



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
DECEMBER 17, 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	5
Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward (Report from Director of Development Services Rizk)	
Staff Report	12
Attachment I	23
Attachment II	38
Attachment III	46
Attachment IV	52
Attachment V	54
Attachment VI	55
Attachment VII	58
Attachment VIII	62
Attachment IX	63
Financing Mechanisms for the City’s Critical Facility Needs and Update on Polling Results (Report from Assistant City Manager McAdoo and Finance Director Vesely)	
Staff Report	67
Attachment I Poll Results	72
Approval of Minutes of the City Council Meeting on December 3, 2013	
Draft Minutes	89
Adoption of an Ordinance Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices	
Staff Report	95
Attachment I Summary of Ordinance	96
Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices	
Staff Report	97
Attachment I Summary of Ordinance	98
Adoption of an Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations	
Staff Report	99
Attachment I Summary of Ordinance	100
Adoption of 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	
Staff Report	102

Attachment I Summary of Ordinance	103
Adoption of 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)	
Staff Report	105
Attachment I Summary of Ordinance	107
Adoption of 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	
Staff Report	108
Attachment I Summary of Ordinance	109
Adoption of 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	
Staff Report	110
Attachment I Summary of Ordinance	111
Adoption of 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	
Staff Report	112
Attachment I Summary of Ordinance	113
Adoption of an Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City	
Staff Report	114
Attachment I Summary of Ordinance	115
Approval of Final Tract Map 8086 – Camden Place Development by Standard Pacific Homes (Applicant/Owner); the Project is Located on Multiple Parcels Totaling 10.9 Acres Generally Located Between Eden Avenue and Saklan Road, North of Middle Lane in the Mt. Eden Area	
Staff Report	116
Attachment I Vicinity Map 8086	119
Attachment II Site Plan for FM 8086	120
Attachment III Resolution Approving FM 8086	121

Approval of Final Tract Map 7991 – Apricot Lane Development (Residual Burbank School Site) by the Successor Agency (Owner)/ Urban Dynamic, LLC (Applicant/Developer) - The Project Site is Located at the Southwest Corner of B Street and Myrtle Street, East of Burbank Elementary School	
Staff Report	123
Attachment I Resolution Approving Final Map 7991	128
Attachment II Vicinity Map	130
Attachment III Site Plan	131
Attachment IV Resolution 11-121	132
Attachment V Resolution 11-122	137
Attachment VI Resolution 12-138	144
Attachment VII RSA Resolution 12-06	151
Approval of Final Map Tract 7893 – Regency Square Development by KB Home South Bay Inc. (Applicant/Owner) - The Project Site is Located Generally at the Intersection of Orchard Avenue and Traynor Street, Westerly of Soto Road	
Staff Report	159
Attachment I Vicinity Map	162
Attachment II Site Plan	163
Attachment III Resolution Approving Final Map	164
Authorization for the City Manager to Negotiate and Execute an Agreement with Noll & Tam Architects and Planners for Professional Design Services for the Hayward 21st Century Library & Community Learning Center	
Staff Report	166
Attachment I	169
Attachment II	170
Attachment III	171
Authorization for the City Manager to Negotiate and Execute an Agreement with Ross Drulis Cusenbery Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9	
Staff Report	172
Attachment I	176
Adoption of Resolution Extending the Inclusionary Interim Relief Ordinance for a Six-Month Period	
Staff Report	177
Attachment I Resolution Extending the Relief Ordinance	181
Resolution Appointing Council Member Halliday to the Alameda County Mosquito Abatement District Board of Trustees	
Staff Report	183
Attachment I Resolution Appointing Halliday	184
Attachment II Letter from ACMAD	185

Final Map Tract 7736, Application No. PL-2006-0069,
 Stonebrae Country Club Village B – Stonebrae L.P. (Subdivider)
 – Request to Amend Condition of Approval No. 171 Related to
 Construction of the Second Water Storage Reservoir in the
 Highland 1530 Zone, and Authorization for the City Manager to
 Negotiate and Execute an Agreement for Reimbursement of
 Costs

Staff Report	186
Attachment I Resolution.	190
Attachment II Location Map.	193

Authorization to Amend a Professional Services Agreement with
 Townsend Public Affairs, Inc. to Extend the Term of the
 Agreement Through the End of FY2014 for Assistance in
 Securing State and Federal Funding and Legislative Advocacy
 Services

Staff Report	194
Attachment I Resolution.	197
Attachment II FY2013 Activities Report.	198

Adoption of a Resolution of Intention to Approve an Amendment
 to the City of Hayward Contract with the California Public
 Employees Retirement System (CalPERS)(Report from Human
 Resources Director Robustelli)

Staff Report	205
Attachment I.	207
Attachment II	209



CITY COUNCIL MEETING FOR DECEMBER 17, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

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

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

➤ Performance Evaluation

City Manager

3. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Anticipated Litigation (One Case)

4. 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

5. Adjourn to City Council Meeting

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Salinas

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATIONS

Presentation by Congressman Swalwell

Commendation Recognizing the Outstanding Scholastic Achievements of Reynaldo Muro Hernandez,
3rd Grader at Southgate Elementary

Commendation Recognizing the Outstanding Scholastic Achievements of Anna Fomitchev,
4th Grader at Stonebrae Elementary School

PUBLIC COMMENTS

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

NON-ACTION ITEMS: *(Work Session and Informational Staff Presentation items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.)*

WORK SESSION

1. Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward (Report from Director of Development Services Rizk)

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

[Attachment III](#)

[Attachment IV](#)

[Attachment V](#)

[Attachment VI](#)

[Attachment VII](#)

[Attachment VIII](#)

[Attachment IX](#)

2. Financing Mechanisms for the City's Critical Facility Needs and Update on Polling Results (Report from Assistant City Manager McAdoo and Finance Director Vesely)

[Staff Report](#)

[Attachment I Poll Results](#)



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

3. Approval of Minutes of the City Council Meeting on December 3, 2013
[Draft Minutes](#)
4. Adoption of an Ordinance Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
5. Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
6. Adoption of an Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
7. Adoption of 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
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
8. Adoption of 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)
[Staff Report](#)
[Attachment I Summary of Ordinance](#)



9. Adoption of 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

[Staff Report](#)

[Attachment I Summary of Ordinance](#)

10. Adoption of 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

[Staff Report](#)

[Attachment I Summary of Ordinance](#)

11. Adoption of 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

[Staff Report](#)

[Attachment I Summary of Ordinance](#)

12. Adoption of an Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City

[Staff Report](#)

[Attachment I Summary of Ordinance](#)

13. Approval of Final Tract Map 8086 – Camden Place Development by Standard Pacific Homes (Applicant/Owner); the Project is Located on Multiple Parcels Totaling 10.9 Acres Generally Located Between Eden Avenue and Saklan Road, North of Middle Lane in the Mt. Eden Area

[Staff Report](#)

[Attachment I Vicinity Map 8086](#)

[Attachment II Site Plan for FM 8086](#)

[Attachment III Resolution Approving FM 8086](#)

14. Approval of Final Tract Map 7991 – Apricot Lane Development (Residual Burbank School Site) by the Successor Agency (Owner)/ Urban Dynamic, LLC (Applicant/Developer) - The Project Site is Located at the Southwest Corner of B Street and Myrtle Street, East of Burbank Elementary School

[Staff Report](#)

[Attachment I Resolution Approving Final Map 7991](#)

[Attachment II Vicinity Map](#)

[Attachment III Site Plan](#)

[Attachment IV Resolution 11-121](#)

[Attachment V Resolution 11-122](#)

[Attachment VI Resolution 12-138](#)

[Attachment VII RSA Resolution 12-06](#)



15. Approval of Final Map Tract 7893 – Regency Square Development by KB Home South Bay Inc. (Applicant/Owner) - The Project Site is Located Generally at the Intersection of Orchard Avenue and Traynor Street, Westerly of Soto Road
[Staff Report](#)
[Attachment I Vicinity Map](#)
[Attachment II Site Plan](#)
[Attachment III Resolution Approving Final Map](#)

16. Authorization for the City Manager to Negotiate and Execute an Agreement with Noll & Tam Architects and Planners for Professional Design Services for the Hayward 21st Century Library & Community Learning Center
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)
[Attachment III](#)

17. Authorization for the City Manager to Negotiate and Execute an Agreement with Ross Drulis Cusenbery Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9
[Staff Report](#)
[Attachment I](#)

18. Adoption of Resolution Extending the Inclusionary Interim Relief Ordinance for a Six-Month Period
[Staff Report](#)
[Attachment I Resolution Extending the Relief Ordinance](#)

19. Resolution Appointing Council Member Halliday to the Alameda County Mosquito Abatement District Board of Trustees
[Staff Report](#)
[Attachment I Resolution Appointing Halliday](#)
[Attachment II Letter from ACMAD](#)

20. Final Map Tract 7736, Application No. PL-2006-0069, Stonebrae Country Club Village B – Stonebrae L.P. (Subdivider) – Request to Amend Condition of Approval No. 171 Related to Construction of the Second Water Storage Reservoir in the Highland 1530 Zone, and Authorization for the City Manager to Negotiate and Execute an Agreement for Reimbursement of Costs
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Location Map](#)

21. Authorization to Amend a Professional Services Agreement with Townsend Public Affairs, Inc. to Extend the Term of the Agreement Through the End of FY2014 for Assistance in Securing State and Federal Funding and Legislative Advocacy Services
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II FY2013 Activities Report](#)



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

22. Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS)(Report from Human Resources Director Robustelli)

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

ADJOURNMENT

**DECEMBER 24, DECEMBER 31, 2013 and JANUARY 7, 2014
MEETINGS CANCELED DUE TO BUSINESS/HOLIDAY CLOSURE**

NEXT SPECIAL MEETING – 7:00 PM, TUESDAY, JANUARY 14, 2014

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

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



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

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

Please visit us on:



DATE: December 17, 2013

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward

RECOMMENDATION

That the City Council reviews and provides comments on this report and the staff recommendations for the establishment of regulations related to the sales of tobacco and tobacco-related products, including electronic cigarettes.

SUMMARY

In response to City Council direction and concerns with the negative health consequences of tobacco use among youth, due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, staff is recommending regulations pertaining to the retail sales of tobacco and tobacco-related products. Given the large number of establishments in Hayward that sell tobacco, staff is recommending zoning restrictions for new establishments that sell tobacco and tobacco-related products, and a new license and fee applicable to all tobacco-sales establishments, to offset the cost of enforcement of the proposed regulations.

The proposed regulations would limit new tobacco retail sales establishments (with an exception for secondary sales in stores over 10,000 square feet) to the General Commercial (CG) Zoning District, subject to approval of a Conditional Use Permit (CUP), and impose a 500 foot separation requirement from schools, parks and other sensitive receptors. Also, staff is recommending that all new and existing retailers obtain a Tobacco Retailers License (TRL) (and pay an associated annual fee of approximately \$400), which would establish some operational standards, compliance inspections and enforcement provisions. Staff is also seeking input from the Council on a possible ban on the sale of tobacco and tobacco-related products in all pharmacies.

Staff also plans to bring an urgency ordinance to Council on January 14 for consideration, which would establish a moratorium on the establishment of new e-cigarette and tobacco retail sales establishments, given the number of establishments being proposed and developed. Staff anticipates bringing new regulations to Planning Commission and City Council in early spring of 2014.

BACKGROUND

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years and with the introduction of a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it is clear that the City needs to develop standards pertaining to the sale of such items in order to prevent sales to youth.

In late 2011/early 2012, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. In conjunction with the Alameda County Department of Environmental Health and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information included several other jurisdictions in Alameda County and northern California, the American Lung Association, Change Lab Solutions (formerly TALC), and the Center for Disease Control (CDC). In addition, staff used the results of decoy operations performed by the Hayward Police Department.

Previous Planning Commission Meetings - Staff developed draft regulations and presented them to the Planning Commission at a work session on May 31, 2012 for consideration. Overall, the Planning Commission was supportive of the proposed regulations, but after lengthy discussion, the Commission felt that additional work was needed and directed staff to come back with regulations that would target the prevention of sales of tobacco and tobacco-related products to youth (see staff report and minutes, Attachment I).

At the November 21, 2013 Planning Commission work session, five (5) members of the public spoke in favor of the proposed tobacco regulations (see meeting minutes, Attachment II). Speakers included a Downtown business owner, members and student advocates from Hayward Coalition for Healthy Youth (HCHY), the American Lung Association, and the Alameda County Department of Environmental Health. The Commissioners expressed support for the establishment of tobacco regulations; however, several concerns were expressed regarding the fee that would be associated with the establishment of a TRL. The Commission directed staff to further analyze the fee associated with the TRL and to also look at an incentive program that would reward those establishments in good standing by waiving or reducing the TRL fee after a determined period of time. The Commission was also in support of the 500-foot separation requirement from sensitive receptors; however, at least one Commissioner felt that a 1,000-foot separation requirement should be considered. Lastly, the Commissioners expressed concern over the number of electronic cigarette stores that have opened in the City recently and were in support of a moratorium.

DISCUSSION

Summary of Recommendations – In order to develop draft regulations for the retail sales of tobacco and tobacco-related products, staff is proposing the following recommendations for Council input:

- Similar to the City's regulations pertaining to the sale of alcohol, staff recommends that the sale of tobacco products be allowed without need of a conditional use permit in retail stores

having 10,000 square feet or more area in any zoning district where the primary retail use is allowed; however, no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco-related products combined (similar to the City's alcohol regulations). This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district for which the primary use is allowed (See discussion below regarding potential impacts to businesses).

- In addition, staff is recommending specific operational standards that would apply to all new and existing tobacco retail sales establishments. For instance, staff's recommendation would restrict product packaging to prohibit the sale of single cigarettes and cigars.
- In 2009, the City and County of San Francisco passed a law prohibiting the sale of tobacco in pharmacies. Since the law was passed in San Francisco, other communities, including the Bay Area jurisdictions of Richmond and San Mateo County, have adopted similar tobacco-free pharmacy laws. Staff supports a similar ban for Hayward and is seeking direction from the Council as to whether or not this should be further evaluated. If the direction is to include pharmacies in the proposed regulations, the aforementioned provision for big box stores and large retailers will need to be modified to state that said stores cannot have a pharmacy and sell tobacco products anywhere in the store.
- Include electronic cigarettes in the new regulations.

Retention of Previous Key Provisions - In addition to further developing draft regulations for the retail sales of tobacco and tobacco-related products, staff is proposing to continue with some key provisions that were recommended in the 2012 draft regulations, and also require Council input, as follows:

- Restrict the location of establishments selling tobacco or tobacco-related products to the General Commercial (CG) Zoning District (with the exception noted below);
- Require the approval of a CUP at all new locations, with some exceptions (see discussion below);
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district, without a CUP;
- Create a definition for tobacco sales, to include the regulation of the sale of electronic cigarettes and other specified items;
- Require a 500-foot separation from sensitive receptors;
- Prohibit any new tobacco retailers from operating within 500 feet of an existing tobacco retailer; and
- Require that all new and existing stores selling tobacco and tobacco-related products, including electronic cigarettes, obtain a TRL.

The CG district was originally selected as suitable for tobacco establishments because it provides regional-serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. If the Council wishes, staff can explore the possibility of allowing new tobacco sales establishments in additional zoning districts; however, given the number of existing establishments, staff would not recommend doing so. By requiring a CUP for

new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties. The intent of a separation requirement (see later discussion under ‘*Additional Research*’) is to keep said establishments away from sensitive receptors, such as schools, parks, libraries, playgrounds, recreation centers, day care centers and health care facilities (i.e., areas where children or people with medical issues are typically present), as well as to ensure that there is not an oversaturation of tobacco sales establishments in one area. There are currently 146 tobacco retail sales establishments and six (6) “vapor” or electronic cigarette retailers in the City, the majority of which are located in close proximity to schools and other sensitive receptors. The establishment of the separation requirement would prevent any new tobacco retailer from opening up within 500 feet from any existing establishment and any sensitive receptors. The separation requirements would not apply to stores over 10,000 square feet, where no more than five (5) percent of such floor area could be devoted to the sale, display and storage of tobacco or tobacco-related products combined, and tobacco sales is a secondary use.

Definitions - Staff has also been working on developing comprehensive definitions to identify tobacco and tobacco-related products to comprehensively regulate the type of products that are allowed to be sold and the products that would be prohibited. Some of the key definitions are as follows:

“Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vapor cigarette or any other product name or descriptor.

“Imitation Tobacco Product” means either an edible non-tobacco product designed to resemble a tobacco product or any non-edible, non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

“Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, and electronic cigarette vapors.

“Tobacco Sales Establishment” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, imitation tobacco products or any combination thereof.

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

“Tobacco Products” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

Additional Research - As part of the research required to further develop the draft regulations, staff reviewed similar ordinances in other jurisdictions, as well as studies on the subject matter from various organizations. One such resource utilized by staff, created by The Center for Tobacco Policy and Organization, was a matrix of local ordinances that restrict tobacco retailers within a certain distance of schools (Attachment III). The matrix is current as of July 2013 and includes 29 California cities and counties.

The statewide policies included in the matrix were restrictions pertaining to the distance of the business from schools, which range from 500 feet to 1,500 feet, with the majority (16 of 29 ordinances) restricting the sales of tobacco within 1,000 feet of schools. In addition to schools, the majority of surveyed jurisdictions (21 of 29 ordinances) also restricted tobacco retailers from within certain distance of other youth-oriented areas. The most common “other” location is parks and playgrounds. Nineteen cities and counties restrict tobacco retailers near parks in addition to schools. Based on this information, and the number and location of existing tobacco retailers in Hayward, staff is recommending a 500-foot separation from schools and other sensitive receptors for all new tobacco retail sales establishments.

The Center for Tobacco Policy and Organization also conducted a study regarding the effectiveness of retail tobacco licensing and enforcement (see Attachment IV). Based on a study of 33 California communities that have retail tobacco ordinances in place, those ordinances with strong enforcement provisions in communities that actively enforce were indeed effective in reducing tobacco sales to minors. An example of such enforcement is through the establishment of a financial deterrent via fines and penalties, including the suspension and revocation of the license. However, the study concluded that an ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws were also needed.

Electronic Cigarettes - An e-cigarette is a battery powered device that allows users to inhale a vapor containing nicotine or other substances. According to the Food and Drug Administration (FDA), the safety of these devices is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. California is one of the states to place a ban on the sale of electronic cigarettes to minors, but there currently are not any state laws regulating where people can use e-cigarettes. Cities do have the ability to adopt local

regulations to define “smoking” to include the use of e-cigarettes and to place restrictions of the use on them in certain public areas. In California, there are currently 59 cities and counties that require retailers to obtain a license to sell electronic cigarettes, including Contra Costa County, and the Bay Area cities of Dublin, Concord, Richmond, Albany and Oakland (see Attachment V). These jurisdictions have added special language to the definition of tobacco products in their local tobacco retailer ordinance to include electronic cigarettes. Further, in recent months, several California cities have placed moratoriums on electronic cigarettes to allow further study to determine if and how to regulate them. These jurisdictions include the cities of Seal Beach, Union City, Bellflower, Duarte and Orange County.

On November 26, 2013, Union City City Council passed an ordinance on a 5-0 vote, to prohibit E-Cigarette bars/lounges, vapor bars/lounges, hookah bars/lounges, and medical marijuana dispensaries within their city limits¹. Union City is the first jurisdiction in California to explicitly prohibit vapor lounges. A more common approach than an outright ban has been to enact zoning restrictions or CUP requirements for e-cigarette lounges.

The State Assembly is currently considering Senate Bill 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, which would extend restrictions and prohibitions against smoking cigarettes and other tobacco products to include electronic cigarettes. The California Senate voted 21-10 in favor; the bill awaits hearing by the California Assembly, possibly in 2014.

A recent study released by the Center for Disease Control (CDC) (see Attachment VI) related to middle and high school students indicates that over 3/4 of those students that use e-cigarettes smoke traditional cigarettes. The data shown in the attachment is summarized below :

- 9.3 percent in grades 6-12 reported that they had never smoked traditional cigarettes;
- 76.3 percent of e-cigarette users in grades 6-12 reported current conventional cigarette smoking;
- 20.3 percent of those in middle school reported that they had never smoked traditional cigarettes;
- 61.1 percent of those in middle school that used e-cigarettes reported current conventional cigarette smoking;
- 7.2 percent of those in high school reported that they had never smoked traditional cigarettes; and
- 80.5 percent of those in high school that used e-cigarettes reported current conventional cigarette smoking.

The attached CDC study states on page 2, “E-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011-2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012. Moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes.” Because there appears to be a high correlation between e-cigarette use and traditional cigarette use, and because the use of e-cigarettes by youth appears to be rising significantly, there are concerns with youth having access to e-cigarettes.

¹ <http://lf2.unioncity.org/WebLink8/DocView.aspx?id=28139&dbid=0>

Based on recent data, including the CDC report, it appears that the use of electronic cigarettes may be gaining popularity among youth, including those who have never smoked traditional cigarettes. Electronic cigarettes come in a variety of fruit and candy flavors, such as watermelon, cotton candy and gummy bear, which are feared to attract and addict youth to nicotine at an early age. According to the Surgeon General², young people are sensitive to nicotine. The younger they are when they start using tobacco, the more likely they are to become addicted to nicotine and the more heavily addicted they will become. If a person does not begin smoking before the age of 26, they are less likely to ever start. Additionally, while many electronic cigarette manufacturers advertise these devices as a smoking cessation device, the FDA has not approved them as such.

Since the long-term effects of electronic cigarettes are still unknown and because of their growing attraction and use by youth, staff and the Planning Commission recommend that electronic cigarettes be included in the tobacco retail sales regulations and seek concurrence from the Council.

Tobacco Sales in Pharmacies - Over the last several years, a number of cities and counties have passed regulations to ban the sale of tobacco products in pharmacies. Because pharmacies are places where people generally go to get health care advice and medicine to improve their health, many health advocates feel that the sale of both tobacco products, which have been proven to cause death, and the medicines used to treat tobacco-related illnesses, presents a troubling conflict of interest. The City of San Francisco was the first city in the nation to place a ban on sales of tobacco products in pharmacies. The law was challenged in three lawsuits, one which resulted in a revision to the law to omit an exemption for grocery stores and big box stores with pharmacies. Ultimately, the court decisions in all three cases demonstrated that there is no legal barrier to banning the sale of tobacco in pharmacies, so long as the law treats all retailers that contain pharmacies equally (see Attachment VII). Because many pharmacies are located in close proximity to schools and in residential neighborhoods and other areas where children are present, staff recommends that a similar law be considered as part of the City's tobacco retail sales regulations and seeks concurrence from the Council.

Potential Impacts to Businesses - There are currently one hundred and forty-six licensed tobacco retailers in the City of Hayward and six (6) electronic cigarette establishments. These existing establishments would become legal non-conforming uses under the proposed regulations and would be allowed to continue to operate in accordance with the Section 10-1.2900 of the City's Zoning Ordinance – Non-Conforming Uses. Per the Non-Conforming Use provision of the City's Zoning Ordinance, these retailers would be allowed to continue operation as a tobacco retail sales establishment, as long as the non-conforming use is not expanded or has not been discontinued for a period of six consecutive months or more. Thus, non-conforming tobacco sales locations would gradually cease operating.

Tobacco Retailer License - All tobacco retail sales establishments, including those that are existing and considered legal non-conforming, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and are not required to obtain a CUP, would be required to obtain an annual Tobacco Retailer License from the City and pay an annual fee. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement

² http://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf

provisions would give the City's Code Enforcement Division the authority to issue administrative fines, fees, penalties and/or citations or abatement notices to violators of the provisions of the ordinance. Staff is currently working on developing an annual fee amount that will serve to recover the costs for annual inspections and enforcement at the local level. In addition to the annual inspections to be conducted by Code Enforcement, the Hayward Police Department will continue its existing Youth Decoy Program.

Prior to the recent Planning Commission work session, staff had received two specific concerns with the proposed regulations. One concern is the impact the regulations would have on small gas stations and convenience stores. Staff has endeavored to learn how much of the revenues earned by gas stations and convenience stores derive from tobacco sales. According to the Association for Convenience and Petroleum Retailing (NACS), in 2012, cigarette sales accounted for more than a third of sales inside convenience stores and generated more than \$622,248 in sales revenue for the average convenience store (See Attachment VIII). Each of these existing gas stations and convenience stores would be able to continue to sell tobacco, but they would be required to get a TRL and would be subject to annual monitoring and compliance checks. Going forward, all existing gas stations and convenience stores selling tobacco products would be considered non-conforming uses, which could limit their ability to expand their business without compliance with all location and operational standards and approval of a Conditional Use Permit. Any new tobacco retailer would be subject to approval of a CUP and conformance with all standards and regulations pertaining to tobacco retail sales.

The second concern pertains to the exemption for large retailers with ancillary sales of tobacco products. Staff recommends this exemption for a variety of reasons, most notably that studies have shown that sales of tobacco and tobacco products to youths are typically not occurring at the larger establishments³. Under the recommended regulations, an existing small smoke shop would become a non-conforming use or a CUP would be required for a new shop, whereas the larger ($\geq 10,000$ sq. ft.) retailer that does not contain a pharmacy, with small areas devoted to tobacco sales, display, etc., would be a conforming use and would not be required to obtain a CUP.

While most small retailers and convenience stores rely on employee training to prevent sales of tobacco products to youth, many large format retail stores, such as grocery stores, have price scanners that will prompt the clerk to verify age for tobacco products. Such checks could explain why violations occur less frequently at the large format retailers than the gas stations and convenience stores⁴. Furthermore, since the Hayward Police Department began conducting the Youth Decoy Operations in 2010, of the 77 citations issued, only one occurrence was at a large format retailer. The remaining 76 citations were issued to gas stations, convenience stores, and tobacco stores.

ECONOMIC IMPACT

The adoption of tobacco retail sales regulations would provide more enforcement authority on the local level for problematic establishments and the ability to keep said establishments away from sensitive receptors, such as schools, parks, and community centers. There would be expected to be

³ <http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPRetailerPresentation07.pdf>

⁴ http://stic.neu.edu/trri/No_Sale/pt3.htm

positive economic benefits through an enhanced and attractive Downtown and business environment throughout the City; however, smaller new retail stores that rely on tobacco sales for a large percent of total sales would be discouraged from locating in Hayward, which may result in a decrease in sales tax revenue from tobacco sales for the City.

FISCAL IMPACT

At a future meeting, along with recommended Code revisions, staff will provide a fiscal impact analysis associated with administering and enforcing the City's regulations. Such analysis will include recommended new fees to recover costs pertaining to City staff, including the Police Department to continue the Youth Decoy Program and Code Enforcement, for enforcement, education, compliance inspections, and administrative costs associated with the approximately 146 tobacco retail sales establishments and six electronic cigarette or "vapor" establishments in Hayward.

PUBLIC CONTACT

On October 28, 2013, a Community Meeting was held to which all 146 existing tobacco and electronic cigarette retailers were invited. The purpose of the meeting was to inform the existing tobacco retailers of the upcoming Tobacco Retail Sales Regulations and to gather feedback, comments and concerns. Twenty people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CVCAN) and the Hayward Coalition for Healthy Youth (HCHY). The Community Meeting notice sent to the existing tobacco and electronic tobacco retailers included the dates for the Planning Commission and City Council work sessions and public hearing dates.

The owners of one of the electronic cigarette stores in Hayward reiterated their dismay, expressed previously at the October 2, 2013 Downtown Business Improvement Area (DBIA) meeting, regarding the inclusion of electronic cigarettes in the proposed regulations, arguing that electronic cigarettes are not a tobacco product. They went on to state that they are "anti-tobacco" and in the business of helping people quit tobacco. One tobacco retailer expressed support for the regulations, because he felt it would help hold storeowners accountable who sell tobacco products to minors. Another retailer in the audience did not agree, stating that they are responsible business owners and strictly adhere to the laws pertaining to sales to minors. Staff commended them and all of the other responsible business owners in the City, but went on to point out that, based on the results of the HPD Youth Decoy Program, there are retailers selling tobacco products to minors in Hayward. Several Hayward student advocates, who participate in the Hayward Police Department Youth Decoy Program, spoke on their experiences as decoys and how easy it was for them to purchase tobacco products as minors. They also spoke on their experiences at school with other kids who use the various candy-flavored tobacco and electronic cigarette products targeted at youth and expressed support for the proposed regulations.

Staff has conducted additional community outreach by making oral presentations and providing an handout outlining (see Attachment IX) the proposed regulations to the Council Economic Development Committee (CEDC) at their September 16, 2013 meeting, Keep Hayward Clean and

Green (KHCG) on September 26, 2013, and the Downtown Business Improvement Area (DBIA) on October 2, 2013. Overall, all three groups were supportive of the proposed regulations.

NEXT STEPS

Staff will incorporate input from Council, from the Planning Commission at the November 21, 2013 work session, and from the public received at the October 28, 2013 community meeting, to develop recommended comprehensive regulations pertaining to tobacco retail sales establishments in Hayward. The regulations will be presented at a community meeting in early to mid-January 2014, and at noticed public hearings to the Planning Commission for consideration in late January and to the City Council in late February 2014.

Prepared by: Linda Ajello, AICP, Associate Planner

Reviewed by: Pat Siefers, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Planning Commission staff report and meeting minutes, May 31, 2012
- Attachment II November 21, 2013 Planning Commission Work Session Minutes
- Attachment III Matrix of Local Ordinances Restricting Tobacco Retailers Within a Certain Distance of Schools, The Center for Tobacco Policy and Organization, July 2013
- Attachment IV Tobacco Retailer Licensing Is Effective, The Center for Tobacco Policy and Organization, September 2013
- Attachment V Tobacco Retailer Licensing and Electronic Cigarettes, The Center for Tobacco Policy and Organization, July 2013
- Attachment VI Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012, Centers for Disease Control and Prevention, September 6, 2013
- Attachment VII A Prescription for Health: Tobacco Free Pharmacies, Change Lab Solutions, July 2013
- Attachment VIII Cigarettes Generate Big Revenue for Convenience Stores; Analysis of 2013 State of the Industry Report, The Center for Tobacco Policy and Organization, 2013

Attachment IX Tobacco Retailer Licensing: An Effective Tool for Public Health, Change
Lab Solutions, September 2012



DATE: May 31, 2012

TO: Planning Commission

FROM: Tim R. Koonze, Associate Planner

SUBJECT: Text Amendment Application Number PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.

RECOMMENDATION

That the Planning Commission recommends that the City Council: 1) adopts the attached Initial Study and Negative Declaration (Attachment II), 2) approves the Zoning Ordinance text amendment to permit the sale of tobacco and tobacco products in the General Commercial (CG) District with the approval of a conditional use permit, and 3) adds a definition of tobacco sales to the Zoning Ordinance, subject to the attached findings (Attachment VI).

SUMMARY

In response to Council direction in late 2011/early 2012, and because the sale of tobacco products is not specifically listed anywhere in the City's Zoning Ordinance, which is challenging for staff, staff is recommending provisions be added to the Zoning Ordinance that would limit the retail sale of tobacco to the General Commercial Zoning District with a conditional use permit. A conditional use permit would require a noticed public hearing before the Planning Commission.

BACKGROUND

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths – one in every five deaths – each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. The economic burden of cigarette use includes \$193 billion annually in health care cost and loss of productivity.

Smoking is not a right protected by the United States Constitution. Specifically, smoking is neither a specially protected liberty nor a right to privacy under the "due process clause" of the Constitution. In addition, smokers are not a specially protected category under the "equal protection clause" of the Constitution. Consequently, the United States Constitution allows for the enactment of smoke free laws that relate to the legitimate government goals of public health, safety, and welfare.

Since 1998, the State of California has continued to implement legislation that restricts smoking and exposure to second-hand smoke (SHS). These include no smoking in public school facilities and athletic events, in public playgrounds and tot lots, as well as day care centers in private residences. State action has also banned smoking in workplaces, in all restaurants and bars, and smoking in the presence of a minor (17 years or younger) while in a moving vehicle and to treat it as a misdemeanor offense when cited with a larger offense. Through a provision in California Government Code 7597, the State of California allows for local governments to adopt and enforce additional smoking and tobacco control ordinances, regulations, and policies that are more restrictive than the applicable standards required by the State of California.

On that basis, in 1996, the City enacted the first Smoking Pollution Control Ordinance, found in Chapter 5, Article 6 of the Hayward Municipal Code (HMC). The ordinance allowed smoking in private residences, bars, tobacco shops that exclusively sold tobacco, and halls and rooms rented for private events. Smoking was prohibited in all enclosed areas customarily used by the public, such as restaurants, theaters, auditoriums, and public transit, including taxi cabs.

Since 1996, the City of Hayward has implemented policies to make Hayward a healthier city. On May 27, 2008, the City Council amended the Smoking Pollution Control Ordinance prohibiting the use of tobacco products in or around public places in the City of Hayward. The premise for such action relates to the desire of the Council to protect the health and well being of the general public by reducing impacts associated with second hand smoke especially on children (refer to 2008 staff report, Attachment VII). The Ordinance included a prohibition to smoke within 20 feet of any enclosed public place and on public sidewalks and streets.

After the City began to enforce the new smoking ordinance, downtown restaurant operators expressed concerns that the enforcement of the Ordinance made the Downtown a less desirable location for those patrons given citations for smoking on the way to and from the restaurants. In addition, restaurant patrons have expressed concern over their safety if they were to smoke in less visible areas around the Downtown. According to some restaurant operators in the Downtown, patrons desiring to smoke have been known to leave restaurants to smoke in their car and/or parking lots. Operators indicate that patrons who leave dining establishments don't always return, which represents a loss of business.

City staff, working with the Council and restaurant operators, came to a solution of eliminating the requirement that smoking could not occur within 20 feet of an opening into a building. This allowed restaurants with limited outdoor space to still provide designated smoking areas. The Ordinance was amended on October 19, 2010 (refer to 2010 staff report, Attachment VIII).

The City furthered its goal to become a healthier city by adopting a resolution to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign, thereby setting goals to provide its citizens and employees with healthier choices (refer to Attachment IX).

In a continuing effort to make Hayward a healthy city and in striving to improve the health and welfare of its citizens, and in response to previous City Council direction, staff recommends limiting the retail sale of tobacco and tobacco products to one commercial zoning district with the approval of a conditional use permit. The conditional use permit would allow the Planning Commission at a

noticed public hearing (or City Council on appeal) to determine if a site is suitable for tobacco sales and if the sale of tobacco would be compatible with surrounding uses. Staff also proposes a definition for tobacco sales to ensure that the tobacco retailers are clear as to the type of products that are allowed to be sold and what products would be prohibited.

DISCUSSION

Staff is proposing the following changes to the Zoning Ordinance:

- Allow retail sales of tobacco and tobacco products only in the Commercial (CG) District with approval of a conditional use permit;
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district;
- Prohibit tobacco sales within 500 feet of sensitive receptors; and
- Create a definition for tobacco sales, to include the prohibition of the sale of drug paraphanelia and other specified items.

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district. As there is no restriction of tobacco sales, the Planning Director has made the determination that tobacco sales were a general retail item permitted in any commercial zoning district, except in the Downtown core area.

Continuing with the City's direction to maintain a healthier Hayward and to minimize smoking and access to tobacco products within the City limits, staff recommends restricting the sale of tobacco or tobacco related products to the General Commercial (CG) District. The CG District is located primarily along the City's major arterials of Mission Boulevard, Jackson Street, and Foothill Boulevard (refer to Attachment I). This CG District was selected as it provides regional serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. It is proposed that tobacco sales would be subject to the approval of a conditional use permit (CUP) (see Attachment III). By requiring a CUP, the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties.

Similar to the regulations for alcohol sales, the sale of tobacco products would be allowed without the need for a conditional use permit only in retail stores having 10,000 square feet or more in area in any zoning district; however, no more than 5 percent of such floor area could be devoted to the sale, display and storage of tobacco or alcohol products combined. This provision allows larger grocery stores and box retail stores to sell tobacco products as a secondary use. In addition, the sale of tobacco would be prohibited within 500 feet of sensitive receptors such as schools, parks, library, playground, recreation center, day care center, health care facilities or any other similar use (see Attachment IV).

Staff also proposes the following definition for "Tobacco Sales Establishments," which would limit tobacco retail establishments to any establishment involving the sale of tobacco and tobacco products (see Attachment V). The definition would read as follows:

Tobacco Sales Establishment – Any establishment that sells tobacco products such as cigarettes, cigars, chewing tobacco, and pipe tobacco, as well as tobacco related products such as pipes, lighters, ash trays, and other products associated with the use of tobacco. The sale of drug paraphernalia, items that are considered “kid friendly” such as flavored tobacco products, containers with secret compartments commonly referred to as “stash cans” and single cigarettes shall be prohibited.

The proposed regulations would prohibit tobacco sales in retail stores that commonly sell tobacco such as small grocery stores, minimarts, and gas stations. The proposed text amendment that would be presented in final form to the City Council for consideration would include revisions to the text for all of the commercial zoning districts where such uses are listed, to include a reference to the new recommended tobacco sales general regulations text that is shown in Attachment IV. For example, any place in the Zoning Ordinance where a convenience market is listed as an allowed use, there would be a reference to the General Regulations section of the Zoning Ordinance, which is proposed to reflect the text in Attachment IV. All existing retailers of tobacco products would be considered legal non-conforming uses and could continue selling tobacco unless the tobacco sales are discontinued for a period of six months or more, pursuant to Section 10-1.2915, Nonconforming Uses, of the Zoning Ordinance, and the City determines they cannot be re-established in accordance with Federal and State laws.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made:

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

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. Regulating the sale of tobacco and tobacco related products will promote public health, safety, convenience and general welfare of the residents of Hayward as it is a continuation of the City’s direction to maintain a healthier Hayward and to minimize the exposure of its citizens to tobacco by restricting the sale of tobacco or tobacco related products to certain commercial areas.

B. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.

The City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

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

This finding is not applicable in that this application does not involve a reclassification.

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.

This finding is not applicable in that this application does not involve a reclassification.

Environmental Review - An Initial Study and Negative Declaration (IS/ND) have been prepared for the project pursuant to the California Environmental Quality Act (CEQA) (see Attachment II). No significant environmental impacts are expected to result from the project. The review period for the environmental documents ends May 30, 2012. No response to the notice indicating availability of the IS/ND had been received when this staff report was completed.

PUBLIC CONTACT

On May 21, 2012, a Notice of this Public Hearing and Availability of the Draft Negative Declaration was published in *The Daily Review*. At the time this report was prepared, staff had not received any public comments.

NEXT STEPS

Should the Planning Commission recommend that the City Council adopt the proposed text amendments, a public before the City Council will be held, tentatively scheduled for June 26, 2012. The decision of the City Council would be final.

Prepared by: Tim R. Koonze, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

- Attachment I Zoning Map Showing the Location of CG Zoning District
- Attachment II Initial Study and Negative Declaration
- Attachment III Addition of Tobacco Sales to the General Commercial District of the Zoning Ordinance
- Attachment IV Addition of Tobacco Sales Requirements to the General Regulations of the Zoning Ordinance
- Attachment V Addition of Definition For Tobacco Sales Establishments in the Definition Section of the Zoning Ordinance
- Attachment VI Findings for Approval for the Text Amendment Application
- Attachment VII City Council Report Amending the Smoking Pollution Control Ordinance 2008
- Attachment VIII City Council Report Amending the Smoking Pollution Control Ordinance 2010
- Attachment IX City Council Report by Adopting a Resolution for the City of Hayward to Become a Member of the Healthy Eating Active Living (HEAL) Cities Campaign

Assistant City Attorney Maureen Conneely advised the Commission to make a final action or at least steps toward a final action. She pointed out there were no conditions of approval or findings for approval, but said it would be appropriate for the Commission to direct staff to prepare both since it appeared a majority of the Commission was inclined to approve the business.

