.1 APPLICABILITY. Storage and use of flammable and combustible liquids in aboveground tanks over 60 gallons is prohibited within the city limits of Hayward unless approved by the Fire Chief upon a finding that such approval would minimize the danger to the health, safety, and welfare of the population of Hayward or to neighboring properties. When allowed, storage and use of flammable and combustible liquids in containers, cylinders, and tanks shall be in accordance with sections 5701 and 5704. For permits see Section 105.1 and 5701.4.

EXCEPTION: Allowance shall be granted in the industrial area of Hayward for stationary, monitored, and double-walled aboveground flammable and combustible liquid storage tanks as follows:

a. Emergency power diesel generator tanks that do not exceed an aggregate site capacity of 5500 gallons. Tanks shall meet Underwriter Laboratory UL142 standard when manufactured as part of an emergency power generator package (generator belly tank) or Underwriter Laboratory UL2085 standard when tanks are separate from the generator package. Interstitial space shall be electronically monitored.

b. Gasoline fueling tanks that meet the Underwriter Laboratory UL2085 standard and do not exceed a site capacity of 550 gallons. Interstitial space shall be electronically monitored.

c. Combustible IIIB liquid storage tanks that do not exceed a site capacity of 5500 gallons. Tanks shall meet the Underwriter Laboratory UL142 standard.

d. Hydraulic oil tanks for elevators that meet California Division of Industrial Safety standards.

For motor-vehicle-fuel-dispensing stations, see Chapter 23.

SECTION 5706 - SPECIAL OPERATIONS.

5706.2 STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

5706.2 Amend the subsection to read:

5706.2 STORAGE AND DISPENSING OF FLAMMABLE AND COMBUSTIBLE LIQUIDS ON FARMS AND CONSTRUCTION SITES.

The storage of Class I, flammable and Class II or III combustible liquids in aboveground tanks is prohibited within the city limits of Hayward unless approved by the Fire Chief upon a finding that such approval would minimize danger to the health, safety, and welfare of the population of Hayward or to neighboring properties. When allowed, permanent and temporary storage and dispensing of Class I, flammable and Class II and III combustible liquids for private use on farms and rural areas and at construction sites, earth-moving projects, gravel pits or burrow pits shall be in accordance with Sections 5706.2.1 through 5706.2.8.1. For permits see section 105.1 and 5701.4.

EXCEPTION: Storage and use of fuel-oil in containers connected with oil-burning equipment regulated by Section 603 and the California Mechanical Code.

5706.2.8 DISPENSING FROM TANK VEHICLES.

5706.2.8. Amend number 2 to read:

2. The dispensing hose does not exceed 50 feet (15,240 mm) in length.

Add item 9 and 10 to read:

9. Vapor-recovery systems are provided in accordance with Section 2306.7.9.

10. Tank vehicles shall not be permitted to serve as portable or temporary storage tanks.

CHAPTER 49 – "WILDLAND-URBAN INTERFACE FIRE AREA"

Add new subsection 4901.3 to read:

4901.3 WHERE REQUIRED. Development in the area east of Mission Boulevard from the south side of D Street to the city limits south to Union City shall be constructed in accordance with this chapter.

SECTION 4902 - DEFINITIONS.

Amend “Wildland-Urban Interface Fire Area” definition to read:

“WILDLAND-URBAN INTERFACE FIRE AREA” is land designated which is covered with grass, grain, brush or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon such land would present an abnormally difficult job of suppression or would result in great and unusual damage through fire or resulting erosion. Such areas are designated by the Fire Chief on a map maintained in the office of the Fire Chief. The “WILDLAND-URBAN INTERFACE FIRE AREA” has been defined as:

> "The areas east of Mission Boulevard Blvd. from the south side of D Street to the city limits south to Union City."

SECTION 4905.2. Amend Section 4905.2 to read:

4905.2 CONSTRUCTION METHODS AND REQUIREMENTS WITHIN ESTABLISHED LIMITS. Within the limits established by Section 4901.3, construction methods intended to mitigate wildfire exposure shall comply with the wildfire protection building construction requirements described in Section 4905.2.1, 4905.2.2 and 4905.2.3. In cases where multiple requirements may apply, the most restrictive requirement shall prevail.

Add new subsection 4905.2.1 to read:

4905.2.1 The building construction shall comply with the requirements contained in the California Building Standards Code including the following:

2. California Building Code Chapter 7A,

2. California Residential Code Section R327,

3. California Reference Standards Code Chapter 12-7A

Add new subsection 4905.2.2

4905.2.2 The building constructed shall comply with the following requirements:

2. Within ten feet of a structure, construct fences with an open wire mesh or non-combustible material to prevent fire from spreading to the structure.

2. Design roofs shall comply with a 'Class A" non-combustible roof rating as outlined in the California Building Code. (Do not use wood shake or treated wood shake roofs.)

3. Provide spark arrestors with1/4" metal mesh screens on all chimneys. Homeowners should inspect spark arrestors every year to ensure mesh screen integrity.

4. Additions to existing decks are subject to review by the Fire Marshal and may be required to meet building construction and fire protection standards.

6. Restrict outdoor storage of firewood, kindling, or compost material within 30 feet of any structure, unless the material is stored in an approved bin or enclosure.

7. Locate chimney at least ten feet away from existing tree canopies.

8. Enclose all roof eaves.

Add new subsection 4905.2.3 to read:

4905.2.3 In addition, the building construction shall comply with other City standards and regulations including but not limited to the Zoning Ordinance, Subdivision Ordinance, Building Ordinance, Fire Code Ordinances, Grading Ordinance, Tree Preservation Ordinance, and Water Efficient Landscape Ordinance.

SECTION 4906. Amend Section 4906 to read:

SECTION 4906 - CITY OF HAYWARD HILLSIDE DESIGN AND URBAN/WILDLAND INTERFACE GUIDELINES. As adopted by Resolution No. 93-037.

APPENDIX B
FIRE-FLOW REQUIREMENTS FOR BUILDINGS

SECTION B105 - FIRE-FLOW REQUIREMENTS FOR BUILDINGS. Amend subsections B105.1 and B105.2 to read:

B105.1 ONE- AND TWO-FAMILY DWELLINGS. The minimum fire-flow requirements for one- and two-family dwellings shall be 1,500 gallons per minute, at 20 PSI.

EXCEPTION: Fire-flow may be reduced 50 percent when the building is provided with approved automatic sprinkler system. The resulting fire flow shall not be less than 1,500 gallons per minute at 20 PSI.

B105.2 BUILDINGS OTHER THAN ONE- AND TWO-FAMILY DWELLINGS. The fire-flow for buildings other than one-and two-family dwellings shall not be less than specified in Table No. B105.1.

EXCEPTION: A reduction in required fire-flow of up to 50 percent, as approved by the Fire Chief, is allowed when the building is provided with an approved automatic sprinkler system. The resulting fire-flow shall not be less than 1,500 gallons per minute at 20 PSI. (5,677.5 L/min.).

APPENDIX C
FIRE HYDRANT LOCATIONS AND DISTRIBUTION

TABLE C105.1 amended to read:

TABLE C105.1
NUMBER AND DISTRIBUTION OF FIRE HYDRANTS

FIRE FLOW REQUIREMENT (GPM)[1]	**MINIMUM NUMBER OF HYDRANTS**	**DISTRICT**	**AVERAGE SPACING BETWEEN HYDRANTS (FEET)[2, 3, 4]**	**MAXIMUM DISTANCE FROM ANY POINT ON STREET OR ROAD FRONTAGE TO A HYDRANT[5]**	**HYDRANT TYPE**
1,750 or less	1	Low Density Residential	400	225	Modified Steamer
		Median Density	400	200	Double Steamer
		Others	300	180	Double Steamer
2,000	2	Low Density Residential	400	225	Modified Steamer
		Median Density	400	200	Double Steamer
		Others	300	180	Double Steamer
2,500	3	Low Density Residential	400	225	Modified Steamer
		Median Density	400	200	Double Steamer
		Others	300	180	Double Steamer
3,500	4	Low Density Residential	400	225	Modified Steamer
		Median Density	400	200	Double Steamer
		Others	300	180	Double Steamer
4,500	5	All	300	180	Double Steamer
5,500	6	All	300	150	Double Steamer
6,500	7	All	250	150	Double Steamer
7,500 or more	8	All	250	120	Double Steamer

1. Measured at 20 PSI residual pressure.
2. Reduce by 100 feet for dead-end streets or roadways.
3. Where streets are provided with median dividers or arterial streets are provided with four or more traffic lanes, hydrants spacing shall average 500 feet on each side.

4. Where new water mains are extended along streets, where hydrants are not needed for protection of structures or similar fire problems, fire hydrants should be provided at not less than 1,000-foot spacing to provide for transportation hazards.
5. Reduce by 50 feet for dead-end streets or roadways.

APPENDIX D
FIRE APPARATUS ACCESS ROADS

SECTION D103 MINIMUM SPECIFICATIONS

D103.1 ACCESS ROAD WIDTH WITH A HYDRANT. Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet, exclusive of shoulders

Delete "MINIMUM CLEARANCE AROUND A FIRE HYDRANT" in Figure D103.1.

D103.3 TURNING RADIUS. Amend Section D 103.3 to read:

D103.3 TURNING RADIUS. The minimum inside turning radius shall be 17 feet. The minimum outside turning radius shall be 45 feet.

SECTION D105 AERIAL FIRE APPARATUS ACCESS ROADS

SEC. 9. APPEALS.

Whenever the Fire Chief shall disapprove an application or refuse to grant a permit or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Chief to the City Manager.

SEC. 10. FEES. Fees may be established by resolution of the City Council for permits required by the code, and the fee required for any permit shall accompany the application for such permit. Unless the permit specifies otherwise, the permit shall be issued for a one-year period.

SEC. 11. PENALTIES.

11.1 Any person who shall violate any of the provisions of this code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or

who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the City Council of the City of Hayward or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be guilty of a criminal offense and subject to the penalties set forth in the Hayward Municipal Code, Chapter 1, Article 3, Section 1-3.00 et. seq.

11.2 The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions or to prohibit the use of any other criminal or civil remedy.

SEC. 12. REPEAL OF CONFLICTING ORDINANCES. All former ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance or of the California Fire Code as adopted and amended herein are hereby repealed.

SEC. 13. VALIDITY. The City Council of the City of Hayward hereby declares that should any section, paragraph, sentence, or word of this ordinance or of the code hereby adopted be declared for any reason to be invalid, it is the intent of the City Council of the City of Hayward that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SEC. 14. DATE OF EFFECT. This ordinance shall take effect and be in force from and after its approval as required by law.

Section 2. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 10th day of December 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the 17th day of December 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. _____

Introduced by Council Member __

RESOLUTION FINDING AND DETERMINING THE NEED FOR CHANGES OR MODIFICATIONS TO THE 2013 CALIFORNIA BUILDING CODE

WHEREAS, section 17958 of the California Health and Safety Code requires the adoption by the City of Hayward of regulations imposing the same requirements of certain uniform industry codes as specified in Health and Safety Code section 17922 and the California Housing and Community Development Commission regulations promulgated thereunder; and

WHEREAS, Health and Safety Code section 17958.5 permits a city to make such changes or modifications to the uniform industry codes as are deemed reasonably necessary because of local conditions.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, pursuant to the requirements of Health and Safety Code section 17958.7, does hereby find and determine the need to adopt changes or modifications to the following sections of the 2013 California Building Code by reason of local climatic, geological, and topographical conditions:

ADMINISTRATIVE CHANGES

1. Certain sections in Volume 2 and Appendix Chapter 1 have been modified or changed to conform with provisions of other ordinances and the Charter of the City of Hayward; such changes are not technical in nature, but are administrative only, and as to those, pursuant to California Code of Regulations Title 25, Section 52, they are deemed equivalent to procedures provided by the state.

2. Amendments and modifications have been made to parallel the requirements as set forth in the Fire Code. Modifications are to the following sections: Chapter 4, Sections 412.4.6, 414.1.4, 415.6.2; Chapter 5, Section 508.2.5; Chapter 9, Sections 901.2, 903.1, 905.1, 905.4, and Sections 903.1.2, 903.1.3 have been added and new Section 1505.5 to Chapter 15 has been added. These modifications have been recognized by the City of Hayward to address the fire problems, concerns, and future directions by which this City can establish and maintain an environment which will afford a level of fire and life safety to its citizens and guests. The proposed Fire and Building Code change sets a lower mandatory limit for the installation of fire sprinklers by reducing to 5,000 square feet of total building floor area and the number of stories from 3 to 4. These proposed changes will provide increased ability to control fires.

3. The code sections 1614,1614.1,1614.1.3 and 1614.1.7 have been added to Chapter 16, Structural Design. Section 2308.9.3 of Chapter 23 Wood, Section 2308.9.3 has been modified. All of these modifications and additions are intended to increase the safety of buildings in a seismic event. This is necessitated by the proximity of the Hayward fault as well as several smaller faults throughout the City of Hayward.

4. A new section 3311.1 has been added to Chapter 33, Safeguards During Construction. This modification is necessary to make Building Code requirements consistent with the Fire Code.