Commissioner Mendall said he wanted to make that motion and he asked that staff to be very strict with the conditions of approval. He said he wanted to see conditions that constrained the use by limiting the number of cars that could be painted, limit the hours of operation, and that staff monitor the fumes, if possible, so the City ended up with a fairly mild, innocuous use that would not effect the neighbors. Commissioner Lamnin seconded the motion, agreed with the restrictions, and asked staff to make the revised staff report available to the neighbors so they would be ensured that they were safe and property values protected. She emphasized that the Commission had heard their concerns.

Commissioner Lavelle said she would be supporting the motion and she asked staff if the decision would be made administratively or if the conditions of approval and the findings for approval would come back for Commission review. Planning Manager said the matter would come back to the Commission and confirmed for Commissioner Lavelle that it could take four to six weeks for that to happen. Commissioner Lavelle said she wanted to make sure the applicant understood that the business would have to wait for final approval before opening.

Commissioner Mendall urged neighbors to remain involved and if there were conditions that they thought would make the proposed business a good neighbor, to express those to staff and to the applicant so when the matter came back in four weeks everyone could be comfortable with the conditions and everyone could move forward and feel good about the decision.

The motion passed 4:3:0.

AYES: Commissioners Lamnin, Lavelle, Mendall
Chair Márquez

NOES: Commissioners Faria, Loché, McDermott

ABSENT:

ABSTAINED:

2. Text Amendment Application PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.

Associate Planner Tim Koonze gave a synopsis of the report.

Commissioner Lamnin asked if there had been any response from the Chamber of Commerce or any other businesses and Associate Planner Koonze said no, but Planning Manager Patenaude interjected saying that during discussions with 7-11, representatives had expressed concern. The proposed regulations wouldn't apply to current 7-11 locations, which would be entitled to continue selling tobacco, but would impact several planned future locations. Mr. Patenaude said that representatives had indicated that tobacco sales comprised 25% of total sales dollars and with alcohol sales of approximately 12-13%, together almost 40% of 7-11's total dollar sales. Representatives had indicated to staff that they would be unlikely to open any new stores in Hayward if the regulations were approved, he said.

Commissioner Lamnin asked if there was a fee for a Conditional Use Permit (CUP) and Planning Manager Patenaude said currently there was a fee deposit of \$5,000 to apply and fees for time and materials were added to that for a total of around \$8-9,000. He noted that the deposit amount was going up July 1st to start at



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

around \$8-9,000. Commissioner Lamnin asked if all that money went to planning and development staff and not to enforcement efforts and Planning Manager Patenaude said that was correct. Commissioner Lamnin asked if there was any mechanism to recoup enforcement costs and Mr. Patenaude said no. Commissioner Lamnin asked if the proposed regulations would have any impact on hookah bars and Planning Manager Patenaude said any new establishment would need a CUP in a General Commercial District, existing hookah bars would be a legal non-conforming use.

Commissioner Mendall asked why allow tobacco sales at a large store but not a small store. He asked what the logic or reasoning was behind that. Planning Manager said it was a policy issue and followed the direction given to staff to restrict the sale of tobacco. Commissioner Mendall made the point that the impact to smaller stores would be greater because tobacco sales comprised a larger percentage of total sales. He said if the City was trying to limit the number of places tobacco was sold, why not limit sales at the businesses that would be less likely to be impacted. Planning Manager Patenaude said that was another approach that could be taken, but noted that in other cities restricting the sale of tobacco at larger stores had created legal issues. Commissioner Mendall asked if the same legal issues wouldn't apply to smaller stores and then he asked if it was just that the smaller stores didn't have the money to sue. Planning Manager Patenaude said the one particular case was a suit by pharmacies, which would fall in the store size range of 10,000 square feet and above.

Assistant City Attorney Conneely explained that the City of San Francisco enacted a ban on the sale of tobacco products at pharmacies and the tobacco industry sued the City and ultimately the case was disposed before it went to trial. The matter was going to be heard, she said, because the court had found there was a rational basis for banning tobacco products at pharmacies where, they said, sales should benefit health, not hurt it. Ms. Conneely explained that the tobacco industry asked for a restraining order and the District Court Judge denied it. That was the only recorded case that she was aware of, she said, that dealt with at which establishments the sale of tobacco was appropriate.

Commissioner Mendall said it felt like an arbitrary recommendation on where tobacco should be sold, and if there was a lawsuit, there should be a rational basis to support the restriction. Restricting tobacco sales at a pharmacy made sense, he said, but if the City was going to restrict sales at gas stations then the City better have a good reason for allowing sales at the grocery store next door. Planning Manager Patenaude said one rational for the zone district limitation was to limit sales to new establishments along major corridors rather than in neighborhoods. Commissioner Mendall said that was a sound basis to limit sales to General Commercial zoning districts, but not to single out certain types of businesses. He asked the Assistant City Attorney if he was off-base with wanting a logical, defensible argument for saying "yes here, no there," and Ms. Conneely said she didn't think he was off-base.

Before expanding regulations, Commissioner Faria asked about enforcement and how much time and effort it took to enforce current regulations. Planning Manager Patenaude said he wasn't clear about the question because there was no ordinance in place regulating sales and Commissioner Faria said not sales, but the smoking ordinance already in place that prohibited smoking on the sidewalk and in public areas. She asked how much enforcement effort that was taking and could the City handle the extra burden of expanded regulations. Planning Manager Patenaude said enforcement of the current ordinance wasn't the City's highest priority, although he knew of some citations issued, and he said Hayward police was not capable of fully enforcing the ordinance. Mr. Patenaude pointed out that the difference was a control of uses and sales and where they were to take place rather than a behavioral issue. By limiting the sale of tobacco to the General

DRAFT

Commercial District, he said, Community Preservation could deal with businesses selling tobacco in other districts more effectively and enforcement rates would be higher.

Commissioner McDermott asked if an existing business that sold tobacco changed ownership would it still be grandfathered in and Planning Manager Patenaude said yes, a change of ownership would not affect use. Based on a previous matter that came before the Commission, Commissioner McDermott said the City should have a clear definition so there no question of interpretation of the ordinance. She said it appeared to her that police had had some confusion about enforcement and changes were made to make the ordinance clearer. Commissioner McDermott said this report seemed to be a working document.

Commissioner Loché said that the City did not list the sale of tobacco as a permitted use wasn't good and he said he applauded that the Commission was having this discussion. In the presentation, he said, staff mentioned that there were 150 locations where tobacco sales occur. He asked staff how many were within 500 feet of sensitive receptors and Planning Manager Patenaude said existing businesses would not be subject to that limitation and that he didn't know what percentage would fall within that radius. Commissioner Loché said he was trying to imagine what stores were 10,000 square feet and above and he said he knew 7-11 was under and Lucky was over, but what about a Fresh & Easy. Planning Manager Patenaude said stores less than 10,000 square feet would include typical convenience markets and gas stations, while larger would include Trader Joes and Fresh & Easy. Commissioner Loché asked if there had been any research conducted that showed smaller businesses were more likely to sell to minors and Mr. Patenaude said that would certainly be something to look into. Commissioner Loché said when looking at an ordinance that would effect small businesses in such a major way, there would need to be a clear understanding of why the City would go down that road.

Commissioner Mendall asked if the 500 foot restriction to sensitive receptors would apply to large stores as well as small and staff said no. Commissioner Mendall commented that there could be a Lucky right next to a school or a park selling cigarettes and staff said yes. He said Union City passed something similar to the proposed regulations in the last year or so and he asked staff if they had spoken to representatives and what they learned. Associated Planner Koonze said Union City adopted a 1,000 foot restriction to sensitive receptors and according to a planner at Union City, pretty much rendered the city a non-tobacco sale area. Mr. Koonze said nine gas stations that already sold tobacco products in the City were grandfathered in and the modification Commissioner Mendall mentioned allowed a tenth station, that was under construction at the time the restriction was original put in place, to also sell tobacco products.

Chair Márquez asked if staff had had any discussion with COMPRE about local businesses selling tobacco products to minors and staff said no.

Chair Márquez opened the Public Hearing at 8:39 p.m.

Francesca Lomotan, with business address on Second Street, spoke on behalf of the Hayward Coalition for Healthy Youth which was comprised of diverse set of community members striving to make the City of Hayward a safer and healthier place for kids to live. She said the coalition was excited that regulations restricting the sale of tobacco to minors were being established and the definition of tobacco sales was being included. Ms. Lomotan said the coalition was especially happy that in the definition of "a tobacco sales establishment" the sale of kid-friendly items was being prohibited. While the coalition was supportive of the proposed ordinance, she said, they had a few suggestions including requiring 500 feet between tobacco retailers and a 1,000 foot radius from sensitive receptors because their research had determined that there was already a high concentration of retailers located near to three middle schools and two high schools in Hayward. She mentioned that in Alameda County, five cities had already adopted ordinances restricting tobacco retailers within a certain distance of schools including Albany (500 feet), Union City and Oakland (1,000 feet), Berkeley (1,400 feet) and San Leandro (1,500 feet). Ms. Lomotan said lastly, the coalition asked



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

for the prohibition of single cigars sales and that the coalition appreciated the City's continuing efforts to make Hayward a healthy city.

Janice Louie, with the Coalition as well as the Alameda County Public Health Department, said she was there to support the proposed ordinance. She provided materials for the Commissioners from the Center of Tobacco Policy that included a matrix of local ordinances that restricted tobacco sales within a certain distance of schools and summarized policies from 24 cities in California. She noted that 14 out of 24 cities had a 1,000 foot restriction of tobacco sales from schools. Ms. Louie said studies had shown that the density of tobacco retailers in neighborhoods near schools had been associated with an increase in smoking and that one-third of illegal sales occurred within a 1,000 feet of schools. She also mentioned that many of the ordinances limited how close retailers could be to each other. She concluded by saying the coalition supported the staff recommendation and asked the Commission to consider a 1,000 foot distance from sensitive receptors and 500 feet between retailers. Ms. Louie mentioned that at the May 10th Planning Commission meeting she distributed information regarding teen-friendly cigars and she asked that language be included in the proposed ordinance limiting the sale of single cigarettes and cigars.

Commissioner Mendall asked Ms. Louie if she had any opinion or comment about restricting sales at small businesses rather than large businesses or if there was any evidence that showed a gas station was a riskier place for children to buy cigarettes than a grocery store. Ms. Louie asked for clarification and Commissioner Mendall asked if it was the number of the places that sold tobacco products that was dangerous or the type of place that sold tobacco and Ms. Louie said the data she had read had indicated that it was the type of store; smaller stores were more likely to sell single purchase items like kid-friendly cigars that cost less than a candy bar. She said Alameda County was going to do a survey to find out how accessible these items were. Commissioner Mendall said that was a good argument to limit the sale of that particular product, but not necessarily that a mini mart was more dangerous than a Lucky and Ms. Louie said it came down to product availability and she noted that small grocery stores located near schools carried more single-sale items.

Commissioner Lamnin asked Ms. Louie if there was any difference or impact on enforcement efforts by cities that had use permits versus tobacco retailer licenses and Ms. Louie said the State of California had been encouraging local jurisdictions to adopt their own ordinances and she said those that do had more leverage against retailers that sold tobacco products than those that did not.

Doug Ligibel, Mesa Circle resident, speaking as a retired state-certified addiction professional, a nationally-certified rehab counselor, and a member of the Coalition, said that he wanted to focus on tobacco industry specifically targeting youth. He said the tobacco industry spent a million dollars an hour marketing their products, and 80% of underage smokers chose brands from the top three most heavily advertised products. Mr. Ligibel said that restricting the sale of tobacco was a good direction for the City to take, but that he agreed with the Coalition that the City needed to look at schools and how far the City was willing to have tobacco retailers able to operate, he said he supported 1,000 feet away from schools. Mr. Ligibel concluded that the City of Hayward had an over-saturation of tobacco sales just as it did alcohol retail sales, specifically in the downtown area, and he encouraged the Commission to listen to the Coalition because they made some really good points.

Deisy Bates, Ambrose Court resident, said she was there as a parent leader in the community and that her three children were born, raised and educated in Hayward. As part of her interest in the community, Ms. Bates said she was a member of the Coalition since inception because she cares for Hayward youth. She said she picked up her youngest son from school every day (he's a junior at Mt. Eden High School), because she

DRAFT

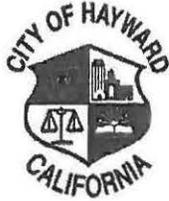
didn't want him to walk by the gas station and houses on Hesperian Boulevard at Panama because of the debris. She pointed out that most middle schools students didn't have the privilege of being picked up by their parents and by walking to and from school they had access to tobacco. She also said those kids were not going to go to Lucky or Safeway or Costco they were going to go to gas stations and small retailers that sell tobacco. She said it was very concerning how accessible these items were and how low the price. Ms. Bates, as a parent in the community, urged the Commission to consider the staff recommendation and in addition, adding a 1,000 foot radius from sensitive receptors and requiring 500 feet between tobacco retailers.

Sanjiv Patel, Starboard Lane resident, asked the City to consider the goal of the proposed ordinance saying he thought it was to reduce smoking in the general population and to reduce underage smoking. He said the goal was not to increase bureaucracy, but as written, the ordinance did exactly that. Mr. Patel pointed out that it was already illegal to sell cigarettes to minors regardless of whether the establishment was located opposite the school or 10,000 feet away. He said by not allowing the sale of tobacco near schools the only thing that was being achieved was not additional laws, but just the implementation of existing laws. Mr. Patel asked what the proposed ordinance did about the implementation of the existing law and he concluded: nothing. How do you make sure young kids do not get their hands on tobacco, he asked; remove the radius requirement and increase the enforcement of the existing law by having additional decoy operations. Mr. Patel said that would require additional funds so he suggested charging a fee for a tobacco license. He said he was a tobacco retailer and he was requesting the City add more fees so the Hayward could limit underage smoking. He also asked what the logic was behind allowing large businesses to sell tobacco and not small businesses. Mr. Patel said the third concern the City should have was the unintentional consequence of the proposed ordinance and he gave this example: in the last couple of years three gas stations closed in Hayward and if this ordinance was in place they would still be closed because no business owner would take the chance to reopen without a tobacco license. He reiterated what happened in Union City and asked if the City Hayward wanted to implement the ordinance right away or think it through first. Mr. Patel urged the City to not pass the proposed ordinance, but instead do more research and come back with a more comprehensive plan that would actually reduce smoking, underage smoking and second-hand smoke.

Commissioner Lamnin thanked Mr. Patel for coming and after confirming he was a business owner asked what business and Mr. Patel said he owned a gas station at Mission and Garin. He noted that the gas station had been closed but they he was able to reopen because the proposed ordinance was not in place.

Nick Patel, Starboard Lane resident, asked if anyone had thought about the impact of a 500 foot radius limit and he said after a quick search of the Mission Boulevard/Tennyson Road area, taking into consideration the school and church, it would pretty much cover the entire area allowing no new tobacco retailer to come in. He said when he expanded the search to City-wide, what was left was probably a very small area. With so many vacant properties, Mr. Patel pointed out that if the regulation passed there would be no new gas stations, convenience stores, or grocery stores less than 10,000 square feet that could come in and start a business. He asked if the City wanted to discourage businesses from coming in to these vacant properties that were basically magnets for crime and other unwanted activities, or did the City want to support business. Mr. Patel said he was not a smoker and was all for discouraging smoking and underage smoking but he said there were other ways to do this. He agreed with Commissioner Mendall that a law that restricted the sell of small cigars would have an impact and would be the right thing to do rather than just a distance limitation. He also suggested a restriction on signs that attract youth to tobacco retailers. Mr. Patel concluded by asking that the City revisit the ordinance and come up with a better solution that would actually help reduce smoking.

Ronald Gruel, parent and longtime Hayward resident living in the Jackson Triangle, said he commuted by local schools and saw small shops and the accessibility students had to tobacco products. Mr. Gruel asked what would be a healthy thing to do for Hayward and he said setting boundaries was perfect. He mentioned one gas station was closed because an underground tank was leaking and after a pump was installed it still "burst up" once in a while and dissipated toxins into the air. He said a new business couldn't move in because



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

the site was still cleaning. Mr. Gruel said it was critical that youth have new facilities at which to play, have healthy activities, and to be engaged.

Julie Waters, with the American Lung Association with offices in Oakland, thanked the Commission for taking the issue on. She said tobacco had a devastating effect on all communities, but disproportionately on the communities in Hayward. Ms. Waters said CUPs were one of the most effective ways to get people to quit smoking or not start smoking in the first place. She said looking at the map presented by staff, Hayward's "main drag" had nothing but back to back retailers and when looking at a community where the prevalence of smoking was around 15%, she said the City already had an abundance of existing retailers. Ms. Waters said she heard the Commissioners discussing increasing the radius from sensitive receptors to 1,000 feet and she explained that this was important because in her experience, a large parking lot could take up the entire 500 feet and allow the business to come in right next to a school without any notice. She said a CUP was an effective method to prevent kids from smoking and that was the ultimate goal. Ms. Waters said the tobacco industry was well aware that the younger a person is when they start smoking, the more addicted they will become and they specifically target youth. She said studies show that if someone starts smoking after age 19 they won't become addicted. Younger kids will develop sensation-seeking brain receptors that make them even more addicted to cigarettes, she said, and that was why the tobacco industry targeted youth. She concluded by saying the city should take any measure necessary to prevent youth access to tobacco.

Commissioner Lamnin asked Ms. Waters how a CUP would limit youth access versus some other enforcement method. Ms. Waters said a CUP limited the number of establishments where tobacco would be available. She said unlike alcohol retailers that had been in business longer, businesses like donut shops and gas stations were applying for retail licenses and when looking at state statistics, these were the kinds of places with the highest buy rate. She said liquor stores were better because they had more to lose; they didn't want to lose their liquor license. Gas stations had a buy rate of around 20%, she said, and donut shops had the highest rate at about 30%.

Chair Márquez closed the Public Hearing at 9:06 p.m.

Commissioner Loché said under definitions "stash cans" and "single cigarette" were mentioned but not "single cigars." Associate Planner Koonze said that language could be added as part of the definition.

Commissioner Lamnin said the single cigar issue needed to be addressed because, as was noted in the report, tobacco manufacturers work around current restrictions and make cigars so small they look like cigarettes. She also suggested candy flavors, flavors in general, and candy shaped packaging be prohibited to counteract the trend of smoking addiction starting in youth. Commissioner Lamnin thanked staff for their research, clarity and the desire for consistency, but said she wasn't sure if the CUP piece of the ordinance addressed all of the issues. She heard there was an over saturation of tobacco retailers in Hayward, but she said she was really concerned about the high concentration of retailers near middle schools. Commissioner Lamnin acknowledged concerns about the need for 1,000 foot radius near sensitive receptors, but said notification would have to be made and training may be needed so carding takes place and youth don't have access. She said she also had concerns about where tobacco was located at stores; was it stored next to candy displays or was it kept up high. Said she wasn't quite ready to make a motion because she wasn't sure how all the information fit together.

Commissioner Mendall said the goal of reducing smoking by underage children was the right one, and he was glad the City was working on an ordinance to do that, but said he wasn't sure if what he had in front of

DRAFT

him was the most effective way to do that. He said requiring a CUP if a retailer was within 1,000 feet of school was great because the matter would come before the Planning Commission and they would have to make a conscious decision to allow it, but the density of uses and proximity to kids was what mattered and the degree of compliance from those businesses. Commissioner Mendall said Mr. Patel's suggestion to double fees and use the money to increase enforcement was a good idea because it was the businesses violating the existing law that were the biggest part the problem. Creating a definition that eliminated the kid-friendly stuff was a "no brainer," he said, and using a broad definition would be good. He noted that cigars were usually sold individually so he suggested creating a minimum price that was high enough to eliminate the 49 cent cigars and the ones the kids might buy. Commissioner Mendall concluded by saying the ordinance needed more work and that logical arguments were needed to back the recommendations. He said in his opinion, the proposed ordinance was not defensible and he wanted to kick it back to staff for additional work focusing on keep tobacco products away from teens rather than picking establishments that can and cannot sell tobacco in what felt like an arbitrary way.

Commissioner Loché mentioned that he worked less than a mile away from the gas station on Hesperian mentioned by Mr. Gruel, and his daughter attended school right around the corner, and he said he could see exactly what Mr. Gruel was referring too. He said there should definitely be a restriction on tobacco sales within at least 500 feet of schools. He noted that when he said "sensitive receptors," he meant schools in particular. Commissioner Loché said there should be no single cigar sales even if it made it more difficult to purchase cigars. He said he wasn't against stiff restrictions on some of these tobacco sales. Regarding the size of the business where tobacco was being sold, he said the focus should be on the type of the tobacco sold and agreed that more work was needed on the proposed ordinance. Commissioner Loché said requiring a CUP was a good thing, and having the item come before the Commission was a step in the right direction.

Commissioner Lavelle said they all knew that smoking was a significant public health issue; smoking cigarettes was dangerous to one's health, and the Commission didn't want to do anything that would thwart the processes to reduce the number of youth who start smoking. But she said she was opposed to the ordinance philosophically because society can't legislate everything away including the negative influences or all the things that young people can't do. Kids do a lot of things they aren't supposed to, she said, including smoking marijuana which was against the law and police have great difficulty enforcing laws about that issue among others. She said she considered cigarette smoking as being lower down on the list of negative influences and didn't require such strict restrictions included in the ordinance. She said she agreed with many of the pronged approaches especially through public education and through the state's efforts citing that California was behind only Utah in the fewest number of adults who smoked.

Commissioner Lavelle said Commissioner Mendall got right to the issue that concerned her when she read the report and that was restricting sales of cigarettes at small businesses in favor of the large ones. She said that was not fair and noted there were already many small businesses in Hayward that sold these products. She said she understood that requiring a CUP for tobacco sales was one of four approaches that have worked in other locations, but she said that would create more government process in the City that, in her opinion, they didn't need. Commissioner Lavelle said the City had a lot of issues it needed to deal with and had CUPs for a lot of other uses and adding the proposed ordinance would make it extremely difficult to sell one product among many. She said she just didn't agree with that philosophically.

Commissioner Lavelle said that she passed an Arco gas station that she had bought gas at many times and it was boarded up. She said that added to the many businesses that were boarded up along Mission Boulevard and she said she didn't want to thwart a potential new owner at that location from doing business here by requiring that he go through a CUP process just to sell cigarettes. That just doesn't seem right, she said.

Commissioner Lavelle said she heard the comments made about approaches to reduce smoking by youth, but in her opinion, parents had the most significant influence on their children. She said she wished parents had more time to be more involved with their children's lives, however, the economy made that very difficult. As



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, May 31, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

a non-parent she acknowledged she didn't have to deal with this issue in her own home, but she reiterated that parents were the number one influence to get kids not to smoke. As a society, as a community, as churches, as business people, as responsible citizens, she said all of us needed to get the message out to youth that they should not take up smoking and that it was dangerous. She concluded that she didn't think this ordinance was the way to go about doing that.

Commissioner McDermott agreed with Commissioner Mendall that more work needed to be done on the ordinance and she said she was leaning toward kicking it back to staff. She said it needed to be more definitive and in some cases, a little more broad based regarding the description of tobacco products. She said she had the highest respect for Commissioner Lavelle, and agreed that parents played a role in their children's lives, but when they are teenagers, she said, the peer pressure is very, very strong. She noted that her mother was a smoker who started at the age of 16 and died of cancer. Commissioner McDermott said she and her siblings constantly told her mom "Don't smoke," but she was so addicted that even when she was diagnosed with lung cancer she wasn't able to stop. She said she wished as parents they did have that much of an influence on kids in regards to smoking specifically, but unfortunately the truth of the matter was, she said, we don't. Commissioner McDermott said sometimes government did need to take measures to provide certain restrictions so kids could be protected because they were so easily influenced, especially in junior high and high school.

Commissioner Faria agreed with Commissioner McDermott that peer groups had a lot of influence on teens and she also agreed that additional clarification was needed regarding the small businesses versus the larger businesses. She said smoking was a public health issue and she saw the impact of smoking on a daily basis not only on the smokers themselves, but on their families. Commissioner Faria said an ordinance was needed, but the proposed ordinance needed more work and some clarification.

Commissioner Lamnin noted that many members of her family smoked, some still did, but it was the images of black lungs that she saw in kindergarten that kept her from starting. She said more than a CUP process, they needed an education process and she made a recommendation to send the proposed ordinance back to staff to include members of the coalition, business owners, Chamber of Commerce members, and community members who may not have known the City was addressing this issue, to determine if the City needed a CUP, a tobacco retailers license, an administrative use permit, or strictly an educational program. She asked what the City should do to address the asthma rates and safety of youth in the community and what could the City do to make the biggest impact on the folks who were here. She also expressed concern about the consistency of the ordinance and the question of why this store and not that store. Research shows, she said, that restrictions on tobacco reduced tobacco use and not just for existing users, so she concluded by asking staff to get some more voices involved.

Commissioner Mendall seconded the recommendation and asked that staff come back with a clear recommendation that targeted sales to youth and built out from there. He mentioned he was a parent too and acknowledged that while parents had a lot of power, if kids were walking by a store right next to their school every day to buy a candy bar on their way home from school and they see the cigarettes, that mattered too. Commissioner Mendall said if the City could just make it a little bit easier for parents that would be a good thing. Rather than try to craft a specific set of recommendations, Commissioner Mendall asked staff to use what they had heard to bring the issue back.

Chair Márquez clarified the motion and commented that she when she read the report she found it confusing because it mentioned collaboration with the Healthy Program and employees and the City and then it moved

DRAFT

to tobacco. She said when she thought of “healthy living” she thought of more physical activity and education, and while she agreed with many of the comments made by the other Commissioners, she said she would like to see more on enforcement and what the community could do to create more healthy activities for youth and their families in the community. Chair Márquez mentioned there were a lot of underutilized facilities, and education about tobacco and alcohol use could be tied into after school and sports programs. She said it was a great discussion with a lot of good points, but she questioned how the City could enforce the proposed ordinance and what the difference was between selling tobacco products at locations under 10,000 square feet versus above. She said she would like to know if the Coalition had a survey of how many outlets were actually selling to youth and said the City should target those outlets and work with them to reduce sales and the signage and advertisements. She concluded by saying that a lot of work needed to be done and while she admired the work that had already been done, the Commission wanted to dig into this a little bit deeper.

The motion passed 7:0:0.

AYES: Commissioners Faria, Lamnin, Lavelle, Loché, McDermott, Mendall
Chair Márquez
NOES:
ABSENT:
ABSTAINED:

COMMISSION REPORTS

3. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude discussed future meeting topics and as a follow-up to past discussions, mentioned that the appeal to bring a Walmart grocery store into the former Circuit City site was denied by Council and the proposed condo project on Maple Court with a change to add some live/work units on the groundfloor was approved by Council.

4. Commissioners' Announcements, Referrals

Commissioner Lamnin said she had the honor of being one of the representatives from the Planning Commission on the Sustainability Committee as well as the development review process focus group and she said as a Planning Commission it had been really valuable, but due to work commitments she asked that someone else take her place. The Sustainability Committee needed three representatives and the focus group needed one, she said.

Commissioner Mendall said that was a great idea and said he had been to two of the meetings himself and found them very informative. He said the discussions between staff and the architects touched on what the Commission did and agreed that one or two Commissioners should attend or at least they should read the minutes. The Commissioners discussed when and where the groups met and Chair Márquez said she was interested in participating and would look into it.

Commissioner Lavelle reminded all registered voters to participate in the election on June 5, 2012.

APPROVAL OF MINUTES

5. April 12, 2012 approved unanimously
April 26, 2012 approved unanimously with one minor change and Commissioners Lavelle and McDermott abstaining

DRAFT



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 21, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Faria.

ROLL CALL

Present: COMMISSIONERS: Loché, McDermott, Márquez, Lavelle
CHAIRPERSON: Faria
Absent: COMMISSIONERS: Trivedi, Lamnin
CHAIRPERSON: None

Commissioner Loché led in the Pledge of Allegiance.

Staff Members Present: Ajello, Bristow, Conneely, Madhukansh-Singh, Rizk, Siefers,

General Public Present: 8

PUBLIC COMMENTS

Ms. Traci Cross, Project Director for the Hayward Coalition for Healthy Youth, supported changes to the Zoning Ordinance establishing regulations for retail sales of tobacco products and tobacco-related products. She shared that under current regulations, electronic cigarettes could be sold at retail stores that are not tobacco outlets and emphasized the need to regulate this product. Ms. Cross expressed concern that smokeless and odorless products that contain nicotine are attracting teenagers and reported that currently there were seven vapor retailers operating in Hayward.

Ms. Janice Louie, Alameda County Public Health Department employee, supported Hayward adopting a Tobacco Retailer Licensing Ordinance, noting that four cities in Alameda County have adopted a local ordinance restricting tobacco retailers operating near schools. She recommended that Hayward adopt a policy where tobacco retailers must be located at least 1,000 feet away from schools and other sensitive receptors as compared to the 500 foot limitation now in the proposed Hayward regulations. Ms. Louie highlighted that according to a density report which she received from the State, in one of Hayward's zip codes, 94541, there are 40 tobacco retailers serving a population of 27,000 people and that 27% of these retailers were situated within 1,000 feet of schools.

Ms. Karishma Khatri, a student at CSUEB, stated that she is a participant in alcohol, tobacco and other drug prevention activities, including being a youth decoy for cities throughout Alameda County. She noted that although e-cigarettes are intended to be used by individuals who attempt to quit smoking cigarettes, it was not uncommon to see students at her university using these devices and she added that children as young as middle school-aged students use e-cigarettes.

Ms. Beneba Thomas, owner of the Golden Tea Garden, said that establishing a Zoning Ordinance regulation for tobacco retailers was an opportunity for the City to be proactive in addressing a potential problem. She encouraged that any future ordinance addressing tobacco concerns be enforceable; that local authorities are able to randomly inspect tobacco retailers; that the City has the ability to terminate business licenses for noncompliant establishments; the regulation allow for the inspection of the tobacco retailer's accounting records to confirm the percentage of sales from tobacco paraphernalia or tobacco products. As the owner of a business in downtown Hayward, Ms. Thomas stressed that tobacco retailers may attract individuals exhibiting behaviors that are not desirable for the downtown.

Mr. James Mamable, resident of Hayward, expressed concern that children are easily influenced to use tobacco products. He suggested that the zoning regulations prohibit tobacco retailers from operating within 500 feet of schools and other sensitive receptors in order to prevent minors from being exposed to such establishments.

Ms. Serena Chen, American Lung Association employee, emphasized that Hayward is a place where nicotine products are being marketed due to its large youth population. She reported that 20% of deaths occurring in Hayward result from the use of tobacco products. She urged the City to restrict where new tobacco retailers can be located because the fewer places that sell and advertise tobacco products to the youth, the less likely children will be able to purchase these products. She stated that the average teenager visited a convenience store about once a week and commented that convenience stores are the main location where children purchase tobacco products. Ms. Chen indicated that Hayward currently had four vapor dens that were attracting college students and potentially leading them towards nicotine addiction.

WORK SESSION

1. Establishment of zoning regulations related to the retail sales of tobacco and tobacco-related products, including electronic cigarettes, within the City of Hayward.

Associate Planner Ajello provided a synopsis of the staff report. She noted that the American Lung Association produced a report card which gave Hayward a grade of 'D' for its efforts on reducing the sale of tobacco products. She said that the percent of tobacco retailers located within 1,000 feet of schools in the Hayward zip code of 94541 was 25% and 29% for the 94544 zip code. She stated that there were six existing vapor stores in Hayward and that these types of businesses were opening up quickly in the City, emphasizing the need to quickly establish zoning regulations pertaining to tobacco-related products. She pointed out that the tobacco regulations would include specific operational standards and enforcement provisions allowing the City's Code Enforcement Division and the Hayward Police Department (HPD) to enforce the regulations. In addition to being required to obtain Tobacco Retail Licenses (TRL), Ms. Ajello stated that all tobacco retailers would have to comply with federal, state, and local laws pertaining to tobacco. She stated that the tobacco regulations would include applying over-concentration criterion to smoking lounges and that the non-conforming uses may eventually even close down.

In response to Commissioner McDermott's question on how the HPD Youth Decoy Program operated, Neighborhood Partnership Manager Bristow stated that the youth decoy program was previously funded through a grant program with Alameda County. She pointed out that the tobacco



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 21, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

licensing ordinance will help the City provide funding for programs such as the youth decoy. She shared that the HPD runs approximately three or four decoy operations per year.

Ms. Khatri clarified for Commissioner McDermott that youth decoys are accompanied by law enforcement officers to tobacco retailers such as Safeway or Lucky. She described that the inspection process consisted of the youth decoys attempting to purchase tobacco products at these establishments. If the youth decoys were sold tobacco products, then the retailer would be cited by the officer. She elaborated that there are community programs that recruit youth decoys for these volunteer positions.

Commissioner McDermott expressed that there was a need to have youth decoys go out more frequently in order to perform inspections and she added that more frequent visits to retailers would help ensure compliance by tobacco retailers in selling tobacco products to those of legal age.

In response to Commissioner McDermott's question, Neighborhood Partnership Manager Bristow said that staff performed a preliminary analysis and determined that an annual licensing fee would cover the youth decoy operations and the annual inspections of the tobacco retail establishments. She noted that a minimum of one inspection would be performed per tobacco retail establishment.

Commissioner McDermott said that she was supportive of an annual TRL fee of \$500 and noted that a fee of \$1400 per year was excessive. She stated that by the City being more proactive in performing inspections it was possible that there would be a decline in the number of noncompliant establishments. Commissioner Loché thanked the public for sharing their comments on the need for establishing tobacco regulations in the Hayward. He urged that strict measures need to be put in place to enforce regulations on the sales of e-cigarettes and claimed that even though e-cigarettes were being marketed as a smoking cessation tool, it was clear to him that young individuals were not utilizing this product for that purpose.

Associate Planner Ajello indicated for Commissioner Loché that once the TRL was in place, staff could enforce compliance of tobacco retailers with the parameters that the business licenses were approved for. In regards to Commissioner Loché's comment on the percentage of sales being tobacco products versus the sale of e-cigarettes, she stated that if tobacco retailers were operating outside of what was authorized in the conditional use permit, then staff could respond to this by issuing a notice of violation.

Ms. Chen noted for Commissioner Loché that in comparison to other nearby cities, Hayward had more vapor retailers. Associate Planner Ajello added that once a definition is established in the City's tobacco regulations ordinance on tobacco-related products, staff expected to see a decline in the number of vapor retailers operating in Hayward.

In response to Commissioner Márquez's question, Associate Planner Ajello said that if staff's recommendations were implemented, then large format stores such as Lucky, Target, or Safeway,

that would like to continue selling tobacco products and that also have a pharmacy would have to obtain a conditional use permit for this purpose.

Associate Planner Ajello confirmed for Commissioner Márquez that the separation requirements for sensitive receptors included religious institutions such as churches. Commissioner Márquez encouraged staff to explore if senior centers and other establishments that dealt with individuals with compromised health qualified as sensitive receptors.

Associate Planner Ajello said that the initial draft of the tobacco regulations consisted of a separation requirement of 500 feet; however, she indicated that if staff received direction from the Planning Commission to increase the separation requirement, then staff could modify this.

Commissioner Márquez supported having a more expansive definition of tobacco-related products, especially to include electronic cigarettes in this definition. She asked staff how the tobacco regulations could be reviewed and measured for success after it was implemented.

Associate Planner Ajello commented that one tool for measuring the success of the program could be through data acquired from the Code Enforcement Division and also through the HPD Youth Decoy Program and from the results of the annual inspections. She shared that since the start of the youth decoy program in 2010, seventy-seven violations had been reported.

Neighborhood Partnership Manager Bristow mentioned that Code Enforcement staff had a software system from which statistical information could be generated on the number of inspections performed and the occurrence of violations and she noted that this could be shared with the Planning Commission and the City Council in order to provide an update on the progress that was being made with the implementation of the tobacco regulations.

Commissioner Lavelle asked staff why longstanding retail establishments in Hayward would need to acquire a TRL in order to be able to sell tobacco products. Associate Planner Ajello stated that the TRL would permit staff to enforce tobacco regulations and to be able to monitor all tobacco establishments by conducting inspections in order to ensure compliance with all laws pertaining to the sale of tobacco products. She commented that through the youth decoy program, it had become evident that many existing establishments were selling tobacco-related products to minors and noted that the TRL would make businesses accountable for who they are selling their products to. Ms. Ajello confirmed that the funding collected from the TRL would provide staff the ability to go out and perform inspections.

Commissioner Lavelle expressed concern that some businesses in Hayward were going to have to pay an additional fee to the City. She said that the Code Enforcement staff was already busy with enforcing other regulations in the City and that the proposed regulations were going to be additional tasks staff would have to cope with. Commissioner Lavelle said that more than half of the businesses in Hayward were already compliant and not selling tobacco products to minors, while large format stores could continue to sell tobacco products.

Associate Planner Ajello responded that one of the reasons staff recommended excluding the large format retailers from certain tobacco regulations was because studies have revealed that these types of establishments do not sell to minors. She stated that according to data collected from the youth



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION**

Council Chambers

Thursday, November 21, 2013, 7:00 p.m.

777 B Street, Hayward, CA94541

decoy program, of the seventy-seven violations in Hayward where minors were sold tobacco products, only one of these sales occurred at a large format retailer. Ms. Ajello said that the TRL requirement had to be equitably applied to all tobacco retailers and not just new tobacco retailers.

Commissioner Lavelle was concerned that tobacco regulations would be onerous and harmful to existing businesses in Hayward, even though she was supportive of the goal of the TRL which was to prevent minors from purchasing tobacco-related products. She emphasized that one of the main objectives of the City was to attract and retain businesses and pointed out that Hayward recently underwent a process of adopting the alcohol beverage outlet regulations which also consisted of businesses being subject to new fees.

Chair Faria said that she was concerned at the speed at which the vapor stores were commencing business in Hayward and that the City could not prohibit such businesses until there was an ordinance in place to regulate such establishments. She shared that she recently became aware that some e-cigarettes contain antifreeze which have been reported to have harmed the young individuals who used these products. She asked staff if anything could be done to limit the expansion of vapor stores more expeditiously, prior to the enactment of the ordinance being passed. Chair Faria expressed concern that some establishments had deviated from what they had reported as the nature of their business on the business license application and they were selling vapor products.

Neighborhood Partnership Manager Bristow responded to Chair Faria's concern indicating that staff will be working with the City Attorney's Office to consider declaring a moratorium on establishments such as vapor stores opening up in Hayward.

Commissioner Márquez agreed with Commissioner Lavelle's comments on the potential hardship that the additional fees may have on Hayward businesses, noting that the fees proposed by staff were steep. She asked staff if it would be possible to set up a payment plan for businesses so that they could pay any required fees through a structured installment plan.

Neighborhood Partnership Manager Bristow indicated that the median fee throughout the State was approximately \$350 and also reported that fees among Bay Area cities varied from being as low as \$50 to as high as \$1050. She shared that staff polled other municipalities in how they determined the fee structure for the TRL program and eleven jurisdictions responded. Ms. Bristow stated that a fee of \$400 would be sufficient to cover the cost of conducting inspections and operating the youth decoy program.

Commissioner Lavelle said that Hayward businesses should not be harmed through the imposition of fees for selling products that were legal for adults to purchase. She also objected to including a prohibition of tobacco sales at stores that contain a pharmacy. She supported strategies in preventing youth from purchasing tobacco-related products such as the youth decoy program and agreed with the 500 foot separation requirement banning tobacco retailers from being situated near schools and other sensitive receptor locations. Commissioner Lavelle noted that City staff was overburdened

already, commenting that the Code Enforcement staff receives complaints through Access Hayward on numerous violations of non-tobacco related matters occurring in Hayward on a daily basis. She stated that currently in California, there was peer pressure to not smoke and urged that an approach be explored to make this peer pressure to not smoke stronger. Commissioner Lavelle recommended that cigarette sales regulations should be separated from the sale of e-cigarette products and indicated her support for a temporary moratorium as this would give staff more time to further study this matter. She agreed with staff's recommendation on requiring new tobacco retailers to undergo a conditional use permitting process, however, she opposed implementing a TRL.

Commissioner Loché suggested that staff consider increasing the separation requirement to 1,000 feet and he also supported having a moratorium on the sale of e-cigarettes in Hayward.

Commissioner McDermott asked staff to elaborate on the consequences that would be imposed on a tobacco retailer that was being negligent and who was cited more than once for violating tobacco regulations.

Neighborhood Partnership Manager Bristow responded to Commissioner McDermott's question by stating that businesses in violation of tobacco regulations, whether this was identified through an inspection or complaint driven, would be subject to the following: the retailer would have up to three days to remedy the violation, the establishment would receive a letter of violation from the City, and the retailer could choose between a thirty-day suspension on tobacco sales or they could opt to pay a \$1,500 fine.

In response to Commissioner McDermott's question, Neighborhood Partnership Manager Bristow said that staff was considering decreasing the fees for compliant businesses over time.

Chair Faria supported instituting a moratorium on the sale of e-cigarettes.

Commissioner Loché supported removing the annual fees for establishments that had demonstrated after a number of years that their business had been operating in compliance with tobacco regulations.

Commissioner Márquez stated that she was supportive of a moratorium in the operation of hookah and vapor lounges. She asked staff if it would be possible to conduct a one year study during which the amount of inspections and youth decoy programs performed could be doubled, in order to collect information on which establishments were complying or violating the tobacco regulations. Commissioner Márquez added that this information could then be utilized to determine which businesses would be charged the annual TRL fees. She said that she agreed with Commissioner McDermott that incentives be explored in having adherence to the tobacco regulations and also noted that the fees either be reduced or removed for establishments that were in good standing.

Neighborhood Partnership Manager Bristow responded that this option had not been previously considered and said that the HPD would have to be consulted on this matter. She mentioned that it was her understanding that the Alameda County was no longer going to provide funding for the HPD Youth Decoy Programs which was why the annual TRL fees were being proposed in order help finance the costs of staff inspections and youth decoy operations being conducted at tobacco retail establishments.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 21, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

Commissioner Lavelle requested that the HPD provide information on what efforts were currently being made in preventing teenagers and young people from smoking marijuana, since marijuana was an illegal product compared to other tobacco-related products.

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Planning Manager Siefers announced that the Integral Communities project was on the agenda for the December 19, 2013 Planning Commission meeting. She reported that on December 16, 2013, staff and Mayor Sweeney would be meeting with residents of the Cannery development who had expressed concerns over the following issues: parking, landscaping, lighting and high speed cut-through street traffic in the neighborhood. Ms. Siefers mentioned that the Planning staff was continuing to work with the Stonebrae developer on ways to bring more open space to the area. She further pointed out that staff is in receipt of many development applications and that staff was trying to get these processed in a timely manner, and despite staffing limitations. Ms. Siefers shared that the Planning Division and Public Works staff are working in conjunction with the City Manager's Office to ensure that Hayward retains the Capitol Corridor Amtrak Station and train service. Ms. Siefers indicated that there is a proposal to be studied that would move the service to the Mulford track adjacent to the Bay.

5. Commissioners' Announcements, Referrals

Commissioner Márquez shared that the City's *Light Up The Season* event would be held on December 5, 2013.

Planning Manager Siefers noted for Commissioner Márquez that a conditional use permit application for operating a distillery and ancillary tasting room by the Buffalo Bill's Property Group was on the agenda for the December 5, 2013 Planning Commission meeting.

Commissioner McDermott commented that she was pleased to experience firsthand how busy some restaurants in downtown Hayward were becoming as this indicated that the economy may be picking up.

Commissioner Márquez thanked staff for their efforts in trying to retain the Amtrak station as this was a great asset to the City.

APPROVAL OF MINUTES

6. The minutes of October 17, 2013 were unanimously approved with Chair Faria abstaining.

ADJOURNMENT

DRAFT

7

Chair Faria adjourned the meeting at 8:19 pm.

APPROVED:

Dianne McDermott, Secretary
Planning Commission

ATTEST:

Avinta Madhukansh-Singh, Senior Secretary
Office of the City Clerk



Matrix of Local Ordinances Restricting Tobacco Retailers Near Schools

July 2013

In order to reduce illegal sales of tobacco products to minors and prevent youth from getting addicted to tobacco products, many cities and counties in California have restricted the location of tobacco retailers near schools. Studies have shown that the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased smoking rates and that one-third of illegal tobacco sales take place within 1,000 feet of schools.

This matrix lists 29 municipalities in California that have adopted an ordinance to restrict the location of tobacco retailers within a certain distance of schools. The cities and counties are listed in reverse chronological order from the most recently passed. To be included on this matrix, the ordinance must require all tobacco retailers or significant tobacco retailers to be located 500 feet or more away from schools. The definition of significant tobacco retailers varies by ordinance, therefore, the strength of each of these 29 ordinances varies and policy details are included in this matrix help to highlight these differences.

Type of Ordinance

There are four different ways for local governments to restrict the location of tobacco retailers and the first section of the matrix designates which type of policy each municipality has adopted. While each of these policy options can accomplish the goal of restricting tobacco retailers near schools, using the tobacco retailer licensing ordinance to do this is the best approach for dealing with current tobacco retailers located within the restricted area around a school, it is more efficient to enforce, and therefore it is recommended. For this reason, the tobacco retailer licensing column is highlighted. Full explanations for each of the four policy types, along with the matrix abbreviation and information about how many municipalities have adopted that type of policy, are listed below.

1. **Tobacco Retailer Licensing Ordinance (TRL)** – this type of law requires all tobacco retailers to obtain a license in order to sell tobacco products in the municipality and a requirement can be added to the licensing ordinance that a retailer cannot obtain a license if they are located within a certain distance of schools. Because tobacco retailer licenses are only granted for a set period of time (one year) and must be renewed annually, it is more efficient to implement location restrictions through a licensing ordinance by simply not renewing licenses for businesses in prohibited locations. Seven municipalities use this type of policy to restrict sales near schools.
2. **Zoning Ordinances (Zoning)** – zoning regulations establish what type of uses are allowed for each type of property or district. A zoning ordinance can be used to specifically prohibit a tobacco retailer from operating within a certain distance of schools. Six municipalities use this policy to restrict sales near schools.
3. **Conditional Use Permit (CUP)** – the requirement that a business obtain a Conditional Use Permit (CUP) is a requirement typically imposed through a community's zoning code that allows a city or county to make an individualized determination about the use of a property in a specific location. If a proposed use, such as tobacco retailing near schools is not "permitted" by the zoning code or "prohibited," it can be "conditionally permitted" depending on site-specific factors. A retailer would have to apply for a CUP in order to open a business in a specific location. A restriction on the issuance of a CUP can be that the tobacco retailer is not located within a certain distance of schools. Sixteen municipalities have adopted this type of policy.

4. **Direct Regulation (Reg)** – this type of law is enacted under the general police powers of the municipality to protect the health, safety, welfare and morals of their citizens. Unlike TRL, zoning, and CUP ordinances, for this type of law an enforcement mechanism must be specifically created or incorporated by referencing another part of the municipal code (TRL and zoning ordinances already include enforcement procedures that apply to any violation.) A regulatory ordinance can be enforced in many ways, for example through civil suit or criminal prosecution, administrative citations, or as a nuisance through administrative, civil or criminal nuisance abatement proceedings. No cities has adopted this type of ordinance to restrict tobacco retailers near schools.

Type of Tobacco Retailers that are Subject to the Ordinance

Another significant distinction for these policies is whether the policy restricts the location of all tobacco retailers or just significant tobacco retailers. The column on the right side contains the information about which type of retailers are subject to the ordinance. The municipalities that contain an “X” in the column are the strongest type of policy and restrict every retailer that sells tobacco products within a certain distance of schools. Twelve municipalities have adopted this type of ordinance, including every ordinance that has been adopted since April 2010. The other policy option is to only restrict the location of significant tobacco retailers. Eight municipalities have adopted an ordinance that only applies to significant tobacco retailers. One municipality has adopted an ordinance that only applies to retailers other than significant tobacco retailers.

Other Important Policy Provisions

In addition, the Matrix also contains information about five other policy provisions relevant to restrictions on the sale of tobacco products near schools. For each of these provisions, the full question is listed below along with information on trends and most common responses from the 29 ordinances:

- *Does the policy prohibits tobacco retailers from being located within what distance of schools?* The restrictions range from 500 feet to 1,500 feet, with the majority (18 of 29) restricting sales within 1,000 feet of schools.
- *Does the policy apply to existing retailers (no grandfathering)?* A majority of the policies (28 of 29) do not subject existing retailers to the location restrictions but would only apply to new retailers and grandfather in existing retailers. However, for several of these cities and counties, there were no existing retailers within that restricted distance from schools.
- *What other youth-oriented areas do the distance requirements apply to other than schools?* In addition to schools, the majority of these policies (22 of 29) also restrict tobacco retailers within a certain distance of other youth-oriented areas. The most popular other location is parks and/or playgrounds, which 18 cities and counties restrict tobacco retailers near in addition to schools.
- *Does the policy restrict tobacco retailers from being located within a certain distance of other tobacco retailers?* In addition to schools and other youth-oriented areas, some of these ordinances contain a density provision that restricts tobacco retailers from being located near other tobacco retailers. Nine ordinances contain this provision and the distance restrictions range from 200 to 1,500 feet.

Resources

The Center has additional resources on restricting tobacco retailers near schools and tobacco retailer licensing ordinances available at www.center4tobaccopolicy.org/localpolicies-licensing. ChangeLab Solution has model ordinance language available for tobacco retailer licensing ordinances, conditional use permits and zoning ordinances at <http://changelabsolutions.org/>.

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth- oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Carpinteria May 2013		X			1,000	No	None	No	X
Oroville March 2013		X			500	No	Residences, parks, and places of worship	No	X
Dublin December 2012		X			1,000	No	500 feet from playgrounds, parks libraries, and City owned and operated recreational facilities	Yes (1,000 feet)	X
Sacramento June 2012			X		1,000	No (but retailers are allowed within the restricted area if 10% or less floor space has tobacco products)	None	No	X
Huntington Park December 2011	X				500	No	Library, playground, youth center, recreational facility open to the public, arcade open to the public, parks	Yes (200 feet)	X
West Hollywood March 2011	X				600	No	None	No	
Santa Barbara County November 2010	X				1,000	No	None	No	X
Santa Clara County November 2010	X				1,000	No	None	Yes (500 feet)	X
South Pasadena November 2010	X				500	No (but there were no retailers within restricted area)	None	No	X
Riverbank July 2010	X				500	Yes	Playgrounds	No	X
Adelanto May 2010		X			1,000	No	Playground, church, public library or childcare facility	No	X

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth- oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Calabasas April 2010	X				500	No (but there were no retailers within restricted area)	None	No	X
Palmdale January 2010			X		500	No	Commercial daycare center, hospitals, parks, libraries, recreation centers	No	X
Union City January 2010			X		1,000	No	Park, playground, library, recreation center, religious institution, youth-oriented establishment	Yes (1,000 feet)	
Vallejo December 2009			X		1,000	No	Church, public recreation area	Yes (1,000 feet)	
Windsor November 2009			X		600	No (but there were no retailers within restricted area)	Religious institutions, libraries and parks	No	
Saratoga October 2009			X		1,000	No	Parks	Yes (500 feet)	X
Rohnert Park April 2009			X		500	No	Religious assembly, public facility, multi-unit residential development	Yes (500 feet)	
Albany February 2009			X		500	Yes	Childcare centers, public libraries, public community centers, parks or playgrounds	No	
Oakland April 2008			X		1,000	No	Residential zone, library, park, playground, recreation center, licensed daycare facility	No	X
La Mirada November 2007			X		600	No	Church, temple, park	Yes (500 feet)	

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth- oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
Mountain View February 2005			X		1,000	No (if existing retailers are caught selling to minors twice in a 36 month period, they must apply for a CUP)	Childcare facility or preschool other than family daycare, playground, youth center, recreational facility	No	
Pasadena February 2004			X		1,000	No	Game arcade, internet access studio, library, licensed childcare facility other than family daycare, park and recreation facility, theater	No	
San Rafael February 2003			X		1,000	No	Parks, libraries, arcades, youth/teen centers, community/recreation centers, licensed daycare centers, shopping malls, houses of worship with youth programs	No	
Marin County 2002			X		1,000	No	Childcare facility or preschool other than family daycare, playground, youth or teen center, community or recreation center, arcade, park, library, houses of worship with youth activities	No	
Berkeley November 2001			X		1,400	No	Public Park	No	
San Leandro July 2001			X		1,500	No	Park, library, recreational facility	Yes (1,500 feet)	
Novato April 2001		X			1,000	No	Parks or other land use oriented to minors as	No	

City/County Date Passed	Type of Policy				Distance (in feet) from schools?	Apply to existing retailers (no grandfathering)?	What other youth-oriented areas (other than schools) are included?	Restricts retailers within a certain distance of other retailers?	Apply to every retailer who sells tobacco products?
	TRL	Zoning	CUP	Reg					
							determined by zoning administrator		
Vista June 1997		X			1,000	No	None	No	



Tobacco Retailer Licensing Is Effective

SEPTEMBER 2013

More than 100 communities in California have adopted strong local tobacco retailer licensing ordinances in an effort to reduce illegal sales of tobacco products to minors. This table includes strong policies defined as one that includes the following four components:

- License that all retailers must obtain in order to sell tobacco products and that must be renewed annually.
- A fee set high enough to sufficiently fund an effective program including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.
- Coordination of tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license.
- A financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.

The table below lists illegal sales rates to minors before and after a strong licensing law was enacted in communities where data is available and enough time (usually at least a year) has passed after the ordinance was enacted to determine results. These sales rates were determined by youth tobacco purchase surveys administered by local agencies. It is important to note that results from the youth tobacco purchase surveys are somewhat dependent on certain factors that differ in each community, such as the age of the youth and the number of stores surveyed.

The results overwhelmingly demonstrate that local tobacco retailer licensing ordinances with strong enforcement provisions are effective. Rates of illegal tobacco sales to minors have decreased, often significantly, in all municipalities with a strong tobacco retailer licensing ordinance where there is before and after youth sales rate data available. However, a licensing ordinance by itself will not automatically decrease sales rates; proper education and enforcement about the local ordinance and state youth access laws are always needed.

Before and after youth sales rate data is available for the following 33 California communities with strong licensing ordinances - Banning, Baldwin Park, Beaumont, Berkeley, Burbank, Calabasas, Coachella, Contra Costa County, Corona, Davis, Delano, Desert Hot Springs, El Cajon, Elk Grove, Grass Valley, Grover Beach, Kern County, La Canada Flintridge, Los Angeles County, Murrieta, Norco, Pasadena, Riverside, Sacramento, Sacramento County, San Fernando, San Francisco, San Luis Obispo, Santa Barbara County, Tehachapi, Vista and Yolo County.

For more resources on these ordinances, including the Matrix of Strong Local Tobacco Retailer Licensing Ordinances with policy and enforcement details for every strong ordinance in the state, visit

www.Center4TobaccoPolicy.org/localpolicies-licensing.

For model tobacco retailer licensing ordinance language, visit ChangeLab Solutions at changelabsolutions.org.

Table of youth sales rates before and after the adoption of a strong tobacco retailer licensing ordinance

City/County	Date Passed	Annual Fee	Youth Sales Rate Before Ordinance	Most Recent Youth Sales Rate
Banning	August 2006	\$350	77%	21%
Baldwin Park	October 2008	\$342	34%	9%
Beaumont	December 2006	\$350	63%	20%
Berkeley	December 2002	\$427*	38%	4.2%
Burbank	February 2007	\$235	26.7%	4%
Calabasas	June 2009	\$0*	30.8%	5%
Coachella	July 2007	\$350	69%	11%
Contra Costa County	January 2003	\$160*	37%	3.8%
Corona	October 2005	\$350	50%	17%
Davis	August 2007	\$344	30.5%	7.8%
Delano	June 2008	\$165	23%	5.6%
Desert Hot Springs	August 2007	\$350	48%	4%
El Cajon	June 2004	\$698	40%	1%
Elk Grove	September 2004	\$270	17%	16.7%
Grass Valley	November 2009	\$100	27%	0%
Grover Beach	September 2005	\$224	46%	0%
Kern County	November 2006	\$165	34%	13.3%
La Canada Flintridge	June 2009	\$50*	47.1%	0%
Los Angeles County	December 2007	\$235	30.6%	8%
Murrieta	May 2006	\$350	31%	7%
Norco	March 2006	\$350	40%	6%
Pasadena	January 2004	\$225	20%	0%
Riverside	May 2006	\$350	65%	31%
Sacramento	March 2004	\$324	27%	15.1%
Sacramento County	May 2004	\$287	21%	7.1%
San Fernando	October 2008	\$250	38.5%	3%
San Francisco	November 2003	\$175*	22.3%	13.4%
San Luis Obispo	August 2003	\$255	17%	15.5%
San Luis Obispo County	October 2008	\$342	33.3%	5%
Santa Barbara County	November 2010	\$235	21%	9%
Tehachapi	February 2007	\$165	8%	16.7%
Vista	May 2005	\$250	39%	1.9%
Yolo County	May 2006	\$344	28%	11.1%

*City or County fee does not fully cover administration and enforcement of the tobacco retailer license. Rather, the fee is supplemented with another stable source of funds, such as Master Settlement Agreement (MSA) funds or general funds. See the Center's Matrix of Strong Local Tobacco Retailer Licensing Ordinances for full details about the administration and enforcement of these ordinances.

Tobacco Retailer Licensing and Electronic Cigarettes

JULY 2013

Cities and counties across California are taking steps to protect kids from new and emerging tobacco products. One such product that has seen an increase in use and advertising is electronic cigarettes, or e-cigarettes. According to the US Food and Drug Administration (FDA), an e-cigarette is a battery powered device that allows users to inhale a vapor containing nicotine or other substances. The safety of these devices is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. Furthermore, FDA has not found e-cigarettes to be safe and effective in helping smokers quit.

For these reasons, a handful of states, including California, have passed laws prohibiting the sale of e-cigarettes to minors. However, aside from that, e-cigarettes are still mostly unregulated in California. As a result, local cities and counties in California have taken steps to ensure that e-cigarettes are regulated and monitored in their communities.

Below is a list of the 59 cities and counties in California that require a retailer to obtain a license to sell e-cigarettes. These cities and counties have done this through special language in the definition of tobacco product in their local tobacco retailer licensing ordinance. They state that a tobacco product includes:

Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

This language can be found in [ChangeLab Solution's Tobacco Retailer Licensing Model Ordinance](#). For specific questions about a city or county policy, please contact the Center. Additional resources on tobacco retailer licensing produced by the Center are available at <http://www.center4tobaccopolicy.org/localpolicies-licensing>.

Carpinteria (May 2013)	Solana Beach (July 2009)	Compton (July 2007)
Contra Costa County (April 2013)	Calabasas (June 2009)	Lomita (May 2007)
Watsonville (March 2013)	Richmond (June 2009)	Wasco (March 2007)
Dublin (November 2012)	Albany (February 2009)	Burbank (February 2007)
Lynwood (October 2012)	South Pasadena (February 2009)	California City (February 2007)
City of Santa Cruz (October 2012)	Baldwin Park (October 2008)	Santa Ana (October 2006)
Parlier (April 2012)	Perris (August 2008)	Banning (August 2006)
Oxnard (February 2012)	Gardena (July 2008)	Lancaster (June 2006)
El Monte (November 2011)	Wildomar (July 2008)	San Jacinto (June 2006)
Huntington Park (November 2011)	Delano (June 2008)	Hollister (May 2006)
Malibu (November 2011)	Oakland (April 2008)	Murrieta (May 2006)
Concord (September 2011)	Hemet (March 2008)	City of Riverside (May 2006)
Hawaiian Gardens (July 2011)	Pacific (February 2008)	Yolo County (May 2006)
Santa Cruz County (April 2011)	Nevada City (November 2007)	Norco (March 2006)
Eastvale (January 2011)	Inglewood (October 2007)	Corona (October 2005)
Palmdale (January 2010)	Glendale (September 2007)	Arroyo Grande (February 2005)
Menifee (December 2009)	Moreno Valley (September 2007)	El Cajon (June 2004)
Grass Valley (November 2009)	Davis (August 2007)	
Montebello (September 2009)	Desert Hot Springs (August 2007)	
Firebaugh (August 2009)	Lake Elsinore (August 2007)	
Culver City (July 2009)	Coachella (July 2007)	



Morbidity and Mortality Weekly Report (MMWR)

Notes from the Field: Electronic Cigarette Use Among Middle and High School Students — United States, 2011–2012

Weekly

September 6, 2013 / 62(35);729-730

Electronic cigarettes, or e-cigarettes, are battery-powered devices that provide doses of nicotine and other additives to the user in an aerosol. Depending on the brand, e-cigarette cartridges typically contain nicotine, a component to produce the aerosol (e.g., propylene glycol or glycerol), and flavorings (e.g., fruit, mint, or chocolate) (1). Potentially harmful constituents also have been documented in some e-cigarette cartridges, including irritants, genotoxins, and animal carcinogens (1). E-cigarettes that are not marketed for therapeutic purposes are currently unregulated by the Food and Drug Administration, and in most states there are no restrictions on the sale of e-cigarettes to minors. Use of e-cigarettes has increased among U.S. adult current and former smokers in recent years (2); however, the extent of use among youths is uncertain.

Data from the 2011 and 2012 National Youth Tobacco Survey (NYTS), a school-based, pencil-and-paper questionnaire given to U.S. middle school (grades 6–8) and high school (grades 9–12) students, were used to estimate the prevalence of ever and current (≥ 1 day in the past 30 days) use of e-cigarettes, ever and current (≥ 1 day in the past 30 days) use of conventional cigarettes, and use of both. NYTS consists of a cross-sectional, nationally representative sample of students in grades 6–12 from all 50 states and the District of Columbia (3).

During 2011–2012, among all students in grades 6–12, ever e-cigarette use increased from 3.3% to 6.8% ($p < 0.05$) (Figure); current e-cigarette use increased from 1.1% to 2.1% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 0.8% to 1.6% ($p < 0.05$). In 2012, among ever e-cigarette users, 9.3% reported never smoking conventional cigarettes; among current e-cigarette users, 76.3% reported current conventional cigarette smoking.

Among middle school students, ever e-cigarette use increased from 1.4% to 2.7% during 2011–2012 ($p < 0.05$) (Figure); current e-cigarette use increased from 0.6% to 1.1% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 0.3% to 0.7% ($p < 0.05$). In 2012, among middle school ever e-cigarette users, 20.3% reported never smoking conventional cigarettes; among middle school current e-cigarette users, 61.1% reported current conventional cigarette smoking.

Among high school students, ever e-cigarette use increased from 4.7% to 10.0% during 2011–2012 ($p < 0.05$) (Figure); current e-cigarette use increased from 1.5% to 2.8% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 1.2% to 2.2% ($p < 0.05$). In 2012, among high school ever e-cigarette users, 7.2% reported never smoking

conventional cigarettes; among high school current e-cigarette users, 80.5% reported current conventional cigarette smoking.

E-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011–2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012. Moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes. This is a serious concern because the overall impact of e-cigarette use on public health remains uncertain. In youths, concerns include the potential negative impact of nicotine on adolescent brain development (4), as well as the risk for nicotine addiction and initiation of the use of conventional cigarettes or other tobacco products.

CDC and the Food and Drug Administration will continue to explore ways to increase surveillance and research on e-cigarettes. Given the rapid increase in use and youths' susceptibility to social and environmental influences to use tobacco, developing strategies to prevent marketing, sales, and use of e-cigarettes among youths is critical.

Reported by

*Catherine Corey, MSPH, Baoguang Wang, MD, Sarah E. Johnson, PhD, Benjamin Apelberg, PhD, Corinne Husten, MD, Center for Tobacco Products, Food and Drug Administration. Brian A. King, PhD, Tim A. McAfee, MD, Rebecca Bunnell, PhD, René A. Arrazola, MPH, Shanta R. Dube, PhD, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, CDC. **Corresponding contributor:** Brian A. King, baking@cdc.gov, 770-488-5107.*

References

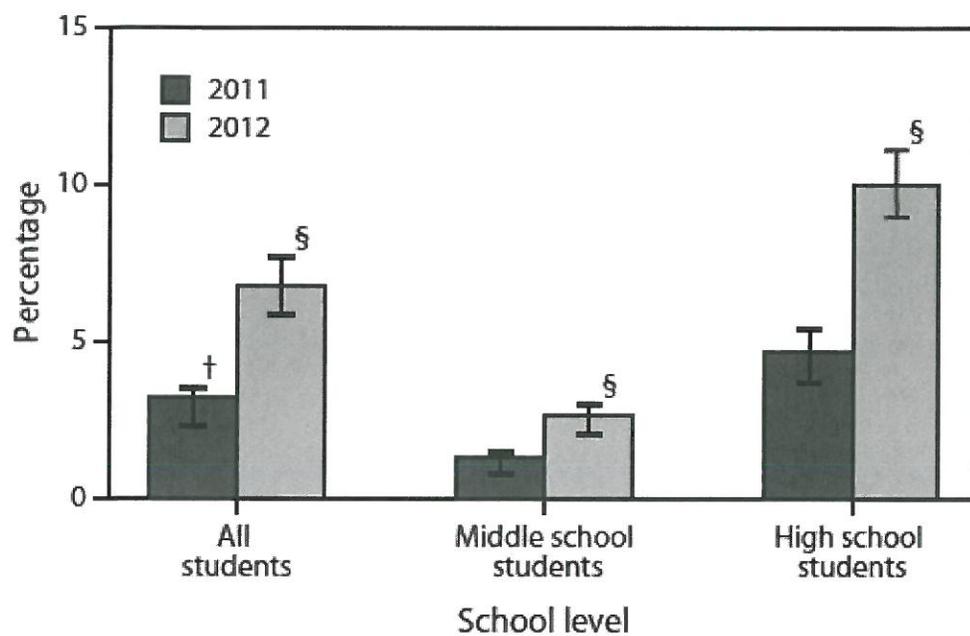
1. Cobb NK, Byron MJ, Abrams DB, Shields PG. Novel nicotine delivery systems and public health: the rise of the "e-cigarette." *Am J Public Health* 2010;100:2340–2.
2. King BA, Alam S, Promoff G, Arrazola R, Dube SR. Awareness and ever use of electronic cigarettes among U.S. adults, 2010–2011. *Nicotine Tob Res* 2013;15:1623–7.
3. CDC. National Youth Tobacco Survey. Atlanta, GA: US Department of Health and Human Services, CDC; 2013. Available at http://www.cdc.gov/tobacco/data_statistics/surveys/nyts.
4. Dwyer JB, McQuown SC, Leslie FM. The dynamic effects of nicotine on the developing brain. *Pharmacol Ther* 2009;122:125–39.

* Ever electronic cigarette use defined as having ever used electronic cigarettes, even just one time.

[†] 95% confidence interval.

[§] Statistically significant difference between 2011 and 2012 (chi-square, $p < 0.05$).

FIGURE. Ever electronic cigarette use* among middle and high school students, by year — National Youth Tobacco Survey, United States, 2011–2012



Alternate Text: The figure above shows ever electronic cigarette (e-cigarette) use among middle and high school students, by year, in the United States during 2011-2012. During 2011-2012, among all students in grades 6-12, ever e-cigarette use increased from 3.3% to 6.8% ($p < 0.05$); current e-cigarette use increased from 1.1% to 2.1% ($p < 0.05$), and current use of both e-cigarettes and conventional cigarettes increased from 0.8% to 1.6% ($p < 0.05$).

Use of trade names and commercial sources is for identification only and does not imply endorsement by the U.S. Department of Health and Human Services.

References to non-CDC sites on the Internet are provided as a service to *MMWR* readers and do not constitute or imply endorsement of these organizations or their programs by CDC or the U.S. Department of Health and Human Services. CDC is not responsible for the content of pages found at these sites. URL addresses listed in *MMWR* were current as of the date of publication.

All *MMWR* HTML versions of articles are electronic conversions from typeset documents. This conversion might result in character translation or format errors in the HTML version. Users are referred to the electronic PDF version (<http://www.cdc.gov/mmwr>) and/or the original *MMWR* paper copy for printable versions of official text, figures, and tables. An original paper copy of this issue can be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402-9371; telephone: (202) 512-1800. Contact GPO for current prices.

**Questions or messages regarding errors in formatting should be addressed to mmwrq@cdc.gov.

Page last reviewed: September 06, 2013
 Page last updated: September 06, 2013
 Content source: [Centers for Disease Control and Prevention](#)

Centers for Disease Control and Prevention 1600 Clifton Rd. Atlanta, GA 30333, USA
 800-CDC-INFO (800-232-4636) TTY: (888) 232-6348 - [Contact CDC-INFO](#)

→

A Prescription for Health: Tobacco Free Pharmacies

Pharmacies are where people go for medicine and health care advice. But most pharmacies in this country also sell cigarettes – items that, when used as directed, kill more than 400,000 Americans every year.¹ Given the enormous burden of tobacco use, many health advocates want to see the sale of tobacco products banned in pharmacies.² This fact sheet outlines the health concerns associated with allowing tobacco sales at pharmacies and shows what local policymakers can do in their communities.



There are many reasons why health advocates oppose the sale of tobacco in pharmacies:

Sends a mixed message

Pharmacists are perceived by many as among the most trusted of health care professionals.³ By selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke.^{4,5} Children and young people are particularly influenced by cues suggesting that smoking is acceptable.⁶

Makes it harder for smokers to quit

Smokers attempting to quit are more successful when they turn to cessation aids such as nicotine replacement gum and “the patch”⁷ – items often found side-by-side with tobacco products at the pharmacy checkout (see photo below). Research shows that exposure to tobacco products and marketing often frustrates efforts to quit by stimulating physical cravings and emotional ties to smoking.⁸ Pharmacy tobacco sales can compromise the ability of smokers to quit right at the moment when they are seeking out the help they need.

Creates a conflict of interest

Pharmacies that sell tobacco products also sell medicines to treat asthma, emphysema, heart disease, and cancer – illnesses caused or made worse by tobacco use.⁹ The sale of both tobacco products and the medicines used to treat tobacco-related illnesses presents a troubling conflict of interest.





Pharmacy vs. Drugstore

Although tobacco is rarely sold from behind a pharmacy counter these days, the term pharmacy here refers to all types of stores that contain a licensed pharmacy on the premises. This might include drugstores, grocery stores, warehouse stores, and more. Note: A California court has held that it is illegal to discriminate between different kinds of pharmacies. If a jurisdiction bans the sale of tobacco products in pharmacies, the jurisdiction cannot exempt grocery or big box stores from the ban. The ban must apply equally across all types of pharmacies (drugstores, grocery, or big box stores).¹⁰

Economic Impact of Tobacco-Free Pharmacies

Nearly 90 percent of California's tobacco-free independent pharmacies have reported either no change or an increase in business since they stopped selling tobacco products.¹³ Likewise, more than 95 percent of consumers have said they would continue shopping at stores that became tobacco-free as much or more often.¹⁴

In 1994, the sale of tobacco products was banned in Ontario, Canada. The restriction had no significant impact on business for drugstores.¹⁵ In fact, the year following the ban saw 120 new drugstore openings in Ontario.¹⁶ As of May 31, 2013, only one of Canada's ten provinces allows tobacco sales in pharmacies.¹⁷

What Can Communities Do to Reduce Pharmacy Tobacco Sales?

Push for Voluntary Action

A first step is to call upon local pharmacies to voluntarily stop the sale of tobacco products. For example, in the early 1970s, various health organizations launched a campaign calling for the voluntary removal of tobacco from pharmacies in San Francisco. By 2003 more than 65 percent of the city's independent pharmacies had become tobacco-free retailers.¹¹ Although a campaign calling for voluntary action may be a successful approach for small, pharmacist-owned stores, the majority of U.S. pharmacies are chain drugstores with corporate ownership,¹² which are unlikely to voluntarily stop selling tobacco.

Enact a Law

The American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for state and local laws prohibiting tobacco sales in drugstores and pharmacies¹⁸ because they believe that doing so supports the public health and social welfare of the communities in which they practice.¹⁹ Several localities have done just that.

In 2008, San Francisco passed a law prohibiting the sale of tobacco products in most types of pharmacies; the law was later amended to include all pharmacies. In 2009, Boston prohibited the sale of tobacco products by a variety of health care institutions and retailers that operate as health care institutions, including pharmacies. A number of communities across the country have since enacted similar tobacco-free pharmacy laws. (See sidebar on page 3.)

Local laws prohibiting tobacco sales in pharmacies have survived several lawsuits, including constitutional challenges based on the First Amendment and Equal Protection guarantees.²⁰ The court decisions in these cases have held that that local governments have the legal authority to prohibit tobacco sales in pharmacies.²¹

Communities with Tobacco-Free Pharmacy Laws*

California

Currently, three jurisdictions in California prohibit tobacco sales in pharmacies:²⁵

Richmond

San Francisco

Santa Clara County

Massachusetts

More than 50 cities and towns in Massachusetts have enacted tobacco-free legislation and regulations.^{26, 27}

A partial list includes:

Boston

Everett

Fall River

Lancaster

Newton

Pittsfield

Southborough

Walpole

Worcester

*Current as of April 2013.

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

This fact sheet was made possible by funds received from Grant Number 09-11182 with the California Department of Public Health, California Tobacco Control Program.

© 2013 ChangeLab Solutions

Photos courtesy of Flickr Creative Commons: Army Medicine (page 1 - upper) and H.I.L.T. (page 2), and ChangeLab Solutions (page 1 - lower)

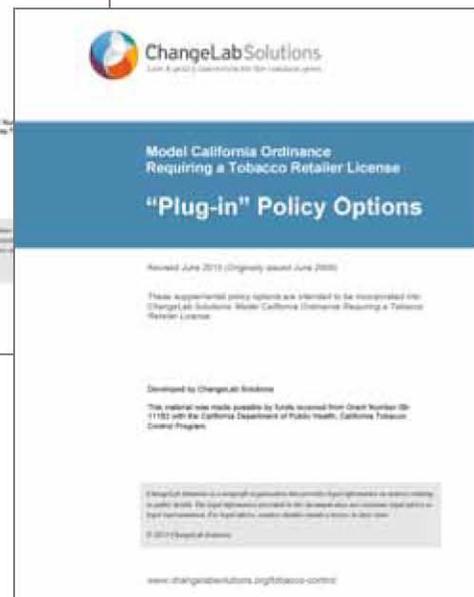
Impact on Tobacco Retailer Density

More than 90 percent of Americans live within five miles of a pharmacy.²² A high density of tobacco retailers has been associated with increased smoking rates, particularly among youth²³ – and tobacco retailer density is highest in low-income communities and communities of color, which are already at greater risk of many health problems.²⁴ Removing tobacco from pharmacies instantly reduces the number of tobacco retailers in a community.

A Model Ordinance from ChangeLab Solutions

One way a community can restrict the sale of tobacco products is as part of a tobacco retailer licensing (TRL) law. Under a local TRL law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.²⁸ ChangeLab Solutions has model ordinance language restricting the sale of tobacco products in all retail stores that also contain a licensed pharmacy, which is designed to be “plugged into” a TRL ordinance. ChangeLab Solutions staff can also draft a stand-alone law for any community that wants to create this restriction outside of a licensing program.

Visit us at www.changelabsolutions.org to learn more.



Endnotes

- ¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. 2008. *Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 2000-2004*. 57(45): p. 1226-1228. www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm
- ² American Health Association, American Stroke Association. 2009. *Eliminating the Sale of Tobacco Products in Pharmacies*. www.heart.org/idc/groups/heart-public/@wcm/@adv/documents/downloadable/ucm_304805.pdf; Brief of Amici Curiae Tobacco Control Legal Consortium, et al. at 8, *Philip Morris USA v. City and County of San Francisco*, 345 Fed. Appx. 276 (9th cir. 2009) (No. 09-17649).
- ³ Jones JM. 2011. *Record 64% Rate Honesty, Ethics of Member of Congress Low: Ratings of Nurses, Pharmacists, and Medical Doctors Most Positive*. www.gallup.com/poll/151460/Record-Rate-Honesty-Ethics-Members-Congress-Low.aspx
- ⁴ Katz MH. 2008. "Banning Tobacco Sales in Pharmacies: The Right Prescription." *Journal of the American Medical Association*, 300(12):1451-1453.
- ⁵ Hudmon KS, Fenlon CM, and Corelli RL. 2006. "Tobacco Sales in Pharmacies: Time to Quit." *Tobacco Control*, 15(1): 35-38.
- ⁶ DiFranza JR, Wellman RJ, Sargent JD, et al. 2006. "Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality." *Pediatrics*, 117(6):e1237-e1248.
- ⁷ Stead LF, Perera R, Bullen C, et al. 2012. "Nicotine Replacement Therapy for Smoking Cessation." *Cochrane Database of Systematic Reviews*, 11: CD000146.
- ⁸ Hoek J, Gifford H, Pirikahu G, et al. 2010. "How Do Tobacco Retail Displays Affect Cessation Attempts? Findings from a Qualitative Study." *Tobacco Control*, 19(4): 334-337.
- ⁹ Katz, *supra* note 4.
- ¹⁰ *Walgreen Co. v. City & County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (2010).
- ¹¹ Eule B, Sullivan MK, Schroeder SA, et al. 2004. "Merchandising of Cigarettes in San Francisco Pharmacies: 27 Years Later." *Tobacco Control*, 13: 429-432.
- ¹² Hudmon et al., *supra* note 5.
- ¹³ Katz, *supra* note 4.
- ¹⁴ *Id.*
- ¹⁵ Physicians for a Smoke-Free Canada. 2010. *Tobacco-Free Pharmacies*. www.smoke-free.ca/eng_home/2010/pharmacy-background-2010.pdf
- ¹⁶ Taylor MC. Physicians for a Smoke-Free Canada. *Banning Cigarettes in Pharmacies Does Not Result in Pharmacy Closures*. www.smoke-free.ca/pdf_1/pharmacy.pdf
- ¹⁷ Diego Marchese, Heart and Stroke Foundation and Scott McDonald, BC Lung Association. 2012. Letter to the Editor. "B.C. Last Holdout on Pharmacy Tobacco Sales." *Vancouver Sun*, December 5. www.vancouversun.com/last+holdout+pharmacy+tobacco+sales/7653124/story.html
- ¹⁸ Tobacco Education and Research Oversight Committee for California. 2006. *Confronting a Relentless Adversary: A Plan for Success Toward a Tobacco-Free California 2006-2008*.
- ¹⁹ Hudmon et al., *supra* note 5.
- ²⁰ *Philip Morris USA v. City and County of San Francisco*, 345 Fed. Appx. 276 (9th cir. 2009); *Walgreen Co. v. City & County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (2010); *Safeway Inc. v. City & County of San Francisco*, 797 F. Supp. 2d 964 (N.D. Cal. 2011).
- ²¹ For more information on these cases, see "Is it legal to ban tobacco sales in pharmacies?" at www.changelabsolutions.org/tobacco-control/question/is-it-legal-ban-tobacco-sale
- ²² National Association of Chain Drug Stores. 2012. Statement of the National Association of Chain Drug Stores for U.S. Senate Armed Services Committee Personnel Subcommittee Hearing on FY2013 Defense Authorization. p. 2. www.nacds.org/pdfs/pr/2012/3_28_SASC_TRICARE_comments.pdf
- ²³ Henricksen L, Feighery EC, Schleicher NC, et al. 2008. "Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventative Medicine*, (47)2: 210-214.
- ²⁴ Rodriguez D, Carlos HA, Adachi-Mejia AM, et al. 2012. "Predictors of tobacco outlet density nationwide: a geographic analysis." *Tobacco Control*. <http://tobaccocontrol.bmj.com/content/early/2012/04/03/tobaccocontrol-2011-050120.full.pdf+html>
- ²⁵ Richmond, Cal., Code of Ordinances art. VII, ch. 7.107.020 (2012); City and County of S.F., Cal., Health Code art. 19J § 1009.91-98 (92) (2010); Santa Clara County, Cal., Ordinance Code tit. A, div. A18, ch. XXIII § A18.370 (c) (2010).
- ²⁶ Municipal Tobacco Control Technical Assistance Program. 2013. *Local Summary of Tobacco Sales Bans in Pharmacies*. http://smokingcessationleadership.ucsf.edu/webinar_30_mass_muni_list_pharmacy.pdf
- ²⁷ Boston, Mass., Boston Public Health Commission Regulation Restricting the Sale of Tobacco Products in the City of Boston (Dec. 11, 2008); Everett, Mass., Regulation of the Everett Board of Health Restricting the Sale of Tobacco Products in the City of Everett (July 19, 2010); Fall River, Mass., Rev. Ordinances pt. II, ch. 34 § 34-320 (2011); Lancaster, Mass., Regulations of the Town of Lancaster Board of Health Restricting the Sale of Tobacco Products and Non-Nicotine Products not Approved by FDA (Dec. 2, 2010); Newton, Mass., Newton Code ch. 20, art. I, §20-2 (2012); Pittsfield, Mass., Board of Health Youth Access and Environmental Tobacco Smoke Regulations (June 6, 2012); Southborough, Mass., Board of Health Rules and Regulations Relative to the Restriction of Sale, Vending and Distribution of Tobacco and Tobacco Products within the Town of Southborough (Dec. 15, 2010); Walpole, Mass., Board of Health Regulations Restricting the Sale of Tobacco Products in the Town of Walpole (Oct. 21, 2010); Worcester, Mass., Rev. Ordinances pt. I, ch. 8, § 3(g)(5) (2008).
- ²⁸ In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that "[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." Cal. Bus. & Prof. Code § 22971.3.