5. Appendix I from Volume 2 and Appendix H from Volume 2.5, Patio Covers, are adopted.

6. All other appendices, except Appendix 1, Administration, have not been adopted since their requirements, where applicable to the City of Hayward are adequately covered by other ordinances of the City of Hayward.

STRUCTURAL CHANGES

1. CODE REFERENCE

2013 CRC Section R403.1.3

ISSUES:

Modify Section R403.1.3 by adding wording to the first sentence of the first paragraph to specify the minimum amount of longitudinal reinforcing, to read:

R403.1.3 Seismic reinforcing. Concrete footings located in Seismic Design Categories D0, D1 and D2, as established in Table R301.2(1), shall have minimum reinforcement of at least two continuous longitudinal reinforcing bars, one top and one bottom and not smaller than No. 4 bars. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) clear from the bottom of the footing.

In Seismic Design Categories D0, D1 and D2 where a construction joint is created between a concrete footing and a stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook and extend a minimum of 14 inches (357 mm) into the stem wall.

In Seismic Design Categories D0, D1 and D2 where a grouted masonry stem wall is supported on a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing and have a standard hook.

In Seismic Design Categories D0, D1 and D2 masonry stem walls without solid grout and vertical reinforcing are not permitted.

Exception: In detached one- and two-family dwellings which are three stories or less in height and constructed with stud bearing walls, isolated plain concrete footings supporting columns or pedestals are permitted.

RATIONALE:

This proposed amendment to the CRC is made to be consistent with TUCC amendment 2 that modifies the plain concrete provisions in CBC Section 1905.1.8 and ACI 318 Section 22.10.1.

This proposed amendment addresses the problem of poor performance of plain or under-reinforced concrete footings during a seismic event. This amendment reflects the recommendations by the Structural Engineers Association of Southern California (SEAOSC) and the Los Angeles City Joint Task Force that investigated the poor performance of plain and under-reinforced concrete footings observed in 1994 Northridge earthquake.

2. CODE REFERENCE

2013 CRC Section R602.10.4 and Table R602.10.3(3)

ISSUES:

Add a new footnote "e" to the end of CRC Table R602.10.3(3), to read:

e. In Seismic Design Categories D0, D1, and D2, Method GB is not permitted and the use of Method PCP is limited to one-story single family dwellings and accessory structures.

Add the "e" footnote notation in the title of Table R602.10.3(3) to read:

TABLE R602.10.3(3)e

Add a new subsection R602.10.4.4, to read:

R602.10.4.4 Limits on methods GB and PCP. In Seismic Design Categories D0, D1, and D2, Method GB is not permitted for use as intermittent braced wall panels, but gypsum board is permitted to be installed when required by this Section to be placed on the opposite side of the studs from other types of braced wall panel sheathing. In Seismic Design Categories D0, D1, and D2, the use of Method PCP is limited to one-story single family dwellings and accessory structures.

RATIONALE:

The proposed amendment addresses the problem of poor performance of gypsum wallboard and Portland cement plaster as wall bracing materials in high seismic areas. This amendment reflects

the recommendations by the Structural Engineers Association of Southern California (SEAOSC) and the Los Angeles City Joint Task Force that investigated the poor performance of these bracing materials that were observed in 1994 Northridge earthquake.

3. CODE REFERENCE

2013 CBC Section 1905.1.8, ACI 318 Section 22.10.1.

ISSUES:

Revise section 1905.1.8. ACI 318 section 22.10.1 that allows the use of plain concrete in residential structures assigned to Seismic Design Category C, D, E or F.

1905.1.8 ACI 318, section 22.10. Delete ACI 318, Section 22.10, and replace with the following:

22.10 - Plain concrete in structures assigned to Seismic Design Category C, D, E or F.
22.10.1- Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

~~(a) Structural plain concrete basement, foundation or other walls below the base are permitted in detached one and two-family dwellings three stories or less in height constructed with stud bearing walls. In dwellings assigned to seismic design category D or E, the height of the wall shall not exceed 8 feet (2438 mm), the thickness shall not be less than 71/2 inches (190 mm), and the wall shall retain no more than 4 feet (1219 mm) of unbalanced fill. Walls shall have reinforcement in accordance with 22.6.6.5.~~

(a) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one- and two-family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

(b) Plain concrete footing supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. ~~For footings that exceed 8" inches (203 mm) in thickness,~~ A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

Exception:

1. In seismic design categories A, B and C, in detached one- and two-family dwellings three stories or less in height and constructed with stud bearing walls, are permitted to have plain concrete footings without longitudinal reinforcement with at least two continuous longitudinal reinforcing bars not smaller than No. 4 are permitted to have a total area of less than 0.002 times the gross cross–sectional area of the footing.

2. For foundation systems consisting of a plain concrete footing and a plain concrete stem wall, a minimum of one bar shall be provided at the top of the stem wall and at the bottom of the footing.

3. Where a slab on ground is cast monolithically with the footing, one no. 5 bar is permitted to be located at either the top of the slab or bottom of the footing.

RATIONALE:

The proposed amendment addresses the problem of poor performance of plain or under-reinforced concrete footings during a seismic event. This amendment reflects the recommendations by the Structural Engineers Association of Southern California (SEAOSC) and the Los Angeles City Joint Task Force that investigated the poor performance of plain and under-reinforced concrete footings observed in 1994 Northridge earthquake.

4. CODE REFERENCE:

2013 CBC Section 1705.3 Concrete Construction.

ISSUE:

The proposed amendment modifies the type of exceptions from requiring special inspection for isolated spread concrete footings of buildings three stories or less above grade plane. Revise section 1705.3 Exception as follows.

1705.3 Concrete construction. The special inspections and verifications for concrete construction shall be as required by this section and Table 1705.3.

Exception: Special inspections shall not be required for:

1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength, f’c, no greater than 2,500 pound per square inch (psi) (17.2 Mpa).

RATIONALE:

Results from studies after the 1994 Northridge earthquake indicated that a lot of the damages were attributed to lack of quality control during construction. The proposed amendment

improves quality control during construction and therefore needs to be incorporated into the Code. Revise CBC Section 1705.3 exception No. 1 to allow special inspection not to be required for isolated spread footing where the structural design of the footing is based on a specified compressive strength, f'c, no greater than 2,500 psi. This proposed amendment is a continuation of an amendment adopted during the
previous code adoption cycle.

BE IT FURTHER RESOLVED that the aforementioned amendments to the *2013 California Building Code*, are based on local climatic, geological, or topographical conditions. The "Findings of Facts" contained herein addresses present local conditions which either singularly or in combination cause the aforementioned amendments to be adopted. The following local conditions have an adverse effect on the prevention and control of major loss fires, thereby making necessary the above changes or modifications in the *2013 California Building Code* in order to provide a greater degree of fire and life safety in this community.

1. CLIMATIC

a. Precipitation: Precipitation ranges from 15 to 24 inches per year with an average of approximately 17.58 inches per year. Ninety-five percent falls during the months of October through April, and 5 percent from May through September.

b. Relative Humidity: Humidity remains in the middle range most of the time. It ranges from 41 percent to 68 percent during the year.

c. Temperatures: High temperatures have been recorded in the low 100's F. Average summer highs are in the 73 F. range with an average annual maximum temperature of 66 F.

d. Winds: Prevailing winds are from the west, northwest (WNW). However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the 14 to 23 mile-per-hour range, gusting to 25 to 35 miles per hour. Forty mile-per-hour winds are experienced occasionally, and higher have been registered. During the winter half of the year, strong, dry, gusty winds from the north move through the area for several days, creating extremely dry conditions.

2. TOPOGRAPHICAL

a. Vegetation: Dry grass and brush are common in the hills and open-space areas adjacent to built-up locations during six to eight months of each year. Many of these areas frequently experience wildland fires which threaten nearby buildings, particularly those with wood roofs or sidings.

b. Hills, Creeks, Canals, Freeways, Railways, Housing Tracts, Large Buildings, Building Complexes, and the Airport: All of these surface features, both natural and man-made, have a major adverse effect upon the road and street layout in the City, including

major traffic routes. These conditions limit the number and cause indirect routing of major arterial streets for normal traffic as well as emergency vehicle response.

c. Terrain: Areas with buildings include level, sloping, and rolling terrain. This terrain is not dissimilar to terrain in other locations which have experienced major conflagrations.

d. Roads and Streets: As noted above, the limited number and the indirect routing of roads and streets in the City create heavy, slow traffic conditions and excessively long travel routes from point to point.

e. Population: The current and rapidly growing population in the City creates two fire protection problems:

1) The more people, the more emergency incidents requiring Fire Department response. The greater the frequency of alarms, the greater the chance there will be simultaneous emergency incidents requiring Fire Department response. This results in longer response times or fewer fire companies to respond to any emergency within the City; and

2) The more people, the more traffic congestion during a greater part of the day. Such traffic congestion not only slows Fire Department response but often restricts access to fire scenes.

f. Buildings, Landscaping and Clearances: Many building complexes are of designs which greatly limit the approach to and accessibility by Fire Department resources. Many houses and other buildings with wood roofs or sidings are close together and fire will readily spread from one to another by both radiation and convection of flying brands.

3. GEOLOGICAL

a. Seismic Activity: The City of Hayward is located in a zone of high seismic activity. A major seismic event may make roads impassable with damage so widespread that resources would not be available to meet all the anticipated needs. Buildings in this area need to be designed to ensure the maximum life safety of occupants and to minimize economic loss as the region struggles to overcome the devastation that would follow after such a seismic event.

4. SUMMARY

Local climatic conditions affect the acceleration, intensity, and size of fires in the community. Times of little or no rainfall, of low humidity and high temperatures, create extremely hazardous conditions, particularly as they relate to wood shake and shingle roof fires and fires involving buildings. During wildland and wood shake and shingle roof fires, winds can carry sparks and burning brands to other roofs, thus spreading the fire and causing conflagrations. In building fires, winds can literally force fire back into buildings and can create a blowtorch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

Local geological and topographical conditions present fire frequency, magnitude, exposure, and accessibility problems and have a negative impact upon the response capability of the Fire Department. The quantity of Fire Department resources that can arrive within an effective time is limited. The time in which they can respond is extended due to lengthy travel distances and traffic congestion.

5. CONCLUSION

Local climatic, geological, and topographic conditions have a definite impact upon the frequency, spread and acceleration, intensity, and size of fire involving buildings in Hayward. Furthermore, they have an adverse impact upon the number of Fire Department resources which can be brought to bear upon such fires within an expeditious period of time. Therefore, it is found to be reasonably necessary that the *2013 California Building Code* be changed or modified to mitigate the effects of the above conditions.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of this resolution, together with the modifications or changes to the 2013 California Building Code, to be filed with the California Department of Housing and Community Development.

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

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A BUILDING CODE FOR THE CITY OF HAYWARD; REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE OF STRUCTURES; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES; REPEALING ORDINANCE NO. 10-17, AND ALL AMENDMENTS THERETO; AND REPEALING ARTICLE 22 OF CHAPTER 10 OF HAYWARD MUNICIPAL CODE (GREEN BUILDING REQUIREMENTS FOR PRIVATE DEVELOPMENT)

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

Section 1. In accordance with state law, effective January 1, 2014, Ordinance No. 10-17, and all amendments thereto, is hereby repealed and in substitution thereof a new Building Code for the City of Hayward is hereby enacted to read as follows:

BUILDING CODE
OF THE CITY OF HAYWARD

SECTION.1.00 2013 CALIFORNIA BUILDING CODES, ADOPTION BY REFERENCE. The *2013 California Building Code Part 1and the two volumes of Part 2, the 2013 California Residential Building Code Part 2.5, the 2013 California Historical Building Code Part 8, the 2013 California Existing Building Code Part 10, the 2013 California Green Building Standards Code Part 11and the 2012 International Code for Property Maintenance, based* on the *2012 International Building Code and the 2012 International Residential Code*, and Appendices thereto, published by the International Code Council, as amended by the State of California pursuant to Health and Safety Code section 17922, and as further modified by the amendments, additions, and deletions as set forth hereinafter, is hereby adopted by reference as the Building Code of the City of Hayward.

A printed copy of such *2013 California Building Codes*, which is in five parts, together with the State and local amendments thereto, is on file in the office of the City Clerk, to which reference is hereby made for further particulars.

Reference is also made to the States' Matrix Adoption Tables which identify local Building Official's responsibility to enforce certain amendments.