Cigarettes Generate Big Revenue for Convenience Stores

Analysis of 2013 State of the Industry Report



The Association for Convenience & Petroleum Retailing (NACS) is an international trade association that represents convenience and fuel retailers. NACS releases an annual report on product sales, store operations, motor fuel and other topics of interest to the convenience store industry. This report is important to the tobacco control community because it includes figures about cigarette and tobacco product sales at convenience stores, which demonstrate just how lucrative selling tobacco can be. This fact sheet highlights data from the 2013 State of the Industry Annual Report of 2012 data. Please note, all of these numbers are national averages for 2012 data, not California specific.

Cigarettes Are the Number One Product Sold at Convenience Stores and Generate \$622,248 in Sales

- Cigarettes accounted for 36.27% of sales inside convenience stores in 2012, by far the number one product. Non-alcoholic packaged beverages were second, with only 14.74% of inside sales.
- This number is a slight decrease from 2011, when cigarettes accounted for 37.73% of sales.
- Average sales of cigarettes per store were \$622,248, a decrease of 0.91% from 2011. This figure is almost \$370,000 higher than any other product's per store average.
- Other tobacco products were the fourth best selling product, accounting for 4.38% of inside sales with average sales of other tobacco products per store at \$78,864, a decrease of 6.48% from 2011.
- Smokeless tobacco products make up 61.09% of other tobacco product sales, followed by cigars at 32.11%.

Cigarettes Generate 16.74% of Gross Margin and Are a Very Important Product for Convenience Stores' Bottom Line

- Convenience stores were the top sellers of cigarettes nationwide. According to this report, in 2012, 86.2% of total cigarette sales were made at convenience stores.
- Other tobacco products were the most common item found in stores, with 99.56% of stores selling them. This is significantly higher than its fifth place standing last year. Cigarettes were sold in 99.09% of stores, the sixth most common item found in stores.
- The average gross margin dollars per store for cigarettes was \$88,908.
- While cigarettes were the top selling product, they rank second in gross margin dollar contribution. Cigarettes contributed 16.74% of the average gross margin dollars per store, ranking behind non-alcoholic packaged beverages which were first at 18.78% and \$99,708.

What This Means for Local Tobacco Retailer Licensing Ordinances

Convenience store owners and other cigarette retailers often oppose efforts to enact strong local tobacco retailer licensing ordinances, which 107 cities and counties in California have adopted (as of June 2013) in order to reduce illegal sales of tobacco products to minors. A strong local tobacco retailer licensing ordinance requires all tobacco retailers to obtain a license with an annual renewal fee and includes enforcement efforts that result in the suspension of a retailer's license for selling tobacco products to minors. The State of the Industry Report shows just how lucrative selling cigarettes is to convenience stores. It is a product that accounts for more than a third of sales inside convenience stores and generates more than \$622,248 in sales for the average convenience store. Being unable to sell cigarettes for a month or longer due to a suspended license would be very detrimental to the bottom line of any store.

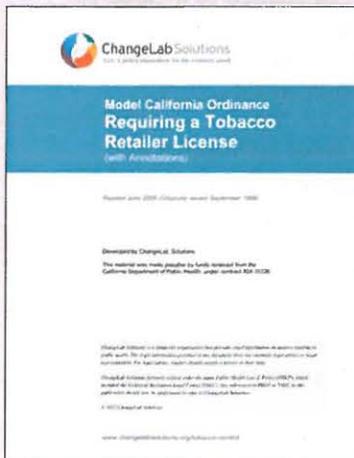
Sources: The Tobacco Education Clearinghouse of California (TECC) has a copy of the 2013 State of the Industry Report available for checkout. Call (800) 258-9090 to borrow the report.

The Center has many other resources related to local tobacco retailer licensing ordinances, including a matrix of communities with strong local licensing ordinances and a fact sheet on the effectiveness of local licensing efforts, available at www.Center4TobaccoPolicy.org/localpolicies-licensing.



ChangeLab Solutions has developed model language for a tobacco retailer licensing law in California cities and counties. The model language offers a variety of policy options that can be tailored to the specific goals and needs of your community.

In addition to the core provisions, ChangeLab Solutions has drafted supplementary “plug-in” provisions, which offer additional policy options that can be incorporated into the law. For more information, please see our resources on Tobacco Retailer Licensing at www.changelabsolutions.org/publications/model-TRL-ordinance.



While ChangeLab Solutions’ model language for a tobacco retailer licensing law was designed for California communities, the model can be adapted for use in other states as well. It is important to carefully check the existing law in your state to learn if local tobacco retailer licensing is allowed. Consult with an attorney licensed in your jurisdiction.

Tobacco Retailer Licensing An Effective Tool for Public Health

Communities are adopting tobacco retailer licensing laws as one way to ensure compliance with tobacco laws and to combat the public health problems associated with tobacco use. In this fact sheet, we explain how tobacco retailer licensing works, why many communities are pursuing this policy, and what goes into creating and implementing a strong tobacco retailer licensing law.

What is tobacco retailer licensing?

Licensing is a common policy tool that state and local governments use to regulate businesses like alcohol retailers, pharmacists, or restaurants. A local government may want to similarly license tobacco retailers in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices.

Under a local tobacco retailer licensing law, the city or county government requires all businesses that sell tobacco products to obtain a license from the government in exchange for the privilege of selling these products to consumers.¹ Local governments may require licensed retailers to pay an annual fee, which can fund administration and enforcement activities such as store inspections and youth purchase compliance checks. Increasingly, tobacco retailer licensing is being used to promote other innovative policy solutions as well, including controlling the location and density of tobacco retailers and imposing additional restrictions on the sale and promotion of tobacco products.²

As of June 2012, more than 100 cities and counties in California had adopted a local tobacco retailer licensing law.³ The Center for Tobacco Policy & Organizing (The Center) classifies 94 of these as “strong,”⁴ meaning the laws have at a minimum:

- a requirement that all tobacco retailers obtain a license and renew it annually;
- an annual licensing fee high enough to fund sufficient enforcement;
- meaningful penalties for violators through fines and penalties, including the suspension and revocation of the license;⁵ and
- a provision stating that any violation of existing local, state or federal tobacco laws constitutes a violation of the local law.





Why adopt a tobacco retailer licensing law?

Many communities adopt tobacco retailer licensing laws because they are effective tools for limiting the negative public health consequences of tobacco use. While this tool provides many benefits, there are three main advantages to a tobacco retailer licensing law. First, these laws have been shown to be effective at limiting youth access to tobacco. Second, strong laws with annual fees create self financing programs that allow for regular enforcement. Third, a tobacco retailer licensing law facilitates comprehensive local enforcement of all tobacco related laws. Each of these points is discussed below.

Protecting youth

Despite state laws prohibiting sales of tobacco to minors, a 2007 survey found that nearly three-quarters of youth access enforcement agencies statewide issued warnings to merchants selling tobacco products to minors during the prior year.⁶ Fortunately, strong local tobacco retailer licensing laws—that is, laws that meet the criteria above—have proven effective at reducing illegal tobacco sales to minors. The Center has found that local tobacco retailer licensing is extremely effective at reducing illegal sales to underage youth: the organization surveyed 31 municipalities that have implemented and enforced a strong tobacco retailer licensing law and found that the rates of illegal sales to minors decreased, often significantly, in all communities surveyed.⁷

A self-financing program

An important strength of licensing is that the government may impose a licensing fee that is sufficient to cover the costs of enforcement. Because funding enforcement is often the best way to ensure compliance with a policy, ChangeLab Solutions recommends that the fee be calculated to include all enforcement activities. For more information on how to calculate a fee for a local tobacco retailer license, see our tobacco licensing cost worksheet at: www.changelabsolutions.org/publications/tobacco-licensure-costs.

A comprehensive enforcement mechanism for local communities

A number of federal and California state laws already regulate tobacco sales and establish penalties for illegal sales to minors. But these laws each have separate enforcement mechanisms and penalty structures, making it difficult to enforce them at the local level. A local tobacco retailer licensing law, on the other hand, empowers *local law enforcement* to impose *meaningful penalties* for illegal sales to minors and ensure compliance with all existing laws—ensuring that local communities can prioritize enforcement even when state and federal authorities are unable to do so.

Meanwhile, some of these state and federal laws fail to address important public health concerns related to tobacco. For example, the federal regulations authorized by the 2009 Tobacco Control Act currently apply only to cigarettes and smokeless tobacco products—they do not apply to little cigars or other tobacco products that are aggressively marketed to youth. A local tobacco retailer licensing law is a tool communities can use to help bridge these gaps and address public health concerns in their communities.



An electronic cigarette with charger.

What is a tobacco product?

When people think of tobacco products, they may think of cigarettes, cigars, and chewing tobacco, but there are other products communities may want to restrict. Our model language defines tobacco products broadly to include all products containing tobacco leaf (including hookah, snuff, snus, and dissolvables) as well as nicotine-only products such as electronic cigarettes. This definition is written to restrict emerging tobacco industry products without interfering with FDA-approved cessation devices—like nicotine patches.

What else can a tobacco retailer licensing law do?

While a tobacco retailer licensing law may be the best tool to prevent sales to minors, it can also promote other innovative policy solutions, controlling the location and density of tobacco retailers, imposing additional restrictions on the sale of other tobacco products like little cigars, and preventing the sale of drug paraphernalia.

Zoning:

Location and density of retailers

Another common way to limit where tobacco retailers can locate is through land use laws, also known as zoning laws. For a comparison between land use laws and licensing laws, see ChangeLab Solutions' factsheet, *Licensing & Zoning: Tools for Public Health*, available at: www.changelabsolutions.org/publications/licensing-zoning.

Location and density of retailers

Local governments can use tobacco retailer licensing to control both the location and density of tobacco retailers in their communities. A licensing law could, for example, prohibit licenses for any businesses operating too close to a school or other area frequented by youth. Because tobacco sales near schools and child-oriented areas have been shown to increase youth smoking⁸, this policy can be used to keep tobacco retailers out of areas where youth typically congregate. A tobacco retailer licensing law also could cap the total number of licenses issued based on population, controlling the overall density of tobacco retailers in a community. California law limits alcohol licenses based on density, and this policy applies that same rationale to tobacco retailers.



Cigarillos in grape, strawberry and blueberry flavors, sold for under a dollar a piece.

Little cigars and cigarillos

A tobacco retailer licensing law can also prohibit the sale of individual or small packages of low-priced cigars, including little cigars and cigarillos. Due to their low prices and candy flavoring, these products are particularly appealing to youth, and though they are often similar to cigarettes, they are not subject to the same restrictions against selling the product individually or in small quantities. This policy allows communities to close this loophole and regulate a product that is increasingly used by youth. For more on this policy, see our fact sheet at: www.changelabsolutions.org/publications/limiting-teen-friendly-cigars.

Drug paraphernalia

Many communities are using tobacco retailer licensing laws to address the sale of drug paraphernalia in their neighborhoods. Through this provision, a retailer found to have violated state laws regarding drug paraphernalia will also be in violation of the local tobacco retailer license, and the penalties of the licensing ordinance will apply. In this way, the tobacco retailer licensing law becomes an additional tool for local law enforcement to combat sales of drug paraphernalia. For more information on this policy option, see our fact sheet on this topic at: www.changelabsolutions.org/publications/drug-paraphernalia.

These are just a few examples of cutting-edge policy solutions for tobacco control. These innovative policy solutions—referred to as “plug-in” provisions—can be incorporated into our model language for a tobacco retailer licensing law. For more information about plug-in provisions, including the ones mentioned here, see: www.changelabsolutions.org/publications/policy-provisions-trl.



Meth pipes for sale at a smoke shop in San Francisco, California.

Implementation and enforcement

It's up to individual communities to decide who will implement and enforce a tobacco retailer licensing law. Multiple agencies might be involved: one agency may issue the license (the city manager, for example, or the agency that issues general business licenses), while another agency, such as the environmental health or police department, may monitor compliance.

There is no one right way to implement and enforce a local tobacco retailer licensing program. That said, successful programs share some characteristics.

¹ In California, local tobacco retailer licensing laws are specifically authorized by the state tobacco retailer licensing law, which says that "[l]ocal licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law." Cal. Bus. & Prof. Code § 22971.3.

² See generally McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Tobacco Control Legal Consortium, 2010. Available at: <http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>

³ American Nonsmokers' Rights Foundation. *California Municipalities with Laws Restricting Youth Access to Tobacco*. 2011. Available at: www.changelabsolutions.org/publications/anrf-list (List includes only those laws which provide for suspension or revocation of a license).

⁴ The Center. *Table of Strong Local Tobacco Retailer Licensing Ordinances*. 2012. Available at: www.center4tobaccopolicy.org/localpolicies-licensing.

⁵ The threat of license suspension creates a greater financial deterrent to retailers than a simple fine. For many stores, especially convenience stores, tobacco sales make up a substantial portion of their revenue. Losing the authority to sell tobacco products for a month can cost retailers far more than the largest fines that can be imposed under existing California laws, like Penal Code section 308 or the STAKE Act. See Cal. Penal Code § 308 (violators can be fined \$200, \$500, or \$1000 for first, second, or third violations, respectively); Cal. Bus. & Prof. Code 22958 (violators can be fined \$400-600 for a first violation and are subject to harsher penalties for each additional violation in a 5-year period).

⁶ Rogers T, Feighery EC, Haladjian HH. *Current Practices in Enforcement of California Laws Regarding Youth Access to Tobacco Products and Exposure to Secondhand Smoke*. Sacramento, CA: California Department of Public Health, 2008. Available at: www.cdph.ca.gov/programs/tobacco/Documents/CTCPEnforcementReport08-05.pdf.

⁷ The Center. *Tobacco Retailer Licensing Is Effective*. 2011. Available at: www.center4tobaccopolicy.org/CTPO/_files/_file/Tobacco%20Retailer%20Licensing%20is%20Effective%20March%202011.pdf.

⁸ Henriksen et al. "Is Adolescent Smoking Related to the Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?" *Preventative Medicine*. 47(210): 210-214, 2008. Abstract only is available at: www.sciencedirect.com/science/article/pii/S0091743508002089.

Photos: Lydia Daniller (cover, top of page 2), ChangeLab Solutions (bottom of page 2, top of page 3), SF City Attorney on flickr.com (bottom of page 3), and Flickr Creative Commons DC Central Kitchen (page 4)

For one thing, they are overseen by a single government agency with dedicated staff members. They also plan early for enforcement that engages all the key players. And they require a license fee that is large enough to cover the full costs of administering and enforcing the program. To assist agencies in coordinating and planning, ChangeLab Solutions created a checklist that includes all the recommended elements of a successful program. The checklist is available at: www.changelabsolutions.org/publications/implementation-checklist-TRL.

To help understand the variety of local approaches to tobacco retailer licensing, in 2006 we studied four communities that are effectively enforcing their local tobacco retailer licensing laws: Contra Costa County, Santa Barbara County, the City of Willits, and the City of Los Angeles. We chose these communities because they were among the first in California to suspend the tobacco licenses of retail outlets that violated sales-to-youth or other tobacco control laws. Read our review of these programs (visit: www.changelabsolutions.org/publications/case-studies-local-trl-ords) to see how, despite their differences, they all achieve the goal of holding retailers accountable for violations of tobacco sales laws.

Licensing for healthy food retailers

Communities can use licensing to improve public health in other ways by ensuring that retailers are not only complying with existing laws but also benefiting the communities they serve. For example, in neighborhoods with limited access to fresh produce and staple foods, a licensing system could require food retailers to carry these items. For more information on healthy food retailer licensing, see our Model Licensing Ordinance for Healthy Food Retailers at: www.changelabsolutions.org/publications/HFR-licensing-ord.



For more information

For support with model language and legal issues:

ChangeLab Solutions

www.changelabsolutions.org

For support with campaign issues:

The Center for Tobacco Policy & Organizing, a project of the American Lung Association in California (The Center)

www.Center4TobaccoPolicy.org



changelabsolutions.org

This material was developed by ChangeLab Solutions with funds received from the California Department of Public Health, under contract #09-11182.

ChangeLab Solutions formerly existed under the name Public Health Law & Policy (PHLP), which included the Technical Assistance Legal Center (TALC).

The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

© 2012 ChangeLab Solutions

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Assistant City Manager
Director of Finance

SUBJECT: Financing Mechanisms for the City's Critical Facility Needs and Update on Polling Results

RECOMMENDATION

That the Committee reviews preliminary polling results for possibly financing critical facility needs and considers possible next steps.

BACKGROUND

Over the past couple of years, staff and the Council have been exploring mechanisms for funding some of the City's critical facility infrastructure needs. Staff has previously identified several key City facilities that are in significant need of repair, upgrade, and replacement. Not only are the facilities outdated and failing to meet current operational needs, there are also health and safety issues that need to be addressed.

Even in a positive and balanced financial environment, the City does not have the ability to generate a source of funds (preliminarily estimated to cost \$160 million) to update these facilities without additional help from the voters. The City continues to face a structural deficit in the General Fund operating budget. A voter-approved revenue measure would provide needed and dedicated funding for the critical facilities upgrades while minimizing the impact to the General Fund operating budget. Just as it is irresponsible to ignore the structural deficit in the General Fund operating budget, it is irresponsible for the City to continue ignoring critical infrastructure needs.

In 2011, the City hired Godbe Research to conduct a preliminary survey on customer satisfaction with City services and voter sentiments towards a potential financing measure to fund critical City facility needs, including a new Library and Community Learning Center, a replacement Police facility, a new animal shelter, and new and upgraded Fire Stations. A copy of the complete 2011 survey results can be found on the City's website: <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-BUDGET-&-FINANCE-COMMITTEE/2011/CSC-BFCIP012611.pdf>.

For a variety of reasons, the work in 2011 to prepare for a potential ballot measure was put on hold to allow staff and the Council to focus on other critical issues. Recently, advocates for the new Library and Community Learning Center approached the Council to request that this work begin again in earnest and Council directed staff to return to the Council Budget & Finance Committee for a discussion about the process for moving forward on this effort. Throughout the summer and early fall, staff has again worked with Godbe Research to complete preliminary polling for possible financing measures that the City could explore in 2014.

DISCUSSION

There are several elements that need to be considered in preparation for a ballot measure or other financing for critical facility needs. These include a comprehensive assessment of the cost of the critical facility needs, polling likely voters about their willingness to support these infrastructure needs, and community outreach to help inform the Council regarding community priorities. Over the past few months, staff has been working on all of these elements to update as much information as possible to help inform the Council’s decision making around a possible revenue measure in 2014.

Facilities Cost Estimating: The most important first step in this process is clearly identifying and costing out the various facility needs. While the Council has had many discussions about a new Library and Community Learning Center and this project has a fairly defined scope, there are other critical facility needs that should be part of this discussion. Public Works staff included money in the City’s Capital Improvement Program (CIP) to fund a facilities needs assessment that would more comprehensively scope out needed facility improvements at the City’s police building and fire stations. The Council will consider award of a contract to an architectural firm at tonight’s meeting for this work. This firm will engage with staff over the next few months to complete a comprehensive needs analysis as well as cost estimates for several of the City’s critical facility needs, including a new Police building and jail and upgrades/improvements to many of the City’s fire stations.

Typically, when developing cost estimates, staff utilizes consulting engineers and architects that specialize in facility upgrades to develop these estimates. The current CIP (on the unfunded project list) includes very preliminary estimates developed by Public Works engineering staff, with assistance from operating staff in each affected department. However, these are not technically grounded and will benefit from the technical review and analysis that the selected architectural firm can provide as staff moves forward. The following provides a summary from the current CIP of the estimated needs for the various facilities, which is in addition to the limited amounts the City may have already budgeted for any preliminary design work:

<i>Library and Community Learning Center</i>	<i>\$53,000,000</i>
<i>Replacement Police Station</i>	<i>\$75,000,000</i>
<i>Upgrades to Fire Stations 1-6</i>	<i>\$11,593,000</i>
<i>New Fire Dept Training Facility</i>	<i>\$8,200,000</i>
<i>Replacement Fire Stations 7</i>	<i><u>\$11,900,000</u></i>
<i>Total</i>	<i><u>\$159,693,000</u></i>

In addition, Council has periodically noted that the South Hayward community is in dire need of a community and/or teen center in association with the Matt Jimenez Community Center; and, the animal shelter remains a topic of interest for many, particularly given the heavier demands on it now that surrounding shelters have reduced services and/or closed. In addition, the community frequently asks for a community meeting place, which was lost when Centennial Hall was taken out of service.

These numbers do not include estimates to build a community or teen center in South Hayward, replace community meeting space, or to renovate or rebuild the Animal Shelter. These estimates do not include amounts needed for non-capital facilities such as roadway improvements or additional police officers, which also have been identified as community priorities. The effort to prepare a comprehensive facility needs assessment will run parallel with efforts to test voter sentiments on which, if any, of these projects the community values; and to begin education and outreach efforts regarding Hayward's various facility needs.

Preliminary Polling: Simultaneous with the effort to secure an architectural firm to complete the comprehensive facility needs assessment, staff entered into a contract with Godbe Research to complete preliminary polling around community funding priorities and possible funding mechanisms. Attachment I presents the results of the 2013 preliminary poll, which was conducted in early September 2013. The poll explored the opinions of likely voters and attempted to gauge their priorities related to the City's critical infrastructure needs. The presentation at tonight's meeting will go into more details regarding the poll results.

With input from the Council Budget & Finance Committee, staff and Godbe Research worked to develop a poll that looked at both a possible increase to the local sales tax in Hayward as well as a bond measure as potential infrastructure funding mechanisms. Although the local sales tax measure appeared more favorable in the polling than a bond measure (primarily due to the lower voter approval threshold), there is still much work to be done to make the measure successful and to fully identify the funding priorities for the community. To this end, staff proposes to embark on a community engagement process that will help increase community understanding of these critical infrastructure needs as well as help the Council confirm funding priorities preliminarily identified in the poll. This effort is discussed in the next section.

Outreach and Education Effort: While City resources must not be utilized to campaign for a bond measure, there is much that the Council, staff, and concerned citizens can do to educate the public about the current state of the facilities and the needed upgrades. If the Council chooses to move forward with this effort, staff would propose partnering with CliffordMoss on this education effort. The City engaged CliffordMoss to assist during the initial phase of polling and planning this fall. The education and outreach would proceed in parallel with efforts to scope out facility improvements and costs and to gauge voter sentiment. CliffordMoss would assist with organizing and developing community messaging and meetings, gathering stakeholder input, and in developing various communications about this effort to the community. If Council wishes to move forward to further engage the community following this work session, staff will bring an amendment to the CliffordMoss agreement for the second phase of work to the Council for approval in early January.

Acknowledging the City's current financial situation, we need to be prudent in our planning for the City's infrastructure needs. While new facilities might be most desirable, upgrades to existing

facilities and remodels might be more practicable. Given the financial challenges to the City's General Fund, we need to explore every option for funding our critical infrastructure needs, including presenting the citizens of Hayward with an opportunity to weigh in on the priority of these needs. The education and outreach effort outlined above is an attempt to do this. This effort will also help staff and the Council further understand priorities for the community in terms of the City's infrastructure needs.

FISCAL IMPACT

As mentioned earlier in this report, the City has numerous critical facility replacement and upgrade needs that cannot currently be funded from the General Fund operating budget or other existing City funds. Without the dedicated revenue source of a revenue measure of some sort for facility replacements and upgrades, the City will be hard-pressed to identify a source of funds to update these facilities.

In terms of the costs to prepare for a possible financing/bond measure, there are several elements:

- 1) Facilities Cost Estimating: The Council will consider a contract award at tonight's meeting in the amount of \$200,000 to hire an architectural firm to complete the facilities needs assessment and cost estimates. The Council previously appropriated funds in the Capital Improvement Plan to fund this effort.
- 2) Polling/Education and Outreach Effort: To date, the City has spent \$xx,xxx on the preliminary poll conducted by Godbe Research and \$20,000 on the initial contract with CliffordMoss for the preliminary outreach/communications efforts. A second tracking poll closer to a possible election date will likely cost approximately \$xx,xxx. The proposed amendment to the existing CliffordMoss agreement (to be brought to Council in January 2014) would add \$24,000 to support the community outreach and engagement efforts in early 2014.
- 3) Election Costs: Based on recent information from the County Registrar of Voters, the City could spend approximately \$200,000 for an election held during the regular municipal election cycle (June 2014 or November 2014). If the City chose to pursue a stand-alone election date (a date when there are no other elections and the municipality would bear the costs), that cost could possibly double unless the decision was made to utilize a mail-in ballot process.

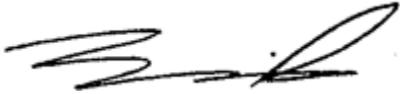
Funding for the polling and education/outreach efforts will come from the money given to the City by Calpine for a new library facility.

NEXT STEPS

If the Council recommends moving forward with further discussion and community outreach about a possible 2014 funding measure, staff will move forward to initiate the community engagement process and will bring a contract award for further education and outreach activities to the Council in January 2014 for approval.

Prepared and Recommended by: Kelly McAdoo, Assistant City Manager
Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Preliminary Poll Results – September 2013



CITY OF HAYWARD

2013 Facilities Measure Feasibility Survey

Topline Report

n=1,001

18-minutes

Likely June and November 2014 Voters

September 19, 2013

www.godberesearch.com

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

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

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

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

SURVEY METHODOLOGY

Godbe Research was commissioned to conduct a survey to assess potential voter support for a facilities measure for the City of Hayward. The survey was also designed to: (a) identify the tax type and amount at which voters will support the measure; (b) prioritize projects and programs to be funded with the proceeds; and, (c) test the influence of supporting and opposing arguments on potential voter support.

Survey Methodology

Godbe Research conducted a total of 1,001 interviews representing 30,933 registered likely November 2014 voters in the City of Hayward. This includes a subsample of 669 likely June 2014 voters contained entirely within the November subsample. The error rate is plus or minus 3.05% for the sample of 1,001 likely November 2014 and plus or minus 3.73% for the sample of 669 likely June 2014 voters. Interviews were conducted from September 3 through September 11, 2013. The average interview time was approximately 18 minutes.

Once collected, the sample of voters was compared with the respective voter population in the City to examine possible differences between the demographics of the sample and the actual universe of voters. The data were weighted to correct these differences, and the results presented are representative of the voter characteristics of City of Hayward in terms of gender, age, political party type, and election timing.

Questionnaire Methodology

To avoid the problem of systematic position bias, where the order in which a series of questions is asked systematically influences the answers, several questions in the survey were randomized such that the respondents were not consistently asked the questions in the same order. The series of items in Questions 5, 6 and 7 were randomized to avoid such position bias. Further, Questions 6 and 7 were rotated so that the sample was balanced in whether they first heard arguments in favor of or opposed to the ballot measure.

Mean Scores and Rounding

In addition to the percentage breakdown of responses to each question, results for the questions relating to features of the measure (Q5), and the positive and negative arguments (Q6 and Q7) include mean scores. For example, to derive the overall importance of a feature of the measure (Q5), a number value is first assigned to each response category (in this case, "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2). The number values that correspond to respondents' answers were then averaged to produce a final score that reflects the overall importance of that issue. The resulting mean score makes the interpretation of the data considerably easier. Responses of "Don't Know" (DK/NA) were not included in the calculations of the mean scores for any question.

Conventional rounding rules are used in this report (.5 or above was rounded up, and .4 or below was rounded down). As a result, the percentages may not add up to 100 percent.

HAYWARD CITY CLIMATE

1. Do you have a favorable or unfavorable opinion of the job the City of Hayward is doing to effectively manage and spend taxpayer dollars and public funds? Is that very [favorable/unfavorable] or somewhat [favorable/unfavorable]?

	June 2014
Very favorable	17.9%
Somewhat favorable	32.6%
Somewhat unfavorable	15.2%
Very unfavorable	13.4%
DK/NA	20.9%

UNINFORMED BALLOT TESTS & BOND TAX THRESHOLD

In the future, voters in Hayward may be asked to vote on local ballot measures. Let me read you the description of one potential measure:

Split Sample A, n=500 – Bond Measure

2. To update City facilities including:

- meeting residents’ educational and informational needs by replacing the aging library with a modern 21st century library, including space for children’s learning materials, a teen homework center, and quiet reading; and
- protecting residents’ safety, maintaining emergency response by replacing and updating aging fire stations with earthquake-safe buildings;

shall the City of Hayward issue \$96 million dollars in bonds with independent oversight and all funds staying local? [72 words]

If the election were held today, would you vote yes or no on this measure? Would that be definitely (yes/no) or probably (yes/no)?

	June 2014	November 2014
Definitely Yes	35.6%	35.5%
Probably Yes	20.7%	22.2%
Probably No	11.6%	11.0%
Definitely No	20.6%	18.8%
DK/NA	11.5%	12.5%

3. Different tax rates are being considered to build a new 21st century library and update and improve Hayward fire stations. Whether the City of Hayward can include all or some of these projects will depend on the tax rate approved by voters.

If you heard that the annual property tax rate for a household would be _____ per \$100,000 of assessed valuation would you vote yes or no on this ballot measure? Is that definitely (yes/no) or probably (yes/no)?

June 2014	Definitely Yes	Probably Yes	Probably No	Definitely No	DK/NA
A. \$40 per \$100,000 in assessed value	25.0%	14.2%	18.2%	34.7%	7.8%
B. \$34 per \$100,000 in assessed value	27.9%	15.7%	16.7%	32.8%	6.9%
C. \$28 per \$100,000 in assessed value	36.5%	12.4%	15.1%	29.5%	6.4%
D. \$22 per \$100,000 in assessed value	42.9%	13.4%	10.1%	27.2%	6.4%

November 2014	Definitely Yes	Probably Yes	Probably No	Definitely No	DK/NA
A. \$40 per \$100,000 in assessed value	25.2%	14.6%	18.7%	32.2%	9.3%
B. \$34 per \$100,000 in assessed value	28.0%	15.5%	17.3%	30.5%	8.7%
C. \$28 per \$100,000 in assessed value	35.6%	13.3%	15.5%	27.7%	8.0%
D. \$22 per \$100,000 in assessed value	41.9%	15.6%	9.6%	25.0%	8.0%

Split Sample B, n=500 – Sales Tax

4. To preserve city services and facilities, including:

- meeting residents’ educational and informational needs by replacing the aging library with a modern 21st century library;
- protecting residents’ safety by replacing and updating aging fire stations with earthquake-safe buildings;
- improving neighborhood police patrols; and
- repairing potholes, streets and sidewalks,

shall City of Hayward increase the sales tax by one-half percent, for twenty years, providing locally controlled funding that cannot be taken by the State? [73 words]

If the election were held today, would you vote yes or no on this measure? Would that be definitely (yes/no) or probably (yes/no)?

	June 2014	November 2014
Definitely Yes	33.0%	32.9%
Probably Yes	23.1%	26.2%
Probably No	11.9%	10.2%
Definitely No	26.0%	25.8%
DK/NA	6.0%	4.9%

FEATURES OF THE MEASURE

5. Now, let's talk about the City services and facilities that would be maintained with the funds generated by the measure. As I read each, please tell me if it would make you more or less likely to vote for the measure.

If you heard the measure would _____, would you be more or less likely to vote for the measure? Is that much (more/less) likely or somewhat (more/less) likely?

	Mean Score	Much More Likely	Somewhat More Likely	No Effect	Somewhat Less Likely	Much Less Likely	DK/NA
Library Features							
A. [Split Sample C, N=500 ½ Sample A ½ Sample B] Replace the outdated and undersized library with a 21 st century library	.58	41.9%	14.9%	15.4%	7.7%	17.1%	3.0%
B. [Split Sample D, N=500 ½ Sample A ½ Sample B] Replace the outdated and undersized library with a 21 st century library and community learning center	.68	42.4%	18.2%	11.4%	8.7%	14.7%	4.6%
C. Provide space in the new library for more books and materials	.65	41.0%	19.5%	12.8%	8.7%	14.9%	3.0%
D. Provide a larger children's section at the library with space for children's books and learning materials and story times	.68	42.0%	18.3%	14.5%	8.6%	13.7%	3.0%
E. Create a safe space for after school, homework and tutoring programs for teens and a center for early childhood education programs	.81	45.7%	19.7%	12.2%	6.5%	13.1%	2.8%
F. Provide increased access to computers for children, teen, adult and senior residents in a state of the art computer lab	.64	41.6%	17.7%	13.7%	7.6%	16.0%	3.4%
G. Provide a Community Learning Center for career development and job search resources	.74	43.9%	19.8%	10.8%	8.1%	13.9%	3.5%
H. Create a larger, separate teen section at the library with space for more books, reading programs, computers and study groups	.64	40.8%	19.1%	13.1%	8.3%	15.3%	3.4%
Fire Station Features							
I. Update all of the city's fire stations to meet the current and future needs of the Hayward neighborhoods, meet current earthquake standards and meet Federal and State requirements	.88	48.9%	18.3%	11.1%	6.3%	12.4%	3.0%

Continued	Mean Score	Much More Likely	Somewhat More Likely	No Effect	Somewhat Less Likely	Much Less Likely	DK/NA
J. Replace aging fire stations in the Huntwood and Tennyson, and 2nd and Campus neighborhoods with new buildings that meet current earthquake standards	.73	42.9%	19.7%	12.3%	8.8%	12.9%	3.5%
K. Replace the obsolete fire training facility with a new facility that will increase the readiness of Hayward's first responders	.79	42.8%	21.3%	12.7%	7.2%	12.1%	3.9%
L. Include a neighborhood health center in the new fire station at Huntwood and Tennyson	.55	39.1%	18.5%	12.6%	9.3%	17.1%	3.4%
Other Features [Split Sample B – Sales Tax]							
M. Repair potholes and maintain streets and sidewalks in Hayward	.95	47.9%	22.3%	11.8%	5.3%	10.1%	2.6%
N. Increase neighborhood police patrols	.99	51.2%	19.6%	10.8%	4.4%	10.8%	3.2%
O. Increase library and community learning center hours on weekday evenings and on weekends	.68	37.8%	24.8%	14.0%	6.9%	13.6%	2.9%
P. Maintain firefighting, prevention and emergency medical services	.94	47.4%	22.5%	10.5%	6.0%	10.2%	3.5%
Q. Increase neighborhood services, including graffiti and trash removal and vandalism prevention	.85	43.8%	25.1%	10.2%	6.6%	11.6%	2.7%

Computation of Mean Scores:

"Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2.

POSITIVE & NEGATIVE STATEMENTS

6. Voters will hear arguments from supporters in favor of the measure we have been discussing. As I read each of the arguments in favor of the measure, please tell me if you would be more likely to vote “YES” on the measure, given the argument.

Here’s the (first/next) _____. Does this argument make you much more likely or somewhat more likely to vote “YES” – or does it have no effect?

	Mean Score	Much More Likely	Somewhat More Likely	No Effect	DK/NA
A. Fire stations on Huntwood and 2nd Street in Hayward are old, have water damage, cracked and deteriorating foundations, and electrical systems that do not meet current building safety codes	1.12	44.0%	20.2%	32.5%	3.3%
B. The new 21 st century library will offer after-school and summer programs for youth and teens to keep them off the streets, out of trouble, and away from drugs and gangs	1.09	43.7%	17.9%	35.1%	3.2%
C. This measure requires independent citizens’ oversight, mandatory financial audits and yearly reports to the community to ensure the funds are spent as promised	1.07	43.7%	15.7%	36.7%	3.9%
D. The State has cut millions of dollars in funding to local schools. Library facilities and programs for children and teens are critical to providing our students with the educational resources they need	.99	39.2%	17.5%	39.9%	3.4%
E. Maintaining adequate emergency services, like fire protection, is essential for preserving the value of our homes	1.07	42.4%	19.7%	35.2%	2.7%
F. Now is the right time to invest in our community. It will cost less to build and improve facilities now as opposed to the future, and it will help create local construction jobs and boost economic activity	1.07	42.5%	18.3%	36.0%	3.2%
G. Hayward residents deserve affordable, high quality library facilities and fire stations	1.00	38.7%	19.1%	39.0%	3.2%
H. The new fire stations and library will have solar panels and advanced, energy-efficient features to reduce the City’s carbon footprint, protect the environment, and save millions of dollars on electrical energy costs	1.06	42.2%	19.3%	35.9%	2.6%
I. The current library is more than 60 years old and deteriorating rapidly. And, it is too small to serve the needs of our growing community in the 21st century	1.01	40.3%	17.2%	39.7%	2.8%
J. The measure will assure that Hayward’s first responder Firefighters, Paramedics and rescue personnel are able to respond immediately after an earthquake or disaster	1.15	46.7%	17.2%	32.5%	3.6%

Split Sample A – Bond Measure	Mean Score	Much More Likely	Somewhat More Likely	No Effect	DK/NA
K. Every penny from this measure will be used for improving Hayward public facilities. No funds will go to the State	1.14	47.5%	15.3%	34.3%	2.9%
L. By law, no money from this measure can be used for administrator salaries	1.10	46.8%	13.4%	37.1%	2.8%
M. Residents and businesses will both pay their fair share	.98	38.7%	17.6%	40.3%	3.4%
Split Sample B – Sales Tax					
N. The measure will fix potholes on miles of neighborhood streets	1.13	44.6%	20.1%	31.8%	3.5%
O. Every penny from this measure will be used for improving Hayward public services and facilities. No funds will go to the State	1.21	49.3%	18.1%	28.7%	3.9%
P. This measure is not a property tax, and visitors to Hayward will pay their fair share so homeowners don't shoulder the entire cost	1.14	45.0%	19.5%	31.7%	3.7%
Q. Basic necessities like groceries and prescription medications will not be taxed	1.15	48.1%	15.3%	33.8%	2.8%
R. This measure will increase police patrols making Hayward neighborhoods safe for seniors, adults and children	1.22	50.9%	16.6%	29.5%	3.0%
S. This measure is needed to maintain the quality of our neighborhoods and protect our property values	1.04	40.4%	20.0%	36.1%	3.6%

Computation of Mean Scores:
 "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0.

7. Voters will hear arguments from opponents against the ballot measure we have been discussing. As I read each of the arguments against the measure, please tell me if you would be more likely to vote “NO” on the measure, given the argument.

Here’s the (first/next) _____. Does this argument make you much more likely or somewhat more likely to vote “NO” – or does it have no effect?

	Mean Score	Much More Likely	Somewhat More Likely	No Effect	DK/NA
A. The economic recovery is very fragile, now is not the right time to raise taxes	.90	35.6%	17.3%	45.8%	1.3%
B. The City is responsible for the current budget problems. If our tax dollars weren’t going to high salaries, benefits, and pensions for public employees, we would not need this measure	.93	35.1%	18.6%	41.8%	4.4%
C. The City sold out the residents by approving construction of a dangerous power plant in exchange for 10 million dollars that won’t even pay for the new library. We should tell the city no until they protect Hayward citizens	.95	36.3%	16.7%	41.0%	6.0%
D. The city wasted millions of dollars building and renovating three city hall buildings that should have been spent on the library and fire stations	.91	35.4%	16.8%	43.8%	4.0%
E. The City could not administer the Downtown Loop construction project effectively; we can’t trust them with new projects for fire stations and a library	.85	32.6%	15.5%	46.5%	5.4%
F. These are just more new projects that benefit downtown, we should spend the money on improving Hayward neighborhood services, not on buildings we don’t need	.82	32.5%	14.4%	50.6%	2.5%
Split Sample B—Sales Tax					
G. There are no rules that direct the spending of sales tax dollars, and no guarantee that the funds will be spent as promised	1.04	39.7%	19.5%	35.5%	5.4%
H. Increasing sales tax in today’s economy will drive shoppers out of Hayward and hurt local businesses	.82	30.3%	18.1%	47.0%	4.6%

Computation of Mean Scores:

“Much More Likely” = +2, “Somewhat More Likely” = +1, “No Effect” = 0.

INFORMED BALLOT TESTS & SALES TAX THRESHOLD

Now that you have heard more about the potential measure, let me read you a summary of the proposal again:

Split Sample A – Bond Measure

8. To update City facilities including:

- meeting residents' educational and informational needs by replacing the aging library with a modern 21st century library, including space for children's learning materials, a teen homework center, and quiet reading; and
- protecting residents' safety, maintaining emergency response by replacing and updating aging fire stations with earthquake-safe buildings;

shall the City of Hayward issue \$96 million dollars in bonds with independent oversight and all funds staying local? [72 words]

If the election were held today, would you vote yes or no on this measure? Would that be definitely (yes/no) or probably (yes/no)?

	June 2014	November 2014
Definitely Yes	35.6%	37.1%
Probably Yes	19.5%	20.3%
Probably No	12.1%	12.4%
Definitely No	27.9%	24.5%
DK/NA	4.9%	5.7%

Split Sample B – Sales Tax

9. To preserve city services and facilities, including:

- meeting residents' educational and informational needs by replacing the aging library with a modern 21st century library;
- protecting residents' safety by replacing and updating aging fire stations with earthquake-safe buildings;
- improving neighborhood police patrols; and
- repairing potholes, streets and sidewalks,

shall City of Hayward increase the sales tax by one-half percent, for twenty years, providing locally controlled funding that cannot be taken by the State? [73 words]

If the election were held today, would you vote yes or no on this measure? Would that be definitely (yes/no) or probably (yes/no)?

	June 2014	November 2014
Definitely Yes	32.6%	34.7%
Probably Yes	28.6%	28.1%
Probably No	9.1%	9.3%
Definitely No	26.8%	25.4%
DK/NA	2.9%	2.5%

10. [If Q9 = Probably yes, Probably no, Definitely no, or DK/NA, ask:] If you heard that the sales tax was going to be increased by one-quarter percent instead of a one-half percent, but would still be used to maintain City services and facilities would you vote yes or no on this measure? Would that be definitely (yes/no) or probably (yes/no)?

	June 2014	November 2014
Definitely Yes	40.6%	43.7%
Probably Yes	22.1%	21.3%
Probably No	10.6%	10.0%
Definitely No	23.8%	22.5%
DK/NA	2.8%	2.4%

DEMOGRAPHICS (JUNE 2014)

Now, just a few background questions for comparison purposes.

A. In the past 12 months, have you or a member of your household visited the Hayward Public Library or the Library's homework and tutoring centers?

Yes	47.8%
No	51.8%
DK/NA	.4%

B. How many children under the age of 18 live in your household?

None	75.2%
One	10.6%
Two	10.2%
Three	2.5%
Four or more	.5%
DK/NA	1.0%

Those are all the questions I have for you. Thank you very much for participating.

C. Respondent's Gender

Male	45.7%
Female	54.3%

Information From Voter File

All information is included in voter registration records, and these items will not be asked during interviews.

D. Age

18 to 29	6.8%
30 to 39	9.7%
40 to 49	13.6%
50 to 64	34.3%
65 and over	35.4%
Not coded	.2%

E. Ethnic Surname

Hispanic	19.0%
African American	6.1%
Italian	2.3%
Chinese	1.8%
Jewish	1.2%
Vietnamese	1.1%
Japanese	0.8%
Korean	0.4%
Armenian	0.3%

F. Homeownership Status

Owner	66.6%
Renter	33.4%

G. Individual Party

Democrat	62.6%
Republican	17.8%
Other	3.6%
DTS	16.0%

H. Household Party Type

Democrat (1)	29.9%
Democrat (2+)	23.1%
Republican (1)	7.2%
Republican (2+)	5.5%
Other (1)	8.2%
Other (2+)	5.5%
Democrat & Republican	5.1%
Democrat & Other	10.3%
Republican & Other	4.1%
Mixed	1.1%

I. Registration Date

2013	.2%
2009 to 2012	28.9%
2005 to 2008	24.3%
2001 to 2004	10.6%
1997 to 2000	8.6%
1993 to 1996	6.7%
1981 to 1992	11.6%
1980 or before	9.1%

J. Voting History

	No	Poll	Mail
June 2006	39.8%	27.6%	32.6%
November 2006	23.9%	31.7%	44.3%
November 2007	99.9%	.1%	0.0%
February 2008	21.9%	33.4%	44.7%
June 2008	43.4%	19.6%	37.1%
November 2008	10.0%	38.1%	52.0%
May 2009	42.5%	18.6%	38.9%
November 2009	100.0%	0.0%	0.0%
June 2010	21.5%	28.5%	50.0%
November 2010	11.4%	34.1%	54.5%
June 2012	20.4%	28.6%	51.0%
November 2012	3.9%	34.1%	61.9%

K. Times Voted in Past Elections

1 of 10	.4%
2 of 10	3.9%
3 of 10	3.1%
4 of 10	5.0%
5 of 10	7.3%

6 of 10	10.3%
7 of 10	8.9%
8 of 10	14.9%
9 of 10	18.4%
10 of 10	27.9%

L. Absentee Voter

0 of 10	28.2%
1 of 10	5.8%
2 of 10	5.9%
3 of 10	4.1%
4 of 10	5.7%
5 of 10	5.2%
6 of 10	4.8%
7 of 10	5.4%
8 of 10	8.7%
9 of 10	10.0%
10 of 10	16.2%

M. Permanent Absentee Voter

Yes	64.5%
No	35.5%

N. Likely Absentee Voter

Yes	67.6%
No	32.4%

O. Likely June 2014 Voter

Yes	100.0%
No	0.0%



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 3, 2013, 7:00 p.m.**

The Council meeting was called to order by Mayor Pro Tempore Salinas at 7:00 p.m., followed by the Pledge of Allegiance.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Mendall
MAYOR PRO TEMPORE Salinas
Absent: MAYOR Sweeney

Mayor Pro Tempore Salinas noted that Mayor Sweeney was ill.

CLOSED SESSION ANNOUNCEMENT

Mayor Pro Tempore Salinas reported the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups, and he noted there was no reportable action.

PUBLIC COMMENTS

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 support the event.

Ms. Anna May and members of the SantaCon Planning Committee announced the 2013 SantaCon Hayward event on December 7, 2013, and invited all to participate noting that the proceeds would benefit the Hayward Animal Shelter.

Mr. Jim Drake, Hayward resident, reported that three pine trees on Harder Road had been removed and he supported hiring more police personnel.

S. J. Samiul, Hayward resident, requested a better design for the Westlake Development; shared photographs of the new Los Gatos Library; and recommended books of interest to the public.

CONSENT

1. Approval of Minutes of the Special City Council Meeting on November 12, 2013
It was moved by Council Member Peixoto, seconded by Council Member Halliday, and carried with Mayor Sweeney absent, to approve the minutes of the Special City Council Meeting on November 12, 2013.

2. Resolution to Authorize Emergency Solutions Grants (ESG) Program 2013-14 Application

Staff report submitted by Administrative Analyst I Kong, dated December 3, 2013, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Halliday, and carried with Mayor Sweeney absent, to adopt the following:

Resolution 13-176, “Resolution Authorizing the City of Hayward to Apply For and Receive Emergency Solutions Grant (ESG) Program Funding”

3. Adoption of 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

Staff report submitted by City Clerk Lens, dated December 3, 2013, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Halliday, and carried with Mayor Sweeney absent, to adopt the following:

Ordinance 13-16, “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”

PUBLIC HEARING

4. Introduction of Ordinance Amending Chapter 11, Article 3, Section 400, Appendix A of the Hayward Municipal Code Relating to Wastewater Discharge Regulations

Staff report submitted by Water Pollution Control Administrator Wilfong, dated December 3, 2013, was filed.

Director of Public Works-Utilities and Environmental Services Ameri announced the report and introduced Water Pollution Control Administrator Wilfong who provided a synopsis of the report.

Discussion ensued among Council and City staff regarding staff’s recommendation.

There being no public comments, Mayor Pro Tempore Salinas opened and closed the public hearing at 7:28 p.m.

Council Member Peixoto offered a motion per staff recommendation and Council Member Halliday seconded the motion.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 3, 2013, 7:00 p.m.**

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

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

Introduction of Ordinance 13-_, “An Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations”

LEGISLATIVE BUSINESS

5. Introduction of Ordinance to Amend Hayward Municipal Code Related to Surcharge for Water Customers Outside of the City

Staff report submitted by Director of Public Works-Utilities and Environmental Services Ameri, dated December 3, 2013, was filed.

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

Discussion ensued among Council and City staff.

Mayor Pro Tempore Salinas opened the public hearing at 7:42 p.m.

Ms. Audie Bock, Fairview Fire Protection District Board member, supported the proposed decrease in the existing surcharge from 50 to 15 percent on water service for customers outside the City limits.

Mr. Jim Drake, Hayward resident, supported the proposed surcharge decrease on water service, but was concerned about the \$50,000 annual revenue decrease that would need to be recovered from all customers.

Mr. Dale Silva, president of the Hayward Hills Property Owners Association, supported the recommendation to set the Castle Homes surcharge at 15 percent because it was reasonable, and commended staff for the thorough review.

Mr. Bob Zaposky, Hayward resident, commended staff’s objective and fact-based review of the surcharge and he urged the Council to approve the surcharge decrease from 50 percent to 15 percent.

Mayor Pro Tempore Salinas closed the public hearing at 7:50 p.m.

Council Member Mendall offered a motion per staff recommendation and Council Member Halliday seconded the motion.

Council Member Mendall thanked Mr. Silva and Mr. Zapotosky for their comments and noted that the 15 percent surcharge was justified by an outside consultant as fair in recovering the additional costs of providing water service to the Castle Homes area.

Council Member Halliday thanked Castle Homes' residents for bringing the surcharge matter to the Council's attention and thanked staff for working with the homeowners on a favorable outcome. Ms. Halliday favored removing the specific percentage surcharge from the Municipal Code and moving it to the Master Fee Schedule which would provide for regular water rate analysis.

Council Member Zermeño thanked Castle Homes' homeowners for bringing the surcharge issue before the Council and was pleased there was a favorable resolution.

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

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

Introduction of Ordinance 13-_, "An Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City"

Resolution 13-177, "Resolution Amending the Master Fee Schedule and Approving a Surcharge on Water Service Outside City"

6. Conditional Authorization of Issuance of Multi-Family Housing Revenue Bonds (Hayward Senior Housing Phase II aka B & Grand Affordable Senior Housing Project) 2013 Series A and Execution of Related Documents

Staff report submitted by Housing Development Specialist Cortez, dated December 3, 2013, was filed.

Assistant City Manager McAdoo provided a synopsis of the report.

Discussion ensued among Council, Assistant City Manager McAdoo, and Mr. Stephen Melikian from Jones Hall.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 3, 2013, 7:00 p.m.**

There being no public comments, Mayor Pro Tempore Salinas opened and closed the public hearing at 8:06 p.m.

Council Member Halliday offered a motion per staff recommendation and Council Member Peixoto seconded the motion.

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

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

Resolution 13-178, “Resolution of the City of Hayward Authorizing the Issuance, Sale and Delivery of City of Hayward Multifamily Housing Revenue Bonds (Hayward Senior Housing Phase II) 2013 Series A, Authorizing the Execution and Delivery of a Bond Issuance and Pledge Agreement, A Loan Agreement and A Regulatory Agreement and Declaration of Restrictive Covenants, and Authorizing the Execution and Delivery of and Approving Other Related Documents and Approving Other Related Actions in Connection Therewith”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Mayor Pro Tempore Salinas noted that Hayward would start experiencing a drop in temperature and advised residents to be prepared for the significantly colder weather.

Council Member Halliday reminded all about the homeless population during the cold weather and noted that people in need of assistance finding shelter options could dial 211.

Council Member Jones announced the SantaCon Hayward event was on December 7, 2013, and invited all to participate and support the Hayward Animal Shelter.

ADJOURNMENT

Mayor Pro Tempore Salinas adjourned the meeting at 8:10 p.m.

APPROVED:

Mark Salinas
Mayor Pro Tempore, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: December 17, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of Ordinance Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

The Ordinance was introduced by Council Member Halliday at the December 10, 2013 special meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:
Attachment I Summary of Ordinance Published on 12/14/13

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

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 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.
- SEC. 4-16.10 DEFINITIONS.
- SEC. 4-16.20 SIMULATED GAMBLING DEVICES PROHIBITED.
- SEC. 4-16.30 EXEMPTIONS.
- SEC. 4-16.40 CONSTRUCTION WITH STATE LAW.
- SEC. 4-16.50 VIOLATIONS.
- SEC. 4-16.60 APPLICATION.

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

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

Introduced at the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Halliday.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

The Ordinance was introduced by Council Member Halliday at the December 10, 2013 special meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:
Attachment I Summary of Ordinance Published on 12/14/13

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

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

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 13-179, 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.

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 the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Halliday.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of an Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 3, 2013.

BACKGROUND

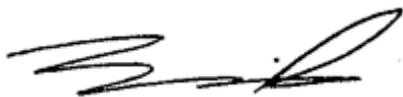
The Ordinance was introduced by Council Member Peixoto at the December 3, 2013 regular meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Summary of Ordinance Published on 12/14/13

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

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 3, APPENDIX “A” OF THE
HAYWARD MUNICIPAL CODE BY ADOPTING THE REVISED WASTEWATER
DISCHARGE REGULATIONS

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

Section 1. Upon the effective date of this ordinance, Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code is hereby amended by adopting the revised Wastewater Discharge Regulations to read in full as follows:

“ARTICLE 3
APPENDIX “A”
WASTEWATER DISCHARGE REGULATIONS
OF
THE CITY OF HAYWARD

Chapter 1
GENERAL PROVISIONS

Chapter 2
REGULATIONS

Chapter 3
WASTEWATER VOLUME DETERMINATION

Chapter 4
ADMINISTRATION

Chapter 5
WASTEWATER CHARGES AND FEES

Chapter 6
ENFORCEMENT

Chapter 7
ABATEMENT

Chapter 8
SEVERABILITY

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

Section 3. **EFFECTIVE DATE.** 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.

ATTACHMENT I

Introduced at the meeting of the Hayward City Council held December 3, 2013, the above-entitled Ordinance was introduced by Council Member Peixoto.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of 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

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

The Ordinance was introduced by Council Member Zermeño at the December 10, 2013 special meeting of the City Council with the following vote:

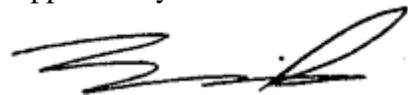
AYES:	Council Members:	Zermeño, Jones, Halliday, Peixoto, Mendall
	Mayor Pro Tempore:	Salinas
NOES:	Council Members:	None
ABSENT:	Mayor:	Sweeney
ABSTAIN:	Council Members:	None

The motion was carried with an amendment to Section 903.2.20 of the Fire Prevention Code for the City of Hayward by removing Item (1).

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment: Attachment I Summary of Ordinance Published on 12/14/13

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

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.
- SEC. 2. ESTABLISHMENT AND DUTIES OF THE FIRE PREVENTION OFFICE.
- SEC. 3. DEFINITIONS.
- SEC. 4. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF FLAMMABLE OR COMBUSTIBLE LIQUIDS IN ABOVEGROUND TANKS IS TO BE PROHIBITED.
- SEC. 5. ESTABLISHMENT OF LIMITS IN WHICH BULK STORAGE OF LIQUEFIED PETROLEUM GASES IS TO BE RESTRICTED.
- SEC. 6. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH STORAGE OF EXPLOSIVES AND BLASTING AGENTS IS TO BE PROHIBITED.
- SEC. 7. ESTABLISHMENT OF LIMITS OF DISTRICTS IN WHICH THE STORAGE OF COMPRESSED NATURAL GAS IS TO BE PROHIBITED.
- SEC. 8. AMENDMENTS MADE IN THE CALIFORNIA FIRE CODE.
- SEC. 9. APPEALS.
- SEC. 10. FEES.
- SEC. 11. PENALTIES.
- SEC. 12. REPEAL OF CONFLICTING ORDINANCES.
- SEC. 13. VALIDITY.
- SEC. 14. DATE OF EFFECT.

Introduced at the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

ATTACHMENT I

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of 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)

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

The Ordinance was introduced by Council Member Zermeño at the December 10, 2013 special meeting of the City Council with the following vote:

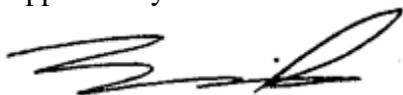
AYES:	Council Members:	Zermeño, Jones, Halliday, Peixoto, Mendall
	Mayor Pro Tempore:	Salinas
NOES:	Council Members:	None
ABSENT:	Mayor:	Sweeney
ABSTAIN:	Council Members:	None

The motion was carried with direction to staff to hold the introduction of Section 101.4.4 of Appendix Chapter 1 of the Building Code for the City of Hayward, related to the provisions of the 2012 International Property Maintenance Code, for further review.

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:

Attachment I

Summary of Ordinance Published on 12/14/13

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

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.
SECTION 2.00 Applicability of CBC Appendix Chapters.

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 the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of 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

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

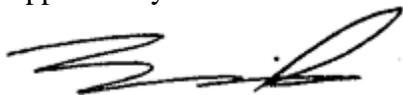
The Ordinance was introduced by Council Member Zermeño at the December 10, 2013 special meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment: Attachment I Summary of Ordinance Published on 12/14/13

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

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
SECTION 2.00 AMENDMENTS, ADDITIONS, AND DELETIONS TO 2013 CALIFORNIA MECHANICAL CODE.

Introduced at the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of 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

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

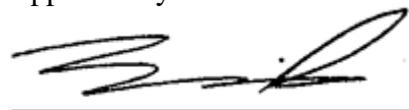
The Ordinance was introduced by Council Member Zermeño at the December 10, 2013 special meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:

Attachment I Summary of Ordinance Published on 12/14/13

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

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
SECTION 2.00 AMENDMENTS, ADDITIONS AND DELETIONS TO THE 2013 CALIFORNIA ELECTRICAL CODE.
SECTION 3.00 APPLICABILITY OF CALIFORNIA ELECTRICAL CODE ANNEX CHAPTERS

Introduced at the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of 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

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 10, 2013.

BACKGROUND

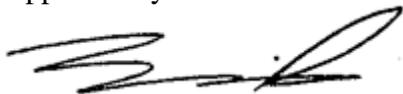
The Ordinance was introduced by Council Member Zermeño at the December 10, 2013 special meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:

Attachment I Summary of Ordinance Published on 12/14/13

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

AN ORDINANCE REPEALING ORDINANCE NO. 10-22 AND ALL AMENDMENTS
THERE TO, 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.
SECTION 2.00 AMENDMENTS, ADDITIONS AND DELETIONS TO THE UNIFORM
PLUMBING CODE

Introduced at the special meeting of the Hayward City Council held December 10, 2013, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of an Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 3, 2013.

BACKGROUND

The Ordinance was introduced by Council Member Mendall at the December 3, 2013 regular meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, December 14, 2013. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I Summary of Ordinance Published on 12/14/13

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

AN ORDINANCE AMENDING CHAPTER 11, ARTICLE 2 OF THE HAYWARD
MUNICIPAL CODE RELATING TO METERED SERVICE CHARGES OUTSIDE CITY

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

Section 1. Upon the adoption of this Ordinance, Article 11, Chapter 2, Section 11-2.40 of the Hayward Municipal Code, relating to metered service charges outside City, is hereby amended to read as follows:

SECTION 11-2.40 METERED SERVICE CHARGES OUTSIDE CITY.

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 the meeting of the Hayward City Council held December 3, 2013, the above-entitled Ordinance was introduced by Council Member Mendall.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 17, 2013, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: December 14, 2013
Miriam Lens, City Clerk
City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Approval of Final Tract Map 8086 – Camden Place Development by Standard Pacific Homes (Applicant/Owner); the Project is Located on Multiple Parcels Totaling 10.9 Acres Generally Located Between Eden Avenue and Saklan Road, North of Middle Lane in the Mt. Eden area

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment III) approving the Final Map for Tract No. 8086 – Camden Place Development, and finding that it is in substantial conformance with the approved Vesting Tentative Tract Map No. 8086 and the conditions of approval thereof; and authorizes the City Manager to take other administrative actions and execute a Subdivision Agreement and such other documents as are appropriate to effectuate the required improvements for the development.

BACKGROUND

Tentative and final subdivision maps are required for all subdivisions creating five or more parcels. A tentative tract map is required to ensure that any proposed subdivision of land complies with the Subdivision Map Act; the California Environmental Quality Act; the City Subdivision, Zoning, and Building regulations; the Hayward General Plan and Neighborhood Plans; and the requirements of the Public Works, Fire, and Police Departments. After the tentative map is approved, the developer submits the final map and improvement plans for review and approval by the City Engineer (and subsequent recordation of the final map) before proceeding with construction of improvements. The developer is required to file tentative and final maps so that these proposed 144 single-family dwelling unit lots can be sold individually.

On November 15, 2011, relying on the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the development applications, the Council approved the Zone Change and Vesting Tentative Tract Map applications to change the Zoning from Medium Density Residential District to a Planned Development District in order to subdivide the property to construct 144 single-family homes. The developer anticipates commencing construction by early 2014, weather permitting, and completing construction by the end of 2016.

On August 16, 2013, Standard Pacific Homes submitted a Precise Plan, preliminary Improvement Plans and the Final Map to the City for review and approval prior to obtaining building permits for construction. The Precise Plan was administratively and conditionally approved by the Planning Director on November 8, 2013.

DISCUSSION

Final Map – The project is located on multiple parcels totaling 10.9 acres generally located between Eden Avenue and Saklan Road, north of Middle Lane in the Mt. Eden area, which was annexed to the City of Hayward effective March 2007. The project site is located within an existing single-family residential neighborhood that includes a mix of one-, two-, and three-story single-family homes. The project site is comprised of about thirteen different parcels that are primarily vacant, with five parcels developed with single-family residences and other structures. This proposed development includes a mix of seventy-nine detached and sixty-five attached units, and incorporates private and group open spaces to serve the future owners of these homes.

The subdivision improvement plans and Final Map were reviewed by the City Engineer and were found to be in substantial compliance with the vesting tentative map, and in conformance with the Subdivision Map Act and Hayward's regulations. There have not been significant changes to the final map, compared to the tentative tract map the City Council approved in November of 2011.

The City Council's approval of the Final Map shall not become effective until and unless the developer enters into a Subdivision Agreement and posts bonds with the City for the construction of improvements and other obligations required per conditions of approval of the vesting tentative tract map.

Recent Tree Removals – The illegal removal of several large trees was recently brought to the attention of Council and staff by an observant and concerned resident. Staff investigated the matter and determined that the trees, while approved to be removed via the 2011 project entitlement process, were removed without required City tree removal permits and without an approved replacement mitigation plan. Staff is working with the developer (Standard Pacific) to have a mitigation plan developed that is at least equal in value to the appraised value of the removed trees, and applicable removal permits issued. Code Enforcement will also impose a fine of \$622 for the illegal removal of the trees.

Environmental Review - The development of Tract 8086 was previously reviewed under a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program adopted for the development by the Hayward City Council via Resolution 11-178 on November 15, 2011.

ECONOMIC AND FISCAL IMPACT

The final map approval is consistent with the approved project and the final map by itself, will not have a fiscal or economic impact. The development created by the approval of the final map will improve commerce, provide housing and employ construction workers.

PUBLIC CONTACT

A public hearing is not required for the filing of Final Map Tract 8086. Public hearings were already conducted for the Vesting Tentative Tract Map 8086 application, of which Final Map Tract 8086 is part.

NEXT STEPS

Assuming the City Council approves the Final Map and adopts the attached resolution, the applicant will have the final map recorded and execute a Subdivision Agreement with the City, and will commence the construction of improvements shown on the approved Improvement Plans. The applicant anticipates commencing construction in early 2014 and completing construction by the end of 2016.

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

Reviewed by: Pat Siefers, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Vicinity Map
Attachment II	Site Plan Tract 8086
Attachment III	Resolution Approving Final Map and Authorizing Execution of a Subdivision Agreement



Final Map 8086

Address:
Eden Avenue, Middle Lane & Sakland Road

Applicant:
Standard Pacific Homes

Owner:
Standard Pacific Homes





Site Plans - Tract 8086



Site Plans - Tract 8086

Address:
Eden Avenue, Middle Lane & Sakland Road

Applicant:
Standard Pacific Homes

Owner:
Standard Pacific Homes



HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION APPROVING FINAL MAP FOR TRACT 8086 AND
AUTHORIZING THE CITY MANAGER TO EXECUTE A
SUBDIVISION AGREEMENT

WHEREAS, Vesting Tentative Tract Map No. 8086, Camden Place Development, was approved by the Planning Commission on November 11, 2011, and the Final Map for Tract 8089 has been presented to the City Council of the City of Hayward for development of 144 single family dwelling units, located on multiple parcels totaling 10.9 acres generally located between Eden Avenue and Saklan Road, north of Middle Lane in the Mt. Eden area, which was annexed to the City of Hayward effective March, 2007; and

WHEREAS, the Director of Public Works reviewed the Final Map and found it to be in substantial compliance with the approved vesting tentative tract map, the Subdivision Map Act and the City of Hayward regulations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby find that the Final Map for Tract 8086 is in substantial compliance with the approved vesting tentative tract map and does hereby approve the Final Map, subject to the subdivider entering into an agreement for the construction of improvements and other obligations as required by the conditions of approval of the vesting tentative map for Tract 8086, and that the approval of the Final Map for Tract 8086 shall not be effective until and unless such agreement is entered into.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized for and on behalf of the City of Hayward to negotiate and execute a subdivision agreement in a form approved by the City Attorney.

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Approval of Final Tract Map 7991 – Apricot Lane Development (Residual Burbank School Site) by the Successor Agency (Owner)/ Urban Dynamic, LLC (Applicant/Developer) - The project site is located at the southwest corner of B Street and Myrtle Street, east of Burbank Elementary School

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) approving the Final Map for Tract No. 7991 – Apricot Lane Development (Residual Burbank School Site), finding that it is in substantial conformance with the approved Vesting Tentative Tract Map 7991 and the conditions of approval thereof; and authorizing the City Manager to take other administrative actions and execute a Subdivision Agreement and other documents to effectuate the required improvements for the development after the State Department of Finance and the Successor Agency have cleared title, efforts for which are underway with the City Manager’s Office.

BACKGROUND

Tentative and final subdivision maps are required for all subdivisions creating five or more parcels. A tentative tract map is required to ensure that any proposed subdivision of land complies with the Subdivision Map Act, the California Environmental Quality Act, the City Subdivision, Zoning, and Building regulations, the Hayward General Plan and Neighborhood Plans, and the requirements of the Public Works, Fire, and Police Departments. After the tentative map is approved, the applicant/developer submits the final map and improvement plans for review and approval by the City Engineer (and subsequent recordation of the final map) before proceeding with construction of improvements. For this project, the applicant/developer is required to file a final map for the fifty-seven detached-single family homes in order to sell them individually.

On July 10, 2006, Hayward Unified School District (HUSD), Hayward Area Recreation and Park District (HARD), the City, and the former Hayward Redevelopment Agency (the Agency) entered into the “Public Facilities Development and Property Exchange Agreement” (the PFDA), which specified the land exchange and financial agreements for the Cannery Area public improvements. In accordance with the provisions of the PFDA, the Agency transferred the new Burbank School to HUSD in August 2008, and concurrently, HUSD transferred the undeveloped 3.84-acre portion of

the former Burbank School to the Redevelopment Agency to facilitate the sale and redevelopment of the site. The area that was transferred to the Redevelopment Agency is referred to as the “Residual Burbank School Site.”

On October 22, 2010, Urban Dynamic, LLC (Urban Dynamic) submitted Zone Change and Vesting Tentative Tract Map applications for the proposed fifty-seven detached, single-family homes at the “Residual Burbank School Site.” The applications were deemed complete on March 17, 2011.

On May 26, 2011, the Planning Commission voted 6-0-1 to recommend that the City Council approve the project, with an amendment to recommended Condition of Approval No. 106, which required a 2.5kW solar energy package on each residential unit. On July 12, 2011, relying on the Mitigated Negative Declaration (MND) and related the Mitigation Monitoring and Reporting Program (MMRP) prepared for the development applications, the City Council introduced the ordinance related to approval of the Zone Change from a Medium Density Residential District to a Planned Development District and also approved the Vesting Tentative Tract Map to subdivide the property to construct fifty-seven detached single-family homes, subject to the recommended conditions of approval (Attachment IV – Resolution 11-121). Additionally, the City Council approved the sale of the ‘Residual Burbank School Site’ to Urban Dynamic, LLC, and adopted Council Resolution (Attachment V – Resolution 11-122), authorizing the City Manager to negotiate and execute the Agreement for Purchase and Sale of Real Property evidencing such transaction.¹

On July 17, 2012, the City Council adopted Council Resolution (Attachment VI – Resolution 12-138), authorizing the City Manager to execute a grant deed to convey the ‘Residual Burbank School Site’ from the City of Hayward to the Successor Agency for the Redevelopment Agency of the City of Hayward; and, acting in its capacity as the governing board of the Successor Agency, the City Council adopted Successor Agency Resolution (Attachment VII – Resolution RSA 12-06), authorizing the acceptance of the Residual Burbank School Site and the conveyance to Urban Dynamic.²

On April 12, 2013, Urban Dynamic submitted a Precise Plan, preliminary Improvement Plans and Final Map to the City for review and approval. The Precise Plan was administratively and conditionally approved by the Planning Director on August 30, 2013.

DISCUSSION

Final Map – The project site is bounded by B Street, Myrtle Street, C Street, and Filbert Street; and is directly across Filbert Street from the Burbank Elementary School. Final Map 7991 is filed so that fifty-seven detached, single-family home lots can be developed and sold individually. The project is located within an existing single-family residential neighborhood, and is well-designed with high-quality architectural features that are reflective of the neighborhood character, including along B Street. In addition, the project proposes substantial green building features including, but

¹ July 12, 2011 Staff Report for Items 16 (pages 334-364) and 17 (pages 365-374): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca030211full.pdf>

² July 17, 2012 Staff Report for Item 12 (pages 131-141): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca071712full.pdf>

not limited to: (1) a standard solar package on all units, with opportunities for upgrades; (2) a charging station within each garage for electric vehicles; and (3) the development is seeking to achieve a minimum of 100 points on the Green Point Rated checklist (versus the 50 points minimum required) or to seek LEED silver designation for each home.

The subdivision improvement plans and final map were reviewed by the City Engineer and were found to be in substantial compliance with the vesting tentative map, and in conformance with the Subdivision Map Act and Hayward's regulations. There have not been significant changes to the final map, compared to the tentative tract map the Council approved in July of 2011.

Issues with the Department of Finance – Although, the sale of the 'Residual Burbank School Site' to Urban Dynamic has been approved, the close of escrow cannot be finalized due to complications by a number of factors such as the dissolution of the Redevelopment Agency due to state law, changing market conditions, and the approval of a long range property management plan (LRPMP) by the State Department of Finance pursuant to the 'Dissolution Act' affecting Redevelopment Agencies.

At the time of completion of this report, the Successor Agency has just received the State Department of Finance's approval of the sale of the 'Residual Burbank School Site.' The applicant/developer has expressed interest in having the Final Map approved by the Council at this meeting, and to close the escrow during the Council holiday break (the next Council meeting is January 14, 2014) once the Successor Agency has cleared title and other details regarding the Department of Finance approval have been finalized. This will allow the developer to be poised to receive building permits in early January and to begin construction later in the month. If the map is not conditionally approved as outlined below, the developer would have to wait almost another month (until the Council meeting of January 14, 2014) before they could even begin to resolve the last details with closing the purchase transaction. The recommended conditional action by the Council tonight would allow these details to be resolved over the next few weeks and to facilitate construction initiation in January.

The City Council's approval of the Final Map shall not become effective until and unless the Successor Agency has cleared title and the applicant/developer enters into a Subdivision Agreement and posts bonds with the City for the construction of improvements and other obligations required per conditions of approval of the vesting tentative tract map. The applicant/developer understands and is agreeable that the Final Map will not be signed and recorded until the Subdivision Agreement is executed and the purchase transaction is complete.

Environmental Review - The development of Tract 7991 was previously reviewed under the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program environmental documents adopted for the development certified by the City Council via Resolution No. 11-121 on July 12, 2011 (Attachment VI).

ECONOMIC AND FISCAL IMPACT

The final map approval is consistent with the approved project and the final map by itself, will not have a fiscal or economic impact. The development created by the approval of the final map will improve commerce, provide housing and employ construction workers. In addition, the sale of the

property from the Redevelopment Successor Agency to Urban Dynamic will result in approximately \$3.6 million being redistributed to taxing entities within Hayward consistent with the Redevelopment Dissolution legislation.

Furthermore, the applicant/developer is required to post initial deposit of \$20,000 with the City to pay for the cost of forming and annexing the development into the Community Facility District No. 2 (CFD No.2) to off-set any impacts to City's public safety services. The formation and annexation must be done prior to the issuance of a Certificate of Occupancy.

PUBLIC CONTACT

A public hearing is not required for the filing of Final Map for Tract No. 7991. Public hearings were already conducted for the Vesting Tentative Tract Map 7991 application.

NEXT STEPS

Assuming the City Council approves the Final Map and adopts the attached Resolution, the following steps must be completed prior to the issuance of any construction permits:

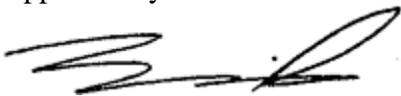
1. Execute the Agreement for Purchase and Sale;
2. Complete the purchase transaction to have the land conveyed to Urban Dynamic, LLC;
3. Execute a Subdivision Agreement and post bonds by the applicant/developer to guarantee performance associated with the construction of required improvements;
4. Record the Final Map at the Alameda County Clerk-Recorder' Office; and
5. Pay fees and obtain permits prior to commencing the construction of improvements.

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

Reviewed by: Pat Siefers, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I Resolution Approving Final Map 7991 and Authorizing Execution of a Subdivision Agreement and Conditions of Approval

Attachment II	Vicinity Map
Attachment III	Site Plan Tract 7991 and Conditions of Approval
Attachment IV	Resolution 11-121 and Conditions of Approval
Attachment V	Resolution 11-122 and Conditions of Approval
Attachment VI	Resolution 12-138
Attachment VI	Resolution RSA 12-06

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION APPROVING FINAL MAP FOR TRACT 7991,
MAKING CERTAIN FINDINGS RELATED THERETO, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE A
SUBDIVISION AGREEMENT AND OTHER DOCUMENTS TO
EFFECTUATE THE REQUIRED IMPROVEMENTS FOR THE
DEVELOPMENT, SUBJECT TO THE SUCCESSOR AGENCY
OBTAINING THE REQUISITE STATE APPROVALS

WHEREAS, Vesting Tentative Tract Map No. 7991 and related land use entitlements were recommended for approval by the Planning Commission on May 26, 2011, and the Final Map for Tract 7991 has been presented to the City Council of the City of Hayward for a subdivision development of 57 detached single family dwelling units at the residual Burbank School Site (the “Apricot Lane Development”), located at the southwest corner of B Street and Myrtle Street, east of Burbank Elementary School; and

WHEREAS, on July 12, 2011, the City Council approved the sale of the “Residual Burbank School Site” (the “Property”) to Urban Dynamic, LLC and authorized the City Manager to negotiate and execute the Agreement for Purchase and Sale of Real Property evidencing such transaction; and

WHEREAS, on July 17, 2012, the City Council authorized the City Manager to execute a grant deed conveying the Property from the City of Hayward to the Successor Agency for the Redevelopment Agency of the City of Hayward and, acting in its capacity as the governing board of the Successor Agency, the City Council authorized the acceptance of the Residual Burbank School Site and the conveyance of the Property to Urban Dynamic, LLC; and

WHEREAS, pursuant to the Dissolution Act, the Successor Agency is required to obtain approval from the State Department of Finance prior to the conveyance of the Property to Urban Dynamics, LLC; and

WHEREAS, the Director of Public Works reviewed the Final Map and found it to be in substantial compliance with the vesting tentative map and in conformance with the Subdivision Map Act and Hayward’s regulations. There have not been significant changes to the final map, compared to the tentative tract map that the Council approved in July of 2011; and

WHEREAS, the applicant/developer has expressed interest in having the Final Map approved by the Council at its December 17, 2013, meeting and to close the escrow during the Council’s holiday break, subject to the Successor Agency obtaining all requisite approvals from the State of California.