SECTION 2.00 Applicability of CBC Appendix Chapters. Wherever in the CBC reference is made to an appendix chapter, the provisions of the said appendix shall not apply unless specifically adopted by this code. The following table is provided for reference:

Appendix Chapter Volume 2	Subject	Applicability
1	Administration	Adopted & Amended the Administrative Code Applicable to all Adopted Codes
A	Employee Qualifications	Not Applicable
B	Board of Appeals	Not Applicable
C	Group U Agricultural Buildings	Not Applicable
D	Fire Districts	Not Applicable
E	Reserved	Not Applicable
F	Rodent Proofing	Not Applicable
G	Flood Resistant Construction	Not Applicable
H	Signs	Not Applicable
I	Patio Covers	Applicable
J	Grading	Not Applicable
K	Group R-3 and Group R-3.1 Occupancies of the Central Valley Flood Protection Plan	Not Applicable
Appendix Chapter Volume 2.5	Subject	Applicability
A	Sizing of Gas Piping	Not Applicable
B	Sizing of Vent Piping	Not Applicable
C	Exit Terminals	Not Applicable
D	Existing Appliance Installation	Not Applicable
E	Manufactures Housing	Not Applicable
F	Radon Control	Not Applicable
G	Swimming Pools	Not Applicable
H	Patio Covers	Applicable
I	Private Sewage Disposal	Not Applicable
J	Existing Buildings	Not Applicable
K	Sound Transmission	Not Applicable
L	Permit Fees	Not Applicable
M	Home Day Care	Not Applicable
N	Venting Methods	Not Applicable
O	Gray Water Recycling	Not Applicable
P	Sizing Water Piping	Not Applicable
Q	ICC Residential Electric Code	Not Applicable
R	Areas Protected Central Valley Flood Protection Plan	Not Applicable

APPENDIX CHAPTER I
ADMINISTRATIVE

SECTION 101 GENERAL

Appendix Chapter 1, "Administration", is hereby adopted as the administrative chapter for the building codes for the City of Hayward with amendments as follows:

SECTION 101 TITLE

Section 101.1 is revised to read as follows:

101.1 Title. The CBC, as amended herein, shall be known as the "Building Code of the City of Hayward." The provisions contained herein are adopted, and together with the amended CBC, are referred to hereafter as "these regulations" or "these building standards" or "this code."

SECTION 101.4.5 PROPERTY MAINTENANCE

The first sentence of Section 101.4.4 is revised to read as follows:

101.4.4 Property maintenance. The provisions of the *2012 International Code for Property Maintenance* shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

SECTION 102.4.1 ABSENCE OF REFERENCED STANDARDS

A new section, 102.4,1 is added to read as follows:

102.4.1 Absence of referenced codes or standards. Where, in any specific case, applicable code sections are absent due to the fact they have not been adopted by the State of California, the building official may require or allow use of alternative codes as a reference document. These codes may include but are not limited to the *2012 International Residential Code, 2012 Uniform Plumbing Code, 2012 Uniform Mechanical Code, 2011 National Electric Code.* The use of alternative referenced code will be at the sole discretion of the building official.

SECTION 103.1 CREATION OF ENFORCEMENT AGENCY

Section 103.1 is revised to read as follows:

103.1 Creation of Enforcement Agency. The Building Division of the Development Services Department is hereby created and the official in charge thereof shall be known as the building official.

SECTION 104.11.3 PEER REVIEW

Section 104.11.3 Peer Review is hereby deleted.

SECTION 105.1.1 ANNUAL PERMITS

Section 105.1.1 Annual Permits is hereby deleted.

SECTION 105.1.2 ANNUAL PERMIT RECORDS

Section 105.1.2 Annual Permit Records is hereby deleted.

SECTION 105.3

A new Section 105.3.1 is hereby added to read as follows:

(a) Permits may only be issued to a person holding a valid State of California Contractors license except when otherwise provided in this section.

(b) Any permit required by this code may be issued to any person to do any work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings provided the applicant is the owner and resident in such buildings, accessory buildings, or quarters.

SECTION 105.5 EXPIRATION

Section 105.5 is hereby deleted and new section 105.5 is added as follows:

105.5 Expiration. With the following exceptions, every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within 1 year from the date of issuance:

1. The building official shall have the authority to authorize longer time periods for specific projects.

2. Whenever a permit is issued specifically to correct a violation of this code or of any pertinent law, rule, regulation, or ordinance, or to rehabilitate, repair, modify, remove, or demolish a dangerous or illegal building or structure or equipment, or to otherwise abate a nuisance, the building official shall establish a reasonable time period for the completion of the work.

3. Whenever a permit is issued for certain short-term projects, the building official shall have the authority to establish a time period of less than 1 year. These projects may include, but not be limited to, termite repairs, free-standing fireplace stoves, solar system installations, spas and hot tubs, demolition, and electrical service alterations.

4. The permit holder may renew a permit for a period of no longer than 1 year after the original date of expiration, provided that the request for renewal is submitted to the building official prior to the said expiration date along with the payment of a renewal fee, that no changes have been made or will be made in the original plans and specifications, and that no laws, regulations, rules, or ordinances have been changed in such as manner as to prohibit the completion of the proposed work. This renewed permit shall require that all incomplete work conform to the laws, regulations, rules, and ordinances in effect at the time of renewal. The permit renewal fee shall be established as indicated in Sections 108.

SECTION 105.5.1 COMPLETION PERMITS

New Section 105.5.1 is added as follows:

105.5.1 Completion permits. In the event that an initial or a renewed permit expires before the work is complete, the completion of the work shall require the issuance of a "completion" permit and the payment of an additional permit fee; moreover, the building official shall have the authority to require the resubmittal of plans, a new plan review, and/or the updating or reassessment of the valuation of the incomplete work. This completion permit will require that all incomplete work conform to the laws, regulations, rules, and ordinances in effect at the time of issuance and that all work be completed prior to the expiration date; no further extensions or renewals shall be allowed. The completion permit fee shall be established as indicated in Section 108.7 and in accordance with the schedule of previously completed and inspected work.

Notwithstanding the above, in the event that a permittee fails to complete the work and to obtain a completion permit within 1 year following the expiration of an initial or a renewal permit, the work may not be completed pending the issuance of a new permit. The building official shall have the authority to require the resubmittal of some or all of the plans and specifications, a partial or complete plan review, the payment of additional review and filing fees, and that all work conform to the laws, regulations, rules, and ordinances in effect at the time of the latest permit application.

SECTION 107 SUBMITTAL DOCUMENTS

Paragraph 1 of Section 107.1 is revised to read as follows:

106.1 Submittal documents. Plans, topographic plats, specifications, engineering calculations, stress diagrams, heat loss calculations demonstrating compliance with California Energy Conservation Standards, soil investigation reports, geotechnical investigation reports, test data, flood elevation certifications, flood design certifications, electrical load calculations, gas and water supply demand calculations, sewer service documentation, air quality releases, and other data sufficient to show the correctness of the plans and specifications and to assure that the proposed building or work will conform to the requirements of this code and to all other applicable laws, rules, regulations, and ordinances, shall be submitted when and in the quantity required by the building official.

SECTION 107.2 CONSTRUCTION DOCUMENTS

Section 107.2.1 is hereby deleted and replaced by new Section 107.2.1 as follows:

107.2.1 Information on construction documents. Plans and specifications shall be drawn to scale upon substantial and adequately sized paper using a semi-permanent medium and shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that it will conform to the provisions of this code and all relevant laws, rules, regulations, and ordinances. The building official shall have the authority to reject plans and specifications that are drawn using pencil or other readily changeable medium or that are drawn on unsuitable or improperly sized paper.

The first sheet of each set of plans shall contain the address or legal description of the property where the work is proposed to be done, the name and address of the owner of the property and the name, and the address and signature of the person who has prepared the plans.

The plans shall include a plot plan that shall show the location of existing buildings and structures, any proposed additions or modifications thereto, and all proposed buildings or structures. The plan shall also show any designated flood, earthquake, or seismic hazard zones on or adjacent to the premises along with topographic features and accessory structures such as waterways, slopes, driveways, retaining walls, fences, poles, wells, etc., and any affected underground structures, lines, pipes, and conduits.

If the permit application is for a new building or structure, a moved building, or a substantially improved building in a floodplain, the applicant shall submit the plot plan in the form of a topographic plat prepared and signed by a licensed land surveyor, or a registered civil engineer qualified under the provisions of the State Business and Professions Code to prepare such a document. The plat shall be drawn to scale and shall show contours at intervals of 1 foot (.3 m) or less on slopes up to 3% and not more than 5 feet (1.5 m) on slopes more than 3%. The plat shall show the location under or above ground, of all existing or proposed gas mains and services; water mains, water services, fire hydrants, sewer mains; power and communication lines; poles and transformers; storm drains, inlets, culverts, curbs, gutters, sidewalks, pavement, building and private sewers, wells, septic tanks and leach fields. The plat shall also delineate all easements and special building setback lines established by covenants or restrictions on the property, all watercourse setback, floodplain, earthquake fault, and seismic hazard boundaries designated by the county, and the width, alignment, grade, and surface treatment of all driveways or access roadways that will be used by emergency services personnel. The building official may require that the plat include the plotting of a boundary line survey whenever the exact location of the line is necessary for the enforcement of any of the provisions of this code. If a question as to the location of a property line or any other boundary line arises at any time before or after the issuance of a permit, the building official shall have the authority to require that a survey of the line be performed, the line be located by appropriate stakes or monuments, and that 3 copies of a plat of the survey be filed with the building official.

EXCEPTIONS:

1. A topographic plat is not required for any lot shown on a subdivision tract map, if the said map was filed at the county recorder's office within 5 years of the date of the application for a permit.

2. The building official may upon written request waive the requirements for a topographic plat map under any one of the following conditions:

a. Properties that contain substantial existing development; or

b. Properties where a topographic plat map has been previously submitted to the building official and where there have been no significant changes to the finished grades shown on the said map; or

c. Properties where the building official determines that the information that would be provided by a plat completed in accordance with this Section is not necessary to show that the work proposed by a particular permit application can be completed in compliance with this code.

The plans shall also include a grading and drainage plan showing existing elevations or contours and all proposed final elevations within 100 feet of any proposed buildings or structures, including the adjacent grade at the buildings or structures. This plan shall also show how all portions of the lot are to be drained, all necessary drainage structures, and the contours or a profile of any proposed access roadways. The grading and drainage plan may be combined with the plot plan if such information can be clearly shown on the plot plan.

Plans for buildings other than group R – division 3 and group U occupancies, as defined in the 2013 CBC, shall indicate how required structural and fire-resistive integrity will be maintained where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes, and similar systems.

The building official shall have the authority to waive the requirements for a plot plan and a grading plan if the proposed work is minor, and does not involve the construction of new buildings or structures or the change in configuration of existing buildings or structures.

SECTION 107.3 EXAMINATION OF DOCUMENTS

A second paragraph is added to Section 107.3 Examination of Documents, to read as follows:

107.3 Examination of Documents. The application, plans, specifications, computations, certifications, and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may also be reviewed by other departments of the City of Hayward as required by the applicable laws, rules, regulations, and ordinances, including but not limited to the review required by Section 13146 of the state Health and Safety Code of those occupancies regulated by the State Fire Marshal. If the building official finds that the work described in the application for a permit and the plans, specifications, computations, certifications and other data filed therewith conform to the requirements of this code and other pertinent laws, rules, regulations, and ordinances, and that the fees specified by the City of Hayward's master fee schedule as shall be amended from time to time, have been paid, the building official shall issue a building permit to the applicant.

SECTION 107.6 EXPIRATION OF PLAN REVIEW

New Section 107.6 is added as follows:

107.6 Expiration of Plan Review. Applications for which no permit is issued within 1 year following the date of completion of the initial review of the submitted plans, or applications for which no permit is issued within 18 months following the date of application, shall expire by limitation. The building official may extend either of these expiration dates for an additional period, not exceeding 180 days, upon written request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once.

Following final expiration of the application, plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official.
In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

SECTION 107.5 MAINTENANCE OF BUILDING PLANS

Section 107.5 Retention of construction documents is hereby deleted and is replaced with a new section 107.5 as follows:

107.5 Maintenance of building plans. The building department of Hayward shall maintain an official copy, which may be on laser fiche, microfilm or other type of photographic copy, of the plans of every building, during the life of the building, for which the department issued a building permit. "Building department" means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection, construction, or alteration of buildings. Except for plans of a common interest development as defined in Section 1351 of the Civil Code, plans need not be copied for:

(a) Single or multiple dwellings not more than two stories and basement in height.
(b) Garages and other structures appurtenant to buildings described under subdivision.
(c) Farm or ranch buildings.
(d) Any one-story building where the span between bearing walls does not exceed 25 feet.

The exemption in this subdivision does not, however, apply to a steel frame or concrete building.

SECTION 109 FEES.

Section 109.1 is revised to read as follows:

109.1 Payment of fees. Prior to the issuance of any permit required by this code,

the applicant shall pay the pertinent permit fee as assessed by the building official in accordance with the schedule described in Section 109.2 along with all other appropriate fees required by this code and by the Municipal Code of the City of Hayward. The said fee shall cover both the administrative costs of preparing and issuing the permit and the normal inspection requirements as described in109; however, when an inspection requires corrections and the said corrections require more than one reinspection, or when an inspection is called for by the permittee but the work is not ready for the inspection, or where the plans, specifications, or other material required for the inspection is not available to the inspector, the building official may require that a reinspection fee be paid to the building official prior to the required reinspection.

The fees for reinspections and for other inspections, including but not limited to the inspection of existing buildings or structures being prepared for movement into or out of the county, shall be set by the building official in accordance with the schedule described in Section 109.

SECTION 109.1.1 PLAN REVIEW FEES

New Section 109.1.1 is added as follows:

109.1.1 Plan Review Fees. When submittal documents are required by Section 107.1, a plan review fee shall be paid at the time of submitting the said documents for review. Said plan review fee shall be assessed by the building official in accordance with the schedule described in Section 109.2.