Vicinity Map



Final Map 7991

Address:
376 C Street

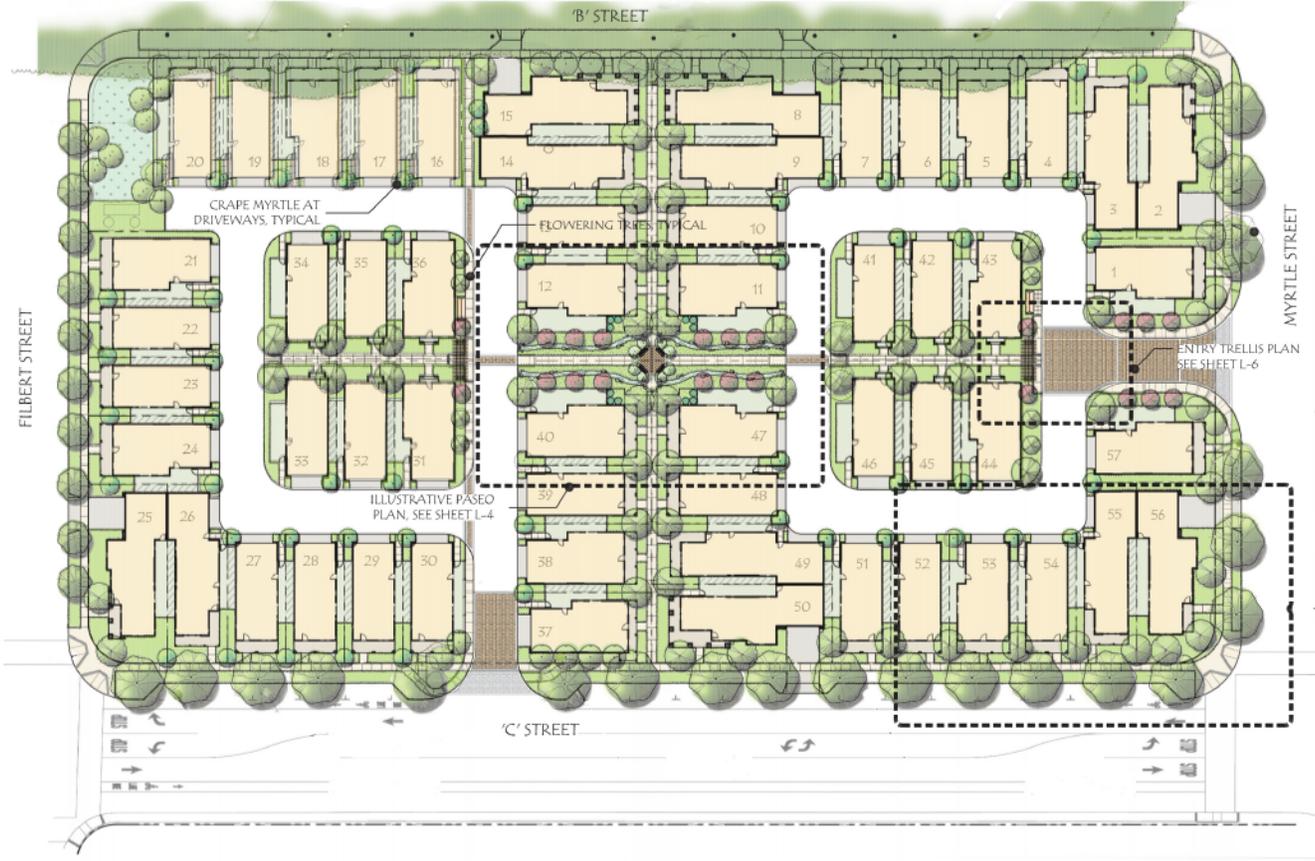
Applicant:
Perry Hariri

Owner:
The Successor Agency





Site Plans - Tract 7991



Site Plans - Tract 7991

Address:
376 C Street

Applicant:
Urban Dynamics

Owner:
The Successor Agency



HAYWARD CITY COUNCIL

RESOLUTION NO. 11-121

Introduced by Council Member Halliday

RESOLUTION ADOPTING THE MITIGATED NEGATIVE
DECLARATION AND THE MITIGATION MONITORING AND
REPORTING PROGRAM AND APPROVING VESTING
TENTATIVE TRACT MAP APPLICATION PL-2010-0405 AND
ZONE CHANGE APPLICATION PL-2010-0403 PERTAINING
TO A PROPOSED 57-UNIT SINGLE-FAMILY RESIDENTIAL
COMMUNITY AT THE RESIDUAL BURBANK SITE

WHEREAS, on October 22, 2010, Urban Dynamic (Applicant) submitted Zone Change Application No. PL-2010-0403 and Vesting Tentative Tract Map Application No. PL-2010-0405, which concerns a request to a) change the zoning from Medium Density Residential to Planned Development and b) to subdivide the property located at the corner of B and Myrtle streets to facilitate construction of 57 detached single-family housing units (the "Project"); and

WHEREAS, a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program has been prepared to assess and mitigate the potential environmental impacts of the Project; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on May 26, 2011, and has recommended that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program; approve PL-2010-403ZC, reclassifying the property from Medium Density Residential to Planned Development; and approve PL-2010-0405TTM, the vesting tentative map application for the 57-unit single-family residential community; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on June 28, 2011, during which the project was continued to July 12, 2011 to allow resolution of issues related to undergrounding of utilities, and said hearing was duly held by the City Council on July 12, 2011.

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. The proposed Project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed Project, with the recommended mitigation measures, could not result in significant effects on the environment. A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared, which reflect the independent judgment of the City of Hayward.
2. The Project will not adversely affect any scenic resources. A lighting plan will be required to ensure that light and glare do not affect area views. Also, compliance with the City's Design Guidelines will ensure visual impacts are minimized. Landscape plans will also be required to ensure that structures are appropriately screened.
3. The Project will not have an adverse effect on agricultural land since the subject site is not used for such purposes, does not contain prime, unique or Statewide important farmland.
4. The Project is consistent with the General Plan Land Use designation for the site and the Cannery Area Design Plan and will not result in significant impacts related to air quality.
5. The Project, proposed on properties surrounded by other residential development and within an urbanized area, will not result in significant impacts to biological resources, including protected trees.
6. The Project will not result in significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The Project will not result in significant impacts to geology and soils as the site is not located within a geologic hazard zone or liquefaction zone. The Project is located west of the Hayward fault, which poses potential risk to any development in the City of Hayward. Recommendations of the Project geotechnical engineer will be required to be incorporated into Project design and implemented throughout construction, to address such items as seismic shaking. Construction will also be required to comply with the California Building Code standards to minimize seismic risk due to ground shaking.
8. Any hazardous materials, including potential arsenic, lead and chlordane associated with historical pesticide and herbicide use on the property, will be required to be removed/treated in accordance with State and local regulations. A site clearance will also be required to be obtained from either the State Department of Toxic Substances Control or the Regional Water Quality Control Board.

9. The Project will be required to meet all water quality standards as part of the normal development review and construction process, to be addressed in a Stormwater Pollution Prevention Plan and Erosion Control Plan that utilize best management practices. Drainage improvements will be required to accommodate stormwater runoff, so as not to negatively impact the existing downstream drainage system of the Alameda County Flood Control and Water Conservation District.

10. The Project proposes amendments to the Hayward zoning designation for the site, but is still consistent with the overall density supported by the Hayward General Plan. In addition, the Project will be required to be consistent with the City of Hayward's Design Guidelines.

11. The Project will not result in any long-term noise impacts. Construction noise will be mitigated through restriction on construction hours, mufflers, etc., to be approved as part of the building permit.

12. The Project will not result in significant impacts related to population and housing in that the amount of development proposed is within the range of development analyzed in the Hayward General Plan.

13. The Project will not result in a significant impact to public services in that development is at least as intensive as that proposed was analyzed in the Hayward General Plan EIR and found to have less-than-significant impacts.

ZONE CHANGE

14. The Project is consistent with the existing General Plan designation and policies related to providing a variety of housing types. The detached two-story single-family homes proposed on this site are more dense than the existing neighborhood to the east, but a much different housing type than is currently under construction at the Cannery just to the west which tend to be three-story townhomes. The exteriors of the homes are consistent with the design of the surrounding homes along B Street and consistent with the design required under the Cannery Area Design Plan, especially the incorporation of Craftsman and Victorian styles. Front porches are incorporated in the home design and the homes are oriented toward the surrounding streets providing the interaction with the existing neighborhood.

15. The proposed Project is an in-fill development site surrounded by existing streets and there are utilities available to the site with adequate capacity to serve the proposed development.

16. The Project applicant has proposed a development achieving an integration of density, livability and renewable energy sources that establishes a high standard for future development in the City. The site design maintains the continuity of the existing street design by providing front porches and entry doors that are oriented toward the surrounding streets and neighborhood, which provide eyes on the public areas and encourage community interaction. Some useable open space and pedestrian connectivity is provided which allows for better circulation and access

to surrounding amenities such as the school, parks, shopping and public transit. Lastly, the home designs offer a wide and flexible range of livability and lifestyles by integrating universal design features in many of the units.

17. The Project is consistent with the Cannery Area Design Plan, as amended, as well as the B Street Design guidelines. The applicant is seeking a Planned Development designation to provide flexibility in the site layout of the units. To off-set the flexibility the applicant desires, the Project proposes to exceed the standards required under the Green Building Ordinance. The proposal is a green development which has been conditioned to achieve a minimum 100 point GreenPoint rating where the minimum required by the ordinance is 50 points or to alternatively seek LEED silver certification for each of the homes. In addition, the applicant will be seeking environmental and resource conservation recognitions and certifications, such as LEED Neighborhood Design, for the proposed development. This Project will serve as an example project for the City and hopefully will encourage more development like this in the future.

VESTING TENTATIVE TRACT MAP

18. The approval of Vesting Tentative Map Tract 7991, as conditioned, will have no significant impact on the environment, cumulative or otherwise. A Mitigated Negative Declaration was prepared per the guidelines of the California Environmental Quality Act (CEQA) for the development of this site.

19. The tentative tract map substantially conforms to the State Subdivision Map Act, the City's Subdivision Regulations, the General Plan, and the City of Hayward Zoning Ordinance.

20. Upon the completion of remediation recommended by the project Geotechnical Engineer the site is physically suitable for the proposed type of development.

21. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

22. The design of the subdivision and the proposed improvements are not likely to cause serious health problems.

23. Upon completion of the proposed improvements the streets and utilities would be adequate to serve the project.

24. None of the findings set forth in Section 66474 of the Subdivision Map Act have been made.

BE IT FURTHER RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approves Zone Change Application No. PL-2010-0403 and Vesting Tentative Tract Map Application PL-2010-0405, subject to the adoption of the companion ordinance rezoning the property located at the corner of B and Myrtle Streets (APN 431-0110-007-00) from Medium Density Residential to Planned Development District.

IN COUNCIL, HAYWARD, CALIFORNIA July 12, 2011

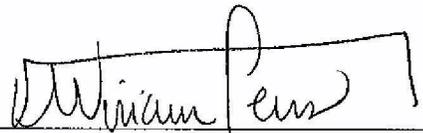
ADOPTED BY THE FOLLOWING VOTE:

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

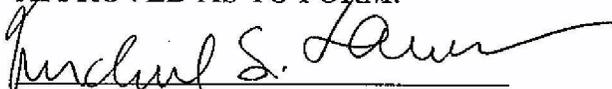
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-122

Introduced by Council Member Zermefio

RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF HAYWARD AND URBAN DYNAMIC, LLC, FOR THE PURCHASE AND SALE OF REAL PROPERTY LOCATED AT 353 B STREET (THE "RESIDUAL BURBANK SCHOOL SITE") FOR THE CONSTRUCTION AND SALE OF FIFTY-SEVEN DETACHED SINGLE FAMILY HOMES

WHEREAS, the City owns certain real property located at 353 "B" Street (the "Residual Burbank School site") in the City of Hayward, County of Alameda, State of California; and

WHEREAS, on June 29, 2010, the Agency Board of the Redevelopment Agency of the City of Hayward authorized the Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with Urban Dynamic, LLC (the "Developer") for a ninety-day period to negotiate the basic terms of a Disposition and Development Agreement for the Residual Burbank School site; and

WHEREAS, on January 18, 2011, the Agency Board authorized the Executive Director to execute a ninety-day extension to the ENA with the Developer for disposition of the Residual Burbank School site; and

WHEREAS, subsequent to the execution of the ninety-day extension of the ENA, the Redevelopment Agency transferred the Residual Burbank School site to the City; and

WHEREAS, the Developer proposes to develop the property with fifty-seven market-rate detached single-family homes (the "Project") and has applied for the requisite land use entitlements to proceed with the Project; and

WHEREAS, the City desires to enter into a purchase and sale agreement (the "Agreement") with the Developer, pursuant to which the City would sell the Residual Burbank School site to the Developer for Four Million Dollars (\$4,000,000.00) and the Developer would develop the Project on the site; and

WHEREAS, the Planning Commission, at a duly noticed meeting held on May 26, 2011, recommended that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and approve the Project; and

WHEREAS, pursuant to Government Code section 37350, the City has the authority to dispose of its property for the common benefit and the common benefit is served by the sale of the Residual Burbank School site, for the reasons set forth in Resolution No. 11-121 approving the zone change and vesting tentative map for the Project; and

WHEREAS, the City Council, at a duly noticed hearing held on June 28, 2011 and continued to July 12, 2011, adopted the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and approved the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby relies on the previously adopted Mitigated Negative Declaration for the Project and authorizes the City Manager to negotiate and execute a purchase and sale agreement, and such other documents as may be reasonably necessary to consummate this transaction, with Urban Dynamic, LLC, for the disposition and development of the Residual Burbank School site, in the amount of \$4,000,000.00 and subject to the terms described in the accompanying staff report, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA July 12, 2011

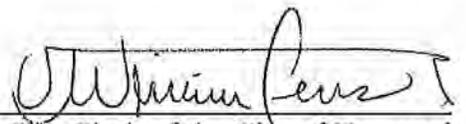
ADOPTED BY THE FOLLOWING VOTE:

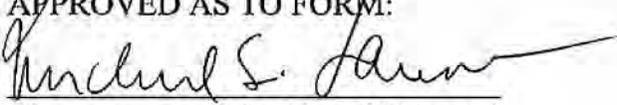
AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



DATE: July 12, 2011

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Agreement for the Purchase and Sale of Real Property between the City of Hayward and Urban Dynamic, LLC for the Construction and Sale of Fifty-Seven Detached Single Family Homes – the Property is Located at 353 B Street (Continued from 6/28/2011)

RECOMMENDATION

That the City Council approves the sale of certain real property located at 353 B Street for the potential development of fifty-seven detached single-family homes by Urban Dynamic, LLC, and adopts the attached resolution (Attachment I) authorizing the City Manager to negotiate and execute the Agreement for Purchase and Sale of Real Property evidencing such transaction.

BACKGROUND

On June 28, 2011, the City Council continued the public hearing on the zoning changes for the residual Burbank site, along with this companion item, to the July 12, 2011 meeting to allow City staff and the applicant time to resolve issues surrounding the undergrounding of utilities along B Street. City staff is continuing to explore options with the applicant and may have additional information for Council at the July 12 meeting regarding options and recommendations related to the undergrounding of utilities along this block of B Street. Any actions taken by Council on July 12, 2011, will be appropriately documented, as necessary, in the final Purchase and Sale Agreement for the property and, if appropriate, in the conditions of approval for the project..

The Redevelopment Agency acquired the Burbank Residual School site from the Hayward Unified School District (HUSD) in July 2008. The subject property was the former location of the Burbank Elementary School; under the Cannery Area Design Plan, the school site was relocated to the west and a new school was constructed. In August 2005, to assure that the facilities at the new Burbank Elementary School would be available for community use, the Hayward Area Recreation and Park District (HARD) and the Hayward Unified School District (HUSD) amended the "Master Facilities Use Agreement" to assure that the facilities at the new Burbank Elementary School would be available to be used for HARD activities when not in use for school or school-related activities.

The site was conveyed to the Agency pursuant to the Public Facilities Development Agreement between the Agency, the City, HUSD, and the Hayward Area Recreation District (HARD), as

partial payment to the Agency for funding the construction of the new Burbank Elementary School. The site is approximately 3.84 acres and it is an entire city block bounded by B and C Streets to the north and south, respectively, and Myrtle and Filbert Streets to the east and west, respectively (see Attachment II).

The Agency originally had a preliminary offer of \$6.0 million from Citation Homes on the property at the height of the market. After that deal fell through and an Exclusive Negotiating Agreement (ENA) with Citation Homes Central was terminated in May 2009, the Agency received an unsolicited proposal from Urban Dynamic, LLC, to purchase the site for \$4.0 million dollars. In June 29, 2010, the Redevelopment Agency Board authorized the Executive Director to enter into an Exclusive Negotiating Agreement (ENA) with Urban Dynamic, LLC for a ninety-day period to prepare initial development plans, have the site appraised, determine its market value, and potentially negotiate the basic terms of a Disposition and Development Agreement (DDA). Upon execution of the ENA, Urban Dynamic, LLC, paid the Agency a \$5,000 non-refundable deposit for Agency incurred expenses. The Deposit shall be credited to the Purchase Price at close of escrow.

On January 18, 2011, the Agency Board authorized the Executer Director to grant a ninety-day extension to the Exclusive Negotiating Agreement with Urban Dynamic, LLC, at which time the developer increased their deposit by \$45,000. If the Agreement for Purchase and Sale of Real Property is terminated prior to close of escrow, any unexpended portion of the Deposit will be returned to Urban Dynamic if the Agreement is terminated due to a default by the City. However, if Urban Dynamic defaults on the Agreement, the City shall retain the deposit.

In March 2011, in response to the Governor's proposal to eliminate redevelopment agencies throughout the State, the Redevelopment Agency transferred the property to the City and assigned the Exclusive Negotiating Agreement to the City as well.

DISCUSSION

In accordance with the terms of the Exclusive Negotiating Agreement, Urban Dynamic, LLC, submitted an application to the Planning Division for the Rezoning and Tentative Tract Map for the proposed fifty-seven single family homes at the Residual Burbank School Site on October 22, 2010 (see Attachment II). The Planning Commission approved the Rezoning and Tentative Tract Map for the project on May 22, 2011. The architectural design is reflective of the neighborhood character, including along B Street. In addition, the project proposes substantial green features including, but not limited to: (1) a standard solar package on all units with opportunities for upgrades; (2) a charging station within each garage for electric vehicles; and (3) the development is seeking a LEED Neighborhood Design designation for the project.

As part of the negotiations with Urban Dynamic, LLC to sell/purchase the site, the following are the key deal points:

- **Soil Clean-up & Removal Action Work Plan:** On May 10, 2011, TRC Solutions, Inc. (TRC) presented the results of their soils investigation study to the City. The study identified four locations that contain arsenic, lead and/or mercury levels exceeding approved levels for residential communities. The proposed remediation efforts will include soil removal in the four

locations. The size of each location is approximately 50 feet by 50 feet by .5 feet to 1 foot deep. Upon completion of the soil removal, TRC will prepare a Removal Action Completion (RAC) Report for submission to the Department of Toxic Substance Control (DTSC) for regulatory approval. TRC will work with the City to obtain a "No Further Action" (NFA) certification letter from DTSC.

The contract amount for remediation of the site and obtaining clearance from DTSC is \$62,000. Urban Dynamic, LLC will reimburse the City for the cost of the remediation work and the additional preliminary soils investigative work, which cost \$24,800.

- Development Fees and Charges: To ensure that future increases in fees and charges do not impact the overall feasibility of the project, Urban Dynamic, LLC, has requested that current rates for "Development Fees and Charges" be fixed at current rates and will be due at the close of escrow for the sale of each unit as follows: - "Building Construction & Improvement Tax" at \$750 per unit; "Supplemental Building Construction & Improvement Tax" at \$1,200 per unit; "Park-Dedication-in-lieu Fees" at \$11,953 per unit; "Inclusionary Housing In-Lieu Fees" at \$80,000 per inclusionary unit; and "Sewer and Water Connection Fees" While staff does not anticipate significant increases in any of these fees or charges, given the unstable housing market, staff agreed that this was a reasonable request.
- Prevailing Wages: Urban Dynamic, LLC shall be required to pay all contractors and subcontractors performing improvements on the Site prevailing wages for each craft and classification as determined by the Director of the Department of Industrial Relations.
- Inclusionary Housing Ordinance: In January 2011, the City Council adopted an Ordinance providing interim relief from the Inclusionary Housing Ordinance effective until December 31, 2012. The Relief Ordinance allows a developer to pay an inclusionary housing in-lieu fee "by right" rather than providing the units on-site. In this particular case, the applicant has indicated they will pay the in-lieu fee as allowed for in the Relief Ordinance. The in-lieu fee cost is \$80,000 per affordable unit.
- Green Features: As noted above, Urban Dynamic, LLC has designed the project to include solar panels and other "green features" with the potential for buyers to purchase upgraded green amenities.
- Underground Service: all service to dwellings shall be "underground service" designed and installed in accordance with Pacific Gas and Electric Company, AT&T (phone) Company, local cable company, and City regulations. All facilities necessary to provide service to the dwelling, including transformers and switchgear, shall also be undergrounded, as approved by the Planning Commission as a condition of project approval. As mentioned previously, the conditions of approval and the Purchase and Sale Agreement will be modified to reflect the final Council action on the underground service issue.

FISCAL AND ECONOMIC IMPACT

Urban Dynamics has proposed to purchase the site for the amount of \$4,000,000. While this is substantially below the first offered price by Citation two years ago (\$6.0 million), it is definitely within market in the current economy. In addition, the green focus of the proposed development is an added benefit to the community.

Since this property is now under City ownership, the proceeds from the sale will go into the General Fund. Given the complexities and unknowns surrounding City-Agency transactions and the uncertain future of the Agency, staff recommends that these funds be held in a designated reserve once escrow has closed. As close of escrow approaches, staff will return to Council for a policy discussion on the use of these funds.

In addition to the sale proceeds, redevelopment of the site will generate an estimated \$250,000 to \$300,000 per year in tax increment. Additionally, construction jobs would be created as the housing units are developed.

PUBLIC CONTACT

June 29, 2010: Redevelopment Agency Board authorized an Exclusive Negotiating Agreement with Urban Dynamic, LLC for a Proposed Residential Development at the Residual Burbank School

November 18, 2010: Property owners within a 300-foot radius of the project site were notified of meeting to be held November 18; two residents attended this meeting and expressed their support for the proposed project.

January 18, 2011: Redevelopment Agency Board authorization to extend the Exclusive Negotiating Agreement with Urban Dynamic, LLC.

January 24, 2011, and April 25, 2011: Neighborhood Partnership Meetings were held at the Burbank Elementary School; Urban Dynamics, LLC shared the plans for the proposed site informally after the public meeting with interested members of the community.

May 26, 2011: Planning Commission Meeting to consider land use entitlements for the project; notice of the public hearing was sent to all property owners within a 300-foot radius as well an expanded notification list that included all property owners along B Street.

NEXT STEPS

Staff will continue to negotiate and execute the Agreement for Purchase and Sale of Real Property. Urban Dynamic will continue to work toward complying with the conditions of approval to allow approval of a precise development plan, approval of a final map and ultimately allow for construction of the project. Final Map approval is expected by November 30, 2011, at which time the close of escrow will occur completing the sale and transfer of the site. Phase I construction is scheduled to begin April 15, 2012 and project completion is scheduled for May 31, 2012.

Prepared by: Gloria Ortega, Project Manger

Recommended by: Kelly McAdoo Morariu, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution
- Attachment II: Site Map
- Attachment III: Street Scene

HAYWARD CITY COUNCIL

RESOLUTION NO. 12 - 138

Introduced by Council Member Zermeño

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
APPROVING THE TRANSFER OF SPECIFIED PROPERTY TO THE
SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF
THE CITY OF HAYWARD AND MAKING CERTAIN FINDINGS
RELATING THERETO

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the “Dissolution Act”) to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, in March of 2011, the City of Hayward (the “City”) acquired from the Redevelopment Agency of the City of Hayward (the “Dissolved RDA”) the property generally described as the “Residual Burbank Site” as more particularly described in Exhibit A to this Resolution, incorporated herein by this reference (the “Property”); and

WHEREAS, on January 10, 2012, pursuant to Health and Safety Code Section 34173, the City Council of the City of Hayward (the “City Council”) declared that the City, would act as successor agency (the “Successor Agency”) for the Dissolved RDA effective February 1, 2012; and

WHEREAS, pursuant to AB 1484 (“AB 1484”), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the City Council has considered and desires to approve the transfer of the Property to the Successor Agency; and

WHEREAS, the accompanying staff report provides supporting information upon which the action set forth in this Resolution is based.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby approves the conveyance of the Property to the Successor Agency.

BE IT FURTHER RESOLVED that the City Council authorizes and directs the City Manager, with the concurrence of the City Attorney, to convey the Property to the Successor Agency, by execution of a grant deed for the conveyance of the Property and to take any action and execute any document as may be necessary to implement this Resolution.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its passage and adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, July 17, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Jones, Peixoto, Salinas, Mendall
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Halliday

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward

EXHIBIT A

LEGAL DESCRIPTION

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

ALL of PARCEL 1, as said parcel is shown on Parcel Map 9659, filed July 7, 2008 in Map Book 308, Pages 29-34, inclusive, Alameda County Records.

CONTAINING 3.8480 acres, more or less as shown on said Parcel Map 9659.

July 9, 2008

Norman Payne

NORMAN PAYNE
L.S. No. 4388
License Expires 09/30/09



APN: 431-0110-007-00



DATE: July 17, 2012

TO: Mayor and City Council
Chair and Members of Successor Agency Board

FROM: Assistant City Manager

SUBJECT: Approval of the Conveyance of the Residual Burbank Site from the City to the Successor Agency; Successor Agency Approval and Acceptance of the Conveyance of the Residual Burbank Site from the City to the Successor Agency; and Approval of the Conveyance of the Residual Burbank Site to Urban Dynamic and Subsequent Assignment to KB Home

RECOMMENDATION

That the City Council takes the following actions, and adopts the attached resolution:

1. Authorizing the City Manager to execute a grant deed to convey the Residual Burbank Site (located at 353 B Street) from the City of Hayward to the Successor Agency for the Redevelopment Agency of the City of Hayward.

That the City Council, acting in its capacity as the governing board of the Successor Agency, take the following actions, and adopt the attached resolution:

1. Authorizing the acceptance of the Residual Burbank Site and approve the conveyance of the Residual Burbank Site to Urban Dynamic and approving the assignment from Urban Dynamic to KB Home.

BACKGROUND

The sale of the property commonly referred to as the "Residual Burbank Site," located at 353 B Street, has been complicated by a number of factors including the dissolution of the Redevelopment Agency, changing market conditions impacting the viability of the proposed residential development, and more recently, increased costs to mitigate contaminated soil conditions.

On March 2, 2011, the Redevelopment Agency conveyed the Residual Burbank Site from the Redevelopment Agency to the City of Hayward. Since that time, the City has been in negotiations with Urban Dynamic for the proposed sale of the Residual Burbank Site for future development.

On June 28, 2011, City Council approved the sale of the Residual Burbank School Site to Urban Dynamic pursuant to the terms outlined in the staff report dated June 28, 2011¹.

On March 20, 2012, the City Council approved the assignment of the Residual Burbank School site to KB Home, and also approved a reduction of the purchase price from \$4,000,000 to \$3,600,000 as a result of declining market values for new homes. The parties intended that the assignment would occur upon the close of escrow by Urban Dynamic. The terms of the assignment are outlined in the staff report dated March 20, 2012². The parties anticipate that the assignment to KB Home will facilitate the proposed development for fifty-seven residential homes as approved by the Planning Commission and City Council.

TRC Solutions has been under contract with the former Redevelopment Agency to provide remediation work on the Burbank Residual Site in an ongoing effort to conduct additional Phase II Environmental Investigation, and to prepare a Removal Action Completion Report (RAC). This would facilitate obtaining clearance from the Department of Toxic Control Substance (“DTSC”) or the Regional Water Quality Control Board (“RWQCB”) to allow for the development of residential housing on the Residual Burbank Site. The ongoing remediation efforts are continuing and due to updates in the removal strategy and reassessed site conditions utilizing additional information, the remediation budget needs to be increased from \$62,000 to \$328,610. A peer review consultant conducted an independent analysis of the increased cost proposal and excavation areas, and was in general agreement, that the increase to the proposed soil removal was necessary to enable residential use of the site. The completion of the remediation work is a condition of conveyance of the site to Urban Dynamic and its completion will ensure the future development of the site.

DISCUSSION

Conveyance from City to Successor Agency

The transfer from the City to the Successor Agency and the subsequent conveyance of the Residual Burbank Site to Urban Dynamic will result in the expeditious disposal of the property in a manner aimed at maximizing value and preventing further losses from declining market value, in a manner consistent with the Dissolution Act. Furthermore, the conveyance by the Successor Agency to Urban Dynamic and the subsequent assignment to KB allows for greater assurance that the site will be developed as residential housing. Therefore, staff recommends that the City Manager be authorized to execute a grant deed to effectuate the conveyance of the Residual Burbank Site from the City of Hayward to the Successor Agency. Staff further recommends, that subject to Oversight Board approval, the Successor Agency be authorized to execute a purchase and sale agreement (consistent with the terms of the June 28, 2011 staff report and subject to completion of the remediation efforts) for the conveyance of the Residual Burbank Site to Urban Dynamic for the purchase price of \$3,600,000; and approve the future assignment by Urban Dynamic to KB Home.

¹ June 28, 2011 Staff Report (page 340): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca062811full.pdf>

² March 20, 2012 Staff Report (page 59): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca032012full.pdf>

FISCAL AND ECONOMIC IMPACT

The Successor Agency adopted a Recognized Obligation Payment Schedule for the period June 1, 2012 to December 31, 2012 (the "Second ROPS") which was subsequently approved by the Successor Agency's Oversight Board and the State Department of Finance as required under existing law. The Second ROPS allocated \$62,000 in funds to pay for remediation of the Residual Burbank Site. The Successor Agency has proposed a modification to the Second ROPS to reflect the increased remediation costs. The approval of the Modified Second ROPS is subject to Oversight Board approval. The additional remediation costs are proposed to be paid from future distributions of tax increment received by the Successor Agency pursuant to future ROPS approved by the Oversight Board and the DOF. There will be no impact to the General Fund from the increased remediation costs as the Successor Agency will be responsible for these costs.

The City Council previously approved the sale of the site for \$3,600,000. Staff recommends that the Successor Agency complete the transfer to Urban Dynamic for the same sales price, as it reflects current market values and will provide for the most expeditious transfer of the Residual Burbank Site. The proceeds of the sale of the Residual Burbank Site will be distributed to taxing entities pursuant to the requirements of Health and Safety Code Section 34177(e).

PUBLIC CONTACT

With regard to environmental remediation of the site, the following public contact has occurred:

June 28, 2011: The Redevelopment Agency Board authorized the Executive Director to negotiate and execute a contract with TRC Solutions, Inc. and to prepare a Removal Action Completion Report.

With regard to the sale of the Residual Burbank School Site, the following public contact has occurred:

June 29, 2010: Approval of Exclusive Negotiating Agreement with Urban Dynamic, LLC for a Proposed Residential Development at the Residual Burbank Site.

January 18, 2011: Approval of ninety-day extension to the Exclusive Negotiating Agreement with Urban Dynamic, LLC.

May 26, 2011: Planning Commission Meeting to consider development.

June 28, 2011: City Council approval of the rezoning and tentative map for the site.

June 28, 2011: City Council approval of the sale of the Residual Burbank School site to Urban Dynamic, LLC.

December 6, 2011: City Council approval of a purchase price reduction from \$4.0 million to \$3.6 million due to declining residential market values and assignment of the sale to KB Home following execution of the agreement with Urban Dynamic, LLC.

NEXT STEPS

1. The City Manager will execute a grant deed that would convey the ownership of the Residual Burbank site (located at 353 B Street) from the City of Hayward to the Successor Agency, to facilitate the future disposition and completion of the environmental remediation.
2. The City Manager, on behalf of the Successor Agency, will accept the conveyance of the Residual Burbank Site from the City to the Successor Agency.
3. The City Manager, on behalf of the Successor Agency, will negotiate and execute a contract with TRC Solutions, Inc. (TRC), in the amount of \$328,610 (which includes the previous contract amount of \$62,000) to complete remediation work, prepare a Removal Action Completion Report (RAC) and obtain a "No Further Action" (NFA) notice from the Department of Toxic Substance Control (DTSC), subject to approval of the Modified Second ROPS by the Oversight Board and the Department of Finance.
4. The City Manager, on behalf of the Successor Agency, will negotiate and execute a purchase and sale agreement incorporating the terms specified in the June 28, 2011 staff report at a purchase price of \$3,600,000 with Urban Dynamic and any documents necessary to effectuate the future assignment to KB Home.

Prepared by: Gloria Ortega, Redevelopment Project Manager

Recommended by: Kelly McAdoo Morariu, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution Approving the Transfer of Specified Property to the Successor Agency for the Redevelopment Agency of the City of Hayward and Making Certain Findings Relating Thereto

Attachment II: Successor Agency Resolution Approving Transfer of Specified Property from the City to the Successor Agency, Approving the Transfer of the Property to Urban Dynamic and Making Certain Findings Relating Thereto

HAYWARD CITY COUNCIL

RESOLUTION NO. RSA 12- 06

Introduced by Board Member Zermeño

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD, ACTING AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD, A SEPARATE LEGAL ENTITY, APPROVING THE TRANSFER OF SPECIFIED PROPERTY FROM THE CITY OF HAYWARD TO THE SUCCESSOR AGENCY, APPROVING THE TRANSFER OF THE PROPERTY BY THE SUCCESSOR AGENCY TO URBAN DYNAMIC, AND MAKING CERTAIN FINDINGS RELATING THERETO

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, in March of 2011, the City of Hayward (the "City") acquired from the Redevelopment Agency of the City of Hayward (the "Dissolved RDA") the property generally described as the "Residual Burbank Site" as more particularly described in Exhibit A to this Resolution, incorporated herein by this reference (the "Property"); and

WHEREAS, on January 10, 2012 pursuant to Health and Safety Code Section 34173, the City Council of the City of Hayward (the "City Council") declared that the City would act as successor agency (the "Successor Agency") for the Dissolved RDA effective February 1, 2012; and

WHEREAS, pursuant to AB 1484 ("AB 1484"), enacted June 27, 2012 to amend various provisions of the Dissolution Act, the Successor Agency is now declared to be a separate legal entity from the City; and

WHEREAS, the City has been in negotiations with Urban Dynamic, and on June 28, 2011, the City Council approved the Sale of the Property pursuant to the terms described in the staff report dated June 28, 2011, incorporated herein by this reference; and

WHEREAS, on March 20, 2012 the City Council approved the assignment of the right to purchase the property from Urban Dynamic to KB Home pursuant to the terms referenced in the staff report dated March 20, 2012, incorporated herein by this reference; and

WHEREAS, the City Council has considered and desires to approve the transfer of the Property to the Successor Agency; and

WHEREAS, the sale of the Property to Urban Dynamic and subsequent assignment to KB Home will result in the expeditious disposal of the Property in a manner aimed at maximizing value and preventing further losses from declining market value, in a manner consistent with the Dissolution Act; and

WHEREAS, the accompanying staff report provides supporting information upon which the action set forth in this Resolution is based.

NOW, THEREFORE, BE IT RESOLVED that the City Council, acting as the Governing Board of the Successor Agency, hereby approves the acceptance of the Property, as the Successor Agency, and declares that this Resolution constitutes the resolution of acceptance by the Successor Agency of the conveyance of the Property for the purposes of Government Code Section 27281.

BE IT FURTHER RESOLVED that the City Council, acting as the Governing Board of the Successor Agency, authorizes and directs the City Manager, with the concurrence of the City Attorney, to accept the conveyance of the Property to the Successor Agency, by acceptance of a grant deed for the conveyance of the Property and to take any action and execute any document as may be necessary to implement this Resolution.

BE IT FURTHER RESOLVED, subject to Oversight Board approval, that the City Council, acting as the Governing Board of the Successor Agency, hereby approves the conveyance of the Property to Urban Dynamic pursuant to a purchase and sale agreement incorporating the terms specified in the staff report dated June 28, 2011 for the conveyance of the Property and to take any action and execute any document as may be necessary to implement the transfer of the Property pursuant to the terms approved in this Resolution.

BE IT FURTHER RESOLVED that, subject to the Oversight Board approval, the City Council, acting as the Governing Board of the Successor Agency, hereby authorizes and directs the City Manager, acting on behalf of the Successor Agency, to execute the documents and instruments as are appropriate, in consultation with the City Attorney, acting in the capacity of counsel to the Successor Agency, to effectuate and implement the terms of this Resolution.

BE IT FURTHER RESOLVED, subject to Oversight Board approval, that the City Council, acting as the Governing Board of the Successor Agency, hereby approves the future assignment and assumption by KB Home of the right to acquire the Property.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its passage and adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, July 17, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS: Zermeño, Jones, Peixoto, Salinas, Mendall
CHAIR: Sweeney

NOES: BOARD MEMBERS: None
ABSTAIN: BOARD MEMBERS: None
ABSENT: BOARD MEMBERS: Halliday

ATTEST: 
Secretary of the Successor Agency
of the City of Hayward

APPROVED AS TO FORM:


General Counsel of the City of Hayward

EXHIBIT A

LEGAL DESCRIPTION

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

ALL of PARCEL 1, as said parcel is shown on Parcel Map 9659, filed July 7, 2008 in Map Book 308, Pages 29-34, inclusive, Alameda County Records.

CONTAINING 3.8490 acres, more or less as shown on said Parcel Map 9659.

July 9, 2008

Norman Payne



NORMAN PAYNE
L.S. No. 4388
License Expires 09/30/09

APN: 431-0110-007-00



DATE: July 17, 2012

TO: Mayor and City Council
Chair and Members of Successor Agency Board

FROM: Assistant City Manager

SUBJECT: Approval of the Conveyance of the Residual Burbank Site from the City to the Successor Agency; Successor Agency Approval and Acceptance of the Conveyance of the Residual Burbank Site from the City to the Successor Agency; and Approval of the Conveyance of the Residual Burbank Site to Urban Dynamic and Subsequent Assignment to KB Home

RECOMMENDATION

That the City Council takes the following actions, and adopts the attached resolution:

1. Authorizing the City Manager to execute a grant deed to convey the Residual Burbank Site (located at 353 B Street) from the City of Hayward to the Successor Agency for the Redevelopment Agency of the City of Hayward.

That the City Council, acting in its capacity as the governing board of the Successor Agency, take the following actions, and adopt the attached resolution:

1. Authorizing the acceptance of the Residual Burbank Site and approve the conveyance of the Residual Burbank Site to Urban Dynamic and approving the assignment from Urban Dynamic to KB Home.

BACKGROUND

The sale of the property commonly referred to as the "Residual Burbank Site," located at 353 B Street, has been complicated by a number of factors including the dissolution of the Redevelopment Agency, changing market conditions impacting the viability of the proposed residential development, and more recently, increased costs to mitigate contaminated soil conditions.

On March 2, 2011, the Redevelopment Agency conveyed the Residual Burbank Site from the Redevelopment Agency to the City of Hayward. Since that time, the City has been in negotiations with Urban Dynamic for the proposed sale of the Residual Burbank Site for future development.

On June 28, 2011, City Council approved the sale of the Residual Burbank School Site to Urban Dynamic pursuant to the terms outlined in the staff report dated June 28, 2011¹.

On March 20, 2012, the City Council approved the assignment of the Residual Burbank School site to KB Home, and also approved a reduction of the purchase price from \$4,000,000 to \$3,600,000 as a result of declining market values for new homes. The parties intended that the assignment would occur upon the close of escrow by Urban Dynamic. The terms of the assignment are outlined in the staff report dated March 20, 2012². The parties anticipate that the assignment to KB Home will facilitate the proposed development for fifty-seven residential homes as approved by the Planning Commission and City Council.

TRC Solutions has been under contract with the former Redevelopment Agency to provide remediation work on the Burbank Residual Site in an ongoing effort to conduct additional Phase II Environmental Investigation, and to prepare a Removal Action Completion Report (RAC). This would facilitate obtaining clearance from the Department of Toxic Control Substance (“DTSC”) or the Regional Water Quality Control Board (“RWQCB”) to allow for the development of residential housing on the Residual Burbank Site. The ongoing remediation efforts are continuing and due to updates in the removal strategy and reassessed site conditions utilizing additional information, the remediation budget needs to be increased from \$62,000 to \$328,610. A peer review consultant conducted an independent analysis of the increased cost proposal and excavation areas, and was in general agreement, that the increase to the proposed soil removal was necessary to enable residential use of the site. The completion of the remediation work is a condition of conveyance of the site to Urban Dynamic and its completion will ensure the future development of the site.

DISCUSSION

Conveyance from City to Successor Agency

The transfer from the City to the Successor Agency and the subsequent conveyance of the Residual Burbank Site to Urban Dynamic will result in the expeditious disposal of the property in a manner aimed at maximizing value and preventing further losses from declining market value, in a manner consistent with the Dissolution Act. Furthermore, the conveyance by the Successor Agency to Urban Dynamic and the subsequent assignment to KB allows for greater assurance that the site will be developed as residential housing. Therefore, staff recommends that the City Manager be authorized to execute a grant deed to effectuate the conveyance of the Residual Burbank Site from the City of Hayward to the Successor Agency. Staff further recommends, that subject to Oversight Board approval, the Successor Agency be authorized to execute a purchase and sale agreement (consistent with the terms of the June 28, 2011 staff report and subject to completion of the remediation efforts) for the conveyance of the Residual Burbank Site to Urban Dynamic for the purchase price of \$3,600,000; and approve the future assignment by Urban Dynamic to KB Home.

¹ June 28, 2011 Staff Report (page 340): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca062811full.pdf>

² March 20, 2012 Staff Report (page 59): <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca032012full.pdf>

FISCAL AND ECONOMIC IMPACT

The Successor Agency adopted a Recognized Obligation Payment Schedule for the period June 1, 2012 to December 31, 2012 (the "Second ROPS") which was subsequently approved by the Successor Agency's Oversight Board and the State Department of Finance as required under existing law. The Second ROPS allocated \$62,000 in funds to pay for remediation of the Residual Burbank Site. The Successor Agency has proposed a modification to the Second ROPS to reflect the increased remediation costs. The approval of the Modified Second ROPS is subject to Oversight Board approval. The additional remediation costs are proposed to be paid from future distributions of tax increment received by the Successor Agency pursuant to future ROPS approved by the Oversight Board and the DOF. There will be no impact to the General Fund from the increased remediation costs as the Successor Agency will be responsible for these costs.

The City Council previously approved the sale of the site for \$3,600,000. Staff recommends that the Successor Agency complete the transfer to Urban Dynamic for the same sales price, as it reflects current market values and will provide for the most expeditious transfer of the Residual Burbank Site. The proceeds of the sale of the Residual Burbank Site will be distributed to taxing entities pursuant to the requirements of Health and Safety Code Section 34177(e).

PUBLIC CONTACT

With regard to environmental remediation of the site, the following public contact has occurred:

June 28, 2011: The Redevelopment Agency Board authorized the Executive Director to negotiate and execute a contract with TRC Solutions, Inc. and to prepare a Removal Action Completion Report.

With regard to the sale of the Residual Burbank School Site, the following public contact has occurred:

June 29, 2010: Approval of Exclusive Negotiating Agreement with Urban Dynamic, LLC for a Proposed Residential Development at the Residual Burbank Site.

January 18, 2011: Approval of ninety-day extension to the Exclusive Negotiating Agreement with Urban Dynamic, LLC.

May 26, 2011: Planning Commission Meeting to consider development.

June 28, 2011: City Council approval of the rezoning and tentative map for the site.

June 28, 2011: City Council approval of the sale of the Residual Burbank School site to Urban Dynamic, LLC.

December 6, 2011: City Council approval of a purchase price reduction from \$4.0 million to \$3.6 million due to declining residential market values and assignment of the sale to KB Home following execution of the agreement with Urban Dynamic, LLC.

NEXT STEPS

1. The City Manager will execute a grant deed that would convey the ownership of the Residual Burbank site (located at 353 B Street) from the City of Hayward to the Successor Agency, to facilitate the future disposition and completion of the environmental remediation.
2. The City Manager, on behalf of the Successor Agency, will accept the conveyance of the Residual Burbank Site from the City to the Successor Agency.
3. The City Manager, on behalf of the Successor Agency, will negotiate and execute a contract with TRC Solutions, Inc. (TRC), in the amount of \$328,610 (which includes the previous contract amount of \$62,000) to complete remediation work, prepare a Removal Action Completion Report (RAC) and obtain a "No Further Action" (NFA) notice from the Department of Toxic Substance Control (DTSC), subject to approval of the Modified Second ROPS by the Oversight Board and the Department of Finance.
4. The City Manager, on behalf of the Successor Agency, will negotiate and execute a purchase and sale agreement incorporating the terms specified in the June 28, 2011 staff report at a purchase price of \$3,600,000 with Urban Dynamic and any documents necessary to effectuate the future assignment to KB Home.

Prepared by: Gloria Ortega, Redevelopment Project Manager

Recommended by: Kelly McAdoo Morariu, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution Approving the Transfer of Specified Property to the Successor Agency for the Redevelopment Agency of the City of Hayward and Making Certain Findings Relating Thereto

Attachment II: Successor Agency Resolution Approving Transfer of Specified Property from the City to the Successor Agency, Approving the Transfer of the Property to Urban Dynamic and Making Certain Findings Relating Thereto

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Approval of Final Map Tract 7893 – Regency Square Development by KB Home South Bay Inc. (Applicant/Owner) - The Project Site is Located Generally at the Intersection of Orchard Avenue and Traynor Street, Westerly of Soto Road

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment III) approving the Final Map for Tract No. 7893 – Regency Square Development and finds that it is in substantial conformance with the approved Vesting Tentative Tract Map No. 7893 and the conditions of approval thereof; and authorizes the City Manager to take other administrative actions and execute a Subdivision Agreement and such other documents as appropriate to effectuate the required improvements for the development.

BACKGROUND

Tentative and final subdivision maps are required for all subdivisions creating five or more parcels. A tentative tract map is required to ensure that any proposed development complies with the Subdivision Map Act; the California Environmental Quality Act; the City Subdivision, Zoning, and Building regulations; the Hayward General Plan and Neighborhood Plans; and the requirements of the Public Works, Fire, and Police Departments. After the tentative map is approved, the developer submits the final map and improvement plans for review and approval by the City Engineer before proceeding with the construction. The developer is required to file the tentative and final maps for this eighty single-family dwelling unit subdivision in order to sell the lots individually.

On June 26, 2007, relying on the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the development applications, the Council approved the General Plan Amendment, Zone Change, and Vesting Tentative Tract Map applications to amend the General Plan Land Use Designation from Mixed Industrial to Medium-Density Residential, and to Change the Zoning from Industrial (I) District to a Planned Development (PD) District in order to develop eighty single-family homes. The PD zoning approval included approval of a preliminary development plan.

On June 18, 2013, KB Homes completed its acquisition of this property from Nelson Trust *et. al.*, and on May 20, 2013, submitted a minor Precise Plan Modification, preliminary Improvement Plans and the Final Map to the City for review and approval prior to obtaining building permits for construction. The Precise Plan Modification involved minor architectural changes and was administratively and conditionally approved by Planning Director on August 23, 2013. KB Home anticipates commencing construction by early 2014, weather permitting, and completing construction by the end of 2015.

DISCUSSION

Final Map - Tract 7893 is generally located at the intersection of Orchard Avenue and Traynor Street, westerly of Soto Road. This tract development is a proposed medium-density residential project that would provide a use more compatible with nearby residential and commercial uses and an appropriate transition from the single-family residential developments to the south and the commercial corridor along Jackson Street to the north. The site is bordered by Jackson Street along its northerly border and by the Union Pacific railroad tracks along its westerly edge.

The proposed development entails construction of eighty three-story ownership detached homes on lots of approximately 1,470 square feet. The homes would have front entrances facing common walkways or paseos that would run between rows of units. This project provides 243 parking spaces, including eight spaces along one side of Orchard Avenue at the entrance to the project. The developer would improve this portion of Orchard Avenue with curb and gutter and landscaping. All units would contain standard two-car garages accessing the private streets. The resulting overall average parking ratio is slightly more than 3.0 spaces per unit.

The subdivision improvement plans and Final Map were reviewed by the City Engineer and were found to be in substantial compliance with the vesting tentative map, and in conformance with the Subdivision Map Act and Hayward's regulations. There have not been significant changes to the final map, compared to the tentative tract map the City Council approved in June of 2007.

The City Council's approval of the Final Map shall not become effective until and unless the Developer enters into a Subdivision Agreement and posts bonds with the City for the construction of improvements and other obligations required per conditions of approval of the tentative tract map. The developer has submitted the subdivision improvement plans and subdivision bonds totaling \$794,000 for the required tract improvements.

Summary Vacation of portions of Traynor Street and Orchard Avenue -

Pursuant to California Streets and Highways Code, the Council ordered that the portions of Traynor Street and Orchard Avenue southeasterly of Traynor Street are to be vacated with the effective date determined by the City Engineer via Resolution 07-115 on July 24, 2007. On September 20, 2013, KB HOME South Bay Inc. deposited the right-of-way purchase price of \$446,000 into escrow with First American Title Company in Pleasanton, California. The City Engineer has agreed that the City will vacate portions of right-of-way on Orchard Avenue and Traynor Street as part of the Final Map for Tract 7893, and that the purchase price will be released to the City of Hayward upon the recordation of the Final Map Tract 7893 at the Alameda County Recorder's Office.

Environmental Review - A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were adopted for the development by the Hayward City Council via Resolution 07-097 on June 26, 2007.

ECONOMIC AND FISCAL IMPACT

The final map approval is consistent with the approved project and the final map by itself, will not have a fiscal or economic impact. The development created by the approval of the final map will improve commerce, provide housing and employ construction workers.

PUBLIC CONTACT

A public hearing is not required for the filing of Final Map Tract 7893. Public hearings were already conducted under the application for Vesting Tentative Map Tract 7893, of which Final Map Tract 7893 is part.

NEXT STEPS

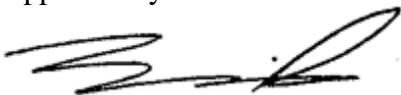
Assuming the City Council approves the Final Map and adopts the attached resolution, the applicant will have the final map recorded and will execute a Subdivision Agreement with the City, and will commence the construction of improvements shown on the approved Improvement Plans. The applicant anticipates commencing construction in early 2014 and completing construction by the end of 2015.

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

Reviewed by: Pat Siefers, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

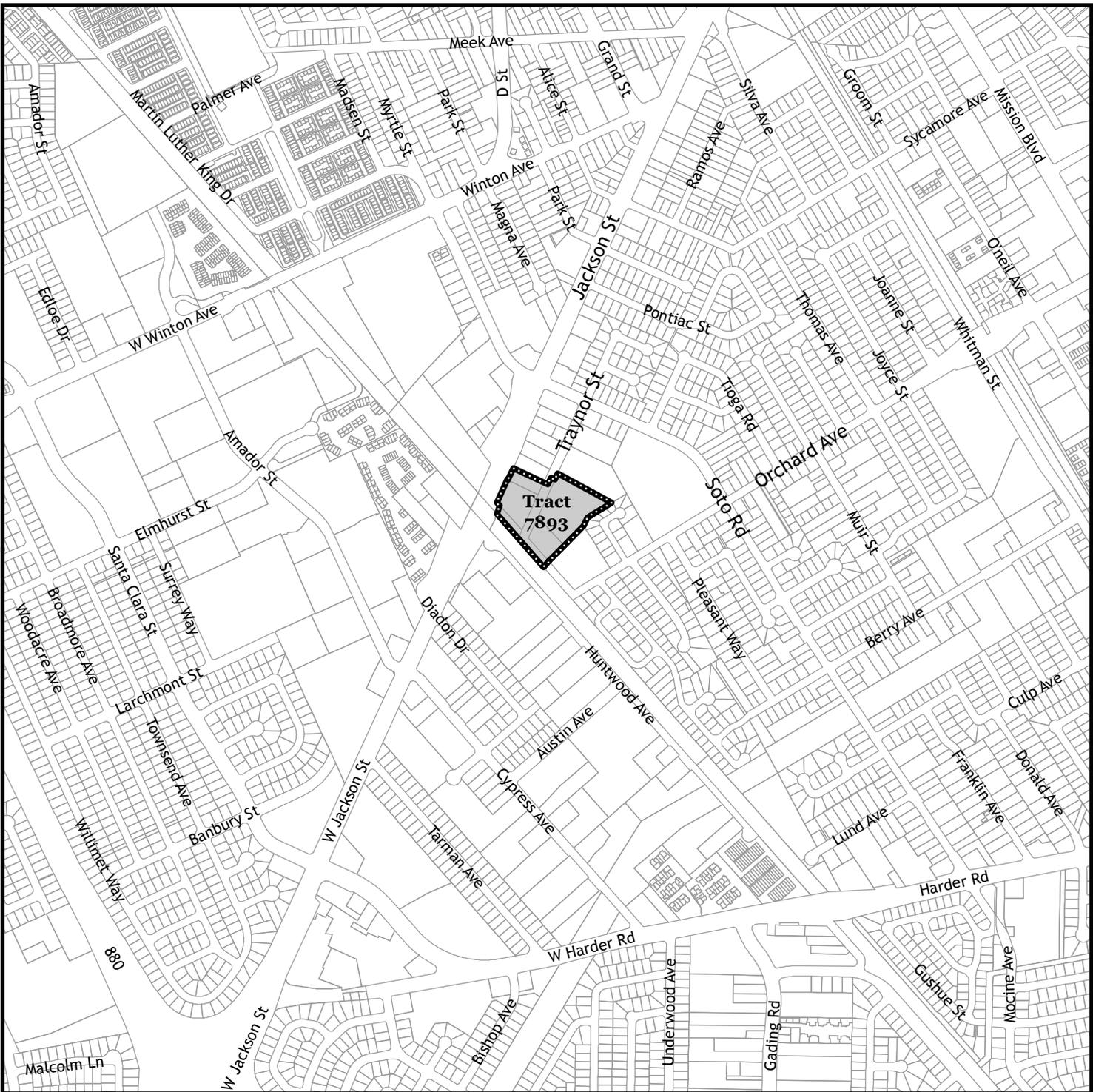
Approved by:



Fran David, City Manager

Attachments:

Attachment I	Vicinity Map
Attachment II	Site Plan Tract 7893
Attachment III	Resolution Approving Final Map 7893 and Authorizing Execution of a Subdivision Agreement



Final Map 7893

Address:
Traynor Street & Orchard Avenue

Applicant:
KB Home South Bay, Inc.

Owner:
KB Home South Bay, Inc.





Site Plans - Tract 7893



Site Plans - Tract 7893

Address:
Traynor Street & Orchard Avenue

Applicant:
KB Home South Bay, Inc.

Owner:
KB Home South Bay, Inc.



HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION APPROVING FINAL MAP FOR TRACT 7893 AND
AUTHORIZING THE CITY MANAGER TO EXECUTE A
SUBDIVISION AGREEMENT

WHEREAS, Vesting Tentative Tract Map No. 7893, Regency Square Development, was approved by the City Council on June 26, 2007, and the Final Map for Tract 7893 has been presented to the City Council of the City of Hayward for a development of 80 single-family dwelling units located generally at the intersection of Orchard Avenue and Traynor Street; and

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby find that the Final Map for Tract 7893 is in substantial conformance with the approved vesting tentative map and does hereby approve the Final Map, subject to the condition that the subdivider enter into an agreement for the construction of improvements and other obligations required as conditions of approval of the tentative map for Tract 7893 and that approval shall not be effective until and unless such agreement is entered into.

BE IT FURETHER RESOLVED that the City Manager is hereby authorized for and on behalf of the City of Hayward to negotiate and execute a subdivision agreement in forms approved by the City Attorney, and to execute any and all documents necessary to complete the transfer of those portions of Tract 7893 property that will be dedicated to or acquired by the City.



DATE: December 17, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Engineering and Transportation

SUBJECT: Authorization for the City Manager to Negotiate and Execute an Agreement with Noll & Tam Architects and Planners for Professional Design Services for the Hayward 21st Century Library & Community Learning Center

RECOMMENDATION

That Council adopts the attached resolutions:

1. Authorizing the City Manager to negotiate and execute a Professional Services Agreement with Noll & Tam Architects and Planners in an amount not-to-exceed \$3,000,000 for professional design services for the Hayward 21st Century Library & Community Learning Center; and
2. Transferring \$3,200,000 from the Donations Fund to the Capital Projects (Governmental) Fund; and appropriating the funds to the project budget from the Donations Fund in order to complete the necessary design services for this project.

BACKGROUND

The design and construction of a new Main Library and Community Learning Center in downtown Hayward is a key facility planning project identified in the City Council Priorities and the Ten-Year Capital Improvement Program (CIP). Funds have been dedicated in prior years from the CIP budget to cover the costs of planning a new Main Library and Community Learning Center facility.

On June 19, 2007, the City Council authorized the City Manager to execute a professional services agreement with Noll & Tam Architects and Planners for the planning and conceptual design of a new Main Library and Community Learning Center. Noll & Tam was originally selected as the qualified consultant through a Request for Proposal process. The planning portion of the project was to be completed in three phases: Community Profile and Needs Analysis; Site Selection and Building Program; and Preliminary Conceptual Building Design.

During Phase I, the consultant prepared a comprehensive profile of the Hayward community and an analysis of current and future library service needs. Phase II involved the preparation of a conceptual design of selected building site alternatives and the development of a draft building program. Lastly, during Phase III, staff and the consultant convened a series of focus groups comprised of various stakeholders to assist in the development of three preliminary design options

for the building. The focus groups and the design team were successful in developing three preliminary design concepts of the Library and Community Learning Center facility. On November 9, 2010, these three design concepts were detailed and provided to Council, and can be found in the following link to the staff report: “[Review and Consideration of Design Options for a New Library and Community Learning Center](http://bit.ly/Prelim-design-report)” (<http://bit.ly/Prelim-design-report>)

On October 29, 2012, the City executed a new contract with Noll & Tam Architects and Planners, in the amount of \$25,000, for a Visualization Study for the Library and Community Learning Center facility. This work included a series of renderings showing different architectural options for the facility, including a children’s area and updated construction cost estimates & conceptual energy models. On June 25, 2013, Council approved a preliminary design concept for the library.

DISCUSSION

On August 29, 2013, a Request for Proposal (RFP) for the 21st Century Library & Community Learning Center was sent out to eleven architectural firms that specialize in the design of libraries. Two proposals were received from Noll & Tam Architects and Planners and Group 4 Architects on September 18, 2013 in response to the RFP. After a careful review of the proposals, staff has concluded that Noll & Tam Architects and Planners is the best qualified architect and has the most knowledge and understanding of the City’s objectives for this project. Furthermore, staff has found Noll & Tam to be very timely with all requested deliverables during the project planning phase. As noted previously, Noll & Tam has been involved in various phases of the project, including a needs assessment and conceptual design for the library, since June 2007.

As envisioned in the preliminary studies and needs assessment reports, this professional design services contract is for an approximately 58,000 square feet library building on three floors. The library is to be located at the corner of C Street and Mission Boulevard in downtown Hayward, adjacent to the Post Office. Noll and Tam Architects and Planners will produce the final construction drawings, specifications and cost estimates for the library building, that addresses the community service needs developed during the planning and study phases of the project, and other site improvements to complement the library. The site improvements include improvements to C Street that will provide additional area for the library building, as well as create a more pedestrian friendly experience along C Street. Also, the adjacent parking structure is to be modified to include an elevator at the eastern corner of the parking structure. A landscape and hardscape transition between the parking structure and the library building shall also be provided in the design. Additionally, the design contract calls for redesign and reprogramming of the existing historic Library Park Plaza. The construction drawings will have a useful life of approximately five years, allowing the City adequate time to plan for the financing of the actual construction of the facility.

FISCAL IMPACT

Staff negotiated a contract with Noll & Tam Architects and Planners in an amount not-to-exceed \$3,000,000, including contingencies:

- Consultant Design Services (not to exceed) \$3,000,000
- Design Administration – City Staff 200,000
- TOTAL Project Design Services: \$3,200,000

An allocation of \$3,200,000 is needed to complete the necessary design services for this project. As noted in Attachment II, staff recommends that Council approve a resolution which authorizes the transfer of additional funds from the Donation Fund (Fund 250) to the Capital Projects (Governmental) Fund (Fund 405) to complete the design. The Donations Fund primarily consists of monies contributed by Calpine in an amount of \$10 million that are earmarked for the development of a new library. The Fund contains sufficient fund balance to accommodate this transfer. Previously, City Council approved \$700,000 of the \$10 million to fund the Main Library’s Automated Materials Handling project. This equipment will be relocated to the new library building after construction completion.

PUBLIC CONTACT

In 2008, a survey was sent out to Hayward residents for input in developing a needs assessment for the Library. At various stages during project planning, presentations were made during public meetings of the Library Commission and the City Council.

SCHEDULE

Begin Design	January 15, 2014
Complete Design	April 30, 2015

Prepared by: Yaw Owusu, Assistant City Engineer

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

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution – Agreement Approval
- Attachment II: Resolution – Transfer and Appropriation of Funds
- Attachment III: Site Plan and Floor Plan

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH NOLL AND TAM ARCHITECTS AND PLANNERS FOR PROFESSIONAL DESIGN SERVICES ASSOCIATED WITH THE HAYWARD 21ST CENTURY LIBRARY & COMMUNITY LEARNING CENTER PROJECT, PROJECT NO. 06992

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with Noll and Tam Architects and Planners for professional design services associated with the Hayward 21st Century Library & Community Learning Center Project, Project No. 06992, in an amount not to exceed \$3,000,000, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AMENDING RESOLUTION 13-105, AS AMENDED, THE BUDGET RESOLUTION FOR CAPITAL IMPROVEMENT PROJECTS FOR FISCAL YEAR 2014, FOR A TRANSFER OF FUNDS FROM THE DONATIONS FUND (FUND 250) TO THE CAPITAL PROJECTS (GOVERNMENTAL) FUND (FUND 405); AND FOR AN APPROPRIATION OF FUNDS FROM THE CAPITAL PROJECTS (GOVERNMENTAL) FUND TO THE HAYWARD 21ST CENTURY LIBRARY & COMMUNITY LEARNING CENTER PROJECT, PROJECT NO. 06992

BE IT RESOLVED by the City Council of the City of Hayward that Resolution 13-105, as amended, the Budget Resolution for Capital Projects for Fiscal Year 2014, is hereby further amended by approving a transfer of \$3,200,000 from the Donations Fund (Fund 250) to the Capital Projects (Governmental) Fund (Fund 405); and an appropriation of \$3,200,000 from the Donations Fund to the Hayward 21st Century Library & Community Learning Center Project, Project No. 06992.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

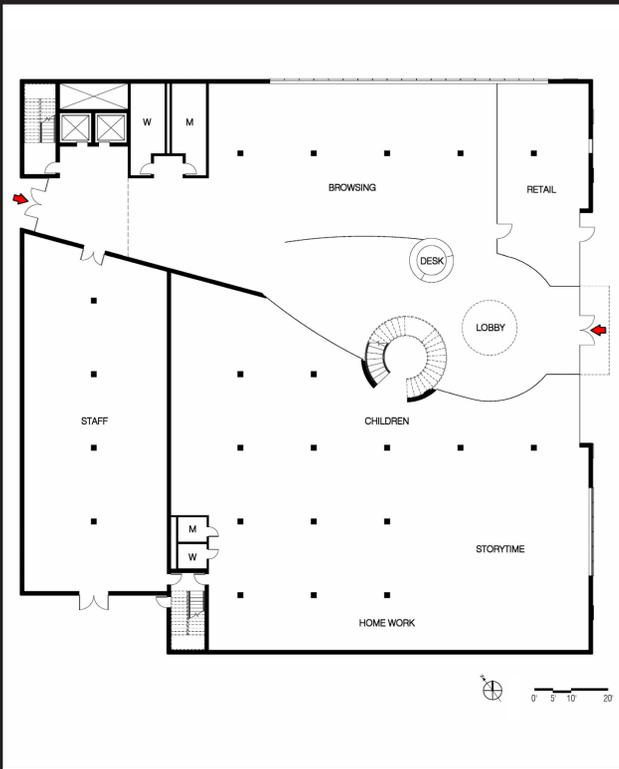
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

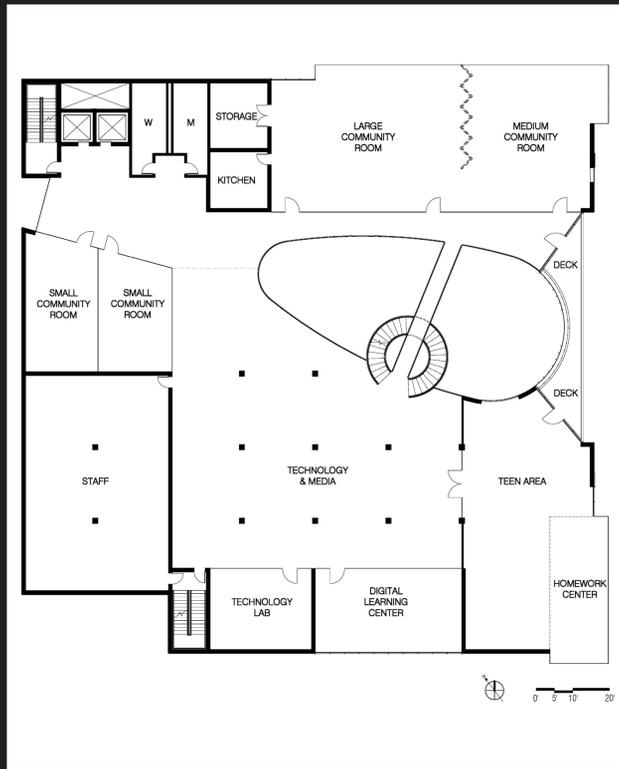
ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

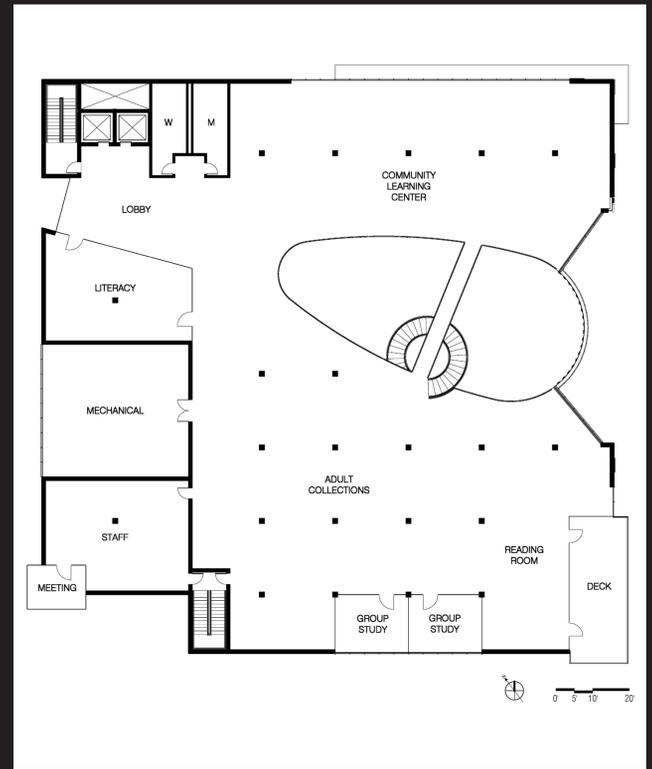
City Attorney of the City of Hayward



First Floor



Second Floor



Third Floor



Site Plan



DATE: December 17, 2013

TO: Mayor and Council

FROM: Director of Public Works – Engineering and Transportation

SUBJECT: Authorization for the City Manager to Negotiate and Execute an Agreement with Ross Drulis Cusenbery Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to negotiate and execute a Professional Services Agreement with Ross Drulis Cusenbery Architecture in an amount not to exceed \$200,000 for professional services for the Facilities Needs Assessment Study and Master Planning of the Police Administration Building, and Fire Stations 1-6 & 9.

BACKGROUND

Police Administration Building

The Hayward Police Department has outgrown its current facilities on Winton Avenue, completed in 1975. In 2003, almost 2,000 square-foot of additional office space was added to the administration building to accommodate the Youth and Family Services program, as well as the Communications Center. The thirty eight-year-old building no longer meets the space, operational or security needs of the Department. Policing operations are hampered by lack of space and outdated interior planning. Functions that should work closely together are separated with the use of modular buildings outside the main building. Further, there is insufficient parking to accommodate department and staff vehicles. To prudently invest in a replacement building at this point in time will ensure the department can efficiently and cost-effectively meet the needs of the community for many years into the future.

Fire Station Buildings

Fire Stations 1, 2, 3, 4, 5, 6 and 9 are aging facilities facing problems of varying degrees: structural deficiencies; substandard training rooms, biohazard equipment cleaning areas, storage, code compliance, air quality, office space, and parking; and inadequate accommodations for department personnel. In January 1991, a Seismic Assessment of Essential Facilities was performed by an outside consulting firm that included all the above buildings except Fire Station #1, which is a fairly new facility that was constructed in 1997. The purpose of the Seismic Assessment was to develop recommendations to mitigate seismic deficiencies that could cause an essential facility to be inoperable or that could pose a life safety hazard. In 1992, seismic retrofit and restroom additions were implemented for Fire Stations #2 through #5. In 2002, Fire Station #5 was expanded by

approximately 680 square feet with the addition of a ladder maintenance area and weight rooms. In 2006, an existing detached storage building at Fire Station #2 was remodeled to convert the structure into a self-containing breathing apparatus (SCBA) workshop room. During the same year, a female restroom and locker room with an area of 232 square feet was added to Fire Station #6.

DISCUSSION

The objectives of this Facilities Needs Assessment Study are to determine the current and long-term (25-year) facility and operational needs of these buildings. The Study will evaluate energy efficiency options and will propose recommendations as to how the operational needs of these Departments can best be met through facility planning. For the Police Administration Building and Fire Station 9 studies, which are expected to result in recommended new buildings, the consultant will initiate the appropriate planning processes to determine needed building space and service needs to serve the Hayward community over the next 25 years or more. The resulting needs analyses shall be the guiding principles to determine the building sizes for each building. There are two possible locations for siting a new Police Administration building: (a) the current building site on West Winton Avenue, and (b) a City-owned lot between City Hall and the Hayward BART Station. A cost-benefit analysis and the comparative benefits and advantages of each site shall be weighed against the objectives and scope of work stated below, and refined following the Needs Assessment Study.

A new Fire Station 9 building is ultimately anticipated to be sited at the present location on Second Street; however, a complete Needs Assessment Study and planning process will be undertaken to develop an appropriate building size and program. For Fire Stations 1, 2, 3, 4, 5 and 6, the study will focus on the seismic assessment of each building and what renovation measures will be needed to bring them up to acceptable standards.

Specific objectives of this Needs Assessment Study and master planning process shall include, but not be limited to, the following:

- a. To understand the Fire and Police Departments' operations and strategies, and the opportunities for more effective operations that the existing buildings or a new facility (for Police Administration & Fire Station 9) could provide.
- b. To understand the Hayward community, its unique and diverse character, and how these facilities can be improved to meet policing and fire operations service needs.
- c. To understand how Hayward may grow and change over the projected 25-year study period, and how the buildings could support the future fire and policing needs & operations.
- d. To determine current and future (25-year projection) space needs, based on the specific requirements of each department, State and Federal laws, building code requirements, and standard police and fire operations practices.
- e. Provide construction and improvement cost estimates for the new buildings, and the structures to be renovated.

- f. Develop a master plan for implementing the improvements over time, as funds become available.

On August 12, 2013, a Request for Proposal (RFP) for the Facilities Needs Assessment Study and Master Plan was sent out to at least twelve architectural firms that specialize in this area. On October 11, 2013, proposals were received from five firms in response to the RFP. After a careful review of the proposals, staff concluded that Ross Drulis Cusenbery Architecture (RDC) is the best qualified firm for this study. RDC is a Bay Area firm specializing in the planning, programming and design of police and fire facilities, 9-1-1 communications centers, emergency operations centers and other public safety projects. Similar projects this firm has completed include the following:

- City of San Francisco Police Department District Station Facility Study
- City of Palo Alto Police Department Public Safety Building
- County of Alameda Cherryland Fire Station and Community Health Clinic
- Town of Los Gatos Police Department Operations Building
- County of Sonoma Sheriff Department Headquarters
- City of San Jose Fire Station 24

FISCAL IMPACT

Staff has negotiated a contract with Ross Drulis Cusenbery Architecture (RDC) in an amount not to exceed \$200,000, including contingencies:

• Consultant Design Services	\$200,000
• Design Administration – City Staff	<u>20,000</u>
TOTAL Project Design Services:	\$220,000

The FY 2014 Capital Improvement Program (CIP) budget includes \$250,000 in the Capital Projects (Governmental) Fund for this project.

PUBLIC CONTACT

As part of the Needs Assessment Study, public meetings, including meetings with the City Council, will be conducted.

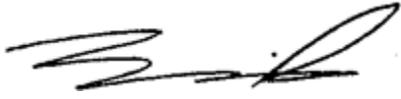
SCHEDULE

Begin Study	January 15, 2014
Complete Study	June 30, 2014

Prepared by: Yaw Owusu, Assistant City Engineer

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH ROSS DRULIS CUSENBERRY ARCHITECTURE FOR PROFESSIONAL SERVICES FOR THE FACILITIES NEEDS ASSESSMENT STUDY AND MASTER PLANNING FOR THE POLICE ADMINISTRATION BUILDING, AND FIRE STATIONS 1-6 AND 9

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with Ross Drulis Cusenberry Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9, in an amount not to exceed \$200,000, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adoption of Resolution Extending the Inclusionary Interim Relief Ordinance for a Six-Month Period

RECOMMENDATION

That the City Council:

- 1) Adopts the attached resolution (Attachment I) extending the Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions for a six-month period and finding that the extension is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

BACKGROUND

In June 2003, the City of Hayward (the “City”) adopted the Inclusionary Housing Ordinance (the “Ordinance”) to help increase the supply of housing that is affordable to low and moderate-income households.¹ The Ordinance requires that fifteen percent (15%) of the units in new residential developments be made affordable to low and moderate-income households. The Ordinance applies to both ownership and rental housing developments consisting of twenty or more units. Pursuant to the Ordinance, the City also established an Affordable Unit In-lieu Fee (the “In-lieu Fee”) by resolution.

Due to the downturn in the new housing construction market, as well as recent court decisions, in 2010, the City hired a consultant to conduct a review of the Ordinance and an Affordable Housing Nexus Study (the “Nexus Study” or the “Study”) to determine the impact of market rate housing on the need for affordable housing. The Study also attempted to calculate the appropriate amount of the In-lieu Fee and the recommended method of payment consistent with the cost of market rate “for-sale” and “rental” housing for single-family detached, single-family attached (townhome), condominiums, and rental apartments in Hayward. Finally, the Study attempted to calculate the affordable housing cost differential (the subsidy or differential needed to provide market-rate housing at affordable rents or prices) and to review best practices for calculating in-lieu fees.

¹ The Ordinance is now included in Article 17 of the Hayward Municipal Code

Based on the consultant's conclusions and recommendations, on December 14, 2010, the City Council introduced an ordinance that provided interim relief from certain inclusionary housing provisions (the Relief Ordinance)² and subsequently adopted the ordinance on January 18, 2011. The Relief Ordinance enacted temporary measures to the Ordinance effective until December 31, 2012. In response to recommendations from staff and members of the development community, on November 15, 2011, the City Council introduced an ordinance that clarified certain provisions of the Relief Ordinance (the First Amendment to the Relief Ordinance).³

At the sunset of the Relief Ordinance, on December 18, 2012, the City Council extended the inclusionary housing relief provisions for twelve months to allow staff to conduct a nexus study similar to the one conducted in 2010 to further amend the Relief Ordinance or to either reinstate or permanently modify the Ordinance.⁴ This twelve-month extension of the Relief Ordinance is referred to as the Second Amendment to the Relief Ordinance.

The following are the main relief provisions, as amended, in effect as of the date of this report:

- The inclusionary housing percentages are reduced from 15% to 10% for single-family detached housing and to 7.5% for single-family attached housing;
- Developers are allowed to pay in-lieu fees "by right" rather than providing units on site, at the developers' option;
- Payment of in-lieu fees are deferred until issuance of a certificate of occupancy;
- Rental housing developments approved without a subdivision or condominium map are exempted from any inclusionary requirements – unless they receive City assistance of some type.
- In order to benefit from the interim relief provisions: a) projects must receive discretionary approvals by December 31, 2013; b) building permits must be issued by December 31, 2015; and c) developers must pay in-lieu fees upon receipt of a certificate of occupancy or at the time of final inspection if no occupancy permit is required for a dwelling unit.

Neither the Relief Ordinance nor its subsequent amendments modified the City's existing inclusionary housing in-lieu fee of \$80,000 per inclusionary unit, as staff recommended that the City not modify any existing fees until the impacts of Proposition 26 were further clarified.

At the December 18, 2012 meeting, Council also authorized allowing further extensions of the Relief Ordinance by resolution, if necessary, if the Council finds that an extension of the Relief Ordinance will mitigate the effects of a recessionary housing market and stimulate new residential construction enhancing the feasibility of residential development. The extension of the Relief

2 The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2010/cca121410full.pdf> - see item No. 16

3 The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca111511full.pdf> - see item No. 9

4 The report is available at : <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca121812full.pdf> - see item No. 7

Ordinance through the end of 2013 would also allow staff time to complete a Nexus Study similar to the one conducted in 2010. To this end, during the early part of the summer, staff administered a Request for Proposals (RFP) process and, following Council approval on July 30, 2013, staff negotiated and later entered into a professional services agreement with David Paul Rosen and Associates (DRA), the highest-ranked consultant from the RFP. DRA has been asked to review the Ordinance, to conduct a Nexus Study, and to determine an In Lieu Fee amount that is appropriate and sustainable in Hayward's housing market.

DISCUSSION

It was the goal of staff to present DRA's findings, conclusions, and recommendations to Council prior to the end of 2013. However, staff recommends postponing the discussion of this item to allow staff and DRA more time to fine-tune the Study, to afford more opportunities to the development community to provide input regarding the Nexus Study, and to develop a series of alternatives for consideration by Council. An added advantage of postponing this discussion is that year-end statistics about the state of the housing and real estate sectors (both area and local) may be available to inform the Council's policy choice. Extending the Relief Ordinance is also needed to mitigate the lingering effects of the recessionary housing market and to enhance the feasibility of residential development in Hayward.

Although the Study is mostly complete, staff is requesting Council approval of a six-month extension⁵ of the Relief Ordinance by resolution. Staff anticipates that the Study findings and subsequent recommendations will be presented to Council during the early part of next year, first in a work session and later in a regular Council meeting, if instructed by Council to do so. Nevertheless, no further action from Council is required at this time because the Second Amendment to the Relief Ordinance authorizes Council to extend the periods in which the Relief Ordinance applies by resolution.

CEQA Review: The resolution extending the Relief Ordinance is exempt from CEQA because it will not have any significant effect on the environment. It only affects the affordability of residences constructed in the City and contains no provisions affecting the physical design or development of residences, and so it can be seen with certainty that there is no possibility that the resolution may have a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3)).

ECONOMIC IMPACT

As with the initial Relief Ordinance and subsequent amendments, this resolution extending the Relief Ordinance for a six-month period may continue to encourage projects that have received discretionary approvals to move forward to construction, therefore stimulating new residential construction and new jobs. By extending the Relief Ordinance, the City hopes to continue to improve the viability of marginally feasible residential projects.

⁵ The extension would be good until June 30, 2014. Consequently, projects must receive discretionary approvals by June 30, 2014, and building permits must be issued by June 30, 2016. Developers would still be required to pay in-lieu fees upon receipt of a certificate of occupancy or at the time of final inspection if no occupancy permit is required for a dwelling unit.

FISCAL IMPACT

Fiscal impacts to the City of Hayward could be moderately positive, to the extent that residential developments are encouraged to proceed within the next few months in order to benefit from the Relief Ordinance provisions. If this was the case, the City would gain additional building permit fee revenue, transfer taxes, and property taxes from new housing development of all types.