The plan review fee specified in this Section is separate from and in addition to the permit fee specified in Section 109.2. This review fee shall cover both the initial review of the submitted plans and a single re-check of the corrected plans. Any further re-checking shall be subject to the additional plan checking fee established in the fee schedule described in Section 109.2; moreover, when submittal documents are incomplete or changed so as to require additional plan review, or when the project involves deferred submittal items, the additional plan review fee shall be charged as specified in the said fee schedule.

SECTION 109.2 SCHEDULE OF PERMIT FEES

Section 109.2 is revised to read as follows:

109.2 Schedule of permit fees. Fees shall be as set forth in a fee schedule adopted, for this purpose, by resolution of the City Council. The said schedule shall establish, but not be limited to, fees for permit issuance and inspections, filing of certain permit exemptions, regular plan reviews, Title 24 energy conservation reviews, termite report reviews, special or additional plan checking, off-hour inspections, re-inspections, movement of buildings or structures, demolition of buildings or structures, permit renewals, completion permits, and permit re-issuance.

The fees for the plan checking and permit issuance of related items shall also be included in the said fee schedule.

SECTION 109.6 FEE REFUNDS

Section 109.6 is revised to read as follows:

109.6 Fee Refunds. The building official shall not authorize refunding of any fee paid to the building department except on written application filed by the original permittee.

The building official may authorize refunding of any fee paid under this code that was erroneously paid or collected.

The building official may authorize the refunding of a maximum of 60% of the initial permit fee paid to the building official when no work has been done under an unexpired permit issued in accordance with this code. If no work has been done and an issued permit has expired, the building official may authorize refunding of not more than 30% of the said permit fee, provided that the request for refund is submitted within 1 year following the permit expiration; after 1 year beyond the permit expiration date, no refund of the permit fee shall be authorized.

The building official may authorize the refunding of a maximum of 60% of the plan review fee paid to the building official if no plan review comments have been issued by the building official prior to the receipt of the request for refund. No refund of this fee shall be authorized following the issuance of the initial plan review comments by the building official.

SECTION 109.7 INVESTIGATION FEES; WORK WITHOUT A PERMIT

New Section 109.7 is added as follows:

109.7 Investigation Fees: Work without a Permit. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, the building official shall perform an investigation prior to the issuance of the permit authorizing the work.

An investigation fee shall be charged to offset the cost of the said investigation. This fee shall be in addition to any other regular plan review or permit fee, and shall be collected whether or not a permit is then or subsequently issued. The amount of the investigation fee shall be assessed by the building official in accordance with the schedule described in Section 109.2 and based upon the circumstances and extent of the violation, but in no case shall be less than the amount of the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

SECTION 109.8 FEES FOR COMPLETION PERMITS

New Section 109.8 is added as follows:

109.8 Fees for completion permits. Fees for completion permits as described in Section 105.5.1 shall be based upon the percentage of work that has passed inspection prior to the expiration of the renewed permit. If either valuation or fees have changed since the original

permit was issued the fees or the valuation shall be updated to the new fees or valuations in effect at the time the completion permit is issued. The percentages to be charged will remain the same.

This schedule is intended to apply to conventional wood frame building construction. In the event that the work is not conventional wood frame construction, or does not constitute a complete building, or is a type of structure other than a building, the building official shall determine the fee based upon the number of the inspections remaining to be performed.

Completed Inspections[1]	% of Updated Valuation
None	60
Foundation	55
Under-floor	50
Shear Wall	40
Rough Frame	30
Lath or Gypsum Board	20
Gas Test	15
All, except Final	10

SECTION 109.9 REINSPECTION FEES

Section 109.9 is added as follows:

109.9 Reinspections. If reinspections are required, fees for the same may be assessed in accordance with Section 109. To obtain a re-inspection, the permittee shall file an application therefore in writing on a form furnished for that purpose, by the building official, and pay any assessed re-inspection fee. In those instances where the building official has assessed a re-inspection fee, the building inspector shall perform no additional inspections of the work until the required fee has been paid.

SECTION 110.3.12 INSPECITONS OF MOVED BUILDINGS

Section 110.3.12 is added as follows:

Inspections of moved buildings: Prior to the issuance of a permit to move any building or structure or equipment into, within, or out of the unincorporated areas of the county, the building official shall inspect the same to assure compliance with this code and with all pertinent laws, rules, regulations, and ordinances, including but not limited to the capability of the building or structure or equipment to be moved without endangering the public safety. The building official may require that portions of the building or structure or equipment be removed or uncovered in order to determine such compliance. If after inspection, the building official determines that the building or structure or equipment cannot be safely moved or cannot reasonably be altered, modified, or improved to meet any other requirement of this code or of the pertinent laws, rules, regulations, and ordinances, he/she shall have the authority to deny the application for a permit. In the event of such denial, the building official shall notify the applicant, in writing, stating the reasons for such denial.

In the event that the building or structure or equipment is proposed to be removed from the unincorporated county into another jurisdiction, the building official shall coordinate all permit issuances or denials with that jurisdiction.

SECTION 110.3.9 SPECIAL INSPECTIONS

Section 110.3.9 is deleted and new section 110.3.9 is added as follows:

110.3.9 Special Inspections. When this code requires tests, inspections, or observations per Chapter 17 of the CBC, the architect or engineer of record shall submit, upon a special form provided by the building official, an inspection program that must be approved by the building official prior to the issuance of the building permit. This program shall include the description of all work requiring special tests and inspections, the nature of the tests and inspections, the names and qualifications of the designated testing and inspecting persons, the specific duties of the special inspectors, samples of the required inspection reports, and time limits for the submittal of the reports.

Special inspectors shall be employed by the owner, the architect or engineer of record, or an agent of the owner, but shall not be employed by the contractor or other persons doing the work.

SECTION 110.5 INSPECTION REQUESTS

Section 110.5 is revised to read as follows:

110.5 Inspection Requests. It shall be the duty of the person doing the work authorized by a permit to notify the building official that such work is ready for inspection. The building official shall provide each permittee with detailed instructions for requesting such inspections.

It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work. Any work that has been covered or concealed prior to a required inspection shall be uncovered for such inspection after notice has been given by the building official.

SECTION 110.7 INSPECTION RECORD CARD

Section 110.7 is added as follows:

110.7 Inspection Record Card. Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder shall have posted or otherwise made available the inspection record card provided by the building official. The building official shall make the required entries on the said card so as to indicate the inspection status of the work. This card shall be maintained available by the permit holder until final approval has been granted by the building official.

SECTION 111.3 TEMPORARY OCCUPANCY

Two new paragraphs are added at the end of Section 111.3 as follows:

111.3 Temporary occupancy. If the building official finds that no substantial hazard will result from occupancy or use of any building or structure, or portion thereof, before the same is completed, he/she may authorize such a temporary occupancy or use pending the completion of the entire building or structure.

The building official, in authorizing temporary occupancy or use, may impose any reasonable conditions that may be necessary to protect life, health, and property and may include a time limit on such occupancy or use. In the event that any such condition is violated, the building official may revoke a temporary occupancy or use.

SECTION 111.5 ABANDONMENT OF LEGAL OCCUPANCY

Section 111.5 is added as follows:

111.5 Abandonment of Legal Occupancy. Whenever the legal occupancy or use of a building or structure, other than a 1 or 2 family dwelling, is abandoned continuously for a period of 1 year or more, the said building or structure shall be considered to have no legal occupancy and shall be so declared by the building official. When this building or structure is next occupied or used after such declaration, it shall be made to comply fully with the requirements for the new occupancy or use pursuant to the requirements of this code.

SECTION 111.6 OCCUPANCY VIOLATIONS

New Section 111.6 is added as follows:

111.6 Occupancy violations. Whenever any building or structure or equipment therein, or portion thereof, as is regulated by this code or by any other pertinent law, rule, regulation, or ordinance, is being used or occupied contrary to this code or to such law, rule, regulation, or ordinance, or when the use or occupancy of the same is changed without the approval of the building official, the building official shall have the authority to order such use or occupancy discontinued, and the building or structure, or portion thereof, vacated, by serving written notice to any persons causing such use or occupancy to be continued. All vacation notices shall state the specific nature of the violation(s), including a reference to the code provision, law, ordinance, rule, or regulation being violated, the time limit when the said use or occupancy must be discontinued, and if necessary, the time when the building or structure, or portion thereof, must be vacated. If there are no persons present on the premises, the building official shall post the notice in a conspicuous place.

No person shall continue to use or occupy the said building or structure or equipment, or portion thereof, contrary to the terms of such notice, pending the correction of the stated violation(s) and the approval of the use or occupancy by the building official.

CHAPTER 2
DEFINITIONS AND ABBREVIATIONS

SECTION. 202 DEFINITIONS New definitions are added to this section as follows:

"CITY OF" or "THE CITY" shall mean the City of Hayward, as the text may require.

"CITY COUNCIL" shall mean the City Council of the City of Hayward.

"BOARD OF APPEALS" shall mean the "Building Advisory Committee" of the City of Hayward.

"BUILDING DEPARTMENT" or "ADMINISTRATIVE AUTHORITY" shall mean the Building Official.

"HAZARDOUS FIRE AREA" is land which is covered with grass, grain brush, or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon such land would present an abnormally difficult job of suppression or would result in great and unusual damage through fire or resulting erosion. Such areas are designated by the Fire Chief on a map are maintained in the office of the Fire Marshal. The "Hazardous Fire Area" has been generally defined as:

The areas East of Mission Blvd. from the South side of D Street to the city limits South to Union City.

(Refer to Resolution No. 93-037, City of Hayward hillside design and urban/wildland interface guidelines)

CHAPTER 4
SPECIAL DETAILED REQUIREMENTS BASED ON USE AND OCCUPANCY

SECTION 412.4.6 FIRE SUPPRESSION

Exception to this section is hereby deleted.

SECTION 414.1.4 HAZARDOUS MATERIALS

A new Section 414.1.4 is hereby added to read as follows:

Hazardous materials are not allowed below grade plane in buildings.

SECTION 415.6.2 FLAMMABLE AND COMBUSTIBLE LIQUIDS

A new sentence is hereby added at the end of this section to read as follows:

Flammable and combustible liquids are **not** allowed below grade plane in buildings.

CHAPTER 5
GENERAL BUILDING LIMITATIONS

TABLE 508.2.5 INCIDENTAL ACCESSORY OCCUPANCIES

Where the phrase "automatic fire extinguishing system" appears it is to be replaced with the following phrase:

"automatic sprinkler system".

CHAPTER 9
FIRE PROTECTION SYSTEMS

SECTION 901.2 FIRE PROTECTION SYSTEMS

Section 901.2 exception is hereby deleted and a new exception is inserted to read as follows:

Any fire protection system not required by this code shall be permitted to be installed provided that such system meets the requirements of this code.

SECTION 903
AUTOMATIC SPRINKLER SYSTEMS

SECTION 903.1 GENERAL

Section 903.1 is amended to read as follows:

Automatic sprinkler systems shall be installed in the occupancies and locations as set forth in this section.

For provision on special hazards, hazardous materials, and hazardous fire areas (as designated by the Fire Marshal), see CFC Section 305, Articles 23, 27 thru 44 and 47.

SECTION 903.1.2 NEW CONSTRUCTION

New Section 903.1.2 is added to read as follows:

An automatic sprinkler system shall be installed in all new construction, regardless of occupancy classification, where the total floor area is 5,000 square feet (465 m^2) or more, (Area Separation Walls may not be used in lieu of a sprinkler system except when buildings are separated by continuous area separation walls of at least four-hour fire-resistive construction without openings), building height exceeds two stories, or floor heights exceed 15 feet (4572 mm) from the lowest level of Fire Department access. In cases where multiple requirements may apply, the most restrictive requirement shall prevail. Floor areas of

mezzanines shall be included in calculating the total floor area to be used in determining automatic fire-extinguishing requirements.

SECTION 903.1.3 EXISTING BUILDINGS

New Section 903.1.3 is added to read as follows:

An automatic sprinkler system shall be installed in an existing building when cumulative additions, repairs, or alterations are made to the building and such additions, repairs, or alterations meet any of the following conditions:

1) Additions, repairs, or alterations are valued at 50 percent or more of the current assessed value of the building. (Value is based only on the structure involved. If owner disputes valuation, an appraisal can be performed at the owner's expense, by an appraiser acceptable to the Fire Chief.)

2) Any addition or additions to the original building which will add 10 percent or more to the total floor area of the existing building and the resulting floor area is 5,000 square feet (465 m^2) or more, except where the occupancy classification for the building is Group S-1, in which case, the resulting total floor area required is 3,000 square feet (279m^2) or more.

3) Additions where items 1 or 2 do not apply that will result in a total floor area that exceeds the maximum floor area allowed by the Building Code under which the building was originally constructed.

4) Additions, repairs, or alterations that will result in a change in occupancy or use shall comply with section 3406 of the *2013 California Building Code*.

SECTION 905 STANDPIPE SYSTEMS

SECTION 905.1 GENERAL

Add a sentence at the end of this section to read as follows:

Buildings three stories or more in height shall have the appropriate class standpipe.

SECTION 905.4 LOCATION OF CLASS I STANDPIPE AND HOSE CONNECTIONS.

Section 905.4 add new subsection number 7 to read as follows:

DUAL OUTLETS All Class I standpipe outlets located as required in section 905.4 shall have added outlets located in enclosed corridors adjacent to enclosed stairway access doors at each level of every required stairway.

CHAPTER 15
ROOF ASSEMBLIES AND ROOFTOP STRUCTURES

Section 1505.5 is hereby amended to read as follows:

Nonclassified roofing is not allowed in the City of Hayward.

CHAPTER 16
STRUCTURAL ENGINEERING DESIGN PROVISIONS

SECTION 1614 MODIFICATIONS TO ASCE (AMERICAN SOCIETY OF CIVIL ENGINEERS) STANDARDS

Sections 1614, 1614.1, 1614.1.3 and 1614.1.7 are added to Chapter 16 of the 2013 California Building Code to read as follows:

SECTION 1614.1 GENERAL

The following text is herby added to read as follows:

The text of ASCE 7 shall be modified as indicated in this Section.

SECTION 1614.1.3 ASCE 7, SECTION 12.8.1.1

Modify ASCE 7 Section 12.8.1.1 by amending Equation 12.8-5 as follows;

$C_S = 0.044 S_{DS} I \geq 0.01$

SECTION 1614.1.7 REPLACE ASCE 7, SECTION 12.12.3.

ASCE 7 Section 12.12.3 is hereby replaced as follows:

All structures shall be separated from adjoining structures. Separations shall follow for the maximum inelastic response displacement (Δ_M). Δ_M shall be determined at critical locations with consideration for both translational and torsional displacements of the structure as follows:

$\Delta_M = C_d \delta_{max}$ (Equation 16-45)

Where δ_{max} is the calculated maximum displacement at level x as defined in ASCE 7 Section 12.8.4.3

Adjacent buildings on the same property shall be separated by at least a distance Δ_{MT}, where

$\Delta_{MT} = \sqrt{(\Delta_{M1})^2 + (\Delta_{M2})^2}$ (Equation 16-46)

And Δ_{M1} and Δ_{M2} are the maximum inelastic response displacements of the adjacent buildings.

Where a structure adjoins a property line not common to a public way, the structure shall also be set back from the property line by at least the displacement, $\Delta_{M,}$ of that structure.

Exception: Smaller separations or property line setbacks shall be permitted when justified by rational analyses.

CHAPTER 17
STRUCTURAL TESTS AND SPECIAL INSPECTIONS

Revise section 1705.3 Exception as follows.

1705.3 Concrete construction. The special inspections and verifications for concrete construction shall be as required by this section and Table 1705.3.

Exception: Special inspections shall not be required for: 1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength, f'c, no greater than 2,500 pound per square inch (psi) (17.2 Mpa).

CHAPTER 19
CONCRETE

Revise section 1905.1.8. ACI 318 section 22.10.1 that allows the use of plain concrete in residential structures assigned to Seismic Design Category C, D, E or F.

1905.1.8 ACI 318, section 22.10. Delete ACI 318, Section 22.10, and replace with the following:

22.10 - Plain concrete in structures assigned to Seismic Design Category C, D, E or F.

22.10.1- Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

(a) Structural plain concrete basement, foundation or other walls below the base are permitted in detached one and two-family dwellings three stories or less in height constructed with stud bearing walls. In dwellings assigned to seismic design category D or E, the height of the wall shall not exceed 8 feet (2438 mm), the thickness shall not be less than 71/2 inches (190 mm), and the wall shall retain no more than 4 feet (1219 mm) of unbalanced fill. Walls shall have reinforcement in accordance with 22.6.6.5.

(a) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one- and two-family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

(b) Plain concrete footing supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. For footings that exceed 8" inches (203 mm) in thickness, A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

Exception:

1. In seismic design categories A, B and C, In detached one- and two-family dwellings three stories or less in height and constructed with stud bearing walls, are permitted to have plain concrete footings without longitudinal reinforcement. with at least two continuous longitudinal reinforcing bars not smaller than No. 4 are permitted to have a total area of less than 0.002 times the gross cross–sectional area of the footing.

2. For foundation systems consisting of a plain concrete footing and a plain concrete stem wall, a minimum of one bar shall be provided at the top of the stem wall and at the bottom of the footing.

3. Where a slab on ground is cast monolithically with the footing, one no. 5 bar is permitted to be located at either the top of the slab or bottom of the footing.

CHAPTER 23
WOOD

SECTION 2308.9.3 BRACING

Section 2308.9.3 is hereby amended by deleting Item(s) 1, 2, 5 and 7.

CHAPTER 33
SAFEGUARDS DURING CONSTRUCTION

SECTION 3311.1 WHERE REQUIRED

Section 3311.1 is hereby deleted and replaced with a new section to read as follows:

Every building three stories or more in height shall be provided with not less than one standpipe for use during construction. Such standpipe shall be provided with Fire Department hose connections at accessible locations adjacent to usable stairs and the standpipe outlets shall be located adjacent to such usable stairs. Such standpipe systems shall be extended as construction progresses to within one floor of the highest point of construction having secured decking or flooring.

In each floor there shall be provided a 2 ½-inch valve outlet for Fire Department use. Where construction height requires installation of a Class I standpipe, fire pumps and water main connections shall be provided to serve the standpipe.

Modify Section R403.1.3 by adding wording to the first sentence of the first paragraph to specify the minimum amount of longitudinal reinforcing, to read:

CHAPTER 4 OF THE RESIDENTIAL CODE
FOUNDATIONS

R403.1.3 Seismic reinforcing. Concrete footings located in Seismic Design Categories D0, D1 and D2, as established in Table R301.2(1), shall have minimum reinforcement of at least two continuous longitudinal reinforcing bars, one top and one bottom and not smaller than No. 4 bars. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) clear from the bottom of the footing.

In Seismic Design Categories D0, D1 and D2 where a construction joint is created between a concrete footing and a stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing, have a standard hook and extend a minimum of 14 inches (357 mm) into the stem wall.

In Seismic Design Categories D0, D1 and D2 where a grouted masonry stem wall is supported on a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing and have a standard hook.

In Seismic Design Categories D0, D1 and D2 masonry stem walls without solid grout and vertical reinforcing are not permitted.

Exception: In detached one- and two-family dwellings which are three stories or less in height and constructed with stud bearing walls, isolated plain concrete footings supporting columns or pedestals are permitted.

CHAPTER 6 OF THE RESIDENTIAL CODE
WALL CONSTRUCTION

Add a new footnote “e” to the end of CRC Table R602.10.3(3), to read:

e. In Seismic Design Categories D0, D1, and D2, Method GB is not permitted and the use of Method PCP is limited to one-story single family dwellings and accessory structures.

Add the “e” footnote notation in the title of Table R602.10.3(3) to read:

TABLE R602.10.3(3)e

Add a new subsection R602.10.4.4, to read:

R602.10.4.4 Limits on methods GB and PCP. In Seismic Design Categories D0, D1, and D2, Method GB is not permitted for use as intermittent braced wall panels, but gypsum board is permitted to be installed when required by this Section to be placed on the opposite side of the studs from other types of braced wall panel sheathing. In Seismic Design Categories D0, D1, and D2, the use of Method PCP is limited to one-story single family dwellings and accessory structures."

Section 2. Effective January 1, 2014, Article 22 of Chapter 10 of the Hayward Municipal Code, relating to Green Building Requirements for Private Development, is repealed.

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

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: 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. __

Introduced by Council Member __

RESOLUTION FINDING AND DETERMINING THE NEED FOR CHANGES OR MODIFICATIONS TO THE 2013 CALIFORNIA MECHANICAL CODE

WHEREAS, section 17958 of the California Health and Safety Code requires the adoption by the City of Hayward of regulations imposing the same requirements of certain uniform industry codes as specified in Health and Safety Code section 17922 and California Housing and Community Development Commission regulations promulgated hereunder; and

WHEREAS, said Health and Safety Code section 17958.5 permits a city to make changes or modifications to the uniform industry code as deemed reasonably necessary because of local conditions; and

WHEREAS, pursuant to section 17958.7 of the Health and Safety Code, local substantive amendments shall be based upon findings of local climatic, geological, or topographical conditions, but such findings are not necessary for merely administrative changes, or changes unrelated to apartment houses, hotels, motels, and dwellings.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines the need to adopt the administrative, commercial, or industrial changes or modifications to the following sections of the *2013 California Mechanical Code* by reason of local conditions:

ADMINISTRATIVE PROVISIONS

Certain administrative provisions in Appendix Chapter 1 and in Chapter 2 have been amended to conform to the provisions of the City Charter and other City ordinances; such changes are not technical in nature, but are administrative only. The City Council finds pursuant to California Code of Regulations Title 25, Section 52, that enforcement procedures of local ordinances are equivalent to those provided by the State for abatement of violations of this code.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of this resolution, together with the modifications or changes to the Uniform Mechanical Code, to be filed with the California Department of Housing and Community Development.

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

ORDINANCE NO. ____

AN ORDINANCE ESTABLISHING A MECHANICAL CODE FOR THE CITY OF HAYWARD, REGULATING THE ALTERATION, CONSTRUCTION, INSTALLATION AND REPAIR OF VENTILATING, REFRIGERATION, AND HEAT PRODUCING EQUIPMENT (MECHANICAL EQUIPMENT); PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES AND PRESCRIBING PENALTIES FOR VIOLATION OF SAID MECHANICAL CODE; AND REPEALING ORDINANCE NO. 10-20 AND ALL AMENDMENTS THERETO

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

Section 1. In accordance with state law, effective January 1, 2014, Ordinance No. 10-20, and all amendments thereto, is repealed and in substitution thereof a new Mechanical Code for the City of Hayward is hereby enacted to read as follows:

MECHANICAL CODE
OF THE CITY OF HAYWARD

SECTION 1.00 2013 MECHANICAL CODE ADOPTION BY REFERENCE
The *2013 California Mechanical Code,* which is based on the 2012 Uniform Mechanical Code and Appendices thereto, published by International Association of Plumbing and Mechanical Officials as amended by the State pursuant to Health and Safety Code Section 17922, and as further modified by these amendments, additions, alterations and deletions set forth hereinafter, is hereby adopted by reference as the Mechanical Code of the City of Hayward.

A printed copy of such Mechanical Code is on file in the office of the City Clerk to which reference is hereby made for further particulars.

Reference is also made to the State's Matrix Adoption Tables which identify local Building Official's responsibility to enforce certain amendments.

SECTION 2.00 AMENDMENTS, ADDITIONS, AND DELETIONS TO 2013 CALIFORNIA MECHANICAL CODE. Set forth below are the local amendments, additions, and deletions to the *2013 California Mechanical Code*. Chapter and section numbers used herein are those of the California Mechanical Code.

APPENDIX CHAPTER I
TITLE AND SCOPE

APPENDIX CHAPTER 1 ADMINISTRATION

Appendix Chapter 1 is hereby adopted as the administrative chapter for this code.

Reference is made to Appendix Chapter 1, Division II Administration of *2013 California Building Code*, which is based on the 2012 International Building Code as published by the International Code Conference and amended by the City of Hayward. Where there is a conflict between administrative requirements of each code, the administrative requirements of the Building Code shall prevail.

CALIFORNIA CHAPTER 1
GENERAL CODE PROVISIONS

SECTION 101.0 TITLE

The first sentence of Section 101.0 is hereby deleted and a new sentence is substituted to read as follows:

This ordinance may be cited and shall be known as the "Mechanical Code of the City of Hayward."

SECTION 114.1.1 TO WHOM PERMIT MAY BE ISSUED

A new Section 114.1.1 To Whom Permit May be Issued is hereby added to read as follows:

Permits may only be issued to a person holding a valid State of California Mechanical License except when otherwise provided in this section.

Any permit required by this code may be issued to any person to do any work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings, provided the applicant is the owner and resident of such buildings, accessory buildings, or quarters.

CHAPTER II
DEFINITIONS

SECTION 205.0-C

Two new definitions shall be added to Section 205.0 to read as follows:

"CITY OF" or "THE CITY" shall mean the City of Hayward as the text may require.

"CITY COUNCIL" shall mean the City Council of the City of Hayward.

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

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: 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. __

Introduced by Council Member__

RESOLUTION FINDING AND DETERMINING THE NEED FOR CHANGES OR MODIFICATIONS TO THE 2013 CALIFORNIA ELECTRICAL CODE

WHEREAS, section 17958 of the California Health and Safety Code requires the adoption by the City of Hayward of regulations imposing the same requirements of certain National Industry Codes as specified in Health and Safety Code section 17922 and Housing and Community Development Commission regulations promulgated there under; and

WHEREAS, Health and Safety Code section 17958.5 permits a city to make changes or modifications to the National Industry Codes as deemed reasonably necessary.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines that, in addition to administrative changes, there is a need to adopt the modifications of the following sections of the *2013 California Electrical Code*, by reason of local climatic, geological, and topographical conditions.

1. ANNEX CHAPTER H ADMINISTRATIVE PROVISIONS. The *2013 California Electrical Code*, as printed, includes detailed administrative provisions, however, they are mostly applicable to State agencies. The City of Hayward only uses these provisions where the local jurisdiction has authority for inspections covered by the State agency regulations. Annex Chapter H of the 2013 California Electrical Code contains certain administrative procedures which the City of Hayward has adopted and amended. These are supplemented by using the administrative procedures of Appendix Chapter 1 of the *2013 California Building Code* as amended by the City of Hayward.

2. ARTICLE 210 BRANCH CIRCUITS. Many neutral conductors of multiwire branch circuits are overloaded due to improper phasing of conductors, splices, and connection of devices. Color coding of the ungrounded conductors of a multiwire branch circuit is a safety as well as a design consideration of safe and proper wiring. Many electrical installations are installed with the NEC minimum requirements as the only design criteria. Failure to connect the proper conductor to devices supplied by multiwire branch circuits can result in overloading of the unprotected neutral conductor to as much as three times its allowable ampacity or, in the case of two four-wire circuits, to as much as six times its allowable ampacity. The resultant over-heating of a neutral wire is no less a hazard than that of an ungrounded conductor.

The identification of ungrounded conductors of a multiwire branch circuit permits the electrician to install devices in a manner that will result in a balancing of the phase loadings and neutral load. Detection of improper phasing of a multiwire branch circuit by the inspecting authority is extremely difficult without conductor identification and virtually impossible when making a final inspection of work that is not energized, as is often the case. The proposal, as written, would offer a simple means for the electrician, inspector, and subsequent electricians to determine and maintain correct circuit phasing in industrial and commercial construction where this is likely to occur.

These amendments are enacted pursuant to earthquake vulnerability as a result of having a substantial portion of the residential, commercial, and industrial areas of the City of Hayward within the Alquist-Priolo Act Special Studies Zone, requiring special geologic studies prior to development. This fact increases the likelihood of seismic disturbances of substantial magnitude occurring and causing consequent damage.

3. ARTICLE 230 SERVICES. The need for this addition to the model code requirements is justified by safety considerations. The need to disconnect all current carrying conductors within a structure by occupants or Fire Department personnel in case of fire or other emergency, and the replacement of wire seals by locking rings on meter bases by Pacific Gas and Electric, make this requirement necessary.

4. ARTICLE 300 WIRING METHODS. The need for this addition to the model code is for the purpose of increasing safety within buildings in an active seismic area. By requiring that these systems be supported, the proposal as written, should increase safety in low voltage circuits and avoid the problem of cables falling through the ceiling in case of seismic activity. It should also provide easier response for emergency personnel as they conduct rescue operations through the building.

5. ARTICLE 770 OPTICAL FIBER CABLES. (See UPS). The proposal, as written, will bring it into conformity with Article 300 requirements, and should also provide the increased safety needed in an active seismic area as a result of these cables being supported.

BE IT FURTHER RESOLVED that the aforementioned amendments to the *2013 California Electrical Code*, are based on local climatic, geological, or topographical conditions. The "Findings of Facts" contained herein address present local conditions which either singularly or in combination cause the aforementioned amendments to be adopted. The following local conditions have an adverse effect on the prevention and control of major loss fires, thereby making necessary the above changes or modifications in the National Electrical Code and the California Electrical Code in order to provide a reasonable degree of fire and life safety in this community.

1. CLIMATIC

a. Precipitation: Precipitation ranges from 15 to 24 inches per year with an average of approximately 17.58 inches per year. Ninety-five percent falls during the months of October through April, and 5 percent from May through September.

b. Relative Humidity: Humidity remains in the middle range most of the time. It ranges from 41 percent to 68 percent during the year.

c. Temperatures: High temperatures have been recorded in the low 100's F. Average summer highs are in the 73 range with an average annual maximum temperature of 66 F.

d. Winds: Prevailing winds are from the West, Northwest (WNW). However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the 14 mph to 23 mph range, gusting to 25 to 35 mph. Forty mile-per-hour winds are experienced occasionally and higher have been registered. During the winter season, strong, dry, and gusty winds from the north move through the areas for several days, creating extremely dry conditions.

e. Summary: These local climatic conditions affect the acceleration, intensity, and size of fires in the community. Times of little or no rainfall or of low humidity and high temperatures create extremely hazardous conditions, particularly as they relate to wood shake and shingle roof fires and fires involving buildings. During wild land and wood shake and shingle roof fires, winds can carry sparks and burning brands to other roofs, thus spreading the fire and causing conflagrations. In building fires, winds can literally force fire back into buildings and can create a blowtorch effect, in addition to preventing "natural" ventilation and cross-ventilation efforts.

2. GEOLOGICAL AND TOPOGRAPHIC

a. Vegetation: Dry grass and brush are common in the hills and open-space areas adjacent to built-up locations during six to eight months of each year. Many of these areas frequently experience wild land fires which threaten nearby buildings, particularly those with wood roofs or sidings.

b. Hills, Creeks, Canals, Freeways, Railways, Housing Tracts, Large Buildings, Building Complexes, and the Airport: These entire surface features, both natural and man-made, have a major adverse effect upon the road and street layout in the City of Hayward, including major traffic routes. These conditions limit the number, and cause indirect routing, of major arterial streets for normal traffic as well as emergency vehicle response.

c. Terrain: Areas with buildings include level, sloping, and rolling terrain. This terrain is not dissimilar to terrain in other locations which have experienced major conflagrations. The City of Hayward is in an active seismic area and may be subject to ground shaking and surface rupture.

d. Roads and Streets: As noted above, the limited number and the indirect routing of roads and streets in the City of Hayward create heavy, slow traffic conditions and excessively long travel routes from point to point.

e. Population: The current and rapidly growing population in the City creates two fire protection problems:

1) The more people, the more emergency incidents requiring fire department response. The greater the frequency of alarms, the greater the chance there will be simultaneous emergency incidents requiring fire department response. This results in longer response times and/or few fire companies to respond to any emergency within this jurisdiction; and

2) The more people, the more traffic congestion during a greater part of the day. Such traffic congestion not only slows fire department response but often restricts access to fire scenes.

f. Buildings, Landscaping and Clearances: Many building complexes are of designs which greatly limit the approach to and accessibility by Fire Department and other emergency resources. Many houses and other buildings with wood roofs and/or sidings are close together and fire will readily spread from one to another by both radiation and convection of flying brands.

g. Summary: Essentially, the above local geological and topographical conditions present fire frequency, magnitude, exposure, and accessibility problems and have a negative impact upon the response capability of the Fire Department and other emergency response efforts. The quantity of emergency resources that can arrive within an effective time is limited. The time in which they can respond is extended due to lengthy travel distances and traffic congestion.

3. CONCLUSION. Local climatic, geological and topographic conditions have a definite impact upon the frequency, spread and acceleration, intensity and size of fire and other structural threats involving buildings in Hayward. Furthermore, they have an adverse impact upon the number of Fire Department and other emergency resources which can be brought to bear in an expeditious period of time to resolve or reduce threats to life and property. Therefore, it is found to be reasonably necessary that the *2013 California Electrical Code* as adopted by the City of Hayward be changed or modified to mitigate the effects of the above conditions.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of this resolution, together with the modifications or changes to the California Electrical Code, to be filed with the State Department of Housing and Community Development.

IN COUNCIL, HAYWARD, CALIFORNIA __,

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

ORDINANCE NO. __

AN ORDINANCE TO BE KNOWN AND DESIGNATED AS THE ELECTRICAL CODE OF THE CITY OF HAYWARD; REGULATING THE INSTALLATION, ALTERATION, REPAIR, AND MAINTENANCE OF ELECTRICAL WIRING, ELECTRICAL FIXTURES, AND OTHER ELECTRICAL APPLIANCES AND EQUIPMENT; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES; AND REPEALING ORDINANCE NO. 10-21 AND ALL AMENDMENTS THERETO

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

Section 1. In accordance with state law, effective January 1, 2014, Ordinance No. 10-21, and all amendments thereto, is repealed and, in substitution thereof, a new Electrical Code for the City of Hayward is enacted to read as follows:

ELECTRICAL CODE
OF THE CITY OF HAYWARD

SECTION 1.00 CALIFORNIA ELECTRICAL CODE, ADOPTION BY REFERENCE

The *2013 California Electrical Code*, Part 3, Title 24, California Code of Regulations (which is based upon the National Electrical Code, 2011 Edition, published by the National Fire Protection Association), as modified by the amendments, additions, and deletions set forth hereinafter, are hereby adopted by reference as the Electrical Code of the City of Hayward, regulating the installation, alteration, repair, and maintenance of electrical wiring, electrical fixtures, and other electrical appliances and equipment in the City of Hayward.

A copy of the California Electrical Code is on file in the office of the City Clerk, to which reference is hereby made for further particulars. Reference is also made to the State's Matrix Adoption Tables which identify local Building Official's responsibilities and enforce certain amendments.

SECTION 2.00 AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2013 CALIFORNIA ELECTRICAL CODE. Set forth below are the local amendments, additions and deletions of the *2013 California Electrical Code*. Chapter and section numbers used herein are those of the California Electrical Code.

SECTION 3.00 APPLICABILITY OF CALIFORNIA ELECTRICAL CODE

ANNEX CHAPTERS Wherever in the California Electrical Code reference is made to an annex chapter, the provisions of the said annex shall not apply unless specifically adopted by this code.

ANNEX CHAPTER H
ADMINISTRATION AND ENFORCEMENT

Annex H "Administration", is hereby adopted as the administrative chapter for the "Hayward Electrical Code" with amendments as follows:

For administrative requirements not covered in this Chapter, the *2013 California Building Code*, Appendix Chapter 1, Division II, as amended by the City of Hayward shall be applied.

SECTION 80.15 ELECTRICAL BOARD

Section 80.15 is hereby deleted and is replaced by Section 112 of Appendix Chapter 1 of the 2013 California Building Code, Board of Appeals.

SECTION 80.19 PERMITS AND APPROVALS.

A new Section 80-19.1 is hereby added to read as follows:

(a) Permits may only be issued to a person holding a valid State of California Electrical Contractors license except when otherwise provided in this section.

(b) Any permit required by this code may be issued to any person to do any work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings provided that the applicant is the owner and resident in such buildings, accessory buildings, or quarters.

Section 80.19 (A) (2) is hereby deleted and a new section 80.19 (A) (2) is added to read as follows:

Work requiring a permit shall not be commenced until the permit holder or their agent shall have posted an inspection record card in a conspicuous place on the premises and in such position as to allow the authority having jurisdiction conveniently to make the required entries thereon regarding inspection of the work. This card shall be maintained in such position by the permit holder until final approval has been granted by the Building Official.

There shall be a final inspection and approval on all buildings and structures when completed and ready for occupancy or use.

Section 80.19 (D) Annual Permits is hereby deleted.

Section 80.19 (E) Fees is replaced to read as follows:

Section E.1 Plan Review Fees. When a plan or other data is required to be submitted by subsection (b) of section 302 of this code and not otherwise included in the plan review of a new building or addition, a plan review fee shall be paid at the time of issuance of the permit. When plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged based on project valuation at the rate established from time to time by applicable resolution of the City of Hayward.

Section E.2 Investigation Fees. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee established by City of Hayward ordinance for building code violations. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Code nor from any penalty prescribed by law.

Section E.3 Reinspection Fees. To obtain a reinspection, the applicant shall pay the prescribed fee as set forth in the City Council resolution establishing fees. Payment shall be made prior to reinspection.

CALIFORNIA CHAPTER 1
GENERAL CODE PROVISIONS

SEC. 89.101.1 TITLE

Section 89.101.1 is revised to read as follows:

89.101.1 Title. The California Electrical Code as amended by this Chapter, shall be known as the *Electrical Code of the City of Hayward*. The provisions contained in this Chapter are adopted, and together with the amended CEC, are referred to hereafter as "these regulations" or "this code."

CHAPTER 1
GENERAL

ARTICLE 100 DEFINITIONS is hereby amended by the addition of the following words or phrases:

"CITY" or "THE CITY": The City of Hayward unless the context requires otherwise.

"CITY COUNCIL": The City Council of the City of Hayward.

"ELECTRICAL CONTRACTOR": A contractor in possession of a valid license issued in accordance with the provisions of the State of California Contractors License Law.

"ELECTRICAL INSPECTOR": The Building Official of the City of Hayward or his or her authorized representative.

"ELECTRICAL WORK": The installation, construction, maintenance, and repair of electrical equipment.

"EXPOSED WIRING": Electric wiring not rendered inaccessible by the structure or finish of the building. Open wiring within basements or under floors rendered accessible by means of doors or openings shall be considered as exposed wiring.

"H.E.C.": The Hayward Electrical Code.

"PERSON": A natural person, his or her heirs, executors, administrators, or assignees, and also includes a firm, partnership, or corporation, it's or their successors or assignees, or the agent of any of the aforesaid.

"SINGLE FAMILY DWELLING": A residential building containing one or two dwelling units.

CHAPTER 2
WIRING AND PROTECTION

ARTICLE 210 BRANCH CIRCUITS is hereby amended as follows:

SEC. 210.5 (C) UNGROUNDED CONDUCTORS OF MULTIWIRE BRANCH CIRCUITS IN RACEWAY. A second paragraph is hereby added to this section to read as follows:

In commercial or industrial occupancies ungrounded conductors of a multi-wire branch circuit shall each be of a color or other distinguishing marking to identify the feeder phase by which it is supplied and each conductor of the same identification shall be connected to the same feeder.

Required colors for identification are as follows:

120/240 volt 3 wire conductors: Black, Red
120/240 volt 4 wire conductors: Black, Orange, Red or Blue
120/208 volt 4 wire conductors: Black, Red, Blue
277/480 volt 4 wire conductors: Brown, Purple, Yellow

ARTICLE 230 SERVICES, SECTION VI SERVICE EQUIPMENT – DISCONNECTING MEANS is hereby amended as follows:

SEC. 230.70 (a) LOCATION is deleted and replaced as follows:

The service disconnecting means shall be installed on the exterior of any residential structure or within a cabinet or electrical equipment room with Fire Department access provided.

ARTICLE 250 GROUNDING AND BONDING, SEC. 250.66.SIZE OF ALTERNATING-CURRENT GROUNDING ELECTRODE CONDUCTOR is hereby amended as follows:

(A) Connection to Rod, Pipe, or Plate Electrodes is hereby deleted.
(B) Connection to Concrete Encased Electrodes is hereby deleted.

CHAPTER 3
WIRING METHODS AND MATERIALS

ARTICLE 300 Wiring Methods is hereby amended as follows:

SEC.300.11Securing and Supporting

A new sentence is added to the end of this section to read as follows:

Low voltage (50 volts and less) communications, alarm, signaling systems, and similar systems shall be supported as provided above at not to exceed 4-1/2 foot intervals within buildings.

EXCEPTION: In suspended ceilings, low voltage (50 volts and less) systems referred to above shall be supported at intervals not to exceed eight feet.

CHAPTER 7
SPECIAL CONDITIONS

ARTICLE 770 OPTICAL FIBER CABLE AND RACEWAYS is amended as follows:

SEC. 770-8 is added to read as follows:

Optical fiber cables shall be supported at intervals not to exceed 4-1/2 feet.

EXCEPTION: The ceiling support system shall be permitted to support wiring and equipment that have been tested as part of the fire-rated assembly.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,

held the___day of_____, by Council Member_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held

the 17th day of December 2013, the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: 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. _____

Introduced by Council Member _____

RESOLUTION FINDING AND DETERMINING THE NEED FOR CHANGES OR MODIFICATIONS TO THE 2013 CALIFORNIA PLUMBING CODE

WHEREAS, section 17958 of the California Health and Safety Code requires the adoption by the City of Hayward of regulations imposing the same requirements of certain uniform industry codes as specified in Health and Safety Code section 17922 and California Housing and Community Development Commission regulations promulgated hereunder; and

WHEREAS, said Health and Safety Code section 17958.5 permits a city to make changes or modifications to the uniform industry code as deemed reasonably necessary because of local conditions; and

WHEREAS, pursuant to section 17958.7 of the Health and Safety Code, local substantive amendments shall be based upon findings of local climatic, geological, or topographical conditions, but such findings are not necessary for merely administrative changes, or changes unrelated to apartment houses, hotels, motels, and dwellings.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby finds and determines the need to adopt the administrative, commercial, or industrial changes or modifications to the following sections of the *2013 California Plumbing Code*, by reason of local conditions:

1. ADMINISTRATIVE PROVISIONS. Certain administrative provisions in Section 1 and in Section 2 have been amended to conform to the provisions of the City Charter and other City ordinances; such changes are not technical in nature, but are administrative only. The City Council finds pursuant to California Code of Regulations Title 25, Section 52, that enforcement procedures of local ordinances are equivalent to those provided by the State for abatement of violations of this code.

2. CHAPTER 3 GENERAL REGULATIONS. ABS, PVC, CPVC, PEX and PEX-Al-PEX shall not be considered as approved materials.

3. CHAPTER 6 WATER SUPPLY AND DISTRIBUTION. Certain provisions of this chapter have been amended to require additional protection for water supply piping installed underground and also at the joints of such piping.

Table 6-4 all plastic materials are deleted from this table.

4. CHAPTER 7 SANITARY DRAINAGE.

Sections 701.1, 701.1.2, 701.2 and 707.1 are deleted.

5. CHAPTER 9 VENTS.

Sections 903.1 and 903.1.2 are amended to disallow the use of ABS and PVC plastic piping as approved materials.

6. CHAPTER 10 TRAPS.

Section 1003.1 is amended to disallow the use of ABS and PVC piping as approved materials.

7. CHAPTER 11 STORM DRAINAGE

Section 1101.1 is hereby amended by the addition of the following paragraph:

All such water which could flow by gravity over the public right of way or onto adjacent property shall be carried in approved conduits sufficient in size to convey accumulated water, through the curb to the street gutter, as required by City Standard Detail SD-118. Conduits under the sidewalk, when conducted though the curb, shall be steel or cast iron piping, or other approved material.

Section 1102.1 amended to disallow the use of plastic piping as approved materials for conducting storm water drainage.

Section 1102.2.1 deleted and replaced with:

Roof Drainage – All Occupancy Groups, is hereby added to read as follows:

1. Rainwater piping placed within interior of a building or run within a vent or shaft shall be of cast iron, galvanized steel, wrought iron, brass, copper, or other approved materials.

1.1 Rainwater piping located on the exterior building shall be not less than 26 gauge galvanized sheet metal or other approved material.

1.2 Rainwater piping located underground within a building shall be of service weight cast iron soil pipe, Type DWV copper tube, or other approved materials

Local amendments are necessary in order to lessen the threat to life, safety and property presented by certain local climatic, geological and topographical conditions existing in the City of Hayward. The local amendments are enacted pursuant to the authority of Section 17958.5 of the California Health and Safety Code for the purpose of addressing conditions which are more specifically described as follows:

1. CLIMATIC

a. Precipitation: Precipitation ranges from 15 to 24 inches per year with an average of approximately 17.58 inches per year. Ninety-five percent falls during the months of October through April, and 5 percent from May through September.

b. Relative Humidity: Humidity remains in the middle range most of the time. It ranges from 41 percent to 68 percent during the year.

c. Temperatures: High temperatures have been recorded in the low 100's F. Average summer highs are in the 73 range with an average annual maximum temperature of 66 F.

d. Winds: Prevailing winds are from the West, Northwest (WNW). However, winds are experienced from virtually every direction at one time or another. Velocities are generally in the 14 mph to 23 mph range, gusting to 25 to 35 mph. Forty mile-per-hour winds are experienced occasionally and higher have been registered. During the winter season, strong, dry, and gusty winds from the north move through the areas for several days, creating extremely dry conditions.

2. TOPOGRAPHICAL

a. Vegetation: Dry grass and brush are common in the hills and open-space areas adjacent to built-up locations during six to eight months of each year. Many of these areas frequently experience wild land fires which threaten nearby buildings, particularly those with wood roofs or sidings.

b. Hills, Creeks, Canals, Freeways, Railways, Housing Tracts, Large Buildings, Building Complexes, and the Airport: All of these surface features, both natural and man-made, have a major adverse effect upon the road and street layout in the City, including major traffic routes. These conditions limit the number and cause indirect routing of major arterial streets for normal traffic as well as emergency vehicle response.

c. Terrain: Areas with buildings include level, sloping, and rolling terrain. This terrain is not dissimilar to terrain in other locations which have experienced major conflagrations.

d. Roads and Streets: As noted above, the limited number and the indirect routing of roads and streets in the City create heavy, slow traffic conditions and excessively long travel routes from point to point.

e. Population: The current and rapidly growing population in the City creates two fire protection problems:

1) The more people, the more emergency incidents requiring Fire Department response. The greater the frequency of alarms, the greater the chance there will be

simultaneous emergency incidents requiring Fire Department response. This results in longer response times or fewer fire companies to respond to any emergency within the City; and

2) The more people, the more traffic congestion during a greater part of the day. Such traffic congestion not only slows Fire Department response but often restricts access to fire scenes.

f. Buildings, Landscaping and Clearances: Many building complexes are of designs which greatly limit the approach to and accessibility by Fire Department resources. Many houses and other buildings with wood roofs or sidings are close together and fire will readily spread from one to another by both radiation and convection of flying brands.

3. GEOLOGICAL

a. Seismic Activity: The City of Hayward is located in a zone of high seismic activity. A major seismic event may make roads impassable with damage so widespread that resources would not be available to meet all the anticipated needs. Buildings in this area need to be designed to ensure the maximum life safety of occupants and to minimize economic loss as the region struggles to overcome the devastation that would follow after such a seismic event.

4. FINDINGS:

a. The Hayward fault lies within the City of Hayward and in fact, a substantial portion of the residential area of the City lies within the Alquist-Priolo Act Special Studies Zone, requiring special geologic studies prior to development. This fact increases the likelihood of seismic disturbances of substantial magnitude occurring and causing consequent damage. Such damage is often accompanied by structural fire. Because ABS, PVC and PEX plastic piping is combustible, emits toxic gases and acids, and generates large amounts of smoke, its presence in interior water distribution systems would increase the threat to life and property in the event of a seismic disturbance. Additionally

b. The travel time to a fire or other emergency within Hayward may be impeded by the following conditions:

(1) Three major railway lines, the elevated BART line, two major freeways, and natural creeks divide the City into numerous sections, and equipment responding to emergencies face potential delays and obstruction of access in crossing these barriers.

(2) The City of Hayward contains five major water reservoirs which, upon failure, would inundate a large portion of the City, further delaying the response to a fire or other emergency.

(3) The major north-south and east-west emergency response routes aside from the freeways are dependent upon bridges and grade

separations. Failure of these structures would isolate a heavily populated section of the City.

(4) In the event of a fire, toxic gases and acid emitted by plastic pipe and the smoke generated by plastic pipe represent and increased life hazard, and since most loss of life in fires is from asphyxiation, a rapid response by emergency equipment becomes more critical.

c. All drain and waste pipes flow into the City of Hayward Waste Water Treatment Plant. Any chemical reaction between the plastic pipe and the waste flowing through it, may produce contaminants, threatening the biological process of the treatment Plant itself and in turn thereby threatening the marine life in the San Francisco Bay. Extensive use presents an unacceptable threat.

d. High wind conditions normally exist in the hillside and shoreline areas of the City, increasing the potential for fire spread. The presence of plastic pipe increases the life hazard.

e. Prevailing temperatures in the City of Hayward periodically reaches levels that may cause excessive expansion of plastic pipe resulting in its failure.

f. A substantial portion of the residential area of Hayward is the natural habitat of various species of animals and rodents. Plastic pipe has been known to be damaged by such animals and rodents.

g. Prevailing soil conditions within the City of Hayward have been found to be highly acidic and corrosive to both ferrous and non-ferrous piping. Without protection these piping systems have shown failure on an accelerated rate. A high rate of failure in unprotected under slab copper tubing has been found to occur due to electrolysis. The use of plastic piping for the pressurized potable water systems within structures constitutes a possible hazard to such structures in case of joint failure and pipe breakage, As the City of Hayward sits astride the Hayward fault which is considered a major California fault system, the likelihood of a high magnitude earthquake is predicted by geologists to be highly likely within the next thirty years. Metal piping with threaded or soldered joints has by the nature of the material considerably greater strength to resist breakage and is considered by the Building Official to be necessary to reduce possible structural damage to buildings in the case of a major seismic event.

5. CONCLUSION. Local climatic, geological and topographic conditions have a definite impact upon the frequency, spread and acceleration, intensity and size of fire and other structural threats involving buildings in Hayward. Furthermore, they have an adverse impact upon the number of Fire Department and other emergency resources which can be brought to bear in an expeditious period of time to resolve or reduce threats to life and property. Therefore, it is found to be reasonably necessary that the *2013 California Plumbing Code* as adopted by the City of Hayward be changed or modified to mitigate the effects of the above conditions.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause a copy of

this resolution, together with the modifications or changes to the *2013 California Plumbing Code* to be filed with the California Department of Housing and Community Development.

IN COUNCIL, HAYWARD, CALIFORNIA _____,

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:

_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

ORDINANCE NO. __

AN ORDINANCE REPEALING ORDINANCE NO. 10-22 AND ALL AMENDMENTS THERETO, AND ESTABLISHING A PLUMBING CODE FOR THE CITY OF HAYWARD, REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE OF PLUMBING; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES

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

Section 1. In accordance with state law, effective January 1, 2014, Ordinance No. 10-22, and all amendments thereto, is repealed and in substitution thereof a new Plumbing Code for the City of Hayward is hereby enacted to read as follows:

PLUMBING CODE
OF THE CITY OF HAYWARD

SECTION 1.00 2013 CALIFORNIA PLUMBING CODE, ADOPTION BY REFERENCE. The *2013 California Plumbing Code*, based the *2012 Uniform Plumbing Code*, and Appendices thereto, published by the International Association of Plumbing and Mechanical Officials, as modified by the California Building Standards Commission and as further modified by the amendments, additions, and deletions set forth herein, is hereby adopted as the Plumbing Code of the City of Hayward.

A copy of such Plumbing Code is on file in the office of the City Clerk, to which reference is hereby made for further particulars. Reference is also made to the State's Matrix Adoption Tables which identify local Building Official's responsibilities to enforce certain amendments.

SECTION 2.00 AMENDMENTS, ADDITIONS AND DELETIONS TO THE UNIFORM PLUMBING CODE Set forth below are the local amendments, additions, and deletions to the *2013 California Plumbing Code*. Chapter and section numbers used herein are those of the California Plumbing Code.

CHAPTER 1
ADMINISTRATION

SECTION 101.0 TITLE

The first sentence of Section 101.0 is hereby deleted and a new sentence is substituted to read as follows:

This ordinance may be cited and shall be known as the "Plumbing Code of the City of Hayward".

Chapter 1 Division II is hereby adopted as the administrative chapter for this code.

Reference is made to Appendix Chapter 1 Administration Division II of *2013 California Building Code*, which is based on the *2012 International Building Code* as published by the International Code Conference and amended by the City of Hayward. Where there is a conflict between administrative requirements of each code the administrative requirements of the Building Code shall prevail.

SECTION 103.3 PERMIT ISSUANCE

SECTION 103.3.1.1 TO WHOM PERMIT MAY BE ISSUED

A new Section 103.3.1.1 is hereby added to read as follows:

(a) Permits may only be issued to a person holding a valid State of California Plumbing Contractors license except when otherwise provided in this section.

(b) Any permit required by this code may be issued to any person to do any work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings, provided the applicant is the owner and resident in such buildings, accessory buildings, or quarters.

CHAPTER 2
DEFINITIONS

SECTION 203.0 DEFINITION OF TERMS

Section 203.0 a new definition is hereby added to read as follows:

ADMINISTRATIVE AUTHORITY shall mean the City Building Official of the City of Hayward or his or her duly authorized representative.

CHAPTER 3
GENERAL REGULATIONS

SECTION 301.1.3.1 STANDARDS

A new sentence is hereby added to the end of this section to read as follows:

ABS, PVC, CPVC, PEX, and PEX-AL-PEX shall not be considered as approved materials. The gas piping, water piping and piping for DWV shall be of approved materials.

SECTION 316.1.1 THREADED JOINTS

A new sentence is hereby added to the end of this section to read as follows:

Screwed fittings shall be cast iron, copper, copper alloy, malleable iron, steel, or other approved materials. Threads shall be tapped out of solid metal. ABS and PVC shall not be considered an approved material.

SECTION 316.1.5.FLEXIBLE COMPRESSION FACTORY-FABRICATED JOINTS

This section is hereby deleted.

SECTION 316.3 FLANGED FIXTURE CONNECTIONS

SECTION 316.3.1

This section is hereby replaced with new Section 316.3.1 to read as flows:

Fixture connections between drainage pipes and water closets, floor outlet service sinks, pedestal urinals, and earthenware trap standards shall be made by means of approved brass or iron flanges caulked, soldered, solvent cemented, or screwed to the drainage pipe. The connection shall be bolted with an approved gasket, washer, or setting compound between the earthenware and the connection. The bottom of the flange shall be set on an approved firm base. ABS and PVC shall not be considered an approved material.

CHAPTER 6
WATER SUPPLY AND DISTRIBUTION

SECTION 604.0 MATERIALS

TABLE 6-4

The following materials are hereby deleted from this table:

CVPC, PE, PE-AL-PE, PEX, PEX-AL-PEX, PVC

SECTION 604.1

After the first paragraph of this section two new sentences are added to read as follows:

Water pipe and fittings to supply potable water shall be of brass, copper, cast iron, galvanized malleable iron, galvanized wrought iron, galvanized steel, or other approved materials. CPVC, PB, PE, or PVC water pipe manufactured to recognized standards shall be limited to cold water irrigation systems outside a building.

SECTION 609.3.2

A new sentence is hereby added to the end of this section to read as follows:

Underground copper tubing installed within a building must be sleeved or double spiral wrapped with minimum 10 mil tape in an approved manner.

CHAPTER 7
SANITARY DRAINAGE

SECTION 701.0 MATERIALS

Table 7-1 The following materials are hereby deleted from this table as approved materials: ABS, Co-extruded ABS, Co-extruded PVC and PVC

SECTION 701.1

Section 701.1.1 is hereby replaced with a new section 701.1.1 to read as follows:

Drainage piping shall be cast iron, galvanized steel, copper, brass, extra strength vitrified clay pipe, or other approved materials having a smooth and uniform bore. Schedule 40 ABS, DWV, schedule 40 PVC DWV are not approved materials.

SECTION 701.1.2

This section is hereby deleted.

SECTION 701.1.3

SECTION 701.2

Section 701.2 is hereby replaced with a new section 701.2 to read as follows:

Drainage fittings shall be of cast iron, malleable iron, brass, copper, vitrified clay, stainless steel 304 and 316L (304 shall not be installed underground and shall be kept at least 6

inches aboveground), or other approved materials having a smooth interior waterway of the same diameter as the piping served and all such fittings shall conform to the type of pipe used. ABS and PVC shall not be an approved material.

SECTION 707.0 CLEANOUTS

SECTION 707.1

This section is hereby amended to read as follows:

Each cleanout fitting for cast iron pipe shall consist of a cast iron or brass body, and an approved plug. Each cleanout for galvanized wrought iron, galvanized steel, copper, or brass pipe shall consist of a brass plug as specified in Table 7-6 or a standard weight brass cap, or other approved materials. Plugs shall have raised square heads or approved countersunk rectangular slots. Countersink heads shall be used where raised heads may cause a hazard. ABS and PVC shall not be considered an approved material.

CHAPTER 9
VENTS

SECTION 903 MATERIALS

SECTION 903.1

This section is hereby amended to read as follows:

Vent pipe and vent fittings shall be cast iron, galvanized steel, galvanized wrought iron, copper, brass, stainless steel 304 or 316L (stainless steel 304 pipe and fittings shall not be installed underground and shall be kept at least six inches aboveground) or other approved materials having a smooth and uniform bore. Schedule 40 ABS, DWV, schedule 40 PVC DWV are not approved materials.

SECTION 903.1.2

This section is hereby deleted.

CHAPTER 10
TRAPS

SECTION 1003.1 TRAPS - DESCRIBED

SECTION 1003.1

Section 1003.1 is hereby amended to read as follows:

Each trap, except one for an interceptor or similar device, shall be self-cleaning. Traps for bathtubs, showers, lavatories, sinks, laundry tubs, floor drains, hoppers, urinals, drinking fountains, dental units, and similar fixtures shall be of standard design and weight and shall be of cast brass, cast iron, or other approved material. An exposed and readily accessible drawn brass tubing trap, not less than 17 B & S gauge (0.45") (1. 1-mm) may be used on fixtures discharging domestic sewage but shall exclude urinals. Each trap shall have the manufacturer's name stamped legibly in the metal of the trap and each tubing trap shall have the gauge of the tubing in addition to the manufacturer's name. Every trap shall have a smooth and uniform interior waterway.

CHAPTER 11
STORMWATER DRAINAGE

Section 1101.0 GENERAL

Section 1101.1 is hereby amended by the addition of the following paragraph:

All such water which could flow by gravity over the public right of way onto adjacent property shall be carried in approved conduits sufficient in size to convey accumulated water through the curb to the street gutter as required by City Standard Detail SD-118. Conduits under the sidewalk, when conducted through the curb shall be steel or cast iron piping or other approved material.

Section 1102.0 MATERIALS

Section 1102.1 is deleted and replaced with:

Conductors installed above ground shall be cast iron, galvanized steel, wrought iron, brass, copper or other approved material.

Section 1102.2 is deleted and replaced with:

Section 1102.2 Roof Drainage-All Occupancy Groups

1. Rainwater piping placed within the interior of a building or run within a vent or shaft shall be of cast iron, galvanized steel, wrought iron, brass, copper or other approved material.
2. Rainwater piping located on the exterior of a building shall not be less than 26 gauge galvanized sheet metal or other approved material.
3. Rainwater piping located underground within a building shall be of service weight cast iron soil pipe, type DWV copper tube or other approved material.

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 __, 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

Type of Project	Existing Regulations/Requirements					Proposed Regulations/Requirements (2014)				
	Energy Efficiency	**Resource Conservation**	**Water Conservation**	**Indoor Air Quality**	**Sustainable Sites**	**Energy Efficiency**	**Resource Conservation**	**Water Conservation**	**Indoor Air Quality**	**Sustainable Sites**
New SF Residential	GPR = 15% above 2008 Energy Code	GPR + CalGreen *Division 4.4*	GPR + Hayward Water Efficiency Ord.+ CalGreen *Division 4.3*	GPR + CalGreen *Division 4.5*	GPR + CalGreen *Division 4.1*	2013 Energy Code	CalGreen *Division 4.4*	CalGreen *Division 4.3*	CalGreen *Division 4.5*	CalGreen *Division 4.1*
SF Residential Remodels/Additions	2008 Energy Code	NO REQUIREMENTS	Hayward Water Efficiency Ord.	NO REQUIREMENTS	NO REQUIREMENTS	2013 Energy Code	CalGreen *Division 4.4*	CalGreen *Division 4.3* + SB 407*	CalGreen *Division 4.5*	CalGreen *Division 4.1*
New MF Residential ≤ 3 stories	2008 Energy Code	GPR + CalGreen *Division 4.4*	GPR + Hayward Water Efficiency Ord. + CalGreen *Division 4.3*	GPR +CalGreen *Division 4.5*	GPR+CalGreen *Division 4.1*	2013 Energy Code	CalGreen *Division 4.4*	CalGreen *Division 4.3*	CalGreen *Division 4.5*	CalGreen *Division 4.1*
New MF Residential > 3 stories	2008 Energy Code	GPR	GPR + Hayward Water Efficiency Ord.	GPR	GPR	2013 Energy Code	CalGreen *Division 4.4*	CalGreen *Division 4.3*	CalGreen *Division 4.5*	CalGreen *Division 4.1*
MF Residential Remodels/Additions	2008 Energy Code	NO REQUIREMENTS	Hayward Water Efficiency Ord.	NO REQUIREMENTS	NO REQUIREMENTS	2013 Energy Code	CalGreen *Division 4.4*	CalGreen+ SB 407+CalGreen *Division 4.3*	CalGreen *Division 4.5*	CalGreen *Division 4.1*
New Commercial	15% above 2008 Energy Code	CalGreen *Division 5.4*	CalGreen *Division 5.3*	CalGreen *Division 5.5*	CalGreen *Division 5.1*	2013 Energy Code	CalGreen *Division 5.4*	CalGreen *Division 5.3*	CalGreen *Division 5.5*	CalGreen *Division 5.1*
Commercial Tenant Improvements/Additions < 1,000 square feet or $500,000 valuation	5% above 2008 Energy Code	NO REQUIREMENTS	Hayward Water Efficiency Ord.	NO REQUIREMENTS	NO REQUIREMENTS	2013 Energy Code	CalGreen *Division 5.713* *Threshold drops to $200K and/or 1,000 sf.*	CalGreen *Division 5.712* *Threshold drops to $200K and/or 1,000 sf.*	CalGreen *Division 5.714* *Threshold drops to $200K and/or 1,000 sf.*	CalGreen *Division 5.710* *Threshold drops to $200K and/or 1,000 sf.*
Commercial Tenant Improvements/Additions > 1,000 square feet or $500,000 valuation	2008 Energy Code	CalGreen *Division 5.713*	CalGreen *Division 5.712*	CalGreen *Division 5.714*	CalGreen *Division 5.710*	2013 Energy Code	CalGreen *Division 5.713*	CalGreen *Division 5.712*	CalGreen *Division 5.714*	CalGreen *Division 5.710*
New municipal buildings < 20,000 sq. ft. and/or <$5 million valuation. *EFFORT TO DESIGN WITH SIMILAR FEATURES TO 20 LEED POINTS, BUT NO CERTIFICATION.*	2008 Energy Code	CalGreen *Division 5.4*	CalGreen *Division 5.3*	CalGreen *Division 5.5*	CalGreen *Division 5.1*	2013 Energy Code+ *LEED CERTIFIED*	CalGreen *Division 5.4 +* LEED CERTIFIED	CalGreen *Division 5.3 +* LEED CERTIFIED	CalGreen *Division 5.5 +* LEED CERTIFIED	CalGreen *Division 5 +* LEED CERTIFIED
New municipal buildings ≥ 20,000 sq. ft. or ≥ $5 million valuation (LEED CERTIFICATION ALSO APPLIES TO ALTERATIONS IN THIS RANGE)	2008 Energy Code + *LEED SILVER*	CalGreen *Division 5.4+ LEED SILVER*	CalGreen *Division 5.3 + LEED SILVER*	CalGreen *Division 5.5 + LEED SILVER*	CalGreen *Division 5.1 LEED SILVER*	2013 Energy Code+*LEED SILVER*	CalGreen *Division 5.4+ LEED SILVER*	CalGreen *Division 5.3 + LEED SILVER*	CalGreen *Division 5.5 + LEED SILVER*	CalGreen *Division 5.1+ LEED SILVER*
Municipal Alterations < 20,000 sq. ft. and/or <$5 million valuation. *EFFORT TO DESIGN WITH SIMILAR FEATURES TO 20 LEED POINTS, BUT NO CERTIFICATION.*	2008 Energy Code	CalGreen *Division 5.713*	CalGreen *Division 5.712*	CalGreen *Division 5.714*	CalGreen *Division 5.710*	2013 Energy Code	CalGreen *Division 5.713*	CalGreen *Division 5.712*	CalGreen *Division 5.714*	CalGreen *Division 5.710*

*Senate Bill 407 is similar to the Hayward Water Efficiency Ordinance (Article 23). It may supersede this local code.