PUBLIC CONTACT

Staff has alerted market-rate and affordable housing developers, and other interested parties of this proposed extension via phone calls and emails.

NEXT STEPS

If the City Council adopts the proposed resolution extending the Relief Ordinance, no additional Council action will be required unless Council, in light of DRA's Nexus Study findings, approves a reinstatement or permanent modification of the Ordinance or additional amendments to the Relief Ordinance. Whichever the case may be, these changes would stem from the recommendations of the Study.

Prepared by: Omar Cortez, Housing Development Specialist

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachment I Resolution Extending the Relief Ordinance

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

RESOLUTION EXTENDING FOR SIX MONTHS PROVISIONS OF AN ORDINANCE PROVIDING INTERIM RELIEF FROM CERTAIN INCLUSIONARY HOUSING PROVISIONS AND FINDING THAT THE EXTENSION IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, on December 18, 2012, the City Council of the City of Hayward adopted Ordinance No. 13-01, An Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions (the "Relief Ordinance"), to provide incentives for the construction of residential dwelling units in the City of Hayward during a period in which residential construction had declined in the State of California and in the United States as a whole; and

WHEREAS, the Relief Ordinance provides that the City Council may by resolution extend the period in which the provisions of the Relief Ordinance are applicable, provided that the City Council finds that an extension of the Ordinance will mitigate the effects of a recessionary housing market and stimulate new residential construction by enhancing the feasibility of residential development; and

WHEREAS, the City Council desires to continue to stimulate residential development in the City; and

WHEREAS, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and attachments thereto at a meeting held on December 17, 2013.

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

SECTION 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

SECTION 2. The City Council's approvals, authorizations and determinations as set forth in this Resolution are based upon the foregoing recitals, information and documents provided by the City staff, and any comments and other information received by the City Council during the public meeting on this matter held on December 17, 2013.

SECTION 3. The City Council hereby extends the period in which the provisions of the Relief Ordinance are applicable, as follows:

Notwithstanding the provisions of Chapter 10, Article 17, "Inclusionary Housing Ordinance," of the Hayward Municipal Code, the provisions of this Ordinance shall be applicable to Dwelling Units in Residential Development Projects which have: (a)

received all discretionary planning approvals by June 30, 2014; and (b) obtained building permits by June 30, 2016. However, the provisions of this Ordinance do not apply to any Residential Development Projects or Dwelling Units that provided Affordable Units or paid In-Lieu Fees prior to the effective date of this Ordinance.

SECTION 4. The City Council hereby finds that an extension of the Ordinance will mitigate the effects of a recessionary housing market and stimulate new residential construction by enhancing the feasibility of Residential Development Projects. Extending the Relief Ordinance for a six-month period will encourage residential projects that have received discretionary approvals to move forward to construction, therefore stimulating new residential construction. By extending the Relief Ordinance, the City hopes to continue to improve the viability of marginally feasible residential projects.

SECTION 5. The City Council hereby finds that the extension of the Relief Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the extension of the Relief Ordinance may have a significant effect on the environment. The Relief Ordinance affects only the affordability of residences constructed in the City of Hayward and contains no provisions modifying the physical design, development, or construction of residences. (CEQA Guidelines Section 15061(b)(3).)

SECTION 6. This Resolution shall take effect upon the date of its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA December 17, 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

DATE: December 17, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Resolution Appointing Council Member Halliday to the Alameda County Mosquito Abatement District Board of Trustees

RECOMMENDATION

That the City Council adopts the resolution appointing Council Member Halliday to the Alameda County Mosquito Abatement District Board of Trustees.

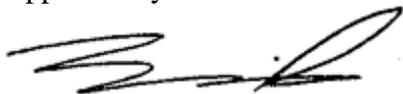
BACKGROUND

On December 20, 2011, the City Council appointed Council Member Halliday as its representative to the Alameda County Mosquito Abatement District for a two-year term from January 1, 2012 through January 1, 2014. Council Member Halliday currently serves as the Vice President of the District Board.

As indicated in Attachment II, the District is requesting an appointment for a two-year term from January 1, 2014 through January 1, 2016.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution Appointing Council Member Halliday
- Attachment II Letter from the ACMAD

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION APPOINTING COUNCIL MEMBER HALLIDAY AS CITY OF HAYWARD REPRESENTATIVE TO THE ALAMEDA COUNTY MOSQUITO ABATEMENT DISTRICT BOARD OF TRUSTEES

BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby appoints Council Member Halliday as the City of Hayward representative to the Alameda County Abatement District Board of Trustees for a two-year term from January 1, 2014 through January 1, 2016.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Alameda County Mosquito Abatement District

BOARD OF TRUSTEES

Jim Prola , President
 Barbara Halliday, Vice-President
 Ryan Clausnitzer, Secretary
 Elizabeth Anders
 Dennis Bray
 James N. Doggett
 Jim Golden
 Richard Guarienti
 Denny McLeod
 Kathy Narum
 Ronald E. Quinn
 William M. Spinola
 Jan Washburn
 George Young

Chindi Peavey Ph.D
 District Manager
cpavey@mosquitoes.org

November 29, 2013

Mayor Michael Sweeney
 City of Hayward
 777 B Street
 Hayward, CA 94541-5007

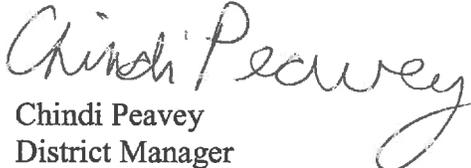
Dear Mayor Sweeney:

The term of office of Barbara Halliday, as trustee of this District, will expire on January 1, 2014. We respectfully request an appointment be made for a two-year term of trustee of this District representing the City of Hayward.

Council Member Halliday was appointed by the Hayward City Council in January 2011. She has been an active participant on the board and currently serves as Vice President of this body. Her experience in governance and Finance has been a great asset to the District. Council Member Halliday currently serves on the district's Finance and Capital Planning Committee.

We shall appreciate your sending us a certified copy of your resolution appointing your trustee to our Board for the term ending January 1, 2016.

Sincerely,


 Chindi Peavey
 District Manager

Cc: Miriam Lens
 Barbara Halliday

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Utilities & Environmental Services

SUBJECT: Final Map Tract 7736, Application No. PL-2006-0069, Stonebrae Country Club Village B – Stonebrae L.P. (Subdivider) – Request to Amend Condition of Approval No. 171 Related to Construction of the Second Water Storage Reservoir in the Highland 1530 Zone, and Authorization for the City Manager to Negotiate and Execute an Agreement for Reimbursement of Costs

RECOMMENDATION

That Council relies on previously approved environmental documents and adopts the attached resolution:

1. Approving an amendment to Condition of Approval No. 171 for Final Map Tract 7736 for Village B that will allow the City to manage all aspects of the design and construction contracts for the second water storage reservoir; and
2. Authorizing the City Manager to negotiate and execute an agreement with Stonebrae L.P. for reimbursement of the City's costs for design and construction of the second water storage reservoir.

BACKGROUND

The vesting tentative tract map (Vesting Tentative Map No. 5354) for Stonebrae Country Club was approved by the City Council in September 2002. The first Final Map Tract 5354 for Village A was approved on April 19, 2005 and recorded on July 29, 2005. The second Final Map Tract 7736 for Village B was approved on November 14, 2006 and recorded on May 24, 2007. Condition of Approval No. 171, in its original form, required the developer to construct two 2.85 million gallon (MG) water storage reservoirs in the water system's 1530 elevation zone. The developer constructed the first tank, and the City now owns, operates and maintains it.

The Conditions of Approval require the developer to construct the second tank prior to issuance of building permits for more than 365 single-family residences. On April 5, 2011, City Council approved a reduction in the size of the second tank to 1.2 MG, due to demonstrated better-than-expected water conservation results, improved technology for metering irrigation flow, and less

acreage for golf course and common area landscaping. The combined total storage of 4.05 MG between the two tanks will fully meet the projected water demand for the development.

DISCUSSION

The fact that only a single storage tank currently exists at the highest pressure zone has caused operational challenges in maintaining water quality. At times, staff has resorted to “dumping” water from the single reservoir to replenish it with fresh water. It is imperative that the second tank be constructed as soon as possible to provide much needed operational flexibility.

To ensure the second reservoir is built in a timely way and to provide a greater degree of control over the design and construction of critical infrastructure, it is in the City’s best interest to manage the work. It is particularly important that the tank be designed with attention to all details and constructed with high quality materials. Further, as the tank will be constructed on what is now City property, and will be adjacent and connected to an in-service City tank, it is preferable that the work be done under staff’s auspices. This will ensure the City has maximum flexibility and prerogative to direct the contractor on how and when to do the work. For these reasons, staff recommends that the City administer the design and construction contracts for this project.

Staff has had discussions with Stonebrae representatives regarding the feasibility of the City administering the design and construction contracts for the second tank, which staff believes is a more desirable approach. Stonebrae’s representatives are supportive of the proposed modifications. If the Council approves the staff’s recommendations, the parties would enter into an agreement to fully reimburse the City for all costs.

If the City is to take on management of this project, it is critical that a mechanism be in place to ensure that the City recovers from the developer all costs associated with the design and construction. To this end, staff has worked with Stonebrae to develop a repayment schedule, whereby the City would front the funds to design and construct the reservoir, and Stonebrae would pay a per-dwelling-unit fee to the City prior to the issuance of a building permit for a residence. The ability to pay for the project over time as new homes are built is the developer’s only incentive to agree to the proposed arrangement. This fee would be separate, distinct from, and in addition to all other applicable development-related fees and charges. While there is potential for over 300 additional homes to be constructed, the fee is conservatively based on the assumption that only 250 additional dwelling units will be constructed. The proposed per dwelling fee, which includes interest, has been calculated at \$8,261.

The proposed agreement includes safeguards to limit the risk of non-payment to the City. As noted, the fee will be due to the City before building permits are issued for individual homes. Building permits will not be issued without payment of this fee. In the event that building permits for the 250th dwelling unit are not issued on or before December 31, 2019, Stonebrae would be required to repay, in full, the outstanding balance at that time. When the City receives payment for the 250th dwelling unit, the reimbursement would be considered complete and no further fees related to this agreement would be outstanding. Further, in the event that all or a portion of the vacant lots are sold to another entity, the agreement requires that fees for the purchased lots be placed into an escrow account and disbursed to the City upon closing. Finally, the agreement will be recorded with the County Assessor’s Office so that potential land purchasers are notified of the obligation during the title search. While staff believes that the risk to the City is small, there is potential that, in the event

that Stonebrae does not construct 250 additional dwelling units, a portion of the cost will not be recovered by the City. In this case, the fees for the deficit number of units would not be paid. However, the fact remains that the second tank must be constructed for operational reasons regardless of whether the remaining units are built. The City faces a similar risk if Stonebrae does not reach the 365-unit threshold and does not proceed with the work, obligating the City to pay the cost in full. For this reason, and to provide the City with greater control over the project, staff considers the proposed alternative to be the preferred option.

Environmental Review

The City certified a Supplemental Environmental Impact Report (SEIR) for the project in 1998 and thereafter adopted an Addendum to the SEIR when it approved the Precise Development Plan and Vesting Tentative Tract Map in 2002. Staff has reviewed the requested amendment to Condition of Approval 171 and determined that it would be in substantial compliance with the existing condition, as amended in April 2011, and does not present any new or increased environmental impacts not previously analyzed; therefore, no additional environmental review under the California Environmental Quality Act (CEQA) Guidelines is required. Therefore, the SEIR with the Addendum is sufficient from a CEQA perspective for the City Council to adopt the attached resolution approving the requested amendment to the final map condition of approval. The attached resolution includes recommended findings for approval of the amended condition of approval.

ECONOMIC IMPACT

There are no economic impacts to Hayward customers as a result of the recommended change in project management. The upfront costs of design and construction will be paid from reserves in the Water System Capital Improvement Fund, and the developer will reimburse the City for all costs, with interest, assuming that at least 250 additional dwelling units are constructed.

FISCAL IMPACT

The current total estimated cost to design and construct the water reservoir is \$1.89 million. Sufficient funds are available in the Water System Improvement Fund. Staff will request appropriation of the monies when the project comes before Council for award of design and construction contracts. All costs to the City will be reimbursed per the terms of the agreement with Stonebrae, assuming the company would not go into default prior to the construction of 250 additional dwelling units.

PUBLIC CONTACT

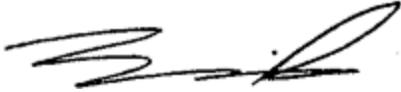
City staff has been in contact with representatives of Stonebrae L.P. regarding this issue. There is no material impact on other Hayward water customers.

NEXT STEPS

If Council adopts the attached resolution approving staff's recommendations, upon review and approval by the City Attorney, staff and Stonebrae will execute and record an agreement. Design of the water reservoir is expected to get underway in the spring of 2014.

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution
Attachment II	Project Location

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION AMENDING CONDITION OF APPROVAL NO. 171 PERTAINING TO CONSTRUCTION OF THE SECOND WATER STORAGE RESERVOIR AT THE HIGHLAND 1530 ZONE FOR FINAL MAP TRACT 7736, STONEBRAE COUNTRY CLUB VILLAGE B, AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH STONEBRAE L.P. FOR REIMBURSEMENT BY STONEBRAE OF ALL COSTS

WHEREAS, the City Council certified the Supplemental Environmental Impact Report (SEIR) for the project in 1998, and thereafter adopted an Addendum to the SEIR when it approved the Precise Development Plan and Vesting Tentative Map in 2002; and

WHEREAS, the City Council, under Resolution No. 06-137, on November 14, 2006, approved Final Map Tract 7736, which primarily encompasses Village B of the Stonebrae Country Club development; and

WHEREAS, Condition of Approval No. 171 for Final Map Tract 7736, as amended by the City Council on April 5, 2011 under Resolution No. 11-030, requires a second 1.2 million gallon water storage reservoir to be constructed at the Highland 1530 Zone before the City issues building permits for more than 365 single-family homes; and

WHEREAS, Stonebrae L.P. has requested an amendment to Condition of Approval 171 of Final Map Tract 7736 to allow the City to manage the design and construction of the second water storage reservoir, with all cost to be paid by Stonebrae; and

WHEREAS, staff has reviewed Stonebrae L.P.'s request and determined that the amendment of Condition No. 171 as it related to the entity designing and constructing the second water storage reservoir does not present any new or increased environmental impact not previously analyzed in the SEIR and the Addendum to the SEIR; and

WHEREAS, Stonebrae L.P. and the City have agreed upon a reimbursement method whereby Stonebrae shall pay to the City a fee for each new single-family residence prior to issuance of building permit; and

WHEREAS, an agreement between the City and Stonebrae L.P. shall be executed to ensure that the City will be reimbursed for all costs associated with the design and construction of the second water storage reservoir.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Hayward, which relies on the previously certified environmental documents, and finds that the amendment to Condition No. 171 of the Conditions of Approval, regarding the entity that will manage all aspects of the design and construction of the second water storage reservoir, does not impose an additional burden on the existing fee owner or alter any right, title or interest in the property; and the proposed modification does not contain any grounds for denying the map under the California Subdivision Map Act, and the amendment of the Final Map does not propose new provisions that modify the development under the approval of the Final Map, nor alter any right, title or interest in the property.

BE IT FURTHER RESOLVED that Condition of Approval No. 171 is hereby revised to read:

The 1285 pumping station, 18-inch transmission line and one 2.85 million gallon (MG) reservoir shall be constructed and accepted by the City before any building permits are issued for any lots requiring the water from the 1530 reservoir. The applicant/developer shall also be responsible for construction of a 1.2 MG reservoir adjacent to the 2.85 MG reservoir. Pursuant to the terms of an agreement between the City and the applicant/developer, the City shall design and construct the second 1.2 MG reservoir upon the City's sole determination that the second reservoir is necessary to provide adequate water service, and the applicant/developer will reimburse the City for all costs. In accordance with the terms of the agreement, the reimbursement shall be based on a fixed, per-parcel fee. The fixed fee shall be \$8,261 per parcel for all dwelling units for which a building permit is issued. The fee shall be assessed and collected on the first 250 building permits for homes, effective upon City Council approval of this condition. In the event that building permits for 250 dwelling units are not issued on or before December 31, 2019, applicant /developer shall be required to repay, in full, the outstanding amount at that time. In the event that applicant/developer sells all or a portion of vacant lots, the per-unit fees for the vacant lots included in the sale shall be paid to the City at the time of sale, based upon the fees in effect at the time of sale.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to negotiate and execute an agreement between the City and Stonebrae L.P. for the design and construction of the water storage reservoir and reimbursement of all costs by Stonebrae, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



PROJECT LOCATION MAP

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Authorization to Extend the Professional Services Agreement with Townsend Public Affairs, Inc. through the End of FY2014 for Assistance in Securing State and Federal Funding and Legislative Advocacy Services

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I):

1. Authorizing the City Manager to extend the current professional services agreement with Townsend Public Affairs, Inc. through FY 2014 in an amount not to exceed \$90,000 for services rendered during FY2014 in order to provide assistance in preparing applications and securing State and Federal funding for Affordable Housing, Economic Development, Public Safety, Library, Infrastructure, Utility and Recycling Activities, and Transportation Related Activities.

BACKGROUND

Townsend Public Affairs, Inc. has been performing Hayward's Federal and State legislative advocacy since 2009 and has assisted Hayward in identifying and securing State and Federal funding for a variety of public improvements and programs, ranging from transportation and infrastructure improvements to public safety, libraries, and affordable housing. An overview of FY 2013 legislative advocacy and support is provided in Attachment II.

DISCUSSION

Townsend Public Affairs works with public agencies and non-profit entities in the following ways:

- Provides legislative notification, tracking, and advocacy.
- Assists with identifying capital and operating funding needs.
- Identifies existing State and Federal funding sources that meet local agency needs, and as necessary to help shape and develop funding programs to meet local needs.
- Assists local agencies in securing favored eligibility or priority status for their funding needs.
- Assists with preparing and reviewing applications for funding, securing legislative sponsors and funding recommendations, and to advocate for the funding throughout the process.
- Works to ensure rapid disbursement of funds, once the funding awards have been made.

Townsend's services in identifying funding sources will continue to be valuable at this time, and will assist the City, particularly the Public Works Department, and potentially Library & Community Services, and Police and Fire for safety-related funding. The current contract is being amended to extend the contract term for an additional fiscal year for the sake of administrative efficiency. Staff originally planned to issue an RFP for these services prior to FY 2014. However, Townsend was and is assisting the City with some critical Federal grants, and it was not practical to disrupt their services in the middle of that process.

Townsend has provided excellent services to the City since 2009; however, staff anticipates issuing a Request for Proposals in late FY2014 or early FY2015 to evaluate other alternatives for these activities. Reviewing options for service providers like this every few years ensures the City has the best possible firm on board and one that understands the City's priorities and values. This extension will allow staff to maximize the quality assistance Townsend is currently providing while still allowing a timely RFP process for FY 2015.

FISCAL IMPACT

Townsend's fee for the current year would be a flat fee of \$7,500 per month, for a total of \$90,000 for this professional services agreement, as it was for FY 2013. Staff proposes that the \$90,000 funding for Townsend's services come from the following sources, which is roughly proportionate to the benefit that has been and will be gained from their services:

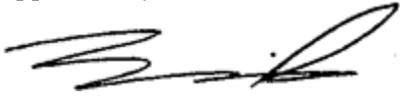
- General Fund - Staff recommends that \$15,000 be designated from the City Manager's office budget for this contract to support Townsend's overall advocacy on behalf of the City, including advocacy for public safety funding and overall advocacy work.
- New Library-Programming/Design Fund \$15,000 - This capital project has sufficient funds for this purpose and could benefit from continued assistance in identifying the necessary funds to construct a new library.
- The following funds will be charged as indicated. All have sufficient funds for this purpose and will benefit from the services provided by Townsend:
 - Water Fund \$15,000
 - Wastewater Fund \$10,000
 - Recycling Fund \$5,000
 - Route 238-Administration/Pre-Design \$30,000 (a capital project)

NEXT STEPS

Following Council approval at this meeting, staff will finalize the FY2014 contract amendment for execution with Townsend Public Affairs, Inc. and will appropriate the funding.

Prepared and Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

- I: Resolution Authorizing Execution of Consulting Agreement for Professional Services
- II: Townsend FY 2013 Activities Report

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT WITH TOWNSEND PUBLIC AFFAIRS, INC., TO ASSIST IN SECURING STATE AND FEDERAL FUNDING FOR AFFORDABLE HOUSING, ECONOMIC DEVELOPMENT, PUBLIC SAFETY, LIBRARY, INFRASTRUCTURE, AND TRANSPORTATION RELATED ACTIVITIES, AND PUBLIC FACILITIES

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute a professional services agreement with Townsend Public Affairs, Inc., to assist in securing state and federal funding for Affordable Housing, Economic Development, Utility and Recycling Activities, Public Safety, Library, Infrastructure, and Transportation related activities, and public facilities for services rendered during FY2014 in an amount not to exceed \$90,000, which is the total amount of contract funds from the City, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

MEMO

To: **City of Hayward**
 Fran David, City Manager
 Kelly McAdoo, Assistant City Manager

From: **Townsend Public Affairs, Inc.**
 Christopher Townsend, President
 Richard Harmon, Director

Date: **December 2, 2013**

Subject: **Updated Exhibit A—Fiscal Year 2012-2013 and 2013-14 First Quarter Report**

Project	Funding Opportunities	Status	Page
Legislative and Administrative Advocacy	N/A	See narrative.	2
Fire Department	FEMA Assistance to Firefighters Grant (AFG)	TPA is working with the Fire Department to submit an AFG application on December 6, 2013.	4
Transportation Planning and Safety	Caltrans Grants 1. Community-Based Transportation Planning Grants 2. Highway Safety Improvement Program	1. TPA worked with the City to submit a successful CBTP application for a transit connector feasibility study in the amount of \$177,060 . 2. TPA worked with the City to submit a successful HSIP application on July 26, 2013, for two intersection improvements in the amount of \$396,000 .	5
Urban Greening	Urban Greening Program	TPA worked with the City to submit two (2) concept proposals for local projects on April 5, 2013, which were unsuccessful.	6
Police Department	COPS Program	TPA worked with the Police Department on a successful application in the amount of \$250,000 .	6
Downtown Specific Plan	Sustainable Communities Grant Program	TPA is working with City and Strategic Growth Council staff on a downtown specific plan application for the next funding cycle expected in early Spring 2014.	7

State and Federal Legislative and Administrative Advocacy

Overview: TPA continues to work closely with City staff to identify priority issues and legislation and advocate on behalf of the City's interests in both Sacramento and Washington, D.C.

- **Fiscal Outlook**

The Legislative Analyst's Office (LAO) released their annual document on California's Fiscal Outlook (attached), which is typically viewed as the document that starts the upcoming budget cycle; in this case the 2014-2015 State Budget. The purpose of the Fiscal Outlook document is to provide the LAO's perspective on the State economy, as well as the current budget condition. The Outlook is based on the LAO's budget forecast projections, revenue projections, as well as the current year budget.

The primary takeaway from this week's Fiscal Outlook is that under the current budget, the State is on pace to have a significant reserve at the end of the 2014-15 budget year; the LAO estimates that this reserve will be approximately \$5.6 billion. Additionally, the LAO projects the State will continue to see multi-billion budget surpluses for the foreseeable future, culminating in a \$9.6 billion surplus in the 2017-18 fiscal year, after which the surpluses will trend downward due to the expiration of the temporary taxes put into place by Proposition 30.

The budget surpluses projected by the LAO are due in large part to an ongoing improved economy; one in which the housing market continues to recover, there is little or no fiscal contraction by the federal government, and the job market continues to improve, thereby lowering the State's unemployment rate. Additional revenues will be realized as increasing home values result in higher property tax collection and the dissolution of redevelopment continues.

During the current fiscal year, the State has seen a significant increase in revenue over what was originally projected in the budget. This has principally been due to stronger than assumed personal income tax (PIT). The LAO anticipates that the PIT will continue to grow and there will be moderate increases in revenue to the State from the sales and use tax, as well as the corporate tax.

As is the case with any long term forecasting, the LAO's projections are not set in stone and will fluctuate based on the actual performance of the economy, actions taken by the Legislature, and by unforeseen events which will require additional budget resources.

Probably the first beneficiary from the increased revenue to the State will be K-12 education and community colleges through Proposition 98, as the State Constitution requires a portion of any new general fund revenue to go to these entities. Based on the LAO's revised revenue projections for the current budget year and the prior two fiscal years, the State's revenues will be approximately \$6.4 billion higher than was anticipated in the 2013-14 budget, which will result in an additional \$4.8 billion in Proposition 98 spending.

After this anticipated expenditure, the LAO does provide recommendations as to how the Legislature may want to utilize any upcoming budget surpluses. The LAO suggests that the Legislature should strategically utilize future surpluses in three key areas: building a strong reserve, paying off budget liabilities accrued over the past several years, and to begin setting aside funds to address long term unfunded retirement liabilities. All three

of these recommendations are meant to put the State in the best position possible in the event of another economic downturn. It should also be noted the LAO acknowledges that there will be significant pressure to fund additional programs and that the Legislature will need to make difficult decisions on how to responsibly utilize any new revenue. The LAO suggests that it may be appropriate to take a portion of the State's revenue and consider providing inflationary increases to existing programs, creating new commitments, providing tax reductions, or investing in additional infrastructure.

As with any economic projection, the LAO will continue to refine and adjust their economic outlook as actual expenditures are made, revenue is received, and policy is changed; however, the LAO's current outlook shows that the State's economy is recovering and will likely continue to grow through the end of the decade.

We will continue to keep you updated on the latest State budget happenings, including a summary of the Governor's proposed budget when it is released in early January, as well as the Legislature's response.

- Federal Budget Status

Democrats and Republicans in the Budget Conference Committee know that any agreement will be a small deal. Implementing user fees is one idea being considered in the committee, but even a small-scale idea like this creates controversy. Democrats still want new revenue, while Republicans refuse to increase taxes—although House Budget Chairman Paul Ryan has shown openness to increasing user fees and non-tax revenue.

Democrats are pushing revenue solutions that would focus on special interests and wealthier individuals, and are sticking to closing tax loopholes. In early November, they released a list of potential loopholes they would like to close. The proposal would include ending special tax deductions for the owners of corporate jets, yachts, and vacation homes, and removing a loophole that allows businesses to deduct expenses for moving a plant overseas. Republicans may agree with closing these loopholes, but insist it be a part of a broader tax reform discussion.

Rep. Paul Ryan, among others, has said he doesn't see another government shutdown when the federal government runs out of funding on January 15. There will either be a small deal, or a continuing resolution to extend the deadline. Even though a shutdown seems unlikely, not reaching a deal and passing a continuing resolution would mean across-the-board spending cuts would take place, without the ability to cater to certain agencies.

After Thanksgiving recess, Congress will have just 8 days to reach a short-term budget deal by their self-assigned December 13 deadline.

- Administrative Actions and Updates

Effective July 1, 2013, the governmental reorganization structure proposed last by Governor Brown took effect. While the proposed changes were approved by the Little Hoover Commission and State Legislature last year, there was a one-year period allowing for a transition to occur before those changes actually go into place.

Ana Matosantos, the former Director of the Department of Finance left the Brown Administration in September. Ana rose to her position during the Schwarzenegger Administration and served in that capacity for the first three years of Governor Brown's

term. Michael Cohen, the Department Chief Deputy Director and familiar face in front of legislative budget committees, has been appointed as the new Director.

- State Legislation

The Legislature will return to the Capitol in January to resume its work. They will be on a one-month timeline to deal with any legislation stalled from last year before starting work on new legislation. During this same time, the Governor will be proposing his proposed budget for the coming fiscal year.

We are hearing of renewed efforts to bring back the Homeless Bill of Rights (AB 5) in some form early in the year. Also likely to be introduced is new legislation targeted at regulating medicinal cannabis dispensaries and massage establishments, as well as placing restrictions on the operation of “sweepstakes” style games at Internet cafes.

In December, TPA will be providing a further analysis of anticipated legislation for the upcoming year, proposed ballot measures, as well as a summary of the changes in Members of the Legislature.

- Other Legislation and Updates

TPA will continue to provide the City with updates and draft position letters as needed on bills pending before the Legislature that impacts local jurisdictions. While some of these bills do not currently impact the City directly, many establish precedents or statewide policies that are detrimental.

In addition, TPA provides updates and briefings on significant federal reauthorizing legislation, including water and transportation bills. These reauthorizations will have broad policy and funding implications and providing timely updates ensures the City is positioned to weigh in or take action.

Fire Department

Assistance for Firefighters Grant Program

Overview: The primary goal of the Assistance to Firefighters Grants (AFG) is to meet the firefighting and emergency response needs of fire departments and nonaffiliated emergency medical service organizations. Since 2001, AFG has helped firefighters and other first responders to obtain critically needed equipment, protective gear, emergency vehicles, training and other resources needed to protect the public and emergency personnel from fire and related hazards.

Recap of Actions:

- TPA notified the City of the solicitation for the current round of AFG funding in November 2013. Due to the federal government shutdown in October, the solicitation is open for a shorter period than in previous years and applications are due at the beginning of December.

Next Steps:

- TPA will continue to assist Fire Department staff on the application and related advocacy efforts as needed.

Transportation Planning and Safety

Community-Based Transportation Planning Grant Program (Caltrans)

Overview: Transportation planning grants promote a balanced, comprehensive multi-modal transportation system. These grants may be used for a wide range of transportation planning purposes, which address local and regional transportation needs and issues. The implementation of these grants should ultimately lead to the adoption, initiation, and programming of transportation improvements.

The Community Based Transportation Planning grant under this program funds coordinated transportation and land use planning that promotes public engagement, livable communities, and a sustainable transportation system, which includes mobility, access, and safety.

Status: The City submitted an application for a transit connector feasibility study on April 2.

Recap of Actions:

- TPA alerted City staff that the solicitation had opened in January 2013, and coordinated a conference call with City staff regarding this opportunity and possible projects within the City that would be most competitive.
- TPA discussed the proposed application with Caltrans staff for feedback.
- TPA worked with City staff on edits and feedback for the application.
- The City was successful with the application and was awarded funding in the amount of **\$177,060** to complete the study.

Highway Safety Improvement Program (Caltrans)

Overview: Summary: The overall purpose of this program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. All proposed projects must lead to the construction of safety improvements. In MAP-21, the Safe Routes to School Program (SRTS) and High Risk Rural Roads (HR3) Program are not set-aside funding programs as in the previous federal surface transportation act. Instead, they are among the eligible categories of HSIP projects.

A city, a county, or a tribal government federally recognized within the State of California are all eligible applicants and projects can include work on any public road or publicly owned bicycle/pedestrian pathway or trail that corrects or improves the safety for its users.

Status: TPA worked with the City to submit an application by the July 26, 2013, deadline.

Recap of Actions:

- TPA alerted City staff that the solicitation had opened in May 2013.
- TPA met with City staff regarding this opportunity and projects within the City that would be most competitive in May.
- TPA reviewed the application narrative and documents in advance of the submittal.
- TPA solicited the support of the City's legislative representatives for the projects.
- The City was successful with the application and was awarded funding for improvements at two intersections in the amount of **\$396,000**.

Urban Greening

Urban Greening Grant Program (Strategic Growth Council)

Overview: In November 2006, California voters approved Proposition 84, a \$5.388 billion measure which included \$70 million in grant funding for development projects related to urban greening. To administer funds from Proposition 84, in 2008, the Governor signed SB 732, creating the Strategic Growth Council (SGC). The SGC is tasked with coordinating the activities of state agencies to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006, encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. The SGC is responsible for the implementation of the Urban Greening Project Grant program and there is no maximum grant award. There is also no match requirement for this grant program.

Status: TPA worked with City staff to submit two concept proposals in April.

Recap of Actions:

- TPA worked with City staff on several ideas for project submittals.
- TPA coordinated conference calls with SGC staff to give feedback on the application ideas and answer specific questions we had related to the program.
- TPA worked to draft and submit two concept proposals.
- TPA solicited support from the City's legislative representatives.
- Unfortunately, the concept proposals were not successful in this round of funding.

Police Department

Community Oriented Policing Services (COPS) Hiring Program

Overview: The fiscal year (FY) 2013 COPS Hiring Program (CHP) is designed to advance public safety through community policing by addressing the full-time sworn officer needs of State, local, and tribal law enforcement agencies nationwide. CHP provides funds directly to law enforcement agencies to hire new and/or rehire career law enforcement officers, and to increase their community policing capacity and crime prevention efforts. Law enforcement agencies awarded funding for new positions this fiscal year must hire military veterans.

The FY 2013 CHP grant program was an open solicitation. All local, state, and tribal law enforcement agencies that have primary law enforcement authority were eligible to apply.

Status: TPA worked with the Hayward Police Department to successfully submit an application to request funding for two School Resource Officers (SROs) to expand its existing youth/community outreach efforts and improve safety in and around the schools.

Recap of Actions:

- TPA worked with City staff to complete and submit an updated grant application.
- TPA coordinated meetings in Sacramento and Washington, D.C. with the COPS director for Chief Urban to discuss the need in the Hayward for this funding.
- TPA drafted and submitted letters of support to the City's legislative representatives.
- TPA advocated in Washington, D.C. for the City's application.

- The City was successful with the application and was awarded funding in the amount of **\$250,000** for school resources officers.

Downtown Specific Plan

Sustainable Communities Planning Grant and Incentives Program

Overview: The Strategic Growth Council (SGC) oversees the Sustainable Communities Planning Grant and Incentives Program. Cities, counties, Metropolitan Planning Organizations (MPOs), Joint Powers Authorities (JPAs), Regional Transportation Planning Agencies (RTPAs), Councils of Governments (COGs), or combination thereof, are eligible to apply. Proposals funded under this solicitation will be not less than \$100,000 or greater than \$1,000,000 each.

Status: TPA worked with City staff to submit a funding request for a Downtown Specific Plan in the amount of \$922,980 on February 15, 2012. The City was not awarded funding, but TPA is working with the City to reapply in Round 3, especially given the preliminary information from SGC staff regarding the much-improved application we worked to submit. The SGC is planning to rework the guidelines for the last round of funding, and TPA has been actively involved in those discussions.

Recap of Actions:

- TPA worked with City staff to complete and submit an application for funding.
- TPA has conducted multiple in person and conference calls meetings with planning staff at the City to ensure a competitive application was crafted.
- TPA coordinated conference calls with SGC staff to give feedback on the application and answer specific questions we had related to the program.

Next Steps:

- TPA continues to monitor the SGC meetings regarding discussion of Round 3 and will alert the City when the solicitation is released—likely in early Spring 2014.
- TPA will work with City staff on the application for Round 3, including additional soliciting additional feedback from SGC staff.

DATE: December 17, 2013

TO: Mayor and City Council

FROM: Director of Human Resources

SUBJECT: Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS)

RECOMMENDATION

That the City Council adopts the Resolution of Intention to approve an amendment to the City of Hayward's contract with CalPERS to add Section 20516 "Employee Sharing Cost of Additional Benefits" for new local fire members.

BACKGROUND/DISCUSSION

In 2011, IAFF LOCAL 1909 (Firefighters) and the Hayward Fire Chief's Association (together, the "Fire Units"), and the Fire Chief participated in budget discussions with the City to address the City's projected budget shortfalls. These discussions resulted in a variety of cost savings concession items related to salaries and benefits. One of the concession items was an amendment to the CalPERS contract to provide for a cost sharing agreement that allows the employee to pay a portion of the employer's retirement contribution.

Effective July 4, 2011, the existing contract with CalPERS allows members of the Fire Units to contribute up to a maximum of 15.607% toward the City's employer contribution. The Fire Units currently contribute 6% toward the employer's contribution in addition to paying the full 9% employee share for a total contribution of 15%. The current agreement between IAFF Local 1909 and the City provides that new employees who may be impacted by the Public Employees' Pension Reform Act of 2013 (PEPRA) will pay the legislatively mandated equal share or 15%, whichever is greater.

Under PEPRA, new members are those who were not enrolled in CalPERS prior to January 1, 2013. PEPRA requires new members to pay an equal share of the normal cost of the retirement benefit. The 2013 contribution rate for new members in the Fire Unit is 11.25%. This amount is less than the 15% the bargaining unit has agreed to. Therefore, under the terms of the existing agreement with IAFF Local 1909, the new members shall contribute an additional 3.75% toward the employer's share. CalPERS requires a separate contract amendment for new members to allow the

additional contribution towards the employer's share. This contract amendment would be in addition to the already executed contract amendment that was approved by Council and the "Fire Units" for classic members in 2011.

Based on information provided by CalPERS representatives that new members under PEPRA would be grandfathered into the existing contract, HR staff provided copies of the agreements between IAFF 1909 and the City and requested that the new members be added to the existing contract and the 3.75% cost share be credited to their accounts in the same manner as the classic members. Unfortunately, the information provided by CalPERS was incorrect and the City has to complete the contract amendment for new members to assure that the additional contributions, currently 3.75%, are properly credited to the employees' retirement accounts.

The Resolution under consideration authorizes staff to work with CalPERS to amend the contract to include the changes discussed above.

FISCAL IMPACT

The cost sharing agreement with the Fire Units are part of a larger concession package with the Fire Units which resulted in a total savings in employee salaries and benefits of approximately \$12.1 million over a six year period.

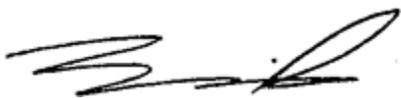
SCHEDULE

If the Council approves the attached Resolution of Intention, Government Code Section 20471 imposes a mandatory twenty (20) day period between the adoption of the Resolution of Intention and the adoption of the final ordinance. The ordinance will be presented to the Council on January 14, 2014.

Prepared by: Nina S. Collins, Senior Human Resources Analyst

Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution of Intention
Attachment II: Exhibit 1: Contract Amendment

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM AND THE CITY OF HAYWARD

WHEREAS, the Public Employees’ Retirement Law permits the participation of public agencies and their employees in the Public Employees’ Retirement System by the execution of a contract and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedure to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change: To provide Section 20516 (Employees Sharing Additional Cost) of 3.75% for new local fire members.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that it does hereby give notice of its intention to approve an amendment to the contract between the City of Hayward and the Board of Administration, California Public Employees’ Retirement System (“CalPERS”) a copy of said amendment being attached here to as an “Exhibit 1” and by this reference made a part hereof, and to authorize staff to work with CalPERS to finalize such contract amendments.

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



EXHIBIT

California
Public Employees' Retirement System



AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Hayward



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1950, and witnessed August 7, 1950, and as amended effective January 16, 1952, January 1, 1956, April 1, 1959, January 1, 1960, November 1, 1962, April 1, 1965, December 1, 1969, July 1, 1973, July 16, 1973, June 1, 1978, April 23, 1979, January 12, 1981, March 9, 1981, July 11, 1986, October 10, 1988, June 21, 1991, June 19, 1992, March 8, 1996, January 1, 2001, April 1, 2001, July 1, 2001, August 26, 2002, May 23, 2008 and July 4, 2011 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective July 4, 2011, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after October 1, 1950 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **PERSONS EMPLOYED AFTER JANUARY 16, 1952 AS CROSSING GUARDS; AND**
 - b. **PERSONS EMPLOYED AFTER JANUARY 30, 1959 AS PART-TIME LIFEGUARDS AND PART-TIME LIBRARY AIDES.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after August 26, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after August 26, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.
 - b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
 - c. Section 20042 (One-Year Final Compensation).
 - d. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage) for local safety members only.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 21027 (Military Service Credit for Retired Persons).
- g. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
- h. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
- i. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local miscellaneous members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- l. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
- m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for classic local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%.

Section 21362.2 (3% @ 50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for classic local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

n. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 3.75% for new local fire members.

10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on June 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
 - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
 - c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF HAYWARD

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk