



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**CITY COUNCIL AGENDA**  
**JUNE 24, 2014**

---

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

Table of Contents

Agenda . . . . . 3

21st Century Library & Community Learning Center – Design Update (Report from Library and Community Services Director Reinhart)

    Staff Report . . . . . 8

Approval of Special Minutes of the City Council Meeting on June 10, 2014

    Draft Minutes . . . . . 11

Cast Iron Water Pipeline Replacement FY14 Project: Approval of Addendum and Rejection of Bids

    Staff Report . . . . . 19

    Attachment I Resolution . . . . . 22

    Attachment II Location Map. . . . . 24

    Attachment III Bid Summary . . . . . 25

Adoption of a Resolution Approving an Amendment for \$49,000 to a Professional Services Agreement for Associate Planner Services in the Planning Division

    Staff Report . . . . . 27

    Attachment I Resolution. . . . . 29

Adoption of Resolution Extending the Inclusionary Housing Interim Relief Ordinance for a Six-Month Period

    Staff Report . . . . . 31

    Attachment I Resolution. . . . . 36

Adopt Resolutions and Introduce Ordinances Regarding Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City’s Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward (Report from Development Services Director Rizk)

    Staff Report . . . . . 39

    Attachment I Draft Ordinance Regarding Proposed Tobacco Retail Sales Regulations . . . . . 53

    Attachment II Draft Ordinance Regarding Proposed Revisions to the General Commercial (CG) Zoning District Regulations . . . . . 67

    Attachment III Draft Ordinance Regarding Proposed Revisions to the Smoking Pollution Control Ordinance Definitions. . . . . 75

    Attachment IV Draft Resolution Regarding Proposed Ordinances and the Negative Declaration/Initial Study . . . . . 84

    Attachment V Draft Resolution Regarding Proposed Revisions to the Master Fee Schedule . . . . . 90

    Attachment VI Negative Declaration/Initial Study . . . . . 96

Attachment VII May 22, 2014 Planning Commission Agenda Report and Minutes . . . . .	118
Attachment VIII Public Comment Letters . . . . .	135
Attachment IX Petition submitted at May 22, 2014 Planning Commission Meeting . . . . .	153
Approval of Disposition, Development, and Loan Agreement for disposition of certain real property located at 123-197 A Street and a \$600,000 loan of Housing Authority funds, both for the development of a ten (10)-unit affordable homeownership project to be constructed by Habitat for Humanity East Bay/Silicon Valley, Inc. and Approval of Categorical Exemption under Section 15332 of the CEQA Guidelines for the Project(Report from Assistant City Manager McAdoo)	
Staff Report . . . . .	200
Attachment I Council Resolution . . . . .	208
Attachment II Authority Resolution . . . . .	211
Attachment III Appropriation Resolution. . . . .	214
Attachment IV Site Plan. . . . .	216
Gann Appropriations Limit for FY 2015 (Report from Finance Director Vesely)	
Staff Report . . . . .	217
Attachment I. . . . .	219
Attachment II . . . . .	221



CITY COUNCIL MEETING FOR JUNE 24, 2014  
777 B STREET, HAYWARD, CA 94541  
[WWW.HAYWARD-CA.GOV](http://WWW.HAYWARD-CA.GOV)

---

**REVISED**

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

**1. PUBLIC COMMENTS**

2. Conference with Legal Counsel  
Pursuant to Government Code 54956.9  
➤ Anticipated Litigation (one case)

3. Conference with Legal Counsel  
Pursuant to Government Code 54956.9  
➤ Pending Litigation
- a. Hackney v. City of Hayward, U.S.D.C., N.D. CA, C-14-1714
  - b. Shah v. City of Hayward, U.S.D.C., N.D. CA, C-13-4516
  - c. Stoddard-Nunez v. City of Hayward, U.S.D.C., N.D. CA, C-13-04990
  - d. Whitted v. City of Hayward, U.S.D.C., N.D. CA, C-14-02526
  - e. Ochoa v. City of Hayward, U.S.D.C., N.D. CA, C-14-02385
  - f. Net Connection, LLC v. City of Hayward, U.S.D.C. N.D., CA 13-1212
  - g. Chrysler Group Realty, etc. v. City of Hayward, A.C.S.C. No. RG14722275

4. Conference with Labor Negotiators  
Pursuant to Government Code 54957.6  
➤ Lead Negotiators: City Manager David; City Attorney Lawson; Assistant City Manager McAdoo; Finance Director Vesely; Deputy City Attorney Vashi; Director of Maintenance Services McGrath; Acting Human Resources Director Collins; Senior Human Resources Analyst Monnastes; Community and Media Relations Officer Holland; Jack Hughes, Liebert, Cassidy and Whitmore  
Under Negotiation: All Groups

5. Conference with Real Property Negotiators  
Pursuant to Government Code 54956.8  
➤ Under Negotiation: South Hayward BART Land Purchase and Requisition  
Lead Negotiators: City Manager David, Assistant City Manager McAdoo, City Attorney Lawson, Project Consultant DeClercq, Development Services Director Rizk, Finance Director Vesely, and Heather Gould and Rafael Yaquian from Goldfarb Lipman

6. Adjourn to Special Joint City Council/Redevelopment Successor Agency/Housing Authority Meeting
-

**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT SUCCESSOR AGENCY/  
HOUSING AUTHORITY MEETING  
Council Chambers – 7:00 PM**

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

**ROLL CALL**

**CLOSED SESSION ANNOUNCEMENT**

**PRESENTATION**

Certificate of Recognition to Hayward High Student Bobbie Reyes-Kaguay for  
Regional Competition at the Computer History Museum

**PUBLIC COMMENTS**

---

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

---

---

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

---

**WORK SESSION (60-Minute Limit)**

1. 21st Century Library & Community Learning Center – Design Update (*Report from Library and Community Services Director Reinhart*)  
[Staff Report](#)
- 

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

---



## CONSENT CALENDAR

2. Approval of Special Minutes of the City Council Meeting on June 10, 2014  
[Draft Minutes](#)
3. Cast Iron Water Pipeline Replacement FY14 Project: Approval of Addendum and Rejection of Bids  
[Staff Report](#)  
[Attachment I Resoluttion](#)  
[Attachment II Location Map](#)  
[Attachment III Bid Summary](#)
4. Adoption of a Resolution Approving an Amendment for \$49,000 to a Professional Services Agreement for Associate Planner Services in the Planning Division  
[Staff Report](#)  
[Attachment I Resolution](#)
5. Adoption of Resolution Extending the Inclusionary Housing Interim Relief Ordinance for a Six-Month Period  
[Staff Report](#)  
[Attachment I Resolution](#)

---

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

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

---

## PUBLIC HEARING

6. Adopt Resolutions and Introduce Ordinances Regarding Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward (*Continued from June 17, 2014*) (*Report from Development Services Director Rizk*)  
[Staff Report](#)  
[Attachment I Draft Ordinance Regarding Proposed Tobacco Retail Sales Regulations](#)  
[Attachment II Draft Ordinance Regarding Proposed Revisions to the General Commercial \(CG\) Zoning District Regulations](#)



- [Attachment III Draft Ordinance Regarding Proposed Revisions to the Smoking Pollution Control Ordinance Definitions](#)
- [Attachment IV Draft Resolution Regarding Proposed Ordinances and the Negative Declaration/Initial Study](#)
- [Attachment V Draft Resolution Regarding Proposed Revisions to the Master Fee Schedule](#)
- [Attachment VI Negative Declaration/Initial Study](#)
- [Attachment VII May 22, 2014 Planning Commission Agenda Report and Minutes](#)
- [Attachment VIII Public Comment Letters](#)
- [Attachment IX Petition submitted at May 22, 2014 Planning Commission Meeting](#)

7. Approval of Disposition, Development, and Loan Agreement for disposition of certain real property located at 123-197 A Street and a \$600,000 loan of Housing Authority funds, both for the development of a ten (10)-unit affordable homeownership project to be constructed by Habitat for Humanity East Bay/Silicon Valley, Inc. and Approval of Categorical Exemption under Section 15332 of the CEQA Guidelines for the Project (*Report from Assistant City Manager McAdoo*)

- [Staff Report](#)
- [Attachment I Council Resolution](#)
- [Attachment II Authority Resolution](#)
- [Attachment III Appropriation Resolution](#)
- [Attachment IV Site Plan](#)

## LEGISLATIVE BUSINESS

8. Gann Appropriations Limit for FY 2015 (*Report from Finance Director Vesely*)

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

9. Approval of the FY 2015 Annual Operating Budget and Appropriations for FY 2015; Approval of the FY 2015 Capital Improvement Program Budget and Appropriations for FY 2015; Approval of the Hayward Redevelopment Successor Agency Budget; Approval of the Hayward Housing Authority Budget (*Report from Finance Director Vesely*)

**\*\*\* Report will be available no later than June 23, 2014 \*\*\***

- Resolutions (4)*
- Redevelopment Successor Agency Resolution*
- Housing Authority Resolution*

## COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

## ADJOURNMENT

**NEXT REGULAR MEETING – 7:00 PM, TUESDAY, JULY 1, 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, 4<sup>th</sup> 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:** June 24, 2014

**TO:** Mayor and City Council

**FROM:** Director of Library & Community Services  
Director of Public Works – Engineering & Transportation

**SUBJECT:** 21st Century Library & Community Learning Center – Design Update

## **RECOMMENDATION**

That the Council reviews tonight’s presentation of the 21<sup>st</sup> Century Library project design update, and provides feedback to staff and the architects for the design development phase of the project.

## **BACKGROUND**

For Council’s convenience, quick links to previously presented project data and background information – approximately 800 pages of material – are provided in the list below:

- **2008:** [Community Needs Analysis for a New Hayward Library](#)  
(Page + Moris, 2008; 83 pages. <http://bit.ly/Community-needs-analysis>)
- **2008:** [Site Recommendation – Library Commission](#)  
(COH, 11/17/2008; 7 pages. <http://bit.ly/Lib-commission-11-17-2008>)
- **2010:** [Building Program – Hayward Library and Community Learning Center](#)  
(Page + Moris, 2010; 140 pages. <http://bit.ly/Building-program>)
- **2010:** [Preliminary Design Concepts for a New Library – Presentation](#)  
(Noll+Tam, 11/09/2010; 94 pages. <http://bit.ly/Prelim-design-presentation>)
- **2010:** [Preliminary Design Options for a New Library – Staff Report](#)  
(COH, 11/09/2010; 12 pages. <http://bit.ly/Prelim-design-report>)
- **2011:** [Survey – Bond Measure Feasibility](#)  
(Godbe Research, 2011; 386 pages. <http://bit.ly/Bond-feasibility-survey>)
- **2012:** [Data – Bay Area Library Rankings by Size](#)  
(California State Library, 2012; 1 page. <http://bit.ly/Library-size-per-capita>)
- **2013:** [Design Visualizations of a 21st Century Library - Presentation](#)  
(COH, 07/16/2013; 37 pages. <http://bit.ly/design-visualizations>)
- **2013:** [Design Visualizations of a 21st Century Library – Staff Report](#)  
(COH, 07/16/2013; 12 pages. <http://bit.ly/design-viz-report>)

- **2014:** [Resolution Placing a Revenue Measure on the June Ballot - Presentation](#)  
(COH, 03/04/2014; 13 pages. <http://bit.ly/measure-c-presentation>)
- **2014:** [Resolution Placing a Revenue Measure on the June Ballot – Staff Report](#), 03/04/2014  
(COH, 2014; 22 pages. <http://bit.ly/measure-c-report>)

## **PUBLIC CONTACT**

- 2007: Extensive community surveys, interviews, and focus groups are convened, involving over 1,800 participants.
- 2008: The *Community Needs Analysis for the Future Hayward Library* report is presented to Council and made available in the Library and on the City website.
- 2008: The Library Commission holds several public meetings to discuss the draft building program; review and discuss building site alternatives; and recommend a building site to Council.
- 2008: Community stakeholder focus groups are convened to discuss and develop “open space” park design alternatives.
- 2010: Community stakeholder focus groups are convened to discuss and develop preliminary building design options and “open space” park design concept
- 2010: The *Hayward Library & Community Learning Center Building Program* – containing detailed space allocations and adjacencies for the new facility – is published and made available to the public in the Library on the City’s website.
- 2010: Library Commission public meetings to review and discuss preliminary building design options for recommendation to Council.
- 2010: City Council and Library Commission jointly convene in public work session to review preliminary design concepts and select a final design concept (“Heart of the City” concept) to move forward.
- 2011: Calpine corporation donates \$10,000,000 to the City of Hayward to help fund the 21<sup>st</sup> Century Library & Community Learning Center for Hayward project.
- 2011: Bond Measure Feasibility Survey conducted to assess Hayward voter support for a potential facility bond measure to address an array of critical public facility needs including the library project.
- 2013: Council Budget & Finance Committee convenes to review and discuss financing mechanisms for the City’s critical facility needs including the 21<sup>st</sup> Century Library & Community Learning Center for Hayward project.

- 2013: City Council convenes in work session to review new design visualizations of the 21<sup>st</sup> Century Library & Community Learning Center for Hayward based on the “Heart of the City” design concept.
- 2014: Extensive community surveying and outreach is conducted in late 2013 and early 2014 to assess residents’ priorities for critical facility and service needs, including the 21<sup>st</sup> Century Library and Historic Library Park project.
- 2014: City Council places a revenue measure on the June 3, 2014 ballot to provide funding to complete the 21<sup>st</sup> Century Library & Community Learning Center and Historic Library Park project, among other critical facility and service needs.
- 2014: Community meetings to gather more public input and feedback on the 21<sup>st</sup> Century Library project and design concepts for the restoration of Historic Library Park.
- 2014: Measure C, a half-cent local sales tax to fund critical City facilities and services including the 21<sup>st</sup> Century Library and Historic Library Park project, is passed by Hayward voters by an overwhelming 2-to-1 margin.

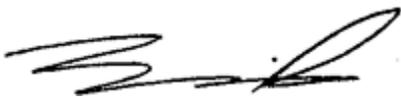
## **NEXT STEPS**

With Council’s comments and concurrence, staff will proceed to:

- (1) Complete the design development phase of the 21<sup>st</sup> Century Library & Community Learning Center project;
- (2) Develop and bring back more detailed design plans to the Council for final review in November 2014.

*Recommended by:* Sean Reinhart, Director of Library & Community Services  
Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



---

Fran David, City Manager



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, June 10, 2014, 7:00 p.m.**

---

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

**ROLL CALL**

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

**CLOSED SESSION ANNOUNCEMENT**

Mayor Sweeney reported that the Council met in closed session concerning three items: 1) conference with labor negotiators pursuant to Government Code 54957.6 regarding all groups; 2) conference with real property negotiators pursuant to Government Code 54956.8 regarding South Hayward BART Land Purchase and Requisition; and 3) conference with real property negotiators pursuant to Government Code 54956.8 regarding 2<sup>nd</sup> Street (at Walpert Street) Properties, APN 445-0050-018-00, APN 445-0050-019-00, APN 445-0050-010-01. There was no reportable action.

**PUBLIC COMMENTS**

Mayor Sweeney reminded candidates that campaign signs needed to be removed after the election. Mayor Sweeney directed staff to make sure to include Measure C -Transactions and Use (Sales) Tax in the proposed FY2015 Proposed Operating Budget.

Ms. Ofelia Mendoza, Hayward resident, spoke about a citation that was issued for leaving her trash bin on the yard and requested that the fine be waived as she was now in compliance with the regulation. Mayor Sweeney asked staff to work with Ms. Mendoza and report back to Council.

Mr. Elie Goldstein, Hayward business owner, brought to Council's attention a property in the downtown referred to as the "white house" that was bringing a threatening element to downtown and requested the issue be addressed. Mr. Goldstein added that downtown sidewalks continued to be less pedestrian friendly.

Council Member Salinas noted he would be representing the City of Hayward in China at an inaugural event for China Silicon Valley with technology investors, food distributors and pharmaceutical industries; and would not be in attendance at the June 17 and 24, 2014, Council meetings.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, encouraged everyone to attend the Downtown Hayward Street Parties on June 19, July 17, and August 21, 2014.

Mr. S.J. Samiul (aka Citizen Sam), Hayward resident, spoke about the Design Review for the new library on June 24, 2014; noted if Waste Management would consider issuing garbage discounts; reported sidewalk damage; indicated Standard Pacific Homes was working on weekends; and congratulated successful Council candidates and expressed support for Council Member Salinas to continue on Council.

## **WORK SESSION**

### **1. Proposed FY 2015 Annual Operating Budget – Work Session #3**

Staff report submitted by Director of Finance Vesely, dated June 10, 2014, was filed.

Finance Director Vesely announced the report.

Mayor Sweeney provided a synopsis of the accomplishments, goals and challenges of the Mayor and City Council Department as presented in the Proposed FY 2015 Annual Operating Budget.

In response to Council Member Mendall's question, City Manager David noted the last time Council had received a raise was in 2004.

Assistant City Manager McAdoo provided a synopsis of the accomplishments, goals and challenges of the City Manager Department as presented in the Proposed FY 2015 Annual Operating Budget.

Discussion ensued among Council members and City staff related to the budget for the City Manager Department. There was support to keep the Neighborhood Partnership Program funded for FY 2015, there was strong support to fill the Economic Development Manager vacancy, and there was a request to keep the Council informed as the programming on Channel 15 gets improved. Council praised the accomplishments by the department.

City Attorney Lawson provided a synopsis of the accomplishments, goals and challenges of the City Attorney Department as presented in the Proposed FY 2015 Annual Operating Budget. Council praised the accomplishments by the department and there was support to add the paralegal position. In anticipation of her retirement, Assistant City Attorney Conneely was commended for her many years of quality service to the City.

City Clerk Lens provided a synopsis of the accomplishments, goals and challenges of the City Clerk Department as presented in the Proposed FY 2015 Annual Operating Budget. City Clerk Lens requested additional staff for her department to assist with the ever increasing workload and meet service demand.

Discussion ensued among Council members and City staff. There was direction for the City Clerk and the City Manager to discuss options for filling a current vacancy in the department and to present the information at budget adoption.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, June 10, 2014, 7:00 p.m.**

---

Acting Human Resources Director Collins provided a synopsis of the accomplishments, goals and challenges of the Human Resources Department as presented in the Proposed FY 2015 Annual Operating Budget.

Information Technology Director Guenther provided a synopsis of the accomplishments, goals and challenges of the Information Technology Department as presented in the Proposed FY 2015 Annual Operating Budget. Director Guenther requested that Council authorize one additional Network/Microcomputer Specialist to help implement the initiatives brought forward by other departments.

Discussion ensued among Council members and City staff. There was strong support for adding a Network/Microcomputer Specialist and for approving new technology that would make the City more efficient.

Mayor Sweeney directed City staff to consider the requests by Information Technology and City Clerk and present it to Council for action at budget adoption.

Finance Director Vesely provided a synopsis of the accomplishments, goals and challenges of the Finance Department as presented in the Proposed FY 2015 Annual Operating Budget.

Discussion ensued among Council members and City staff regarding the budget for the Finance Department, the Enterprise Resource Planning (ERP) system, sources to increase long-term revenues, and City of San Leandro's business tax. Council commended the department for its accomplishments during difficult times.

There was discussion on the general budget and Council asked staff to provide estimated cost for the feasibility study for a possible Hotel and Business Conference Center; develop policies for funding levels of Unfunded Liabilities; consider a policy placing a limit on Real Property Transfer Tax; and incorporate Measure C commitments into the recommended budget that address the library, police protection, fire station improvements, and repairing potholes and streets.

## **CONSENT**

2. Approval of Minutes of the City Council Meeting on May 20, 2014

It was moved by Council Member Peixoto, seconded by Council Member Zermeño, and carried unanimously, to approve the minutes of the City Council Meeting on May 20, 2014.

3. Adoption of a Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2014

Staff report submitted by Senior Human Resources Analyst Monnastes, dated June 10, 2014, was filed.

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

Resolution 14-069, “Resolution Approving the Amended Fiscal Year 2014 Salary Plan Designating Positions of Employment in the City Government of the City of Hayward and Salary Range; and Superseding Resolution No. 14-018 and All Amendments Thereto”

4. Recycled Water Project Environmental Assessment: Authorization for the City Manager to Execute Professional Services Agreement with SMB Environmental to prepare an Environmental Assessment for the Recycled Water Project

Staff report submitted by Senior Utilities Engineer England, dated June 10, 2014, was filed.

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

Resolution 14-070, “Resolution Authorizing the City Manager to Execute an Agreement Between the City of Hayward and SMB Environmental, for Professional Services to Prepare an Environmental Assessment for the Recycled Water Project in an Amount Not to Exceed \$98,000”

5. Update on Potential for Rail Transport of Crude Oil through Hayward

Staff report submitted by Fire Chief Contreras, dated June 10, 2014, was filed.

Council Member Halliday underscored that the report was in opposition to the transport of hazardous crude oil by rail through Hayward due to the high risk to the community and property resulting from a crude oil release, explosion, and fire.

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

Resolution 14-071, “Resolution Opposing Transportation of Crude Oil by Rail Through the City of Hayward and Authorizing Staff to Advocate Locally and Nationally on this Issue”

6. Authorization to Negotiate and Execute a Professional Services Agreement with Brainchild Creative for Brand Marketing Services

Staff report submitted by Community and Media Relations Officer Holland, dated June 10, 2014, was filed.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, June 10, 2014, 7:00 p.m.**

---

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

Resolution 14-072, “Resolution of the City Council of the City of Hayward Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Brainchild Creative to Provide Brand Marketing Consulting Services”

7. Authorization for the City Manager to Execute a Service Agreement for the Installation of an Automated Materials Handling System at the Main Library

Staff report submitted by Director of Library and Community Services Reinhart, dated June 10, 2014, was filed.

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

Resolution 14-073, “Resolution Authorizing the City Manager to Execute a Sales and Service Agreement with Bibliotheca, LLC, for the Purchase and Installation of an Automated Materials Handling System at the Main Library”

## **PUBLIC HEARING**

8. FY 2015 Master Fee Schedule/Fine and Bail Update

Staff report submitted by Director of Finance Vesely, dated June 10, 2014, was filed.

Director of Finance Vesely provided a synopsis of the report and noted that the report and the Master Fee Schedule had been posted for public review on May 30, 2014, pursuant to public noticing requirements, and that subsequent to posting the report, staff noticed three administrative errors and posted a memorandum that highlighted changes to the report and Master Fee Schedule, which was posted for public review on June 2, 2014.

There was clarification about the Mobilehome Park Closure/Change of Use and related fees.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 9:07 p.m.

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

Resolution 14-074, “Resolution Adopting a Revised Master Fee Schedule for FY 2015, Including a Revised Fine and Bail Schedule, Relating to Fees and Charges for Departments in the City of Hayward and Rescinding Resolution No. 13-056 and All Amendments Thereto”

9. South Hayward BART Transit Oriented Development: Approval of Second Amendment to Owner Participation Agreement (for (a) Extension of Construction Timelines and (b) to mirror changes in Conditions of Approval), Tentative Map Conditions of Approval (Relating to Costs) and Eden Housing Additional Loan

The item was continued to June 17, 2014.

## **LEGISLATIVE BUSINESS**

10. Approval of Resolutions and Financing Documents for Fire Station 7 and Firehouse Clinic Project

Staff report submitted by Finance Director Vesely, dated June 10, 2014, was filed.

Finance Director Vesely provided a synopsis of the report.

Discussion ensued among Council, City staff and NHA Advisors Principal, Craig Hill, regarding the financing for new fire station and firehouse clinic project and the City’s Water Enterprise Fund.

Mayor Sweeney opened the public hearing at 9:17 p.m.

Ms. Dianne McDermott, Hayward resident and representing Fremont Bank, noted that the City’s Financial Advisor, NHA Advisors, conducted a bid process for the bank financing and staff was recommending to select the low bidder, Umpqua Bank. Ms. McDermott noted that other factors, besides the lowest bid, should be considered and urged the Council to support Fremont Bank, a local business that has helped sustain non-profit organizations in Hayward.

Mr. Gary Ong, Commercial Officer at Fremont Bank, spoke about how this was Fremont Bank’s first government financing bid on a municipal project and noted there were only five financing bids. Mr. Ong pleaded Council to support Fremont Bank.

Mayor Sweeney closed the public hearing at 9:24 p.m.

Discussion ensued among Council members, City staff, and NHA Advisors Principal Craig Hill about the bid process for the bank financing, procurement process, rebid process. It was noted the process was neutral and Fremont Bank was not the lowest bidder, and the costs that the banks would charge and interest rate were taken into consideration when selecting the lowest bidder.

Council Member Salinas offered a motion to explore reconsidering the selection of the financial institution that would be awarded the project, provided the action was not burdensome or caused delays with the timeline. The motion died for a lack of second.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, June 10, 2014, 7:00 p.m.**

---

Council Member Mendall appreciated that Fremont Bank was bidding on City projects. Mr. Mendall recommended that Council consider discussion on modifying the policy for awarding projects and taking into account local businesses as one of the factors for selecting the lowest bidder.

Council Member Jones suggested considering a policy of giving preference to local businesses inclusive of the bidding process.

Council Member Halliday agreed with staff that it would be out of the norm to change staff's recommendation, and noted there was a strong desire to work with local businesses.

Council Zermeno supported establishing a policy that favored local businesses but did not want to delay the project because of its importance. Council Member Zermeno offered a motion approving lease financing documents related to the financing of a new Fire Station 7 and Firehouse Clinic and memorializing the advance of funds from the City's Water Enterprise Fund to the City's General Fund.

Council Member Mendall seconded the motion.

Council Member Salinas noted he did not want to delay the project and agreed with establishing a policy that would give preference to local businesses and banks.

Council Member Mendall offered a friendly amendment directing staff to create a procurement policy that includes options for providing incentives to local businesses. Council Zermeno was amenable to the friendly amendment.

It was moved by Council Member Zermeno, seconded by Council Member Mendall, and carried unanimously, to adopt the following with a friendly amendment directing staff to create a procurement policy that includes options for providing incentives to local businesses:

Resolution 14-075, "A Resolution of the City Council of the City of Hayward Approving Certain Lease Financing Documents Relating to the Financing of a New Fire Station and Firehouse Clinic Project, and Authorizing and Directing Actions with Respect Thereto"

Resolution 14-076, "A Resolution Memorializing the Financing of a Portion of the Costs of a New Fire Station and Firehouse Clinic Project for the City Through an Advance of Funds from the City's Water Enterprise Fund, and the Obligation of the City's General Fund to Pay or Reimburse the City's Water Enterprise Fund for Such Advanced Funds"

## 11. Review of Options for Filling Short-Term City Council Vacancy

Staff report submitted by City Manager David, dated June 10, 2014, was filed.

City Manager David provided a synopsis of the report.

Discussion ensued among Council members and City staff regarding the options for filling the City Council vacancy, schedule for appointment process, and noticing requirements. Council members suggested that City staff outline a process similar to the process that Council used in 2006 and one that could be formalized on July 8, 2014.

Council Member Mendall suggested moving the application deadline to July 14, 2014, and the selection of candidates to July 15, 2014. Mr. Mendall noted he had a Bay Area Water Supply and Conservation Agency (BAWSCA) meeting on July 17, 2014.

Mayor Sweeney suggested that staff be specific on the report that will be presented to Council on July 8, 2014.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 9:56 p.m.

### **COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS**

Council Member Salinas announced the 4<sup>th</sup> Annual Let's Do Lunch Hayward... and breakfast too Campaign is on June 16, 2014, and noted that there would be free breakfasts and lunches throughout Hayward this summer. Mr. Salinas congratulated California State University East Bay students who were finalizing an academic year.

Council Member Zermeño announced that June 19, 2014, marked the first of three Downtown Hayward Street Parties, and invited all to attend.

### **ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 9:59 p.m., in memory of Dr. Reed Buffington, who passed away on June 9, 2014. Dr. Buffington was a former President/Superintendent of Chabot College. It was noted that Mr. Buffington led Chabot College from its founding up until his retirement, and he was an iconic figure for his dedication to the fulfillment of the educational and cultural needs, hopes, and desires of the people. Mayor Sweeney asked staff to work with Mr. Buffington's family and the Chabot College family to find an appropriate place to plant a tree in his memory.

### **APPROVED:**

Michael Sweeney  
Mayor, City of Hayward

### **ATTEST:**

Miriam Lens  
City Clerk, City of Hayward

**DRAFT**

**DATE:** June 24, 2014  
**TO:** Mayor and City Council  
**FROM:** Director of Public Works – Utilities & Environmental Services Department  
**SUBJECT:** Cast Iron Water Pipeline Replacement FY14 Project: Approval of Addendum and Rejection of Bids

**RECOMMENDATION**

That Council adopts the attached resolution:

1. Approving Addendum No. 1, providing minor revisions to the Plans and Specifications; and
2. Rejecting all bids.

**BACKGROUND**

This project is part of a continuing program to maintain and upgrade the City’s water distribution system. The City has approximately 344 miles of water distribution pipeline; approximately 23 miles (7%) is cast iron (CI) pipe installed between 1926 and 1992. CI pipe has an estimated useful life of roughly fifty years. The City’s current Capital Improvement program contains a multi-year program to replace some of the older more problematic CI pipes.

The CI water mains that staff had selected for replacement as part of this project were: West Jackson Street (from Santa Clara Street to Diadon Drive); Orchard Avenue (from Lucien Way to Tioga Road); Lucien Way; Pleasant Way; Park Street (from Winton Avenue to Meek Avenue); Park Street/Glade Street Easement; and Dean Street (from Sutro Street to D Street). The pipe segments have been shown on Attachment II - Project Location Map.

On May 6, 2014, Council approved the plans and specifications for the project and called for bids to be received on June 3, 2014.

**DISCUSSION**

This project would replace and upgrade water mains with new PVC or Ductile Iron (DI) water mains and new service connection pipes at the locations shown on Attachment II. The pipeline replacements consist of replacing 2300 feet of 12” and 8” CI pipes that are past their estimated useful life, and meet other criteria for replacement, such as the number of recent main breaks, with new 12” and 8” pipes. The project would also replace 5700 feet of substandard 4” and 6” CI pipes with new 8” water mains to improve reliability and minimize future maintenance needs. The

portion of the work on West Jackson Street would be done under a Caltrans Encroachment Permit and the work was planned to be done at night to minimize impact to traffic and businesses.

During the bidding process, staff issued one addendum (Bid Addendum No. 1), which corrected the quantity of one bid item and addressed minor questions raised during the pre-bid conference held May 21, 2014. One such question was whether the City was providing all materials for reconnection of water services as stated in the Specifications and on the Plans or if there were items the Contractor would be required to provide.

On June 3, 2014, staff received five (5) bids. JMB Construction, Inc. submitted the low bid in the amount of \$1,972,000, which is approximately 52% above the Engineer's Estimate of \$1,300,000. J&M, Inc. submitted the second lowest bid at \$2,127,114, and California Trenchless, Inc. submitted the third lowest bid at \$2,146,555.

The recent upswing in the regional economy appears to have created an unfavorable bidding environment for this type of project. As more piping work is being done this year than has been the case in recent years, fewer piping contractors are bidding on jobs, resulting in higher bids. The timing of this bid may have also contributed to the higher costs, as most piping contractors are very busy during the summer season. A bid process initiated in late winter to early spring, when contractors have not yet lined up their summer construction work, may result in lower bids. While the Engineer's construction cost estimate may have been somewhat low, given the market conditions and recent bid item costs, a low bid that is 52% over Engineer's estimate cannot be justified. Therefore, staff recommends that Council reject all bids for this project.

There is no great urgency to replace these mains in this calendar year or next. Staff sees no value in rebidding the identical project, in the near future, in hopes of achieving lower bid prices. Instead, staff will examine all options available to achieve the same quality and quantity of work but at a lower cost. This process will involve a critical look at various engineering alternatives, for example using thicker pipes that can be installed at shallower depths, where the cost savings related to a shallower trench may be much more than the difference in cost of the pipe. Staff is also in the process of improving and upgrading its in-house underground construction capabilities so that more of this type of work can be done in-house. As a result, some portions of the work required in local streets would be considered for construction by City staff.

Staff will re-evaluate the process and timing for construction of the remaining work and will request the Council call for bids for all or some segments of the project at a later time.

## **FISCAL AND ECONOMIC IMPACT**

The estimated project costs were as follows:

Design and Construction Administration – City Staff	\$ 70,000
Construction Contract	1,300,000
Inspection and Testing	<u>50,000</u>
Total	\$1,420,000

The FY 2014 Capital Improvement Program includes \$1,000,000 for the “Cast Iron Water Pipeline Replacement” project and \$420,000 from the “Water Main Replacements at Jackson Mission, Winton and Grand Street” project in the Water System Replacement Capital Improvement Fund.

As stated earlier, the high cost of construction bid has put this project somewhat outside of the threshold for a justifiable cost-to-benefit ratio, and therefore the City should not proceed with the project with the current low bid.

## **PUBLIC CONTACT**

No public contacts had been made to date. For this type of project, public contacts are made prior to commencement of the construction, which is not applicable in this case.

## **SCHEDULE**

Not applicable.

*Prepared by:* Rod Schurman, P.E., Associate Civil Engineer

*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 Map
- Attachment III: Bid Summary

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING ADDENDUM NO. 1 AND REJECTING ALL BIDS FOR THE CAST IRON WATER PIPELINE REPLACEMENT FY14 PROJECT, PROJECT NO. 07005;

WHEREAS, by resolution 14-052 on May 6, 2014, the City Council approved the plans and specifications for the Cast Iron Water Pipeline Replacement FY14 Project, Project No. 07005, and called for bids to be received on June 3, 2014; and

WHEREAS, Addendum No. 1 was issued to make minor revisions to the plans and specifications; and

WHEREAS, on June 3, 2014, five (5) bids were received ranging from \$1,972,000 to \$2,489,029, all well above the Engineer’s Estimate of \$1,300,000; and

WHEREAS, the low bid is fully 52% over the Engineer’s estimate of the probable construction cost; and

WHEREAS, City staff plans to examine the reasons for the high cost and if possible devise other processes, including regrouping the project segments and bidding at a time of year with higher potential for lower bids in the future;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Addendum No. 1 is hereby approved and adopted as part of the plans and specifications for the project.

BE IT FURTHER RESOLVED that all bids are hereby rejected for the Cast Iron Water Pipeline Replacement FY14 Project, Project No. 07005.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

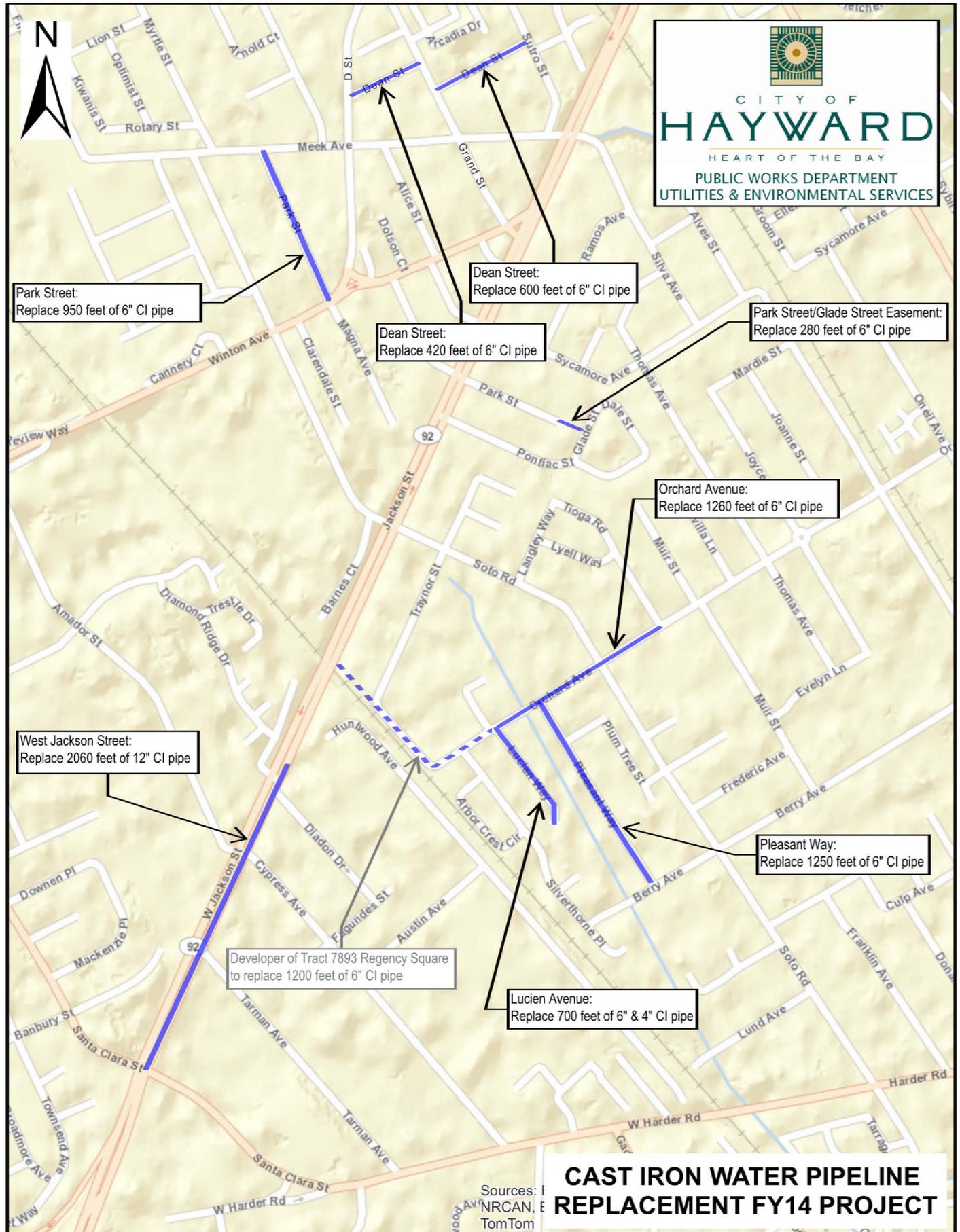
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



**BID SUMMARY**



# CITY OF HAYWARD

## UTILITIES & ENVIRONMENTAL SERVICES DEPARTMENT

CONSTRUCTION OF: **Cast Iron Water Main Replacement Project FY 2014**

PROJECT NO. : **07005/07163**  
 COUNCIL RESO DATE: **5/6/2014**      **Reso #14-052**  
 BID ADVERTISE DATE: **5/12/2014**  
 PREBID CONF DATE: **5/21/2014 at 10:00 AM**  
 BID OPEN DATE: **6/3/2014 at 2:00 PM**  
 NO. BIDS RECEIVED: **Five (5)**  
 NO. OF ADDENDA: **One (1)**

<b>Name:</b> JMB Construction Inc.	<b>J&amp;M Inc.</b>	<b>California Trenchless, Inc</b>
<b>Mail Add.:</b> 132 South Maple Ave	6700 National Dr	11875 Dublin Blvd
<b>Ste., #, etc.:</b>		C240
<b>City, State, ZIP:</b> So. San Francisco, CA 94080	Livermore, CA 94550	Dublin, CA 94568
<b>Phone:</b> (650) 267-5300	(925) 724-0300	(925) 361-7046
<b>Fax:</b> (650) 267-5303	(925) 724-0160	(510) 266-1543
<b>Email:</b> chehir@jmbconstruction.com	dray@jminc.com	thaining@californiatrenchless.com

BID ITEMS					ENGINEER'S ESTIMATE		BIDDER #1		BIDDER #2		BIDDER #3	
ITEM NO.	SPEC. SECTION	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	10-1.08	Mobilization	1	L.S.	10,000.00	10,000.00	75,000.00	75,000.00	21,800.00	21,800.00	50,000.00	50,000.00
2	10-1.12	Traffic Control System for Lane Closure	1	L.S.	30,000.00	30,000.00	90,000.00	90,000.00	125,000.00	125,000.00	70,000.00	70,000.00
3	10-1.40	Trench Shoring and Trench Safety	1	L.S.	8,000.00	8,000.00	9,000.00	9,000.00	18,600.00	18,600.00	20,000.00	20,000.00
4	10-1.25	Asphalt Concrete (Pavement Replacement and Restoration)	1,656	Ton	140.00	231,840.00	180.00	298,080.00	187.00	309,672.00	155.00	256,680.00
5	10-1.34	Abandon Existing Water Main	63	Each	650.00	40,950.00	1,200.00	75,600.00	2,100.00	132,300.00	125.00	7,875.00
6	10-1.35	Abandon Existing Water Valve	29	Each	300.00	8,700.00	750.00	21,750.00	373.00	10,817.00	150.00	4,350.00
7	10-1.36	Remove Existing Water Valve	2	Each	100.00	200.00	700.00	1,400.00	502.00	1,004.00	200.00	400.00
8	10-1.37	Abandon Existing Blow-Off	1	Each	200.00	200.00	720.00	720.00	502.00	502.00	250.00	250.00
9	10-1.38	Remove Existing Blow-Off for Connection	3	Each	100.00	300.00	800.00	2,400.00	6,100.00	18,300.00	250.00	750.00
10	10-1.31	Install 12-inch Water Pipe (DIP or PVC), Standard Backfill	960	L.F.	100.00	96,000.00	115.00	110,400.00	133.00	127,680.00	150.00	144,000.00
11	10-1.31	Install 8-inch Water Pipe (DIP or PVC), Standard Backfill	4,510	L.F.	75.00	338,250.00	95.00	428,450.00	95.00	428,450.00	130.00	586,300.00
12	10-1.31	Install 6-inch Water Pipe or FH Run (DIP or PVC), Standard Backfill	23	L.F.	65.00	1,495.00	400.00	9,200.00	468.00	10,764.00	150.00	3,450.00
13	10-1.31	Install 4-inch Water Pipe, Fire Service (DIP), Standard Backfill	20	L.F.	50.00	1,000.00	190.00	3,800.00	521.00	10,420.00	150.00	3,000.00
14	10-1.31	Install 12-inch Water Pipe (DIP or PVC), Caltrans Backfill	2,197	L.F.	105.00	230,685.00	150.00	329,550.00	173.00	380,081.00	250.00	549,250.00
15	10-1.31	Install 8-inch Water Pipe (DIP or PVC), Caltrans Backfill	400	L.F.	80.00	32,000.00	200.00	80,000.00	149.00	59,600.00	250.00	100,000.00
16	10-1.31	Install 6-inch Water Pipe or FH Run (DIP or PVC), Caltrans Backfill	62	L.F.	70.00	4,340.00	375.00	23,250.00	340.00	21,080.00	150.00	9,300.00
17	10-1.31	Install 12-Inch Valve	11	Each	1,100.00	12,100.00	3,000.00	33,000.00	2,730.00	30,030.00	2,600.00	28,600.00
18	10-1.31	Install 8-Inch Valve	15	Each	900.00	13,500.00	2,000.00	30,000.00	1,750.00	26,250.00	1,500.00	22,500.00
19	10-1.31	Install 6-Inch Valve	6	Each	700.00	4,200.00	1,850.00	11,100.00	1,400.00	8,400.00	1,100.00	6,600.00
20	10-1.31	Install 4-Inch Valve	1	Each	500.00	500.00	1,400.00	1,400.00	1,230.00	1,230.00	1,000.00	1,000.00
21	10-1.31	Install Air Valve	1	Each	2,000.00	2,000.00	5,000.00	5,000.00	2,010.00	2,010.00	3,000.00	3,000.00
22	10-1.31	Install Fire Hydrant	6	Each	2,500.00	15,000.00	2,800.00	16,800.00	2,525.00	15,150.00	2,600.00	15,600.00
23	10-1.06	Pothole Select Utility	15	Each	500.00	7,500.00	800.00	12,000.00	623.00	9,345.00	500.00	7,500.00
24	10-1.32	Connect to Existing Service (Type A, 5'±)	110	Each	500.00	55,000.00	850.00	93,500.00	704.00	77,440.00	700.00	77,000.00
25	10-1.32	Connect to Existing Service (Type B, 10'±)	14	Each	600.00	8,400.00	1,000.00	14,000.00	1,621.00	22,694.00	900.00	12,600.00
26	10-1.32	Connect to Existing Service (Type C, 20'±)	28	Each	900.00	25,200.00	1,600.00	44,800.00	2,725.00	76,300.00	1,400.00	39,200.00
27	10-1.32	Connect to Existing Service (Type D, 25'±)	9	Each	1,000.00	9,000.00	2,100.00	18,900.00	3,460.00	31,140.00	1,650.00	14,850.00
28	10-1.32	Connect to Existing Service (Type E, 30'±)	3	Each	1,200.00	3,600.00	2,600.00	7,800.00	4,422.00	13,266.00	2,000.00	6,000.00
29	10-1.32	Connect to Existing Service (Type F, 75'±)	1	Each	3,000.00	3,000.00	5,600.00	5,600.00	13,621.00	13,621.00	5,000.00	5,000.00
30	10-1.41	Restore Private/Public Improvements After Construction	1	L.S.	5,000.00	5,000.00	19,500.00	19,500.00	24,168.00	24,168.00	1,500.00	1,500.00
31	10-1.45	Administrative Change Orders	1	L.S.	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00
<b>TOTALS:</b>						<b>\$1,297,960.00</b>		<b>1,972,000.00</b>		<b>2,127,114.00</b>		<b>2,146,555.00</b>

**BID SUMMARY**



# CITY OF HAYWARD

## UTILITIES & ENVIRONMENTAL SERVICES DEPARTMENT

CONSTRUCTION OF: **Cast Iron Water Main Replacement Project FY 2014**

PROJECT NO. : **07005/07163**  
 COUNCIL RESO DATE: **5/6/2014**      **Reso #14-052**  
 BID ADVERTISE DATE: **5/12/2014**  
 PREBID CONF DATE: **5/21/2014 at 10:00 AM**  
 BID OPEN DATE: **6/3/2014 at 2:00 PM**  
 NO. BIDS RECEIVED: **Five (5)**  
 NO. OF ADDENDA: **One (1)**

Name:	<b>Ghilotti Construction Co., Inc.</b>	<b>Mitchell Engineering</b>
Mail Add.:	246 Ghilotti Ave	12100 Stevens Canyon Rd
Ste., #, etc.:		
City, State, ZIP:	Santa Rosa, CA 95407	Cupertino, CA 95014
Phone:	(707) 585-1221	(408) 253-2512
Fax:	(707) 585-1601	(408) 253-6445
Email:	annette@ghilotti.com	

BID ITEMS					ENGINEER'S ESTIMATE		BIDDER #4		BIDDER #5	
ITEM NO.	SPEC. SECTION	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	10-1.08	Mobilization	1	L.S.	10,000.00	10,000.00	200,000.00	200,000.00	100,000.00	100,000.00
2	10-1.12	Traffic Control System for Lane Closure	1	L.S.	30,000.00	30,000.00	100,000.00	100,000.00	35,500.00	35,500.00
3	10-1.40	Trench Shoring and Trench Safety	1	L.S.	8,000.00	8,000.00	15,000.00	15,000.00	31,000.00	31,000.00
4	10-1.25	Asphalt Concrete (Pavement Replacement and Restoration)	1,656	Ton	140.00	231,840.00	165.00	273,240.00	215.00	356,040.00
5	10-1.34	Abandon Existing Water Main	63	Each	650.00	40,950.00	250.00	15,750.00	1,000.00	63,000.00
6	10-1.35	Abandon Existing Water Valve	29	Each	300.00	8,700.00	250.00	7,250.00	1,000.00	29,000.00
7	10-1.36	Remove Existing Water Valve	2	Each	100.00	200.00	350.00	700.00	1,000.00	2,000.00
8	10-1.37	Abandon Existing Blow-Off	1	Each	200.00	200.00	350.00	350.00	1,000.00	1,000.00
9	10-1.38	Remove Existing Blow-Off for Connection	3	Each	100.00	300.00	350.00	1,050.00	1,000.00	3,000.00
10	10-1.31	Install 12-inch Water Pipe (DIP or PVC), Standard Backfill	960	L.F.	100.00	96,000.00	140.00	134,400.00	200.00	192,000.00
11	10-1.31	Install 8-inch Water Pipe (DIP or PVC), Standard Backfill	4,510	L.F.	75.00	338,250.00	110.00	496,100.00	140.00	631,400.00
12	10-1.31	Install 6-inch Water Pipe or FH Run (DIP or PVC), Standard Backfill	23	L.F.	65.00	1,495.00	210.00	4,830.00	315.00	7,245.00
13	10-1.31	Install 4-inch Water Pipe, Fire Service (DIP), Standard Backfill	20	L.F.	50.00	1,000.00	210.00	4,200.00	332.00	6,640.00
14	10-1.31	Install 12-inch Water Pipe (DIP or PVC), Caltrans Backfill	2,197	L.F.	105.00	230,685.00	190.00	417,430.00	238.00	522,886.00
15	10-1.31	Install 8-inch Water Pipe (DIP or PVC), Caltrans Backfill	400	L.F.	80.00	32,000.00	220.00	88,000.00	200.00	80,000.00
16	10-1.31	Install 6-inch Water Pipe or FH Run (DIP or PVC), Caltrans Backfill	62	L.F.	70.00	4,340.00	275.00	17,050.00	421.00	26,102.00
17	10-1.31	Install 12-Inch Valve	11	Each	1,100.00	12,100.00	2,200.00	24,200.00	3,303.00	36,333.00
18	10-1.31	Install 8-Inch Valve	15	Each	900.00	13,500.00	1,300.00	19,500.00	1,683.00	25,245.00
19	10-1.31	Install 6-Inch Valve	6	Each	700.00	4,200.00	950.00	5,700.00	1,683.00	10,098.00
20	10-1.31	Install 4-Inch Valve	1	Each	500.00	500.00	800.00	800.00	1,004.00	1,004.00
21	10-1.31	Install Air Valve	1	Each	2,000.00	2,000.00	4,000.00	4,000.00	1,949.00	1,949.00
22	10-1.31	Install Fire Hydrant	6	Each	2,500.00	15,000.00	4,500.00	27,000.00	2,873.00	17,238.00
23	10-1.06	Pothole Select Utility	15	Each	500.00	7,500.00	850.00	12,750.00	896.00	13,440.00
24	10-1.32	Connect to Existing Service (Type A, 5'±)	110	Each	500.00	55,000.00	1,850.00	203,500.00	523.00	57,530.00
25	10-1.32	Connect to Existing Service (Type B, 10'±)	14	Each	600.00	8,400.00	2,900.00	40,600.00	1,333.00	18,662.00
26	10-1.32	Connect to Existing Service (Type C, 20'±)	28	Each	900.00	25,200.00	2,200.00	61,600.00	2,020.00	56,560.00
27	10-1.32	Connect to Existing Service (Type D, 25'±)	9	Each	1,000.00	9,000.00	5,000.00	45,000.00	3,430.00	30,870.00
28	10-1.32	Connect to Existing Service (Type E, 30'±)	3	Each	1,200.00	3,600.00	5,000.00	15,000.00	4,102.00	12,306.00
29	10-1.32	Connect to Existing Service (Type F, 75'±)	1	Each	3,000.00	3,000.00	7,000.00	7,000.00	9,981.00	9,981.00
30	10-1.41	Restore Private/Public Improvements After Construction	1	L.S.	5,000.00	5,000.00	15,000.00	15,000.00	11,000.00	11,000.00
31	10-1.45	Administrative Change Orders	1	L.S.	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00
<b>TOTALS:</b>						<b>\$1,297,960.00</b>		<b>2,357,000.00</b>		<b>2,489,029.00</b>

**DATE:** June 24, 2014

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Adoption of a Resolution Approving an Amendment for \$49,000 to a Professional Services Agreement for Associate Planner Services in the Planning Division

### **RECOMMENDATION**

That the Council adopts the attached resolution (Attachment I), authorizing the City Manager to amend for the second time, a contract for professional services with West Coast Code Consultants (WC3), and to increase the contract amount by \$49,000 to perform the duties of the Associate Planner position in the Planning Division of the Development Services Department through October 31, 2014. The total contract amount will not exceed \$110,000.

### **BACKGROUND**

The Associate Planner position is a journey level position that is vital to the day-to-day operation of the Planning Division, and whose primary function is to review building, site and architectural plans, use permits, zone changes, variances, development proposals, applications and other related documents. The position also serves as primary point of contact to developers and property owners in meeting these standards, and requires coordination with the Public Works Departments, and other City departments.

Associate Planners are responsible for processing most planning applications in the Planning Division and providing support at Hayward's One Stop Permit Center in relation to land use and zoning inquiries. The Associate Planners respond to inquiries and assure conformance with state and city policies and regulations regarding zoning and other land use development controls.

### **DISCUSSION**

The Development Services Department currently employs three Associate Planners in the Planning Division. One of the three Associate Planners was absent for ten weeks on approved leave, from February 10 through April 18. Due to the demand for planning services related to the employee's absence, the Development Services Department originated an agreement with West Coast Code Consultants (WC3) on January 31, 2014, to provide professional planning services not to exceed

\$25,000. In order to allow for the completion and turnover of projects already in progress, Council adopted Resolution #14-050 to amend the agreement with WC3 by extending the professional planning services of Donna Kenney through the end of the fiscal year, and increase the contract by an additional \$36,000. However, with the resignation of the Planning Manager on April 8, and with the recent promotion of Senior Planner Sara Buizer to Interim Planning Manager, additional assistance from WC3 via Planner Donna Kenney is requested in order to allow for a thorough recruitment and training process to permanently hire a Senior Planner. Through WC3, Ms. Kenney will continue to perform Associate Planner duties and tasks, including providing technical support to Senior Planner Damon Golubics and Interim Planning Manager Sara Buizer in the Planning Division. This amendment would allow a total contract amount of \$110,000.

**FISCAL IMPACT**

All costs for this professional services agreement will be offset by salary savings via the approved vacant Senior Planner position in the FY 2015 budget for the Development Services Department.

**PUBLIC CONTACT**

No public contact has occurred associated with this action.

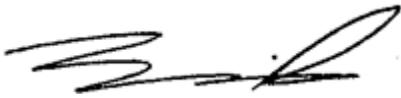
**NEXT STEPS**

Upon Council approval of this resolution, staff will execute a contract amendment.

*Prepared by:* Jade Kim, Administrative Analyst

*Recommended by:* David Rizk, AICP, Development Services Director

Approved by:



---

Fran David, City Manager

Attachments:

Attachment I      Draft Resolution

HAYWARD CITY COUNCIL  
RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO  
NEGOTIATE AND EXECUTE AN AMENDMENT TO AN  
AGREEMENT WITH WEST COAST CODE CONSULTANTS (WC3)  
FOR ASSOCIATE PLANNER SERVICES

WHEREAS, one of three Associate Planners in the Planning Division of the Development Services Department was on approved leave for ten weeks from February 10 through April 18 of 2014; and

WHEREAS, a contract in an amount not to exceed \$25,000 was executed with West Coast Code Consultants (“WC3”) in early February of 2014 to provide Associate Planner services; and

WHEREAS, in order to allow time for the completion of projects already in progress, Council adopted Resolution No. 14-050, which approved an amendment to the agreement with WC3, extending the professional planning services of Donna Kenney through the end of the fiscal year and increasing the contract by an additional \$36,000; and

WHEREAS, the Planning Manager resigned on April 8, 2014, and a Senior Planner in the Planning Division was promoted to Interim Planning Manager; and

WHEREAS, the level of activity and demand for Planning services necessitates additional Associate Planner services support through October 31, 2014; and

WHEREAS, the additional cost for such services can be accommodated with salary savings in the Planning Division budget.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby directs the City Manager to negotiate and execute a second amendment to the City’s agreement with WC3 for Associate Planner services in the amount of \$49,000, for a total contract amount not to exceed \$110,000, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014.

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:** June 24, 2014

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Adoption of Resolution Extending the Inclusionary Housing 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<sup>1</sup>. 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 20 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.

---

<sup>1</sup> 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)<sup>2</sup> and subsequently adopted the ordinance on January 18, 2011. The Relief Ordinance enacted temporary measures to the Ordinance effective until December 31, 2012.

Since its adoption early in 2011, Council has taken several other actions in connection with the Relief Ordinance. The following table summarizes those actions to the date of this report:

Table 1: City Council Action in Connection with Relief Ordinance To-Date

<b>Ordinance/City Council Action</b>	<b>Date Introduced</b>	<b>Date Adopted</b>	<b>Effective Until</b>
Interim Relief Ordinance	12/14/2010	1/18/2011	12/31/2012
First Amendment to the Relief Ordinance	11/15/2011	12/06/2011	N/A clarifications only
Second Amendment to the Relief Ordinance	12/18/2012	1/22/2013	12/31/2013
Third Amendment to the Relief Ordinance	12/17/2013	N/A adopted by resolution	6/30/2014

As illustrated by Table 1, at the sunset of the Relief Ordinance, on December 18, 2012, the City Council extended the inclusionary housing relief provisions for twelve months until the end of 2013<sup>3</sup>. This twelve-month extension of the Relief Ordinance is referred to as the Second Amendment to the Relief Ordinance<sup>4</sup>. At the December 18, 2012 meeting, Council also authorized allowing further extensions of the Relief Ordinance by resolution, if 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.

An additional reason to extend the Relief Ordinance through the end of 2013 was to allow staff to conduct a nexus study similar to the one conducted in 2010. The goal of this study would be determine whether further amendments to the Relief Ordinance or a reinstatement or permanent modification of the Ordinance are justified given the improvements in the local housing market. To this end, early in the summer of 2013, staff conducted a Request for Proposals (RFP) process to hire a consultant with expertise in financial feasibility and inclusionary housing studies. Thus, 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

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/2012/CCA12PDF/cca121812full.pdf> - see item No. 7

4 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. This amendment is actually referred to as the First Amendment to the Relief Ordinance. The staff report explaining these clarifications is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2011/CCA11PDF/cca111511full.pdf> - see item No. 9

RFP process. DRA was 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.

It was the goal of staff to present DRA's findings, conclusions, and recommendations to Council prior to the end of 2013 as the bulk of the Study was completed during the fall of 2013. However, staff decided to postpone 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 Study, and to develop a series of alternatives for consideration by Council. An added advantage of postponing this discussion was that year-end statistics about the state of the housing and real estate sectors (both area and local) would be available to inform the Council's policy choice. Lastly, staff and the consultant determined that extending the Relief Ordinance was needed to mitigate the lingering effects of the recessionary housing market and to enhance the feasibility of residential development in Hayward. Therefore, as illustrated by Table 1, upon the expiration of the Second Amendment to the Relief Ordinance at the end of 2013, Council extended the Relief Ordinance by resolution until June 30, 2014. This extension of the Relief Ordinance is the "Third Amendment to the Relief Ordinance"<sup>5</sup>.

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 June 30, 2014; b) building permits must be issued by June 30, 2016; 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 three 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 on this fee were further clarified.

## **DISCUSSION**

---

<sup>5</sup> The report is available at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca121713full.pdf> - see item No. 18

In February 2014, the City released a Public Review Draft of the Housing Element update (the Update). Pursuant to State housing element law, the Update contains a discussion of the resources available to address the City's-identified housing needs. Included among those resources is the Ordinance, which is also discussed in a section of the Update listing the local policies that may represent a constraint to the development of housing.

Although the Nexus Study is for the most part complete, staff decided to postpone the discussion about temporary or permanent modifications to the Ordinance until the second part of 2014, to consider and/or incorporate any public comments regarding the City's inclusionary housing policies resulting from the legally-mandated extensive community outreach in connection with the Update<sup>6</sup>. This opportunity is particularly important given the discussion of the Ordinance in the Update both as a resource available to address the housing needs of the residents and as a potential constraint to the development of housing. For this reason, staff is recommending that Council approves an additional six-month extension of the Relief Ordinance by resolution. The extension would be good until the end of 2014. Projects will have to receive discretionary approvals by December 31, 2014, and building permits will have to be issued by December 31, 2016 in order to benefit from the relief provisions. 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.

Staff anticipates that the Study findings and subsequent recommendations will be presented to Council prior to the end of 2014, 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 related to the Ordinance itself 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.

## **FISCAL IMPACT**

Fiscal impacts to the City of Hayward could be moderately positive, to the extent that residential

---

<sup>6</sup> The Update has been made available throughout different City locations to provide the public the opportunity to comment on the policies and programs discussed in the Update until its certification by the State Department of Housing and Community Development (HCD).

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 informed market-rate and affordable housing developers, and other interested parties of this proposed extension via phone calls and emails.

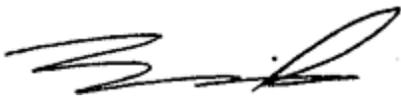
## **NEXT STEPS**

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. \_\_\_\_\_

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 17, 2013, the City Council of the City of Hayward adopted Resolution No. 13-187, extending the term of the Ordinance Providing Relief from Certain Inclusionary Housing Provisions (the "Relief Ordinance"), which provides 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 extension of the Relief Ordinance will expire on June 30, 2014, unless further extended: 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 Relief 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 mitigate the effects of the recessionary housing market and stimulate new residential development in the City; and

WHEREAS, the City Council reviewed the information contained in this resolution and the accompanying staff report and attachments thereto at a meeting held on June 24, 2014.

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 June 24, 2014.

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 December 31, 2014; and (b) obtained building permits by December 31, 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 Relief 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 June 24, 2014.

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:** June 24, 2014

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Adopt Resolutions and Introduce Ordinances Regarding Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward.

## **RECOMMENDATION**

As recommended by staff, that the City Council:

- a. Adopts the attached resolution (Attachment IV) approving the Negative Declaration/Initial Study and adopting findings in support of the proposed ordinances (Attachment VI);
- b. Adopts the attached resolution (Attachment V) approving revisions to the Fiscal Year 2014/2015 Master Fee Schedule;
- c. Introduces the attached ordinance (Attachment I) related to revisions to Chapter 10, Article I of the Hayward Municipal Code to add regulations relating to Tobacco Retail Sales Establishments Regulations (Hayward Municipal Code Sections 10-1.2780 *et seq.*);
- d. Introduces the attached ordinance (Attachment II) associated with revisions to the General Commercial (CG) Zoning District regulations related to land uses; and
- e. Introduces the attached ordinance (Attachment III) associated with revisions to Section 5-6.02 of the Smoking Pollution Control Ordinance.

## **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 new regulations pertaining to the retail sales of tobacco and tobacco-related products. For purposes of this report, tobacco-related products are items designed for the smoking or ingestion of tobacco products and electronic delivery devices, with or without nicotine. The proposed regulations are consistent with new General Plan Goals and Policies, as follows:

- HQL-1 - *Improve the health and well-being of all Hayward residents;*

- *HQL-1.1 - Prioritize the overall health of Hayward residents in its strategies, programs, daily operations, and practices;*
- *HQL-1.6 - Address health inequities in Hayward by striving to remove barriers to healthy living, avoiding disproportionate exposure to unhealthy living environments, and providing a high quality of life for all residents, regardless of income, age, or ethnicity; and*
- *HQL-4.3 – The City shall prohibit the sale of cigarettes near schools.*

Given the large number of establishments in Hayward that sell tobacco (142 tobacco retailers, 8 electronic cigarette retailers and 2 hookah lounges), staff is recommending new regulations that would limit new tobacco retail sales establishments (with an exception for stores over 10,000 square feet that dedicate no more than five percent of their square footage to tobacco products) 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. Additionally, all new and existing retailers would be required to obtain a Tobacco Retailers License (TRL) (and pay an associated annual fee of approximately \$400), which would establish operational standards, compliance inspections and enforcement provisions, and provide a funding source to help pay for inspections.

## **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 recent prevalence of the establishment of “smoke shops” and other establishments selling tobacco and tobacco-related products, and with the introduction of a variety of new tobacco or nicotine-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth.

*History of Proposed Regulations* - In response to the [American Lung Association’s State of Tobacco Control](#) local grade of D for Hayward (see page 23 of the report pertaining to reducing sales of tobacco products to youth), City Council in late 2011/early 2012 directed staff to develop regulations pertaining to the sales of tobacco and tobacco-related products. In conjunction with the Alameda County Health Department and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information utilized in the development of the proposed regulations included several other jurisdictions in Alameda County and northern California, the American Lung Association, Change Lab Solutions (formerly Technical Assistance Legal Center) and the Center for Disease Control (CDC). In addition, staff used the results of recent decoy operations performed by the Hayward Police Department.

May 31, 2012 Planning Commission Meeting - Staff developed draft regulations and presented them to the Planning Commission at a work session on May 31, 2012<sup>1</sup> for

---

<sup>1</sup> See staff report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2012/PCA12PDF/pca053112full.pdf> and minutes at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2012/PCA12PDF/pca062812full.pdf>

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 more effectively prevent sales of tobacco and tobacco-related products to youth.

Community Meeting - On October 28, 2013, a Community Meeting was held and all existing tobacco and electronic cigarette retailers doing business in Hayward were invited. The purpose of the meeting was to inform the existing tobacco retailers of the upcoming Tobacco Retail Sales Establishments Regulations and to gather feedback, comments and concerns. Twenty (20) people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CV CAN) and the Hayward Coalition for Healthy Youth (HCHY). Most attendees expressed support for new regulations, though owners of local tobacco and e-cigarette establishments expressed concerns.

Work Sessions - On November 21, 2013<sup>2</sup> and December 17, 2013<sup>3</sup>, work sessions were held with the Planning Commission and City Council, respectively. At both work sessions, several members of the public spoke in favor of the proposed tobacco regulations. 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. Overall, both the Planning Commission and City Council expressed support for the establishment of tobacco regulations and were supportive of a moratorium to allow staff more time to research the issues and develop regulations.

Moratorium - In order to allow staff additional time to research and develop tobacco regulations for the City, on January 14, 2014<sup>4</sup>, the City Council adopted an urgency ordinance to place a 45-day moratorium on the issuance of business licenses or building permits for any new small and large format tobacco retailers. The moratorium was extended an additional ten (10) months and fifteen (15) days at the February 18, 2014 City Council meeting<sup>5</sup>.

May 22, 2014 Planning Commission Hearing: The Planning Commission, with three Commissioners absent or not participating due to conflict of interest, heard the matter at its regular meeting on May 22, 2014 (see staff report and meeting minutes, Attachment VII). During

---

<sup>2</sup> See staff report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2013/PCA13PDF/pca112113full.pdf> and minutes at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2014/PCA14PDF/pca010914full.pdf>

<sup>3</sup> See staff report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca121713full.pdf> and minutes at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca011414full.pdf>

<sup>4</sup> See staff report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca011414full.pdf> and minutes at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca012814full.pdf>

<sup>5</sup> See staff report at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca021814full.pdf> and minutes at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca030414full.pdf>

deliberations, it was determined that there would not be sufficient votes to support a motion to recommend approval or denial of the proposed regulations; thus, a formal motion by the Commission was not made. Three of the Commissioners were in support of the proposed regulations (one expressing reservations because she felt the proposed ordinance was still lacking “concrete detail,” such as a definition of “sensitive receptors”) and one Commissioner was not in support of the proposed regulations, stating that the additional fee for the TRL would be a hardship on small business owners. Furthermore, that Commissioner did not support the conditional use permit requirement and stated that it should also apply to large format retailers. The Commission did express that they would like to learn more about the potential health impacts related to the exposure to and use of electronic cigarettes as the information becomes available.

Eight members of the public spoke in favor of the proposed regulations, including participants in the Youth Decoy operations and other members of the Hayward Coalition for Healthy Youth and the American Lung Association. The youth speakers described their experiences as Youth Decoys and how easy it has been for them to purchase tobacco products. Other speakers spoke about the discussions they have with their school-aged children regarding the use of tobacco and electronic cigarettes amongst their schoolmates and the ease with which they can obtain said products. Four speakers spoke against the proposed regulations, including three local tobacco and electronic cigarette retailers and one resident. The retailers expressed their objection to paying yet another fee and spoke about their diligence in not selling to minors. The electronic cigarette store owner who spoke stated that electronic cigarettes are not a tobacco product and should not be treated as such. She went on to recommend that the Commission educate themselves on the product and stated that the FDA published a report stating that electronic cigarettes were not harmful to one’s health. The Commission asked that she send this report to them. To date, staff has not received a copy of said report and has been unable to confirm any such statement made by the FDA.

*Pending Legislation* - The State Assembly is currently considering Senate Bill (SB) 648 and Assembly Bill (AB) 1500. SB 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, 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 later this year. AB 1500 was introduced by Assembly Member Dickenson and, as introduced, would prohibit any person engaged in the business of selling or distributing cigarettes, tobacco products or e-cigarettes, to ship or cause to be shipped any cigarettes, tobacco products or e-cigarettes to any person in this state other than specified businesses. The bill went to Committee on May 21, 2014, where the motion to pass failed (Ayes: 6; Noes: 1; Abstain; 10); however, reconsideration was granted.

*Food and Drug Administration (FDA) Ruling* - On April 24, 2014, the FDA released a proposed [rule](#) to expand its tobacco authority to cover products that meet the statutory definition of a tobacco product, including currently unregulated marketed products, such as electronic cigarettes (e-cigarettes), cigars, pipe tobacco, nicotine gels, waterpipe (or hookah) tobacco, and dissolvables. Under the proposed rule, the FDA would regulate said products in the same manner as traditional tobacco products, including, but not limited to: requiring product registration with the FDA and reporting of product and ingredient listing; allowing marketing of new tobacco products only after FDA review; only making direct and implied claims of reduced risk if the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as

a whole; and prohibiting distribution of free samples. Additional provisions include: minimum age and identification restrictions to prevent sales to underage youth; requirements to include health warnings; and prohibition of vending machine sales, unless in a facility that never admits youth. The proposed rule is currently under a 75-day public comment period.

*Electronic Cigarette Studies* - On May 12, 2014, UCSF Scientists published a [study](#) based on the comprehensive assessment of peer-reviewed public research regarding electronic cigarettes. The study found that the vapor emitted from e-cigarettes is not merely “harmless water vapor” as frequently claimed and that it can be a source of indoor air pollution. Furthermore, the study went on to say that while many companies market electronic cigarettes as smoking cessation aids, the devices have not been approved by the [Food and Drug Administration](#) as such and, to date, there is limited research to support such claims. Studies have shown that many people who use e-cigarettes are dual users of both conventional cigarettes and e-cigarettes and that up to a third of adolescents who use e-cigarettes have never even smoked conventional cigarettes, thus starting the use and potential addiction of nicotine through e-cigarettes. The study concluded that electronic cigarettes should be regulated in the same manner as traditional tobacco cigarettes, including marketing restrictions and prohibiting use where traditional cigarettes are prohibited.

## DISCUSSION

*Overview of Proposed Tobacco Retail Sales Regulations* – As proposed, the Tobacco Retail Sales Establishments Regulations will be codified at Section 10-1.2780 et seq. of the Zoning Ordinance (see Attachment I). The stated specific purpose of the regulations is “to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.”

The proposed tobacco retail sales regulations require that any new tobacco retail sales establishment that is either less than 10,000 square feet or larger than 10,000 square feet with more than 5% of its retail floor space dedicated to tobacco products:

- be limited to the General Commercial Zoning District;
- not be located within 500 feet of schools, parks and other sensitive receptors; and
- be subject to approval of a Conditional Use Permit (CUP).

Additionally, all *new* and *existing* Tobacco Retail Sales Establishments will be required to obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments (see Table 1 below). If adopted, the TRL requirement will go into effect next calendar year. Staff would mail all existing establishments a notice of the adoption of the regulations and the procedures and timeframe in which they must obtain their TRL.

**Table 1 – Permit Requirements for Tobacco Retail Sales Establishments**

	TRL*	CUP	500' from sensitive receptors	500' from existing tobacco retailer
Existing Tobacco Retailer	X			
New Tobacco Retailer**	X	X	X	X
New Lg Format Retailer***	X			

\*Includes compliance with all Requirements and Operational Standards and local, state and federal laws.

\*\*General Commercial Zoning District only

\*\*\* Stores >10,000 sf and 5% or less of floor area dedicated to storage and display.

The General Commercial (CG) district was determined to be most suitable for tobacco establishments because it provides regional-serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas (see proposed ordinance, Attachment II). By requiring a CUP for new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations in a public hearing format to ensure they are compatible with the surrounding properties. The intent of a separation requirement is to keep said establishments away from sensitive receptors, such as schools, parks and playgrounds, libraries and day care centers (i.e., areas where youth are typically present), as well as to ensure that there is not an oversaturation of tobacco sales establishments in one area. The ordinance, as proposed, includes a definition of sensitive receptors as follows: “people that have an increased sensitivity to air pollution or environmental contaminants.” The Ordinance also refers to other common definitions of sensitive receptors as put forth by the EPA and the Air Resources Board. For purposes of this Ordinance, sensitive receptor locations include schools, parks and playgrounds, libraries and day care centers. There are currently one hundred and forty-two (142) tobacco retail sales establishments, two (2) hookah lounges and eight (8) “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 or any sensitive receptors.

Similar to the City’s regulations pertaining to the sale of alcohol, the proposed regulations would allow the sale of tobacco products 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. This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district in which those stores are allowed (see discussion below regarding potential impacts to businesses).

The recommended *Requirements and Operational Standards* provisions will create local provisions as well as reinforce state and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia. This includes posting prominently near the cash register or other point of sale the legal age to purchase such items and checking the identification of purchasers to ensure they are of legal age. The inclusion of state and federal laws in the local ordinance will allow the City to enforce them at a

local level. As noted in the footnotes in the table above, all tobacco retailers will be required to comply with the Requirements and Operational Standards as part of the TRL, including those which are exempt from the CUP requirements (i.e. large format retailers and legal non-conforming tobacco retailers).

Tobacco Retailer License (TRL) - All tobacco retail sales establishments, including existing retailers who would become legal non-conforming uses under the proposed ordinance, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and do not require a CUP, would be required to obtain an annual Tobacco Retailer License from the City. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give City staff the authority to issue administrative fines, fees, penalties and/or citations to and/or require abatement from violators of the provisions of the ordinance. The TRL will have an annual fee of \$400 that will serve to recover the costs for annual inspections and enforcement at the local level, including the continued operation of the Hayward Police Department's Youth Decoy Program.

Youth Decoy Program – Since the inception of the Youth Decoy Program in 2010, the Hayward Police Department (HPD) has tested more than 707 establishments and issued 93 citations to establishments for selling tobacco products to minors (including electronic cigarettes) to date. Historically, HPD's Youth Decoy Program has been funded through a grant from the Alameda County Health Department; however, the funding program will soon no longer be available. With the implementation of the TRL program, a percentage of the TRL fees collected by the City will be appropriated to HPD to continue the operation of the Youth Decoy Program.

Definitions - Broad definitions have been developed 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, which 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, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

“Imitation Tobacco Product” means any 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 smoking device is not an imitation tobacco product.

“Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.

“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 Product” means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. “Tobacco product” includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

“Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.

*Compliance Checks and Penalties for Violations* – As part of the TRL, each establishment will be subject to a minimum of one compliance check inspection per year, starting in early 2015. Compliance checks will cover local, state and federal regulations, as well as permit and licensing requirements. Establishments that are found to be non-compliant will be subject to penalties and possible suspension or revocation of their TRL.

Prior to inspections taking place, staff will notify each tobacco-related business with a valid City of Hayward business license and State of California “Cigarette and tobacco products license” at least one month prior. The notification will include: Program description and requirements; copy of the TRL checklist; local, state and federal permit and licensing requirements; program fees and penalties; and reference to adopted regulations and active laws related to tobacco or related products.

A four-step process will be implemented by the Code Enforcement Division to assure compliance with all applicable local, state or federal codes. Violations and associated penalties consist of the following on a per case basis:

1. First Violation: Upon confirmation of violation(s) by City staff, tobacco retailers will be provided with a compliance date by which to correct identified violation(s). Tobacco retailers will be required to pay a fine of \$1,500 if violations are discovered, and face suspension of tobacco-related business activity for a period of 30 days for significant violations.

Significant Violations warranting suspension of the TRL include, but are not limited to:

- a. Failure to obtain required local, state or federal permits and/or licenses for the sale, distribution or display of “tobacco products” as defined in Section 10-1.2780 of the Hayward Municipal Code.
  - b. Sales of “tobacco products” to minors under the age of 18. ([California Penal Code Section 308, Stake Act.](#))
  - c. Failure to allow staff or law enforcement officers to review cigarette and tobacco products purchase invoices upon request or inspect premises upon request. ([Stake Act Section 22957 \(a\).](#))
2. Second Violation: A second confirmation within a two (2) year time period will result in a 90-day suspension of sales and business related to tobacco products and a \$3,000 fine.
  3. Third Violations: A third violation within a three (3) year time period will result in a \$5,000 fine and 120-day suspension of sales and business related to tobacco products. Additionally, retailers shall be subject to revocation of the TRL pursuant to HMC Section 10-1.2796.
  4. Revocation (Fourth Step): If a retailer’s TRL permit is suspended due to ongoing non-compliance with local, state or federal laws and regulations and subsequently revoked as a result, no future approval for TRL permits will be approved for the retailer.

There will be two (2) separate appeal processes for disputing revocation of the TRL.

1. Large Format Retailers: Retail establishments that have 10,000 square foot or more of floor area and that devote not more than five (5%) percent of such floor area to products covered under HMC Section 10-1.2781.

For Large-Format Tobacco Retail Sales Establishments, cases will be forwarded to the Code Enforcement Supervisor prior to revocation. A notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in [Chapter 1, Article 7 of the HMC](#).

2. CUP/Legal Non-Conforming Retailers (e.g., tobacco retailers permitted under a CUP or pre-existing tobacco retailers with valid State licenses and local business licenses for tobacco retail sales prior to adoption of ordinance.)

For tobacco retailers that have a conditional use permit or that are legal non-conforming uses, case documentation outlining observed violations by inspection staff will be forwarded to the Planning Division. A revocation hearing (for a conditional use permit) or termination hearing (for a legal, non-conforming use) will be scheduled before the Planning Commission in accordance with the procedures set forth in HMC Section 10-1.3260. Appeals shall be governed by [HMC Section 10-1.2845](#).

Any recipient of a TRL fine or penalty may contest the factual findings of the case and is required to complete a Request For Administrative Hearing Form (for a hearing before a hearing officer) and

return it to the City within fifteen (15) days from the date the fine or penalty was issued. Hearing forms will be available for download on the City web page or staff shall mail/send an appeal form within 48 hours upon request.

Potential Impacts to Existing Businesses - Many of the existing establishments would become legal, non-conforming uses under the proposed regulations and would be allowed to continue to operate in accordance with the HMC Section 10-1.2900 (Non-conforming Uses). Per those provisions, 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 with the intent to abandon the use. Also, additional development of any property on which a legal non-conforming use exists is required to have all new uses conform. Thus, non-conforming tobacco sales locations would cease operating over time.

Proposed Amendments to the Master Fee Schedule – A minor amendment to the City’s Master Fee Schedule is proposed to include the annual TRL fee. The amount of the proposed fee has been calculated based on the cost recovery associated with review and oversight of tobacco retail sales establishments. The amendments to the Master Fee Schedule will also include the addition of the fines for violations of the ordinance as outlined above.

Proposed Revisions to Smoking Pollution Control Ordinance - Minor amendments to the City’s Smoking Pollution Control Ordinance (at HMC Section 5-6.02) are proposed in order to make it consistent with the proposed Tobacco Retail Sales Establishments regulations and to address the smoking of electronic cigarettes in the City (see Attachment III). The proposed amendments include revisions to the definitions of “smoking” and “tobacco products” and the addition of a definition for “smoke,” to include electronic cigarettes and vapor produced from said devices. With the proposed revisions, it will be unlawful for anyone to use electronic cigarettes and smoking devices wherever smoking is prohibited.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made. Staff provides reasons why the findings can be made in the attached resolution (Attachment IV).

- A. ***Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.***
- B. ***The proposed change is in conformance with all applicable, officially adopted policies and plans.***
- C. ***Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.***
- 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.***

Environmental Impact Analysis – Staff prepared and circulated for public review and comment a Negative Declaration and Initial Study (Attachment VI), in accordance with the California

Environmental Quality Act (CEQA), which concludes the proposed text amendment and new fees would not generate significant environmental impacts.

## **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 are expected to be 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.

## **FISCAL IMPACT**

Based on a fiscal impact analysis conducted by Code Enforcement Department staff, an annual TRL fee of \$400 per establishment (estimated \$56,264 total annually) has been proposed to help ensure cost recovery. The fee will recover costs pertaining to City staff, including the Police Department to continue the Youth Decoy Program and Code Enforcement, and for enforcement, education, compliance inspections, and administrative costs associated with all new and existing tobacco retail sales establishments in Hayward. It is anticipated that future annual adjustments to fees may be needed in response to additional demands and costs that may arise after the implementation of the TRL. Such fee may result in a very small decrease in sales tax revenue from tobacco sales for the City, due to the limited number of new establishments that would choose not to locate in Hayward due to the annual TRL fee. In addition, the City may receive some limited amount of revenue from fines issued for violations. However, this is anticipated to be less than \$15,000 based on current estimates. Staff will reassess fee and fine levels, enforcement needs, and staffing requirements regularly as part of the implementation of the Ordinance.

## **PUBLIC CONTACT**

Significant outreach has occurred over the last year for these proposed regulations, as described in the BACKGROUND section of this report. A community mailing, which included key points of the proposed amendments and notice of this hearing and the planned future City Council hearing, was sent in early May to all existing tobacco retailers (including electronic cigarette retailers) in Hayward. Also, a notice of this hearing was published in *The Daily Review* on June 7, 2014. Staff received three written comments in opposition to the proposed regulations prior to the Planning Commission Meeting and has received thirteen additional comments regarding those notices as of the date of finalization of this report (Attachment VIII). Several concerns were raised in regards to the proposed regulations. Staff has prepared the following responses to address the concerns raised in the comments received:

### **1. How will I know when this ordinance becomes effective?**

Prior to Tobacco Retailers License (TRL) program inspections taking place, the City of Hayward shall give notice by mail a minimum of one month in advance, to each tobacco related business with a valid City of Hayward business license and State of California

“Cigarette and tobacco products license.” The program notice will provide the following summary of information to businesses and property owners:

- Program description and requirements
- Copy of TRL Checklist
- Local, State and Federal Permit & Licensing requirements
- Program fees and penalties
- Reference to adopted regulations and active laws related to tobacco products.

There will also be a web-page dedicated to the Tobacco Retail Licensing Program as part of the City’s website that will provide information about the program, including but not limited to, date of adoption.

**2. Minimum pack size for cigars that cost \$5 or less will hurt my business.**

Staff is proposing this restriction to discourage sale of certain products to youth. Flavored cigars are commonly sold individually or in small packages. These products are often low-priced and flavored like candy, making them especially attractive to young people. Selling cigars individually, whether flavored or not, makes them cheaper and easier for youth to buy. Some little cigars and cigarillos are packaged for individual retail sale, and others are taken out of their original packaging and sold individually by the retailer. To reduce youth access to these flavored and/or inexpensive tobacco products (with prices as low as .49 cents for a single and .99 cents for a two-pack), the prohibition of sale of inexpensive individual cigars or those sold in packages of small quantities is proposed. The purpose of the cost threshold is not to prevent the sale of single premium (more expensive) cigars to adults.

**3. What kind of documentation will be required to confirm flavored tobacco sales occurred prior to adoption of ordinance, so that such businesses can continue to sell such products?**

Existing business owners that were selling flavored tobacco products at the time of the adoption of the ordinance will need to provide documentation, such as a copy of an invoice. This will be noted on the initial TRL license and carried forward on annual renewals. This will allow the business to continue to sell any flavored tobacco products, as permitted by law.

**4. If I sell my business that the City has acknowledged can continue to sell flavored tobacco products (see response to #3 above), will the new owner also be able to sell flavored tobacco products?**

Yes; however, the new owner of a legal non-conforming tobacco retail sales establishment will have to apply for a change of ownership on the TRL. The new owner will not need to re-pay the TRL fee as the fee covers the business/location for the twelve month period. The new owner would be able to continue the sale of *all* tobacco products that the prior owner was legally permitted to sell, including flavored tobacco.

**5. Why are chain stores exempt from the restrictions of this ordinance?**

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 establishments<sup>6</sup>.

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 at gas stations and convenience stores<sup>7</sup>. Furthermore, since the Hayward Police Department began conducting the Youth Decoy Operations in 2010, of the **93** citations issued, only three occurrences were at a large format retailers. The remaining **90** citations were issued to gas stations, convenience stores, and tobacco stores.

**6. It is not fair to pass the new ordinance without informing the impacted businesses.**

All existing 142 tobacco retailers in the City of Hayward with a valid Cigarette and Tobacco Products license issued by the State Board of Equalization (BOE) and the four Vapor Stores with City Business licenses at that time were notified of the pending regulations and invited to attend a Community Meeting on October 28, 2013. The “Notice of Community Meeting and Public Hearings” notice included an overview of all proposed draft regulations and dates for upcoming Planning Commission and City Council Work Sessions and tentative public hearing dates.

A second mailing was sent out to the 142 tobacco retailers and the now eight Vapor Stores on May 9, 2014 notifying each business of the Planning Commission Meeting on May 22, 2014 and City Council Meeting on June 17, 2014, during which the proposed tobacco regulations were to be reviewed. The mailing included the key provisions of the proposed regulations, including how the regulations would affect existing businesses and the purpose of the TRL. The mailing also provided a link to the full draft document on the City’s website.

**NEXT STEPS**

Should the Council adopt the attached two resolutions and introduce the attached three ordinances, staff will bring back the ordinances for adoption at the next City Council meeting on July 1, 2014. Once Council adopts the ordinances, staff will send out notices to all existing tobacco retailers informing them of the new regulations and licensing requirements. Staff envisions being able to start collecting fees at the beginning of CY 2015, and each January thereafter.

*Prepared by:* Linda Ajello, AICP, Associate Planner

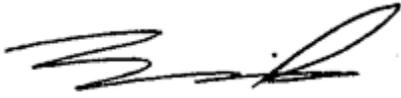
---

<sup>6</sup> <http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPRetailerPresentation07.pdf>

<sup>7</sup> [http://stic.neu.edu/trri/No\\_Sale/pt3.htm](http://stic.neu.edu/trri/No_Sale/pt3.htm)

*Recommended by:* David Rizk, AICP, Development Services Director

Approved by:



---

Fran David, City Manager

Attachments:

- Attachment I Draft Ordinance Regarding Proposed Tobacco Retail Sales Regulations (New HMC Code Section 10-1.2780 *et seq.*)
- Attachment II Draft Ordinance Regarding Proposed Revisions to the General Commercial (CG) Zoning District Regulations
- Attachment III Draft Ordinance Regarding Proposed Revisions to the Smoking Pollution Control Ordinance Definitions (HMC Section 5-6.02)
- Attachment IV Draft Resolution Regarding Proposed Ordinances and the Negative Declaration/Initial Study
- Attachment V Draft Resolution Regarding Proposed Revisions to the Master Fee Schedule
- Attachment VI Negative Declaration/Initial Study
- Attachment VII May 22, 2014 Planning Commission Agenda Report and Minutes
- Attachment VIII Public Comment Letters
- Attachment IX Petition submitted at May 22, 2014 Planning Commission Meeting

ORDINANCE NO. 14-

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE  
HAYWARD MUNICIPAL CODE TO ADD REGULATIONS  
RELATING TO TOBACCO RETAIL SALES ESTABLISHMENTS

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

Section 1. Sections 10-1.2780 through 10-1.2797 of the Hayward Municipal Code, entitled  
“Tobacco Retail Sales Establishments,” are hereby enacted to read as follows:

**SECTION 10-1.2780 TOBACCO RETAIL SALES ESTABLISHMENTS**

Sections:

Section 10-1.2780	Purpose
Section 10-1.2781	Applicability
Section 10-1.2782	Definitions
Section 10-1.2783	Requirements and Operational Standards for Tobacco Retail Sales Establishments
Section 10-1.2784	Large-Format Tobacco Retailers
Section 10-1.2785	Tobacco Retailer License (TRL)
Section 10-1.2786	Conditional Use Permit for New Tobacco Retail Sales Establishments
Section 10-1.2787	Posting of Conditions of Approval
Section 10-1.2788	Findings
Section 10-1.2789	Application for Conditional Use Permit
Section 10-1.2790	Prohibited Uses
Section 10-1.2791	Existing Tobacco Retail Sales Establishments
Section 10-1.2792	Liability for Expenses
Section 10-1.2793	Inspection and Right of Entry
Section 10-1.2794	Public Nuisance
Section 10-1.2795	Cumulative Remedies
Section 10-1.2796	Revocation of Tobacco Retailer Licenses and Conditional Use Permits; Appeals
Section 10-1.2797	Annual Report

**SECTION 10-1.2780 PURPOSE.**

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Tobacco Retail Sales Establishments regulations is to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.

**SECTION 10-1.2781 APPLICABILITY.**

These regulations apply to all Tobacco Retail Sales Establishments, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, electronic smoking devices or tobacco paraphernalia, as defined herein. Tobacco Retailers legally existing prior to the adoption of these regulations may exist without the approval of a conditional use permit but must otherwise comply with all standards set forth in these regulations.

**SECTION 10-1.2782 DEFINITIONS.**

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

- a. "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."
- b. "Characterizing Flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- c. "Distinguishable" means perceivable by an ordinary consumer by either the sense of smell or taste.
- d. "Drug Paraphernalia" is defined in California Health & Safety Code section 11014.5, as that section may be amended from time to time.
- e. "Electronic Smoking Device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which 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, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

- f. “Flavored Tobacco Product” means any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor. For purposes of this definition, “constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- g. “Hookah bar” or “hookah lounge” means any facility, building, structure or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.
- h. “Imitation Tobacco Product” means any 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 smoking device is not an imitation tobacco product.
- i. “Labeling” means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- j. “Licensee” means the holder of a valid, City-issued Tobacco Retailer License.
- k. “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- l. “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.
- m. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- n. “Proprietor” means a person with an ownership or managerial interest in a Tobacco Retail Sales Establishment. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a Tobacco Retail Sales Establishment, other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a Tobacco Retail Sales Establishment.

- o. “Residential District” is any area within City limits that is designated in the City’s zoning ordinance as one of the following districts: RS; RNP; RM; RH; RO; MH; SMU; any residential Planned Development; T3, T4, T4-1, T4-2 or T-5 (in the City’s Form-Based Code zoning districts); or any subsequently created zoning district whose primary use is residential in character.
- p. “Self-Service Display” means the open display of tobacco products, electronic smoking devices or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- q. “Sensitive Receptors” are people that have an increased sensitivity to air pollution or environmental contaminants. For the purpose of this Ordinance, sensitive receptor locations include schools, parks and playgrounds, libraries, and day care centers.
- r. “Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.
- s. “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.
- t. “Tobacco Product” means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. “Tobacco product” includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
- u. “Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.
- v. “Vapor bar” or “vapor lounge” (also referred to as “smoking device bar” or “electronic smoking device lounge”) means any facility, building, structure or location where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

**SECTION – 10-1.2783 REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.**

- a. All new and existing Tobacco Retail Sales Establishments shall abide by all of the following requirements and operational standards:

1. All Tobacco Retail Sales Establishments shall comply with local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including posting prominently near the cash register or other point of sale the legal age to purchase such items, and checking the identification of purchasers to ensure they are of legal age.
2. All new Tobacco Retail Sales Establishments shall obtain a conditional use permit pursuant to Section 10-1.3200 prior to operation, unless exempt as provided hereinafter, and a Tobacco Retailer License. It shall be unlawful for any person to operate as a Tobacco Retail Sales Establishment without first obtaining a conditional use permit if one is required and a Tobacco Retailer License.
3. All Tobacco Retail Sales Establishments shall display their Tobacco Retailer License to sell tobacco products and their annual inspection certificate in a visible, prominent location.
4. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices or tobacco paraphernalia.
5. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment or any of the Tobacco Retail Sales Establishment's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, except that conduct authorized pursuant to the state Medical Marijuana Program (California Health and Safety Code sections 11362.7 *et seq.*) shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell or transfer tobacco products or electronic smoking devices to any person who appears to be under twenty-seven (27) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state and federal law to purchase and possess tobacco products or electronic smoking devices.
7. No person who is younger than the minimum age established by state or federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. Tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia shall be secured so that only store employees have immediate access to these items. Self-service displays of tobacco products, electronic smoking devices, and tobacco products are prohibited.
9. All Tobacco Retail Sales Establishments that do not sell imitation tobacco products or flavored tobacco products as of the effective date of these regulations are prohibited from selling any imitation tobacco product or flavored tobacco

product. The burden of proof to establish that sales of imitation tobacco products and/or flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.

10. No Tobacco Retail Sales Establishment shall sell tobacco products, tobacco paraphernalia, or electronic smoking devices at a mobile location. For example, sales of tobacco products, tobacco paraphernalia, or electronic smoking devices on foot or from vehicles are prohibited.
11. Mobile vendors of tobacco products and electronic smoking devices are prohibited.

b. Notwithstanding any other provision of law, it shall be a violation of these regulations for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:

1. Any single cigar, whether or not packaged for individual sale;
2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
3. Any package of cigars containing fewer than five (5) cigars.  
This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars.

c. With the exception of Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of this Article, it shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school. The burden of proof to establish that sales of flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.

d. A tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

1. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product;  
or
2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.

e. Every Tobacco Retail Sales Establishment shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the establishment separately from the original packaging designed for retail sale

to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale and may be disposed of upon the sale of the entire contents of such package.

f. Each application for a conditional use permit to operate a Tobacco Retail Sales Establishment shall include a plan for demonstrating the means by which the applicant will comply with the operating standards outlined in this section.

g. Compliance with these regulations shall be enforced by the City’s Planning Director, in conjunction with the City’s Code Enforcement Division and the Hayward Police Department. The Code Enforcement Supervisor or his/her designee shall use reasonable efforts to conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per twelve (12) month period to determine if the Tobacco Retail Sales Establishment is in compliance with these regulations. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other person against the City or its agents in conducting these annual inspections.

**SECTION 10-1.2784 LARGE-FORMAT TOBACCO RETAILERS.**

Retail establishments, such as grocery stores, big-box stores, pharmacies, etc., that have 10,000 square feet or more of floor area and that devote not more than five (5%) percent of such floor area to the sale, display, sale and storage of tobacco products, electronic smoking devices or tobacco paraphernalia (“Large-Format Tobacco Retailers”) are permitted in any zoning district in which retail sales are allowed, without the need to obtain a conditional use permit for tobacco sales. Large-Format Tobacco Retailers are required to obtain a Tobacco Retailer License as set forth in Section 10-1.2785 and are subject to compliance with all requirements and operational standards as set forth in these regulations.

**SECTION 10-1.2785 TOBACCO RETAILER LICENSE (TRL).**

All new and existing Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 above.

a. Tobacco Retailer License Application Procedure:

1. Application for a Tobacco Retailer License shall be submitted in the name of each proprietor proposing to conduct tobacco retail sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No proprietor may rely on the issuance of a TRL as a determination by the City that the proprietor has complied with all laws applicable to tobacco retail sales. A TRL issued contrary to these regulations, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 10-1.2796 herein. Nothing in these regulations shall be construed to vest in any person obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any provision of law.

2. All applications for a TRL shall be submitted on a form supplied by the City and shall contain the following information:
  - i. The name, address, and telephone number of each proprietor of the business seeking a TRL;
  - ii. The business name, address, e-mail, and telephone number of the single fixed location for which a TRL is sought;
  - iii. A single name and mailing address authorized by each proprietor to receive all communications and notices (the “authorized address”). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (b)(2);
  - iv. Proof that the location for which a TRL is sought has been issued a valid state tobacco retailer’s license by the California Board of Equalization;
  - v. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, these regulations and, if so, the dates and locations of all such violations within the previous five years;
  - vi. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the TRL is sought; and
  - vii. Such other information as the Planning Director deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including any proposed signage or artwork for the business premises to ensure that the signage/artwork does not encourage youth smoking.
3. All Tobacco Retail Sales Establishments shall inform the Planning Director or his/her designee in writing of any change in the information submitted on an application for a TRL within ten business days of a change.
4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law, subject to any applicable exemptions.

b. Issuance of TRL:

Upon the receipt of a complete application for a TRL and the license fee required hereunder, the Planning Director or his/her designee shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate, false or otherwise fails to comply with Section 10-1.2785(a)(2) above. Intentionally supplying inaccurate or false information shall be a violation of these regulations;

2. The application seeks authorization for tobacco retail sales at a location for which the issuance of a TRL is prohibited under these regulations, unless tobacco retail sales were being conducted at the proposed location prior to the effective date of these regulations and provided that such sales constitute a legal, nonconforming use;
3. The application seeks authorization for tobacco retail sales that is prohibited under these regulations (e.g., mobile vending) or that is unlawful pursuant to this Article, including without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law;
4. The location for which a TRL is sought lacks a valid state tobacco retailer's license by the California Board of Equalization; or
5. The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last three years.

c. TRL Renewal and Expiration:

1. Term and Renewal of TRL. A TRL is invalid if the appropriate fee has not been timely paid in full or if the term of the TRL has expired. The term of a TRL is one year, commencing the first day of each calendar year.
2. Expiration of TRL. A TRL that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license that was not timely renewed, the proprietor must:
  - i. Submit the TRL fee, including any fees for late renewal, and application renewal form; and
  - ii. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product, electronic smoking device or tobacco paraphernalia after the TRL expiration date and before the TRL is renewed; and
  - iii. Has paid all outstanding fines and resolved any outstanding violations of these regulations, before seeking renewal of the license.

d. TRL Nontransferable:

A TRL may not be transferred from one person to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in proprietor(s).

e. TRL Conveys a Limited, Conditional Privilege:

Nothing in these regulations shall be construed to grant any person obtaining and maintaining a TRL any status or right other than the limited conditional privilege to act as a Tobacco Retail Sales Establishment at the location in the City identified on the face of the license. Nothing in these regulations shall be construed to render inapplicable, supersede, or apply in

lieu of any other provision of applicable law, including but not limited to, any provision of the Hayward Municipal Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. ATRL does not make the Tobacco Retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

f. Fee For TRL:

The fees for the annual TRL shall be established by the City Council from time to time in the City’s Master Fee Schedule, and are payable at the time the establishment obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of these regulations, including but not limited to, issuing a license, Tobacco Retailer inspections and compliance checks, documentation of violations and prosecution of violators. Annual fees shall not be pro-rated or refunded during the course of the year.

g. Compliance and Monitoring:

1. Compliance with these regulations shall be enforced by the Planning Director, in conjunction with the Code Enforcement Division and Hayward Police Department. The City Manager may designate any number of additional persons to monitor compliance with these regulations.
2. Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is in compliance with all laws regulating sales of tobacco products, electronic smoking devices, tobacco paraphernalia, and imitation tobacco products. City staff shall endeavor to perform compliance inspections at least annually on all Tobacco Retail Sales Establishments.
3. The City shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device purchases or possession against a person who otherwise might be in violation of such law because of the person’s age (hereinafter “youth decoy”) if the potential violation occurs when:
  - i. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;
  - ii. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations; or
  - iii. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services or other governmental agency.

**SECTION 10-1.2786 CONDITIONAL USE PERMIT FOR NEW TOBACCO RETAIL SALES ESTABLISHMENTS.**

a. All new Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia shall apply for and obtain a conditional use permit, in addition to a Tobacco Retailer License.

b. New Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia are only allowed in the General Commercial (CG) Zoning District. In addition to obtaining a conditional use permit, new Tobacco Retail Sales Establishments shall be subject to the following separation requirements:

1. No new Tobacco Retail Sales Establishments shall be established or located within 500 feet from any existing residential district or use, any sensitive receptors, or similar use as determined by the Planning Director, or within 500 feet of any other Tobacco Retail Sales Establishment.
2. The distances set forth above shall be measured as a radius from property line to property line without regard to intervening structures.
3. The applicant shall be required to submit a map, drawn to scale, showing how their proposed business location meets the aforementioned location requirements as part of the conditional use permit application.

#### **SECTION 10-1.2787 POSTING OF CONDITIONS OF APPROVAL.**

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

#### **SECTION 10-1.2788 FINDINGS.**

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

#### **SEC. 10-1.2789 APPLICATION FOR CONDITIONAL USE PERMIT.**

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

- a. A map showing that the proposed establishment meets all location and separation requirements as set forth in Section 10-1.2786; and

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

**SECTION 10-1.2790 PROHIBITED USES.**

The following uses are prohibited in all zoning districts: Vapor bars or vapor lounges; smoking device bars or electronic smoking device lounges; and hookah bars or hookah lounges.

**SECTION 10-1.2791 EXISTING TOBACCO RETAIL SALES ESTABLISHMENTS.**

Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations shall be considered a legal non-conforming use and will be permitted to continue in operation as a Tobacco Retail Sales Establishment. In order to maintain its legal non-conforming status, each such Tobacco Retail Sales Establishment shall be required comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 and the Non-Conforming Use regulations set forth in Section 10-1.2900 et seq., and shall obtain an annual Tobacco Retailer License as set forth in Section 10-1.2785.

**SEC. 10-1.2792 LIABILITY FOR EXPENSES.**

Any person who is found to have violated the Tobacco Retail Sales Establishments regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

**SEC. 10-1.2793 INSPECTION AND RIGHT OF ENTRY.**

To the extent permissible by law, the Planning Director or his designees shall have the right to enter and inspect any Tobacco Retail Sales Establishment for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Tobacco Retail Sales Establishments regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

**SEC. 10-1.2794 PUBLIC NUISANCE.**

It shall constitute a public nuisance for any person to operate a Tobacco Retail Sales Establishment in violation of these regulations.

**SEC. 10-1.2795 CUMULATIVE REMEDIES.**

Any person who violates any provision of the Tobacco Retail Sales Establishment regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Tobacco Retail Sales Establishments regulations shall be established by the City Council in the Master Fee Schedule.

**SEC 10-1.2796 REVOCATION OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS; APPEALS.**

- a. Any Tobacco Retail Sales Establishment that violates these regulations three (3) times within a three-year period shall be subject to revocation of its Tobacco Retail License and/or its conditional use permit.
- b. For Large-Format Tobacco Retail Sales Establishments, written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 of this Code.
- c. For Tobacco Retail Sales Establishments that have a conditional use permit or that are legal nonconforming uses, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of this Code. Appeals shall be governed by Section 10-1.2845 of this Code.
- d. The hearing officer, in the case of administrative action under 10-1.2796 subsection (a), or the Planning Commission, in the case of administrative action under 10-1.2796 subsection (b), has the authority to order a suspension of the Tobacco Retail Sales Establishment's TRL and/or conditional use permit in lieu of revocation.

**SECTION 10-1.2797 ANNUAL REPORT.**

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

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 24<sup>th</sup> day of June, 2014, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE  
SECTION 10-1.1000 ET SEQ., REGULATING THE CITY’S  
GENERAL COMMERCIAL (CG) DISTRICT, TO IMPLEMENT  
THE TOBACCO RETAIL SALES ORDINANCE

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

Section 1. The City Council incorporates by reference the findings contained in Resolution, approving the text changes requested in Zone Change Application PL-2013-0389TA.

Section 2. Zoning Ordinance Sections 10-1.1000 through 10-1.1020, relating to the General Commercial (CG) District, are hereby amended to add certain text (as indicated by underline) and delete certain text (as indicated by strikeout), to implement the City’s Tobacco Retail Sales ordinance introduced herewith and as such amendments are more specifically shown on Attachment “A” hereto.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward,  
held the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held  
the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

---

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

---

**SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)**

## Sections:

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

**SEC. 10-1.1005 PURPOSE.**

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

**SEC. 10-1.1010 SUBDISTRICTS.**

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

**SEC. 10-1.1015 USES PERMITTED.**

a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District as primary uses.

- (1) **Administrative and Professional Offices/Services.**
  - (a) Accounting and financial offices. (Excluding check cashing stores)
  - (b) Architectural and engineering offices.
  - (c) Banks and financial institutions.
  - (d) Chiropractic and acupuncture offices.
  - (e) Insurance and real estate offices.
  - (f) Law offices.
  - (g) Medical and dental offices.
  - (h) Travel and airline agency offices.
  
- (2) **Automobile Related Uses.**
  - (a) Automobile parts store.
  - (b) Automobile dealership. (Dealership selling primarily new vehicles,

---

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

---

when all minimum design standards are met and when located along Mission Blvd. between Highland/Sycamore and 700 feet south of Harder Road.)

- (3) Personal Services.
- (a) Barber or beauty shop.
  - (b) Dance studio.
  - (c) Dry cleaner/laundry.
  - (d) Health club.
  - (e) Martial arts studio.
  - (f) Music studio.
  - (g) Nail salon.
  - (h) Palm reading service.
  - (i) Photography studio.
  - (j) Physical fitness studio.
  - (k) Shoe repair shop.
  - (l) Tailor/seamstress shop.
- (4) Residential Uses.  
Residential dwelling unit(s). (Above first floor commercial uses only)
- (5) Retail Commercial Uses.
- (a) Antique store.
  - (b) Appliance store.
  - (c) Art and art supplies store.
  - (d) Bakery.
  - (e) Bicycle store.
  - (f) Bookstore.
  - (g) Camera store.
  - (h) Card shop.
  - (i) Carpet/drapery store.
  - (j) Clothing store.
  - (k) Consignment store.
  - (l) Coffee/Espresso shop.
  - (m) Delicatessen.
  - (n) Fabric store.
  - (o) Floral shop.
  - (p) Furniture store.

---

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

---

- (q) Gift shop.
  - (r) Hardware store.
  - (s) Jewelry store.
  - (t) Locksmith shop.
  - (u) Music store.
  - (v) Nursery (plant).
  - (w) Paint/wallpaper store.
  - (x) Pet grooming shop.
  - (y) Pet store.
  - (z) Plumbing and heating store.
  - (aa) Restaurant. (Where not abutting a residential district or property and with no bar)
  - (bb) Sporting goods store.
  - (cc) Stationary store.
  - (dd) Supermarket.
  - (ee) Theater (Small Motion Picture or Live Performance only.)
  - (ff) Thrift shop.
  - (gg) Toy store.
  - (hh) Variety store.
  - (ii) Video sales and rental store.
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop. (Not ancillary to a primary use.)
  - (b) Copying or reproduction facility.
  - (c) Equipment rental.
  - (d) Hotel or motel.
  - (e) Mailing or facsimile service.
  - (f) *Not Used*
  - (g) Reverse vending machine(s). (When located within a convenience zone.)
  - (h) Upholstery shop (furniture).
- (7) Other Uses.
- (a) Broadcasting studio.
  - (b) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served.)

---

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

---

- (c) Catering facility. (Where not abutting a residential district or property.)
- (d) Christmas tree or pumpkin patch lot. (See Section 10-12750 et seq. for standards)
- (e) Day Care Home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
- (f) Educational facility. (Small, generally less than 2000 square feet, designed to augment the learning process of elementary and secondary school students.)
- (g) Public agency facilities.

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

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

### **Sec. 10-1.1020 CONDITIONALLY PERMITTED USES**

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

- (1) **Administrative and Professional Office/Services.**
  - (a) Medical/dental laboratory.
- (2) **Automobile Related Uses.**
  - (a) Automobile brokerage office. (See definitions.)
  - (b) Automobile repair (minor and major). (See Section 10-1.1045h. for special requirements.)
  - (c) Automobile service station. “ “
  - (d) Automobile storage facility. “ “
  - (e) Car wash. “ “
  - (f) Drive-in establishments. “ “
  - (g) Parking lot.
- (3) **Personal Services.**
  - (a) Suntan parlor.

---

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

---

- (4) Residential Uses. None.
- (5) Retail Commercial Uses.
- (a) Wine Shop
  - (b) Convenience market. (See Section 10-1.2750 et seq. for regulations of alcohol.)
  - (c) Restaurant. (Where abutting a residential district or property with no bar.)
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop. (Not ancillary to a primary use)
  - (b) Equipment rental.
  - (c) Hotel or motel. (Where abutting a residential district or property)
  - (d) Recycling collection area. (When located within a convenience zone)
  - (e) Sign shop.
- (7) Other Uses.
- (a) Ambulance service.
  - (b) Animal grooming service.
  - (c) Animal hospital.
  - (d) Auction.
  - (e) Banquet hall. (Where abutting a residential district or property but not where alcohol is served)
  - (f) Carnival.
  - (g) Catering facility. (Where abutting a residential district or property)
  - (h) Commercial amusement facility.
  - (i) Cultural facility.
  - (j) Day care center. (State-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions)
  - (k) Educational facility.
  - (l) Flea market.
  - (m) Kennel.
  - (n) Mortuary.
  - (o) Outdoor gathering. (Refer to General Regulations Section 10-.2735g.)
  - (p) Passenger terminal.
  - (q) Recreational facility.
  - (r) Religious facility.
  - (s) Sign shop.
  - (t) Temporary use. (i.e., parking lot or tent sale)
  - (u) Wind energy conversion system.

---

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

---

- b. **Conditional Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District subject to approval of a conditional use permit:
- (1) Administrative and Professional Offices/Services.
    - (a) Check cashing store.
    - (b) Payday loan facilities.
  - (2) Automobile Related Uses.
    - (a) Automobile sales and rental. Except as provided for under Sec. 10-1.1015a(2)(b)
  - (3) Personal Services.
    - (a) Massage parlor.
    - (b) Tattoo parlor.
  - (4) Residential Uses.

None.
  - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
    - (a) Bar, Cocktail lounge.
    - (b) Brewery or Distillery.
    - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
    - (d) Dance or night club.
    - (e) Liquor store.
    - (f) Theater, Large Motion Picture.
    - (g) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).
  - (6) Service Commercial Uses.

None
  - (7) Other Uses
    - (a) Homeless shelter
    - (b) Warehouse (When located behind and ancillary to primary uses).
    - (c) Wholesale establishment

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE  
SECTION 5-6.02, SMOKING AND POLLUTION CONTROL  
DEFINITIONS, TO CONFORM TO THE TOBACCO RETAIL  
SALES ORDINANCE

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

Section 1. The City Council incorporates by reference the findings contained in Resolution No. 14-\_\_\_\_\_ approving the text changes requested in Zone Change Application No. PL-2013-0389TA.

Section 2. Zoning Ordinance Section 5-6.02, relating to definitions, is hereby amended to add certain text (as indicated by underline) to conform to the City’s Tobacco Retail Sales Outlets ordinance (No. 14-\_\_\_\_\_) introduced herewith and as such amendments are more specifically shown on Attachment “A” hereto.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 24th day of June, 2014, by Council Member\_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

ARTICLE 6

SMOKING POLLUTION CONTROL

Section Subject Matter

5-6.00	TITLE
5-6.01	FINDINGS AND PURPOSE
5-6.02	DEFINITIONS
5-6.03	APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES
5-6.04	PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS
5-6.05	REASONABLE SMOKING DISTANCE REQUIRED - 20 FEET (This section removed by Ord. 10-13, Adopted Oct. 26, 2010)
5-6.06	AREAS NOT SUBJECT TO SMOKING REGULATIONS
5-6.07	POSTING OF SIGNS
5-6.08	TOBACCO SAMPLES PROHIBITED
5-6.09	TOBACCO VENDING MACHINES RESTRICTED
5-6.10	ENFORCEMENT OFFICER
5-6.11	CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS
5-6.12	OTHER APPLICABLE LAWS

## ARTICLE 6

### SMOKING POLLUTION CONTROL

SEC. 5-6.00 TITLE. This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 FINDINGS AND PURPOSE. The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;
- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those, who had to quit, to begin smoking again;

- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;
- c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.
- d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.
- e. 'Public Place' means any place to which the public is invited or in which the public is permitted including, but not limited to, any rights-of-way, (*which include but are not limited to sidewalks, streets, and medians*), banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

- f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.
- g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.
- h. 'Service line' means any place where one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.
- i. 'Smoke or Smoking' means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor or aerosol, in any manner or in any form. ~~cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed, plant, or combustible substance, including medical marijuana.~~
- j. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- k. ~~'Tobacco Product' means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis (flavored cigarettes), or any other preparation of tobacco.~~ "Tobacco Products" means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

SEC. 5-6.03 APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES.

Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.04 PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

- a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:
- (1) Elevators and restrooms;
  - (2) Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
  - (3) Service lines;
  - (4) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
  - (5) Retail stores, except in areas in the stores not open to the public;
  - (6) Within enclosed common areas for hotels and motels, as well as 35 percent of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
  - (7) Restaurants, dining areas, and bars, whether enclosed or unenclosed;
  - (8) Public areas of libraries and museums when open to the public;
  - (9) Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
  - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
  - (11) Sports arenas, recreational areas, parks, playgrounds, and greenways.
- b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.
- c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.05 REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

(This section removed by Ord. 10-13, Adopted Oct. 26, 2010)

SEC. 5-6.06 AREAS NOT SUBJECT TO SMOKING REGULATIONS.

- a. Private residences, except when used as a child care or a health care facility.
- b. Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than 35 percent of their guest rooms as non-smoking rooms and removes ashtrays from these rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms.

SEC. 5-6.07 POSTING OF SIGNS.

- a. “Smoke Free” or “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.
  - (1) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.
  - (2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.08 TOBACCO SAMPLES PROHIBITED. No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store.

SEC. 5-6.09 TOBACCO VENDING MACHINES RESTRICTED. No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes, except in a bar.

SEC. 5-6.10 ENFORCEMENT OFFICER. Enforcement shall be implemented by the City Manager or designee.

SEC. 5.6.11 CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

- a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.
- b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.

- c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the Hayward City Council. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.
- d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.
- g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.12. OTHER APPLICABLE LAWS. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Councilmember \_\_\_\_\_

RESOLUTION ADOPTING NEGATIVE DECLARATION AND FINDINGS SUPPORTING AMENDMENTS TO THE HAYWARD MUNICIPAL CODE RELATING TO TOBACCO RETAILERS AND THE USE OF ELECTRONIC CIGARETTES

WHEREAS, at the direction of the City Council, staff has prepared a comprehensive package of administrative regulations governing establishments selling tobacco products and tobacco paraphernalia in the City of Hayward, including a Tobacco Retail Sales Ordinance and related amendments to the City’s Zoning Ordinance, the Smoking Pollution Control Ordinance and the Master Fee Schedule to implement the proposed regulatory framework (collectively referred to as the “Project”); and

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

WHEREAS, the City has a substantial interest in planning and regulating the use of property within the City and in maintaining the quality of urban life and the character of the City’s neighborhoods; and

WHEREAS, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, more than five million Americans who are younger than eighteen are projected to die prematurely from a smoking-related illness; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority by prohibiting the sale or furnishing of cigarettes, tobacco products, electronic cigarettes and smoking paraphernalia to

minors, as well as requiring that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under eighteen years of age; and

WHEREAS, state law explicitly authorizes cities and counties to enact local tobacco retail licensing ordinances and allows for the suspension or revocation of a local license for a violation of any state tobacco control law; and

WHEREAS, despite state and local efforts to limit youth access to tobacco, minors are still able to access cigarettes. In California, more than one-third of all high school students have smoked a cigarette by fourteen years of age and sixty-four percent of adult smokers started by the age of eighteen; and

WHEREAS, in 2013, an average of twenty-two percent of surveyed, Hayward tobacco retailers surveyed sold to minors and more than one-third of Hayward electronic cigarette retailers sold to minors; and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. A review of California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in many of these communities after the ordinances were enacted, with an average decrease of twenty-six percent in the youth sales rate; and

WHEREAS, more than one hundred cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; and

WHEREAS, the City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates; and

WHEREAS, a study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five or more tobacco retailers than at schools in neighborhoods without tobacco retailers; and

WHEREAS, studies in journals such as BMJ (formerly British Medical Journal), Pediatrics, and Preventive Medicine have demonstrated that candy cigarettes and other imitation tobacco products predispose children to use tobacco later in life by desensitizing them and promoting tobacco use as culturally or socially acceptable. One such study concluded that twenty-two percent of adults who had regularly consumed candy cigarettes were regular or former smokers, compared with only twelve percent of adults who had never consumed candy cigarettes; and

WHEREAS, electronic cigarettes are not currently regulated by the federal Food and Drug Administration and some scientific and medical studies have determined that the vapors inhaled by the users of electronic cigarettes may be harmful to one's health; and

WHEREAS, the City's Smoking Pollution Control Ordinance does not specifically address the use electronic cigarettes in places where the smoking of conventional cigarettes is prohibited; and

WHEREAS, it is the intent of the City Council to ensure compliance with all state and federal laws, with particular emphasis on those laws and regulations that prohibit or discourage the sale or distribution of tobacco, nicotine products and electronic cigarettes to minors and to prohibit the use of electronic cigarettes in all places in the City where the smoking of conventional cigarettes is prohibited; and

WHEREAS, the Planning Commission considered the Project at a duly-noticed, public hearing on May 22, 2014, during which a majority of the Commissioners present recommended that the City Council approve the Project; and

WHEREAS, amendments to the City of Hayward Fiscal Year 2014/2015 Master Fee Schedule are proposed to offset costs to the City from the enforcement and administration of the proposed regulations; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on June 17, 2014.

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 a Negative Declaration and Initial Study have been prepared, which conclude that no significant environmental impacts will occur as a result of the Project and such determination reflects the independent judgment of the City Council of the City.

#### AMENDMENTS TO THE MUNICIPAL CODE

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

The Project will promote the public health, safety, convenience, and general welfare of the residents of Hayward by amending the Zoning Ordinance to provide definitions for tobacco sales and to regulate the sale of electronic cigarettes and other specified items; establishing performance and operational standards that will apply to all new and existing tobacco retail

sales establishments and will help ensure such establishments are not operated in a manner which violates any local, state or federal laws and so as not to constitute a public nuisance; establishing local enforcement provisions for tobacco retail sales establishments found to be in violation of the regulations; prohibiting new tobacco retail sales establishments in areas of the City that are in close proximity to sensitive receptors and to existing tobacco retail sales establishments to prevent an overconcentration of such establishments in the City; establishing a Tobacco Retailers License (TRL) which all new and existing tobacco retail sales establishments will be required to obtain annually; creating cost recovery mechanisms through the TRL fee, which will cover annual inspections by the Code Enforcement Division and for the Youth Decoy Program by the Hayward Police Department; and prohibiting the use of electronic cigarettes in all places in the City where the smoking of conventional cigarettes is prohibited.

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

The Project conforms to City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the Project is aligned:

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

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

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

Additionally, over the last several years, the City has established various policies to create a healthier Hayward. In 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code to prohibit the use of tobacco products in or around public places in the City of Hayward. In 2011, the City adopted a resolution for the City to become a member

of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over seventy-five other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this Project is consistent with the goals of making Hayward a healthier City.

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

No properties are proposed to be reclassified as part of the Project. Any new tobacco retail sales establishments will be required to have adequate streets and facilities before operating, as currently required.

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

No properties are proposed to be reclassified as part of the Project. The Project will provide additional standards to help ensure tobacco retailers operate in a manner that does not generate negative impacts to surrounding properties and neighborhoods. In addition, the Project will provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Police Department. Finally, the Project will clarify the use of electronic cigarettes is prohibited in all places in the City where the smoking of conventional cigarettes is prohibited.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Negative Declaration and approves the Project, subject to the adoption of the companion ordinances.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

---

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AMENDING THE CITY OF HAYWARD FISCAL YEAR 2014/2015 MASTER FEE SCHEDULE ASSOCIATED WITH AMENDMENTS TO THE CITY OF HAYWARD MUNICIPAL CODE TO PROVIDE REGULATIONS FOR TOBACCO RETAILERS

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

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

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

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

WHEREAS, the City is not achieving cost recovery associated with review and oversight of tobacco retail sales establishments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Master Fee Schedule relating to fees and charges for the Finance Department, as reflected in Attachment A.

BE IT RESOLVED that this resolution shall become effective on the date that the last of the three companion ordinances (Ordinances No. 14- , No. 14- , and No. 14- ) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:

                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_

City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney of the City of Hayward

## Attachment A

**Finance**A. **ASSESSMENT DISTRICT FEES**

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

**B. OPERATING PERMITS**

- |    |   |                      |
|----|---|----------------------|
| 1. | <u>Bingo Permit</u> (Reference HMC 4-3)   |                      |
|    | a. Initial or renewal Fee   | \$50.00              |
| 2. | <u>Card Club Permit</u> (Reference HMC 4-3)   |                      |
|    | a. Application Fee  | \$40.00              |
|    | b. Annual Table Fee   | \$8,693.00 per table |
| 3. | <u>Closeout Sale Permit</u> (Reference HMC 6-4)   |                      |
|    | a. Initial Fee  | \$76.00              |
|    | b. Renewal  | \$67.00              |
| 4. | <u>Cabarets and Dance Licenses and Permits</u> (Reference HMC 6-2)  |                      |
|    | a. Annual License (payable quarterly in advance)  | \$103.00/year        |
|    | b. Single Event Permit  | \$42.00              |
| 5. | <u>Preferential Parking Permit</u> (Reference Hayward Traffic Regulations Section 3.95 and Hayward Traffic Code 6.36) |                      |
|    | a. Initial Fee and Biennial Renewal Fee (for up to two residential or visitor permits)                                | \$50.00              |
|    | b. Each additional residential permit   | \$25.00              |
|    | c. Each additional visitor permit   | \$25.00              |
| 6. | <u>Peep Show Permit</u> (Reference HMC 6-9)   |                      |
|    | a. Peep Show Device   | Time & Material      |
|    | b. Investigation Fee  | Time & Material      |
| 7. | <u>Tobacco Retailer License</u> (Reference HMC 10-1.3500)   |                      |
|    | a. Initial or renewal Fee   | \$400.00             |

**C. MISCELLANEOUS FEES**

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

**All City Departments**

**A. ADMINISTRATIVE CITATIONS** – Authorized by Hayward Municipal Code (HMC) Article 7 - Administrative Citations have fines set pursuant to Government Code (GC) Section 53069 and 36900. Unless otherwise specified by Ordinance, Fee Schedule or Code, the fine amount for any violation of any section of the Municipal Code shall be:

- 1. First Violation \$100.00
- 2. Second Violation \$200.00
- 3. Third and Subsequent Violations \$500.00

**B. ADMINISTRATIVE HEARING FEE** \$50.00

**C. CD-ROM or DVD** \$5.00 each

**D. DISHONORED OR RETURNED PAYMENT FROM BANK OR CREDIT CARD**

- 1. If paid within 30 days of notification \$25.00 + amount of check
- 2. If paid after 30 days of notification, subject to forgiveness of all or a portion of the fee by the Director of Finance As authorized by California Civil Code 1719 but not less than \$25.00

**E. GROSS HOUSEHOLD INCOME**

The State of California annually publishes an Official State Income Limits guideline for each county. This document is available through the California Department of Housing and Community Development website at <http://housing.hcd.ca.gov>. Municipal programs offering income based discounts will use the 'Alameda County - Very Low Income' figures to determine eligibility.

**F. LATE AND DELINQUENT PAYMENTS**

Unless specifically provided otherwise, the manner of payment, delinquency status, and assessment and collection of penalties for delinquent payment of the fees imposed or reflected by this master fee schedule shall be as follows:

- DAILY FEE:** Due on its effective date and delinquent at 5:00 PM on due date.
- MONTHLY FEE:** Due on the first day of each month for which licenses, permits, fees are sought and delinquent at 5:00 PM on the tenth day of the month.
- QUARTERLY FEE:** Due on the first day of the yearly quarter period and delinquent at 5:00 PM on the tenth day of the first month in which the quarterly fee is due.
- ANNUAL FEES:** Due on the first day of the established annual period and delinquent at 5:00 PM on the tenth day of the first month in which the annual fee is due. A late payment fee of \$5.00 per month shall be applied to all accounts paid after the established due date.

The delinquent account(s) shall be assessed an interest charge of one percent (1%) per month of the unpaid delinquent balance and related interest charge. The interest charge shall be applied to all accounts delinquent for any calendar month or portion of such month, and shall not be prorated. If the delinquent payment is paid within 30 days of notification, the interest fee may be subject to forgiveness based on hardship. The Director of Finance shall review and document all interest fees not collected.

**G. PHOTOCOPYING OF FILE MATERIALS:**

1. Black and White Copy- 8½ x 11 inches or 8½ x 14 inches \$0.50/page for first ten (10) pages of each document  
 \$0.10 each additional page of same document

2. Black and White Copy– 11 inches x 17 inches \$1.00/page for first ten (10) pages of each document  
 \$0.20/page each additional page of same document

3. Color Copy- 8½ x 11 inches or 8½ x 14 inches \$0.75/page

4. Color Copy– 11 inches x 17 inches \$1.50/page

**H. RESEARCH OR ANALYSIS OF RECORDS** (involving more than 15 minutes) \$39.00 per hour (minimum charge \$20.00)

**I. SMOKING ORDINANCE**

- 1. Smokers Violating the Ordinance \$50.00 per violation
- 2. Fines for businesses that fail to enforce the smoking ordinance
  - (1) First Offense \$1,000.00
  - (2) Second Offense \$1,500.00
  - (3) Third Offense \$2,000.00

**J. TOBACCO ORDINANCE**

- (1) First Offense \$1,500.00 penalty/30 day TRL suspension
- (2) Second Offense \$3,000.00 penalty/30 day TRL suspension
- (3) Third Offense \$5,000.00 penalty/30 day TRL suspension or revocation



**DEPARTMENT OF DEVELOPMENT SERVICES  
Planning Division**

**INITIAL STUDY CHECKLIST**

**Project Title:** Text Amendment Application No. PL-2013-0389: Establish zoning regulations related to tobacco retail sales establishments in the City of Hayward

**Lead agency name/address:** City of Hayward, Development Services Department; 777 B Street, Hayward, CA 94541-5007

**Contact person:** Linda Ajello, AICP, Associate Planner  
(510) 583-4207  
linda.ajello@hayward-ca.gov

**Project location:** Citywide

**Project Sponsor's Name and Address:** City of Hayward  
777 B Street  
Hayward, CA 94541

**General Plan Designation:** Various (no changes proposed)

**Zoning Designation:** Various (no changes proposed)

**Project description:**

Text Amendment Application No. PL-2013-0389:

Proposed revisions to the Hayward Municipal Code to establish regulations related to tobacco retail sales establishments to include:

- Revisions to definitions;
- Designate zoning districts in which Tobacco Sales establishments can be located;
- Create standards and operating procedures for all new and existing tobacco retail sales establishments;
- Create local enforcement provisions;
- Establish an annual Tobacco Retailer License and fee for cost recovery, including for annual inspections and enforcement; and
- Revisions to definitions in Article 6 – Smoking Pollution Control.

**Surrounding land uses and setting:**

Regional Setting

The City of Hayward is known as the “Heart of the Bay” due to its central location in Alameda County along the east side of the San Francisco Bay, twenty-five miles southeast of San Francisco, fourteen miles south of Oakland, twenty-six miles north of San Jose, and ten miles west of the valley communities of San Ramon, Dublin, and Pleasanton. The City of Hayward lies along the southeastern shore of the San Francisco Bay, at the western end of the Diablo Mountain Range. Topography in the eastern portion of Hayward generally consists of moderately steep foothills descending from the Diablo Range, leveling into a valley before reaching the San Francisco Bay.

The Nimitz Freeway (US 880) passes through the City of Hayward on its path between the City of San Jose and the San Francisco-Oakland Bay Bridge. The Hayward-San Mateo Bridge, State Route 92, spans the San Francisco Bay between the cities of Hayward and Foster City. The City of Hayward borders the cities of San Leandro, Union City, Fremont and Pleasanton. The census-designated places bordering Hayward within Alameda County are Castro Valley, San Lorenzo, Cherryland, and Fairview.

### City Setting

The City of Hayward is highly urbanized, with the shoreline and hillsides containing natural open space. Commercial development tends to be located along major arterial streets such as Mission Boulevard, Foothill Boulevard, Jackson Street, Tennyson Road, and Hesperian Boulevard. The western and southern portions of Hayward primarily consist of industrial land uses. To the east and north of the industrial corridor lie numerous tracts of residential development often centered upon public school sites.

**Requested Local Approvals:** The following actions by the Lead Agency are necessary to carry out the project:

- Text Amendment: The project would entail:
  - Revisions to the City of Hayward Municipal Code to establish Sections 10-1.2780 through 10-1.2797);
  - Revisions to the Definitions Section of the Zoning Ordinance (Hayward Municipal Code Section 10-1.3500); and
  - Revisions to various Zoning District regulations to reflect recommended new definitions.
  - Revisions to the Definitions Section of 5-6.02 of the Municipal Code (Definitions).
- New Fees: Amend the Hayward Master Fee Schedule for Fiscal Year 2015.

### **Other public agencies whose approval is required:**

None.

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Aesthetics               | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality                        |
| <input type="checkbox"/> Biological Resources     | <input type="checkbox"/> Cultural Resources                 | <input type="checkbox"/> Geology /Soils                     |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials      | <input type="checkbox"/> Hydrology / Water Quality          |
| <input type="checkbox"/> Land Use / Planning      | <input type="checkbox"/> Mineral Resources                  | <input type="checkbox"/> Noise                              |
| <input type="checkbox"/> Population / Housing     | <input type="checkbox"/> Public Services                    | <input type="checkbox"/> Recreation                         |
| <input type="checkbox"/> Transportation/Traffic   | <input type="checkbox"/> Utilities / Service Systems        | <input type="checkbox"/> Mandatory Findings of Significance |

**DETERMINATION: (To be completed by the Lead Agency)**

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
April 28, 2014  
Date

\_\_\_\_\_  
Linda Ajello, AICP

Printed Name

**EVALUATION OF ENVIRONMENTAL IMPACTS:**

**ENVIRONMENTAL ISSUES:**

	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
<b>I. AESTHETICS --</b> Would the project:				
a) Have a substantial adverse effect on a scenic vista? <i><b>Comment:</b> The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? <i><b>Comment:</b> The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings? <i><b>Comment:</b> The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? <i><b>Comment:</b> The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
---	---	---	----------------------

**II. AGRICULTURE AND FOREST**

**RESOURCES:** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? ***Comment:*** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
<i>with such uses; thus, no impact..</i>				

d) Result in the loss of forest land or conversion of forest land to non-forest use? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

**III. AIR QUALITY** -- Where applicable, the significance criteria established by the Bay Area Air Quality Management District (BAAQMD) is relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IV. BIOLOGICAL RESOURCES** -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife Service or U.S. Fish and Wildlife Service? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife Service or US Fish and Wildlife Service? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. CULTURAL RESOURCES -- Would the

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in California Environmental Quality Act, Title 14; Chapter 3; Article 5; Section 15064.5? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact..</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VII. GREENHOUSE GAS EMISSIONS --**

Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VIII. HAZARDS AND HAZARDOUS MATERIALS --** Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
hazardous materials into the environment? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? <b><i>Comment:</i></b> <i>The Project would establish</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

#### IX. HYDROLOGY AND WATER QUALITY - - Would the project:

a) Violate any water quality standards or waste discharge requirements? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
levee or dam? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				

j) Inundation by seiche, tsunami, or mudflow? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

**X. LAND USE AND PLANNING --** Would the project:

a) Physically divide an established community? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

c) Conflict with any applicable habitat conservation plan or natural community conservation plan? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--	--------------------------	--------------------------	--------------------------	-------------------------------------

**XI. MINERAL RESOURCES --** Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
state? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>XII. NOISE</b> -- Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>with such uses; thus, no impact.</i>				
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>XIII. POPULATION AND HOUSING --</b> Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
--	--------------------------------	--	------------------------------	-----------

**XIV. PUBLIC SERVICES --**

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Fire protection? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Police protection? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Schools? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Parks? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Other public facilities? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

**XV. RECREATION --**

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>with such uses; thus, no impact.</i>				
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XVI. TRANSPORTATION/TRAFFIC --**

Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
intersections) or incompatible uses (e.g., farm equipment)? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
e) Result in inadequate emergency access? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>XVII. UTILITIES AND SERVICE SYSTEMS</b>				
-- Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? <b><i>Comment:</i></b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
effects? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>				
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the City of Hayward that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste? <b>Comment:</b> <i>The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --**

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
---	--------------------------	--------------------------	--------------------------	-------------------------------------

restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

**Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? **Comment:** *The Project would establish new standards and regulations associated with tobacco retail sales establishments, as well as new fees associated with such uses; thus, no impact.*



**DATE:** May 22, 2014

**TO:** Planning Commission

**FROM:** Linda Ajello, AICP, Associate Planner

**SUBJECT:** Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward.

## **RECOMMENDATION**

Staff recommends that the Planning Commission, making the required findings (Attachment V), recommends that the City Council adopts the attached Negative Declaration/Initial Study (Attachment VII) and approves the proposed Tobacco Retail Sales Regulations (Attachment I), revisions to the General Commercial (CG) Zoning District regulations related to land uses (Attachment II), revisions to the Smoking Pollution Control Ordinance (Attachment III) and related new fees (Attachment IV).

## **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 new regulations pertaining to the retail sales of tobacco and tobacco-related products. Given the large number of establishments in Hayward that sell tobacco (146 tobacco retailers and 8 electronic cigarette retailers), staff is recommending new regulations that would limit new tobacco retail sales establishments (with an exception for stores over 10,000 square feet that dedicate no more than 5% of their square footage to tobacco products) 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. Additionally, all new and existing retailers would be required to 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, and provide a funding source to help pay for inspections.

## **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 became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth.

History of Proposed Regulations - 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 Health Department and the Hayward Police Department, staff reviewed available studies and draft ordinances. Sources of information utilized in the development of the proposed regulations 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.

May 31, 2012 Planning Commission Meeting - 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 more effectively prevent sales of tobacco and tobacco-related products to youth (see staff report and minutes, Attachment VII).

Community Meeting - On October 28, 2013, a Community Meeting was held and all existing tobacco and electronic cigarette retailers doing business in Hayward 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 (20) people attended the meeting, including local tobacco and electronic cigarette retailers and youth advocates from the Castro Valley Community Action Network (CV CAN) and the Hayward Coalition for Healthy Youth (HCHY). Most attendees expressed support for new regulations.

Work Sessions - On November 21, 2013 and December 17, 2013, work sessions were held with the Planning Commission and City Council, respectively. At both work sessions, several members of the public spoke in favor of the proposed tobacco regulations (see Attachments VIII and IX). 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. Overall, both the Planning Commission and City Council expressed support for the establishment of tobacco regulations and were supportive of a moratorium to allow staff more time to research the issues and develop regulations.

Moratorium - In order to allow staff additional time to research and develop tobacco regulations for the City, on January 14, 2014, the City Council adopted an urgency ordinance to place a 45-day moratorium on the issuance of business licenses or building permits for any new

small and large format tobacco retailers (see Attachment X). The moratorium was extended an additional ten (10) months and fifteen (15) days at the February 18, 2014 City Council meeting (see Attachment XI).

Pending Legislation - The State Assembly is currently considering Senate Bill (SB) 648 and Assembly Bill (AB) 1500. SB 648, which was introduced by Sen. Ellen Corbett, D-San Leandro, 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 later this year. AB 1500 was introduced by Assembly Member Dickenson and, as introduced, would prohibit any person engaged in the business of selling or distributing cigarettes, tobacco products or e-cigarettes, to ship or cause to be shipped any cigarettes, tobacco products or e-cigarettes to any person in this state other than specified businesses. The bill was scheduled to go to Committee on May 7, 2014, but the Committee hearing was cancelled at the request of the bill sponsor.

Food and Drug Administration (FDA) Ruling - On April 24, 2014, the FDA released a proposed rule to expand its tobacco authority to cover products that meet the statutory definition of a tobacco product, including currently unregulated marketed products, such as electronic cigarettes (e-cigarettes), cigars, pipe tobacco, nicotine gels, waterpipe (or hookah) tobacco, and dissolvables. Under the proposed rule, the FDA would regulate said products in the same manner as traditional tobacco products, including, but not limited to, requiring product registration with the FDA and reporting of product and ingredient listing; allowing marketing of new tobacco products only after FDA review; only making direct and implied claims of reduced risk if the FDA confirms that scientific evidence supports the claim and that marketing the product will benefit public health as a whole; and prohibiting distribution of free samples. Additional provisions include minimum age and identification restrictions to prevent sales to underage youth; requirements to include health warnings; and prohibition of vending machine sales, unless in a facility that never admits youth. The proposed rule is currently under a 75-day public comment period.

## **DISCUSSION**

Overview of Proposed Tobacco Retail Sales Regulations (Attachment I) – As proposed, the Tobacco Retail Sales Regulations will be codified at Section 10-1.2780 et seq. of the Zoning Ordinance. The stated specific purpose of the regulations is “to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.”

The proposed tobacco retail sales regulations require that any new tobacco retail sales establishment that is either less than 10,000 square feet or larger than 10,000 square feet with more than 5% of its retail floor space dedicated to tobacco products be limited to the General Commercial Zoning District, not be located within 500 feet of schools, parks and other sensitive receptors, and be subject to approval of a Conditional Use Permit (CUP). Additionally, all *new* and *existing* Tobacco Retail Sales Establishments will be required to obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for

Tobacco Retail Sales Establishments. If adopted, the TRL requirement will go into effect next fiscal year. Staff would mail all existing establishments a notice of the adoption of the regulations and the procedures and timeframe in which they must obtain their TRL.

The General Commercial (CG) district was determined to be most suitable for tobacco establishments because it provides regional-serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas (see proposed ordinance, Attachment II). By requiring a CUP for new establishments (other than certain situations as noted below), the City could evaluate proposed tobacco sale locations in a public hearing format to ensure they are compatible with the surrounding properties. The intent of a separation requirement 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 one hundred and forty-six (146) tobacco retail sales establishments and eight (8) “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.

Similar to the City’s regulations pertaining to the sale of alcohol, the proposed regulations would allow sale of tobacco products 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. This provision would allow larger grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning district in which those stores are allowed (see discussion below regarding potential impacts to businesses).

The recommended *Requirements and Operational Standards* provisions will create local provisions as well as reinforce state and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia. This includes posting prominently near the cash register or other point of sale the legal age to purchase such items and checking the identification of purchasers to ensure they are of legal age. The inclusion of state and federal laws in the local ordinance will allow the City to enforce them at a local level.

Tobacco Retailer License (TRL) - All tobacco retail sales establishments - including those that are existing and would be considered legal non-conforming uses, new establishments requiring a CUP, and shops that sell tobacco as a secondary use and do not require a CUP - would be required to obtain an annual Tobacco Retailer License from the City. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give City staff the authority to issue administrative fines, fees, penalties and/or citations and/or abatement to violators of the provisions of the ordinance. The TRL will have an annual fee of \$400 that will serve to recover the costs for annual inspections and enforcement at the local level, including the continued operation of the Hayward Police Department’s Youth Decoy Program.

Definitions - Broad definitions have been developed 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, which 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, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

“Imitation Tobacco Product” means any 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 smoking device is not an imitation tobacco product.

“Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.

“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 Product” means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption. “Tobacco Product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

“Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.

Potential Impacts to Existing Businesses - Many of the 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 those provisions, 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, with the intent to abandon the use. Also, additional

development of any property on which a legal non-conforming use exists is required to have all new uses conform. Thus, non-conforming tobacco sales locations would cease operating over time.

*Proposed Revisions to Smoking Pollution Control Ordinance* - Minor amendments to the City's Smoking Pollution Control Ordinance are proposed in order to make it consistent with the proposed Tobacco Retail Sales regulations and to address the smoking of electronic cigarettes in the City (see Attachment III). The proposed amendments include revisions to the definitions of "smoking" and "tobacco products" and the addition of a definition for "smoke", to include electronic cigarettes and vapor produced from said devices. With the proposed revisions, it will be unlawful for anyone to use electronic cigarettes and smoking devices wherever smoking is prohibited.

*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 the public health, safety, convenience, and general welfare of the residents of Hayward.***

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

- a. amending the Zoning Ordinance to provide a definition for tobacco sales, to include the regulation of the sale of electronic cigarettes and other specified items;
- b. establishing performance and operational standards that would apply to all new and existing tobacco retail sales establishments that will help ensure such establishments are not operated in a manner that violates any local, state or federal laws and so as not to constitute a public nuisance;
- c. establishing local enforcement provisions for tobacco retail sales establishments found to be in violation of the regulations;
- d. prohibiting more tobacco retail sales establishments in areas of the City that are in close proximity to sensitive receptors and to existing tobacco retail sales establishments to prevent an overconcentration of such establishments in the City;
- e. establishing a Tobacco Retailers License (TRL) which all new and existing tobacco retail sales establishments will be required to obtain annually; and
- f. creating cost recovery mechanisms through the TRL fee, which will cover annual inspections by the Code Enforcement Division and for the Youth Decoy Program by the Hayward Police Department;

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

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

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.

- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

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

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

Additionally, over the last several years, 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.***

No properties are proposed to be reclassified. Any new tobacco retail sales establishments will be required to have adequate streets and facilities before operating, as currently required.

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

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

*Environmental Impact Analysis* – Staff prepared and circulated for public review and comment a Negative Declaration and Initial Study (Attachment VIII), in accordance with the California Environmental Quality Act (CEQA), which concludes the proposed text amendment and new fees would not generate significant environmental impacts.

## **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 is expected to be 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**

Based on a fiscal impact analysis conducted by Code Enforcement Department staff, an annual TRL fee of \$400 has been proposed to help ensure cost recovery. The fee will 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 all new and existing tobacco retail sales establishments in Hayward. It is anticipated that future annual adjustments to fees may be needed in response to additional demands and costs that may arise after the implementation of the TRL.

## **PUBLIC CONTACT**

Significant outreach has occurred over the last year for these proposed regulations, as described in the BACKGROUND section of this report. A community mailing, which included key points of the proposed amendments and notice of this hearing and the planned future City Council hearing, was sent in early May to all existing tobacco retailers in Hayward and various interested parties (Hayward Chamber of Commerce President Kim Huggett, Alameda County Health Department, the American Lung Association, Hayward Coalition for Healthy Youth (HCHY), etc.). Also, a notice of this hearing and future planned Council hearing was published in *The Daily Review* on May 10, 2014. Staff has not received specific comments regarding those notices as of the date of finalization of this report.

## **NEXT STEPS**

Staff will incorporate input from the Planning Commission and forward the Commission's recommendation to the City Council for a public hearing scheduled for June 17, 2014.

Prepared by: Linda Ajello, AICP, Associate Planner

Recommended by: Sara Buizer, AICP, Interim Planning Manager

Approved by:



---

David Rizk, AICP  
Development Services Director

Attachments:

- |                 |  |
|-----------------|--|
| Attachment I    | Proposed Tobacco Retail Sales Regulations  |
| Attachment II   | Proposed Revisions to General Commercial (CG) Zoning District Regulations                      |
| Attachment III  | Proposed Revisions to the Smoking Pollution Control Ordinance Definitions (HMC Section 5-6.02) |
| Attachment IV   | Proposed Revisions to the Master Fee Schedule  |
| Attachment V    | Findings   |
| Attachment VI   | Negative Declaration/Initial Study   |
| Attachment VII  | Planning Commission Agenda Report and meeting minutes, May 31, 2012                            |
| Attachment VIII | November 21, 2013 Planning Commission Agenda Work Session Agenda Report and Minutes            |
| Attachment IX   | December 17, 2013 City Council Work Session Agenda Report and Minutes                          |
| Attachment X    | January 14, 2014 City Council Agenda Report and Minutes  |
| Attachment XI   | February 18, 2014 City Council Agenda Report and Minutes                                       |



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, May 22, 2014, 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 Vice Chair McDermott.

**ROLL CALL**

Present: COMMISSIONERS: Loché, Márquez, Lavelle  
CHAIRPERSON: Vice Chair McDermott  
Absent: COMMISSIONERS: Trivedi, Faria  
CHAIRPERSON: Lammin

Commissioner Loché led in the Pledge of Allegiance.

Staff Members Present: Ajello, Bristow, Buizer, Conneely, Irizzary, Madhukansh-Singh

General Public Present: 30

**PUBLIC COMMENTS**

None

**PUBLIC HEARING**

1. Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, as well as Proposed New Fees and Amendments to the City's Smoking Pollution Control Ordinance (Text Amendment Application No. PL-2013-0389); the City has Prepared a Negative Declaration, which Concludes that the Project will not have a Significant Negative Impact on the Environment; Applicant: City of Hayward

Associate Planner Ajello provided a synopsis of the staff report.

Neighborhood Partnership Manager Bristow stated that if the tobacco regulations are adopted, a program letter will be sent to the members of the community explaining what the tobacco regulations entail and will give businesses the opportunity to ask questions and attain the necessary licensing. She mentioned that tobacco retailers will receive a copy of the checklist in advance so they know what the annual inspections will include. She pointed out that the funding of the youth decoy program by a grant from Alameda County was no longer available, and the annual Tobacco Retailer License fee being proposed would assist in covering youth decoy operation expenditures encumbered by the Police Department. Ms. Bristow stated the program will be implemented in November 2014 and that unannounced inspections will be performed on tobacco retail establishments. She said that the violations consist of a three stage process: the first violation will be

\$1,500 fine and a 30 day suspension from selling tobacco products, noting that the tobacco retailer would have five days to correct the violation(s); the second violation within a twelve month period will be a \$3,000 fine and a 90 day suspension; the third violation will be a \$5,000 fine and a 120 day suspension or a recommendation for a revocation. In regards to revocation of the Tobacco Retail License (TRL), Ms. Bristow indicated that a large format retailer in violation of the tobacco retail sales regulations would have to go through an administrative hearing and that a small establishment would have to request a public hearing before the Planning Commission.

Hayward Police Department (HPD) Detective Irizarry explained that she coordinates the youth decoy program and mentioned that trained youth decoys between the ages of 15 to 17 years old are used for operations. She stated that the operations involve testing tobacco retail establishments in order to see if retail clerks will sell tobacco products or electronic cigarettes to minors. Detective Irizarry shared that in the last year, the youth decoy program performed three operations and have tested 81 establishments. These operations resulted in the issuance of 12 citations to tobacco retail establishments for the sale of tobacco products to minors. She reported that in analyzing the results of the youth decoy operations, there was a willing to sell rate of 18.5% of tobacco products being sold to minors, noting that this was significantly higher compared to the state average of 8.7%. She indicated the City hopes to reduce the willing to sell rate of tobacco products to minors by instituting the TRL and also by educating tobacco retailers.

In response to Commissioner Márquez' question, Detective Irizarry confirmed that with the passage of the tobacco regulations, youth decoys would continue to be used. She noted that the Hayward Coalition for Healthy Youth (HCHY) provides the Hayward Police Department with trained youth decoys under the age of 18 and additionally, Hayward Police Explorers are used for the program as well.

Neighborhood Partnership Manager Bristow indicated for Commissioner Márquez that if a tobacco retailer was found to be in violation of multiple items on the checklist during a an inspection, this retailer would only be assessed \$1,500 fine for this one visit; she added that violations on subsequent inspections would be assessed accordingly, based upon the number of visits to that establishment.

Associate Planner Ajello noted for Commissioner Loché that the Food and Drug Administration (FDA) currently does not have enough data to conclude what the long term effects of electronic cigarettes are as this is a relatively new product. She added that the FDA is currently collecting data on the experiences and problems that users are having with these products.

Commissioner Loché expressed that there were more than enough existing tobacco retail establishments in Hayward and noted that a significant portion of these establishments were located in the 94544 zip code area. He asked staff why there was an abundance of tobacco retailers in Hayward and whether this was attributable to the high concentration of youth in the City or the absence of regulations on the sale of tobacco related products. Associate Planner Ajello responded that the high number of tobacco establishments may be a result of the City's current Municipal Code not addressing the sale of tobacco products. She noted that the 146 establishments were not just standalone tobacco establishments, pointing out that this included tobacco retailers such as convenience stores and large format retailers that also sold tobacco products.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, May 22, 2014, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Commissioner Loché asked if staff had considered relaxing the TRL fees for businesses that were complying as he was concerned with responsible retailers being overburdened with the proposed fees. Neighborhood Partnership Manager Bristow stated the program will be assessed annually and she estimated that staff will be able to determine how the program is performing in two to three years in order to consider adjusting the TRL fees for establishments where compliance has been achieved.

In response to Vice Chair McDermott's question, Associate Planner Ajello responded that Hayward's ordinance was more restrictive on the sale of flavored tobacco products in comparison to other cities that do not have a provision addressing this issue. Vice Chair McDermott asked staff if instituting tobacco retail sales regulations impacted the retention of businesses in other cities. Associate Planner Ajello stated the City of Dublin adopted tobacco regulations in 2012 and according to a Dublin staff member, the implementation of the tobacco regulations do not seem to have impacted local businesses and two new tobacco establishments have even applied to open up in Dublin. She mentioned that Ms. Serena Chen from the American Lung Association informed her that some smaller businesses where the sale of tobacco products was not the primary function of the establishment had discontinued selling tobacco products.

Detective Irizarry indicated for Vice Chair McDermott that two to four youth decoys are used per operation and that the participants are rotated so that the retail clerks do not begin to recognize youth decoys. Detective Irizarry stated that since she took over the program, she has used approximately 10 youth decoys in the past year and half.

Vice Chair McDermott opened the public hearing at 7:35 p.m.

Jocelyn Bonilla, a member of the HCHY shared her experience as working as an undercover youth decoy for two and a half years. She stated that it has been very easy for her to purchase tobacco products as a youth decoy in Hayward. She described that on youth decoy operations, she has been served tobacco and a pipe at a hookah lounge and has been sold electronic cigarettes at tobacco retail establishments. She reported that electronic cigarettes and hookah pens are popular products among teens today. She said that having a requirement of 500 to 1,000 feet distance between tobacco retail sales establishments and sensitive receptors will safeguard against opportunities for teenagers to get access to tobacco products. Ms. Bonilla emphasized that she works as a youth decoy because she cares about the health and wellness of the community and wants tobacco retailers to adhere to laws by not selling tobacco products to minors.

Brandon Ko, a youth decoy and a member of HCHY, shared how easily he was able to purchase tobacco products on youth decoy operations. He described the following experiences while on operations: retail clerks freely selling him tobacco products and rarely asking for his identification card (ID); when his ID was checked, some retail clerks would sell him the product despite him being underage; and that he was offered to try a product inside a tobacco establishment by a salesman. Mr. Ko expressed his concern that tobacco products were easily obtainable by minors and the health and addiction risks that minors faced with tobacco products.

Kendra Jordan, a member of HCHY and a parent of Hayward students, expressed that a number of kids at her children's school use tobacco products and/or have offered them to her children. She encouraged that there be at least a 500 feet requirement separating tobacco retailers from sensitive receptors, such as schools. Ms. Jordan reported that there was a high concentration of tobacco outlets near the following schools: Bret Harte, Cesar Chavez, and Winton Middle Schools; Hayward High School, and Mt. Eden High School. She said that vapor lounges, hookah stores, and electronic cigarette stores should be defined as tobacco retailers. She emphasized that the youth are known to gain access to purchasing tobacco products on their path to and from school. Ms. Jordan stressed that the TRL would be an effective tool in holding the tobacco retailers accountable.

Corina Vasaure, a Hayward resident and a parent of Hayward students, was concerned that smoke shops are targeting the youth in the community. She mentioned that there is a smoke shop in her neighborhood which is also near Hayward High School, Bret Harte Middle School and the Hayward Plunge. She indicated that the youth have to pass by this smoke shop on their way to and from school and has also observed that this smoke shop uses a sign spinner to advertise the store. She requested that the City adopt the tobacco ordinance and implement strict regulations on how close smoke shops can operate in proximity to schools.

Andres Orrea, a Hayward student, stated that the current proposal will benefit the community as tobacco products are detrimental to the health of users. He stated that the use of tobacco products by minors will encourage them to use more dangerous substances later on in life and shared that an increasing number of his peers at school are using tobacco products. Mr. Orrea emphasized that the proposed tobacco regulations are intended to protect the youth who are already vulnerable to tobacco products.

Daniel Aguilar, a Hayward student, shared the following problems with the sale of tobacco products: easy access of tobacco products to the youth and no long term punishments for retailers violating the law. He said that he was worried about his generation as tobacco products like vapor pens and hookahs are trending among his friends and classmates. Mr. Aguilar noted that even students in middle schools have gained access to tobacco products. He stated that his friends have indicated to him and also as the youth decoys have demonstrated, the youth are getting access to tobacco products directly from retailers. He emphasized that a strong system such as the TRL would help reduce the accessibility of tobacco products by minors.

Serena Chen, an employee with the American Lung Association, passed sample tobacco products to the Planning Commissioners to give them an idea about the flavored tobacco products that minors were gaining access to absent tobacco regulations. Ms. Chen reported that Berkeley formerly had a 38% willing to sell rate of tobacco products to minors; upon institution of tobacco regulations with sanctions for violating the law, this rate reduced to 4.2%. She underscored that when the TRL is installed, there is a dramatic reduction in the sale of tobacco products to minors and stated that there are 114 cities in California that have the TRL. Ms. Chen noted that because Hayward is a family friendly place and has a large college population, the City has become a magnet for tobacco sellers because the youth are marketed for the sale of tobacco products. Ms. Chen presented a study conducted by UCSF on the contents of the vapor produced by electronic cigarettes and she submitted this for the record.



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, May 22, 2014, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

Tracy Cross, with the HCHY and coordinator of the youth decoy operations, thanked the City for developing the proposed tobacco regulations. In response to Commissioner Marquez' question, she shared that one tool used to train youth decoys is a mock video of a decoy operation. She mentioned that she recruits teenagers for the youth decoy program through schools and service clubs. Ms. Cross added that once the youth decoys are partnered with a law enforcement agency, they undergo more training.

Commissioner Loché asked how it is determined which tobacco retailers will be inspected. Detective Irizzary responded that inspections are performed once a year and that last year, youth decoys visited 111 stores. She noted that the number of operations performed was dependent upon the availability of resources such as staff time and funding. She indicated for Commissioner Loché that if an establishment was reported to have violations in a given year, then this establishment would be reevaluated the following year.

Vice Chair McDermott expressed concern that waiting one year to reevaluate an establishment found to be in violation of the tobacco regulations was too long. Detective Irizzary responded that if the TRL is adopted, City staff will have additional resources available and also the support of Code Enforcement staff to perform inspections more frequently.

In response Commissioner Loché's question, Detective Irizzary stated that the youth decoy operations performed at big box stores indicate that these stores are usually in compliance and this was attributable to many of these stores being equipped with ID card readers. Her experience has been that gas stations and convenience stores that serve as tobacco retailers have a greater tendency to sell tobacco products to minors.

Rebecca Ramirez, a Hayward resident, expressed that she had concerns about the proposed regulations. She stated that by permitting large format stores to dedicate 5% of the store space towards the sale of tobacco products would be exposing children to tobacco products as children are more likely to accompany their parents into a grocery store rather than a smoke shop. Ms. Ramirez presented for the record a petition containing 700 signatures of Hayward residents who are unaware of the proposed tobacco regulations. She was displeased that residents were not being given the opportunity to vote on the proposed tobacco regulations as it will impact the community at large. She said that the proposed fees will impact the small retailers and will give more business to large retailers and will also result in 250 people becoming jobless.

Sam Kassem, a tobacco retailer in Hayward, stated that even if the tobacco regulations are implemented, minors would find a way to purchase tobacco products. He shared that retailers only make a 10% profit from the sale of tobacco products, adding that retailers sell such products to attract customers in to purchase other products. Mr. Kassem said that tobacco retailers are already assessed many fees, including a tobacco license which they have to obtain from the State of California. He commented that the proposed tobacco regulations in the City were strict compared to Alameda County. He added that the passage of the tobacco regulations might lead to the closure of

some businesses causing them to relocate to other cities. Mr. Kassem emphasized that he does not support the sale of tobacco products to minors.

Mr. Mohammed, a tobacco retailer in Hayward for 19 years, shared that when he refused to sell a tobacco product to a teenager, his life was threatened and he was shot at with a firearm by an adult customer. Vice Chair McDermott encouraged Mr. Mohammed to contact staff to have his specific questions addressed on how his business would be impacted by the proposed tobacco regulations.

Jennifer Mish, a vapor store owner, indicated for Commissioner Loché that the FDA has new information available that second hand smoke from electronic cigarettes is safe. She shared that a hookah pen is similar to a hookah apparatus in that both utilize flavored tobacco; she differentiated an electronic cigarette from a hookah pen by indicating that electronic cigarettes contain flavored nicotine and not flavored tobacco. She further noted that electronic cigarettes produce vapor and not smoke. Ms. Mish said that to categorize electronic cigarettes and hookah pens together is contradictory. She stated that she should not be required to obtain a TRL because the vapor products that she sells at her establishment do not contain tobacco.

Vice Chair McDermott closed the public hearing at 8:12 p.m.

Commissioner Lavelle commented that she does not favor the TRL; however she does favor regulating vapor stores and electronic cigarette stores. She stated that instituting a TRL fee of at least \$400 will be harmful and onerous to already struggling local businesses. She was pleased that staff modified the tobacco regulations to require that large retailers will be required to obtain a TRL. Commissioner Lavelle alternatively spoke in favor of the City implementing a program that would enable staff to work specifically with tobacco retailers in violation of the tobacco regulations. She did not support large retailers being precluded from having to obtain a Conditional Use Permit (CUP). She noted that the implementation of the TRL will create more work for Code Enforcement staff. Commissioner Lavelle pointed out that a bigger problem among young people in the community was the smoking of marijuana, which was an illegal product altogether.

Commissioner Loché stated that as a parent of a teenager, he expressed that the City needs to address the issue of adolescents utilizing electronic cigarettes. He noted that electronic cigarettes are intended to get adults to stop smoking and that the sale of such products should not be hindered by the proposed tobacco regulations. He spoke in favor of the TRL fees being assessed initially in the program as this will help City staff identify which tobacco retailers are operating responsibly. He said in the long term, the City should not continue to penalize business owners who are complying with the tobacco regulations. Commissioner Loché was supportive of the separation requirement between tobacco retailers and sensitive receptors being at least 500 feet, and indicated that he would even be amenable to this being increased to 1,000 feet.

Commissioner McDermott said that as a grandmother of an adolescent, she also favored the staff recommendation. She supported Commissioner Loché's remarks that compliant tobacco retailers be rewarded. She noted that tobacco users get hooked onto these products at a young age and that by marketing tobacco products to kids is how tobacco companies maintain an ongoing business.

Commissioner Márquez stated that the proposed tobacco regulations will improve the image and reputation of Hayward. She commented that although the annual fee may be high, if this is broken



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, May 22, 2014, 7:00 p.m.  
777 B Street, Hayward, CA94541**

---

down on a monthly basis then the fee is approximately \$33 per month. She suggested that after the first couple years of implementing the program, an audit should be conducted to determine which businesses are in compliance and then the fees be scaled back for the establishments acting responsibly. She supported Commissioner Lavelle's concern that the CUP be required of large retailers as well. She mentioned that although she was supportive of the ordinance, she agreed with some of the members of the public who commented that the ordinance lacked some details and needed further revision. Commissioner Márquez pointed out that the ordinance did not contain a list of the different types of sensitive receptors. She appreciated that staff will be sending a checklist of what the inspection will entail to the tobacco retail establishments prior to performing the inspections.

There was no motion on the item due to a lack of support on the item with Commissioner Loché, Commissioner Márquez, and Vice Chair McDermott favoring the staff recommendation and Commissioner Lavelle opposing.

## **COMMISSION REPORTS**

### **2. Oral Report on Planning and Zoning Matters**

Planning Manager Buizer provided the Planning Commissioners with copies of a letter from Mr. Kenneth Henkelman, Director of Facilities at St. Rose Hospital, requesting consideration that some of the lawn and grounds areas of the hospital facility be replaced with a synthetic grass. Planning Manager Buizer indicated that Planning staff still needs to research this matter, commenting that Planning staff will work with the Public Works Utilities and Environmental Services department to understand the situation and explore other alternatives. Commissioner Márquez commented that there might be other aesthetically pleasing options instead of synthetic grass. Commissioner Lavelle suggested that this topic be considered by the Council Sustainability Committee.

### **3. Commissioners' Announcements, Referrals**

Vice Chair McDermott shared that she attended the Hayward Unified School District's (HUSD) Education Summit on Saturday, May 17 at City Hall. She was pleased with the turnout at the event and also the numerous resources that are available to the youth. She commended the HUSD and Superintendent Dobbs for organizing the summit.

Commissioner Márquez announced that the Primary Election is being held on June 3, 2014 and she encouraged Hayward residents to vote.

## **APPROVAL OF MINUTES**

### **4. None**

**ADJOURNMENT**

Vice Chair McDermott adjourned the meeting at 8:35 p.m.

**APPROVED:**

---

Vishal Trivedi, Secretary  
Planning Commission

**ATTEST:**

---

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

**Linda Ajello**

---

**From:** Abhinash Francis <afrancis074@gmail.com>  
**Sent:** Monday, May 19, 2014 9:48 AM  
**To:** Linda Ajello  
**Subject:** Opposed to proposed Amendment...

Linda,

As a consumer, I'm very much opposed to the City Of Hayward Proposed Tobacco Retail Sales Establishment Regulations.

--

<http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2014/PCA14PDF/pca052214.pdf>

Thanks!!!

=====

Abhinash Francis

## Linda Ajello

---

**From:** Grover,Anjini <Anjini.Grover@gartner.com>  
**Sent:** Monday, May 19, 2014 10:23 AM  
**To:** Linda Ajello  
**Subject:** Opposed to Proposed Amendment

Linda,

As a consumer, I'm very much opposed to the City Of Hayward Proposed Tobacco Retail Sales Establishment Regulations.

<http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2014/PCA14PDF/pca052214.pdf>

Thank you,  
Anjini Grover

---

This e-mail message, including any attachments, is for the sole use of the person to whom it has been sent, and may contain information that is confidential or legally protected. If you are not the intended recipient or have received this message in error, you are not authorized to copy, distribute, or otherwise use this message or its attachments. Please notify the sender immediately by return e-mail and permanently delete this message and any attachments. Gartner makes no warranty that this e-mail is error or virus free.

## Linda Ajello

---

**From:** rebecca ramirez <rramirez1090@yahoo.com>  
**Sent:** Thursday, May 22, 2014 2:02 AM  
**To:** Linda Ajello  
**Subject:** A small business advocate disgusted at this practically unknown proposal

"staff is recommending new regulations that would limit new tobacco retail sales establishments (with an exception for stores **over 10,000 square feet** that dedicate no more than **5%** of their square footage to tobacco products)"

"Similar to the City's regulations pertaining to the sale of alcohol, the proposed regulations would

allow sale of tobacco products **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. **This provision would allow larger**

**grocery stores and big box retail stores to sell tobacco products as a secondary use in any zoning**

**district in which those stores are allowed** (see discussion below regarding potential impacts to

businesses).

**If the entire purpose of these new regulations is to enforce that youth are less exposed to tobacco products, why would large retailers be able to dedicate such a large amount of space for tobacco products? (5% of a 10,000 square foot store is about the average size of a Hayward tobacco retail establishment) when the laws regarding large retailers allow children to enter? At least, in designated tobacco stores, they have the right to prohibit children from entering their business. This part of the proposed amendment is going to cause youth to be much more exposed to tobacco products on a daily basis. This contradicts the entirety of the new proposed amendments to tobacco retailers.**

## Stop By Market

---

**21995 Mission Blvd., Hayward, CA 94512**  
**(510) 538-9753**

Hon. Michael Sweeney  
Hayward City Hall  
777 B Street  
Hayward, CA 94541-5007

06/05/14 16:21 CLK

Dear Mayor Sweeney,

I heard that the city council will soon vote on tobacco sales restrictions and I am not sure that I will be able to attend the meeting so I wanted to submit my opposition and comments.

I am confused why the city would hurt local businesses with tough tobacco sales restrictions especially since it is easy for our customers to go outside Hayward or the Internet to buy the tobacco products they prefer.

I have many customers who prefer to buy one cigar at a time. It is already illegal to sell cigars to kids so why are you punishing my customers and me by raising the number of cigars to 5? And why would you want people to buy more cigars than they want to?

Also, the record keeping of flavored tobacco products is confusing. It seems that I would have to maintain my purchase records indefinitely. I am not sure how it will affect me if the manufacturer changes the name of a particular flavor. Does that mean that I can't carry the renamed or repackaged product? It doesn't account for new tobacco products including FDA approved products.

This ordinance hurts my ability to service my customers, compete with the chains for business or compete to keep business in Hayward. I urge you to vote no.

Thank you.



Pawan Tandia, Owner

Cc: Hon. Mark Salinas, Hon. Marvin Peixoto, Hon. Barbara Halliday,  
Hon. Francisco Zermeno, Hon. Greg Jones, Hon. Al Mendall

B Street Liquors  
1681 B Street  
Hayward CA 94541

June 4, 2014

Hayward City Council  
Hayward City Hall  
777 B Street  
Hayward, CA 94541

Dear Mayor and Members of the City Council,

I have owned B Street Liquors for over 10 years. I am very concerned about the proposal before you to impose more regulations and sales restrictions on cigarettes and cigars.

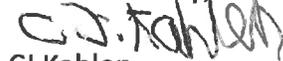
As I understand it, I will be allowed to continue to sell flavored tobacco products since I am already selling them. However, I will be required to prove to the City that I was selling these items on the day the ordinance is effective and be able to provide documentation to city officials. How will I know when this ordinance is effective and what will the city accept as proof that I sold these items?

If I decide to sell my business, will the new owner be able to sell flavored tobacco products? If not, this will seriously impact the value of my business and I would expect the city to compensate me for the loss of income.

I am also concerned about the prohibition to sell single cigars that cost less than \$5 dollars to my customers. Why should my customers be forced to buy 5 cigars if they only want one? This is unfair to people with little money and will drive my customers to Castro Valley and other cities to buy not just cigarettes and cigars, but the other items they purchase at my store.

This is a bad idea and I hope you will reconsider this ordinance.

Yours sincerely



CJ Kahlon

Owner

# Model Liquor

June 5, 2014

Hayward City Council  
777 B Street  
Hayward California 94541

Dear Members of the City Council,

I have owned Joe's Model Liquor for over 38 years. Tobacco sales account for almost one-third of my business. This does not include the other items that my customers often purchase in addition to cigarettes. Needless to say, tobacco sales are an extremely important segment of my business – too valuable to risk selling a pack of cigarettes to a minor.

The proposal before the city council to limit single sale cigars, to ban flavored tobacco products and prohibit tobacco sales near schools or near other retailers won't keep tobacco out of the hands of children. They will just walk across the street to San Leandro to buy them. Taking my business and the city's tax revenue with them.

Why would the city want to do this to my business – a business that has been recognized by the Hayward Police Department for keeping alcohol out of the hands of minors?

And what about the value of my business? These restrictions will seriously decrease the value of my liquor store when I decide to retire and sell it. Do you plan to compensate me?

This ordinance is a solution in search of a problem and I urge you to reject it.

Sincerely

Tim Ruhman

*RMC Model Liquors  
430 West A Street  
Hayward, CA 94541*



*430 West A Street, Hayward, CA 94541*

## Discount Cigarettes and Retail

Hayward Mayor and Council  
777 B Street  
Hayward, CA 94541

Dear Mayor and Council Members:

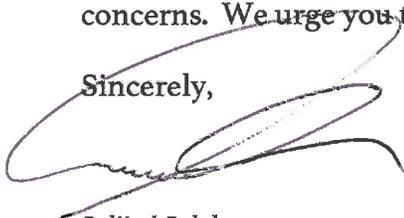
My family has owned Discount Cigarettes and Retail for 6 years. I am concerned about the proposed tobacco ordinance because we are just a tobacco shop – we don't sell anything else. If you adopt these tobacco sales restrictions, it would have a severe negative impact on our store.

This ordinance affects us in many ways:

- Single cigar minimum pack size of 5 – most customers only want to buy one cigar at a time. This ordinance is counter-productive and forces customers to buy more than they want.
- Prohibition of vapor bars. We would be impacted because the nature of e-cigarette sales is to allow adults to sample the flavors before purchasing. We don't allow anyone under 18 in the store and it is already illegal for minors to purchase e-cigarettes.
- Prohibition of flavor tobacco products near schools/parks/churches. We are located near a park and near another retailer. As I understand the draft ordinance, we could only continue selling the flavors we have on our shelf today so long as we can provide proof. So if a new, better tobacco product or new flavor came out, we would not be able to sell it in our store but a store down the street or in another town could. It doesn't make much sense because we only sell to adults and adults of all ages like flavor tobacco products.

Unfortunately this ordinance will hurt our business directly and push our customers outside Hayward or to the internet. Thank you for the opportunity to voice our concerns. We urge you to oppose this ordinance.

Sincerely,



Saljjad Salak

**24289 Mission Blvd, Hayward CA 94544**

## **Brunette Liquor**

**25516 Mission Blvd**

**Hayward CA 94544**

The Hon. Michael Sweeney  
City of Hayward  
777 B Street  
Hayward, CA 94541-5007

Dear Mayor Sweeney,

I was alarmed to learn that the city council will consider an ordinance that would place onerous restrictions on my convenience store. The ordinance would place a huge administrative burden on me by making me keep records indefinitely to prove what flavored tobacco products and e-cigarettes that I currently sell. The IRS does not require me to keep records that long.

The other part that is problematic is that I already compete against the chain stores for customers and this ordinance treats the chains differently. They are exempt from the sales restrictions that would do the most harm to my bottom line – limited pack size of cigars and flavored tobacco products – it would put me at an even greater disadvantage. I have owned and operated Brunette Liquor on Mission for almost 17 years. My family and I are part of this community and yet this ordinance tells me that I am not a good community partner but chain stores are.

I ask that you reevaluate the unintended consequences and change this ordinance. Requiring a tobacco license for all tobacco retailers at a lower fee and eliminate the sales restrictions and record keeping seems fair to me. If the city leaders want to limit vape shops or smoke shops then a separate ordinance for those stores makes more sense. Please don't pass this ordinance and punish long-time, law-abiding businesses.

Sincerely,



~~Balwinder Gill~~, Owner

*Chamissa Lambert Gill*

Copy – City Council Members Salinas, Peixoto, Halliday, Zermeno, Jones and Mendall



EDENS LIQUOR & DELI  
1086 A ST  
HAYWARD, CA 94541

June 5, 2014

Dear Mayor and City Councilmembers:

I am writing to ask that you to vote against the tobacco regulations will be before you next week.

If this ordinance is adopted, it will have serious consequences on my business. Most of my cigar sales are single purchases. Customers that purchase a single cigar often purchase other merchandise in my store. If the city bans the sale of single cigars, people will not stop smoking them. They will just drive to a store outside Hayward and spend their money somewhere else.

This restrictions in the bill would be bad for my business and ultimately, bad for the City because there would be less tax revenue collected.

I urge you to consider the impact this ordinance will have on small businesses in Hayward and reject this ordinance.

Sincerely,

INDERJIT SINGH  


# **R&H Liquor**

**1201 A Street  
Hayward CA 94541**

June 4, 2016

Mayor Michael Sweeney  
Hayward City Hall  
777 B Street  
Hayward CA 94541

Dear Mayor Sweeney,

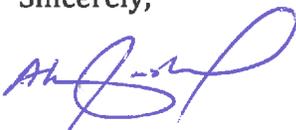
I have owned R&H Liquor since 1990 – over 24 years. We take our responsibility to not sell liquor and tobacco to underage minors very seriously. We are always in compliance with youth decoys and have received letters of commendation from the Hayward Police Department for our efforts to keep alcohol out of the hands of teenagers.

I don't know why we need another license and fee to sell tobacco in Hayward. We already pay extra money for police enforcement. I also do not understand why the city wants to prevent me from selling cigars that cost less than \$5. We don't sell to minors so you are just making it more expensive for my adult customers to buy cigars.

The city seems to want to shut down all the small businesses in Hayward in favor of large chain stores and grocery stores. The city council should be doing more to encourage us to stay in business rather than passing more laws and imposing more fees that make it difficult for small, independent businesses to keep our doors open.

The City Council should just say no to this tobacco ordinance.

Sincerely,



Ahmad Rasheed  
Owner, R&H Liquor

Cigarette City  
1960 B Street  
Hayward CA 94541

---

Mayor Sweeney  
Hayward City Hall  
777 B Street  
Hayward CA 94541

Dear Mayor Sweeney:

I own Cigarette City on B Street and I am very concerned about the tobacco ordinance that you are reviewing. If you pass this ordinance, will I be able to continue to operate my business?

What exactly are you planning to ban? Is it all flavored tobacco, including e-juice, chewing tobacco and cigars?

I have a lease and employees and I do not think it is fair for the city to pass new laws without informing impacted businesses. I'm sure I am not the only business in town that will be impacted.

Before you pass any laws banning cigars, cigarettes or e-cigarettes you should at least meet with us.

I urge you not to vote on any new tobacco law before you talk with the businesses.

Best regards,

VENKAT R. VEERAMACHANENI  
U.V. Ratan

June 5, 2014

Hayward City Council  
777 B Street  
Hayward CA

Dear Members of the Ciity Council

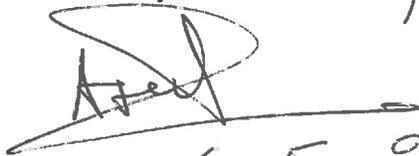
I am writing urge you to vote no on the tobacco ordinance. The ordinance would create restrictions on what I can sell in my store and could negatively affect the value of my business when I want to sell my business.

Bans like this harm my business and disproportunately impact the poorest people in our community. Some of my customers may not have enough money to buy 5 cigars at once. That is why they buy one at a time.

If I can't sell them a single cigar, they will buy them in another town. I hope you will reject the ordinance before you.

Thank you.

Sincerely,



6-5-2014

NSB LIQUOR & GROCERY  
27826 MISSION BLVD

HAYWARD CA 94544

510-247-0786

# Steve's Liquor

1145 W. Tennyson, Hayward CA 94544  
(510) 782-0727

The Honorable Mayor and City Council  
City of Hayward  
777 B St.  
Hayward, CA 94541

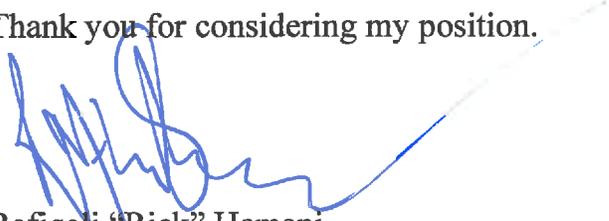
Dear Mayor and Council Members;

I am a convenience store owner in Hayward and proud to have served my customers since 2002. I have raised my family here and attend church nearby. I am writing because I am troubled with a tobacco control ordinance that would negatively impact my business with vague record keeping requirements and devalue my business since my store backs up to a park. If I sell my business, the next owner would not be able to sell tobacco products thereby making my store worth less in the future.

But the part that is patently unfair is that a chain store could open without any of the same requirements. I am a member of the community, I don't sell tobacco to kids but I am treated differently under this law.

I hope that some greater consideration is given to family-owned businesses. There is no rational reason to give such advantage to chain stores. I hope that you support locally owned businesses and oppose this ordinance as written. Stripped of the distance, single cigar and flavor restrictions, a license requirement is palatable with a lower annual fee.

Thank you for considering my position.



Rafiqali "Rick" Hemani



CITY OF  
**HAYWARD**  
HEART OF THE BAY

June 2, 2014

Steve's Liquors  
1145 W Tennyson  
Hayward CA, 94544

Dear Sir or Madam:

On 05/31/2014, the Hayward Police Department conducted a minor decoy operation at various establishments throughout the City of Hayward. A decoy, under the age of 18, was sent into your establishment in an attempt to purchase TOBACCO products. Your business was SUCCESSFUL in preventing this activity.

I would like to thank you for a job well done.

Respectfully,

**Kristina Ferreyra**  
**Community Service Officer**  
**Special Investigations-Vice/Intelligence Unit**  
**Hayward Police Department**

**POLICE DEPARTMENT**

300 WEST WINTON AVENUE, HAYWARD, CA 94544  
TEL: 510/293-7000 • FAX: 510/293-7183 • TDD: 510/783-8884

Joe Abreu  
26250 Industrial Blvd #30  
Hayward, CA 94545  
June 12, 2014

City Manager & Hayward City Council  
City of Hayward  
777 B St.  
Hayward, CA 94541

Dear City Manager and the City Council,

I am writing to ask for a continuance of the 6/17/14 city council meeting regarding the amendment to the ordinance in regards to Tobacco products. I am a wholesaler of electronic cigarette products and was unaware of this meeting until recently. I did not receive a letter from the city and cannot be prepared to do research on this topic or speak on this topic in such a short time period.

I further request that this meeting be continued, so that the city can mail out another letter to the 146 stores it mentions. There are many stores did not know that the letter, that the city sent out, applied to them. These stores include vapor stores, liquor stores, gas stations and other retail locations. By the manner in which the letter was written, many stores assumed that this was specific to smoke shops only. A new letter should be mailed that clearly states and make these stores aware that the proposed amendment affects them. The city has a responsibility to make sure these businesses are aware that this amendment affects them.

I would like to already state in this letter, that there should not be any restriction on e-cigarette products or flavored e-cigarette products, such as flavored e-Liquid. The current FDA regulations (as outlined in the Tobacco Control Act) regarding flavored products, extends to cigarettes only and not to e-cigarettes or flavored e-cigarette products:

*FDA is aware that some tobacco products, such as e-cigarettes and certain cigars, are being marketed with characterizing flavors,... The prohibition against characterizing flavors established in the Tobacco Control Act applies to cigarettes only.*

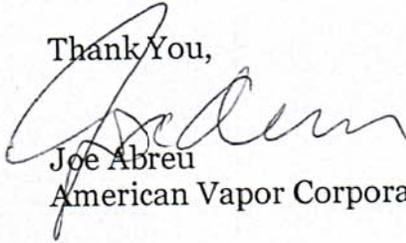
Regardless if there are any new proposed FDA regulations, these proposed regulations are not in effect. They are proposed and may not pass or may change in many ways.

I also would like to take this time to thank the city employees and council members for their service to the City of Hayward. In the past, I have personally

City Manager & Hayward City Council  
June 12, 2014  
Page 2

met some of the council members and city employees and appreciate all of their hard work.

Thank You,

A handwritten signature in black ink, appearing to read "Joe Abreu". The signature is fluid and cursive, with a large initial "J" and "A".

Joe Abreu  
American Vapor Corporation

Doris Dib  
City Hall  
777 B Street  
Hayward, CA 94545  
June 16, 2014  
Re: City of Hayward Proposed Tobacco Retail Sales Establishment Regulations

Dear Miss or Madame

We urge you to accept or reconsider these adjustments or any other rules and regulations not listed below to the amendment of the proposed tobacco retail sales establishment that will jeopardize the production and the continuance existing of all current small tobacco establishments that depend on tobacco, tobacco products, and any other related items as their primary source of income. The purpose of this request is to insure that inventory of tobacco, tobacco products, flavored tobacco, electronic cigarettes, and paraphernalia not to be subjected to additional regulation other than the ones enforced by state law. Any additional restrictions will cause said businesses to lose a great amount of revenue derived from the sale of such product. They will eventually run out of business. And to insure that we are able to sell our businesses without losing its value. Also that the non-conforming use does not make our small business establishment a burden on the properties on which they exist. This regulation will create a reasonable condition to the property owners not to renew our leases. In addition to any unnecessary fees violation fees, cumulative fees, and citations added to already existing charges through local policy and state law. That will cause hardship on these establishments.

1. **Section 10-1.2783 Requirements and operational standards or tobacco retail sales establishments.**

Future effect on existing tobacco establishments

- Need to clarify what is allowed to sell according to the ordinance: for example with the exception of the sale of the single cigars all other items tobacco products electronic smoking devices tobacco paraphernalia should not be subjected to additional regulation not withstanding any other provision of law
- Keeping original labeling and packaging of cigarettes is not practical
- Imitation tobacco products should be regulated in all retail stores regardless whether they are tobacco sellers or not this is a candy product not tobacco product
- Mobile vendors of tobacco products and electronic smoking devices are prohibited (mobile vendors are not retail; therefore should not be prohibited)

2. **Section 10-1.2785 Tobacco Retailer License (TRL).**

In the case of changing proprietors of the existing tobacco establishment

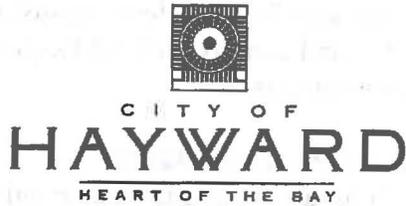
- Need to clarify that the new owners will continue to operate as an existing establishment and the TRL will be grandfathered through the new owners that means they will be able transfer their TRL

3. **Under Potential Impacts to Existing Businesses.**

Not to make existing businesses a burden on the properties

- Section 10-1.2900 of the city's Zoning Ordinance (Non-conforming Uses). The property on which a legal non-conforming establishment exist should be exempt to have all new uses conform.

4. **The LTR fee**
  - The LTR fee of \$400 must not exceed \$100 under any circumstances
5. **Section 10-1.295 Cumulative Remedies**  
Not to be applicable
  - Penalties in case of violation should be subjected only to state law, example; a warning for first offense and no more than 250 for the second offense and so on
6. **Section 10-1.2796 Revocation of Tobacco Retailer Licenses and Conditional Use Permits: Appeals**
  - The revocation of large format tobacco retailer should be similar to the tobacco retail sales establishment that have a conditional use permit or that are legal non-conforming uses
7. **Section 10-1.2784 Large-Format Tobacco Retailers**
  - Reduce the percentage of areas where big format stores are allowed to sell tobacco to be remained according to the state law
8. **Section 10-1.2793 Inspection and Right of Entry**
  - Limit inspection to once a year and not without reasonable cause similar to state law
9. **Section 10-1.2794 Nuisance**  
Not to be applicable
  - This regulation is demeaning to one's character and is not necessary
10. **Section 10-2792 Liability for expenses**  
Not to be applicable
  - Extreme hardship
11. **Section 10-1.2782 Definition**  
Not to be applicable
  - "Imitation tobacco products" needs to be removed
  - "Tobacco Retail License" (mobile vender of tobacco products and electronic smoking devices are prohibited)
  - This sentence is not a definition and needs to be removed
  - "Tobacco Retail Establishment" wholesale is not retail



May 9, 2014



Re: City of Hayward Proposed Tobacco Retail Sales Establishment Regulations

Dear Sir or Madame:

7:00 PM

On Thursday, May 22, 2014, the Planning Commission will be reviewing a proposed amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. The Commission will be making a recommendation to the City Council, which will consider the amendments for adoption at the June 17, 2014 City Council Meeting. If adopted by Council, the Regulations would go into effect immediately.

The purpose of the proposed Ordinance is to establish regulations on the sales of tobacco and tobacco related products within the City of Hayward in effort to prevent the sales of said products to youths. Some of the key provisions of the proposed Tobacco Sales Establishment Regulations include:

- Define Tobacco Sales Establishments, Tobacco Paraphernalia, Tobacco Products, etc.
- Restrict the zoning districts in which all new Tobacco Sales establishments can be located to the General Commercial Zone (CG) with the approval of a Conditional Use Permit and compliance with set operational standards and annual Tobacco Retailers License (TRL).
- Allow large format retailers ( $\geq 10,000$  square feet,  $\leq 5\%$  of floor area) to sell with Tobacco Retail License only (similar to alcohol regulations).
- Require separation requirements for all new Tobacco Sales establishments from sensitive receptors (i.e., schools, churches, parks, etc.) and other Tobacco Sales Establishments.
- Prohibit sales of specific products that are considered "kid friendly" or prohibited by State Law (i.e. drug paraphernalia, single cigarettes and cigars, flavored tobacco products, etc.).
- Prohibit sales sale of single cigarettes and cigars and of cigarettes in packs with less than twenty (20) cigarettes and cigars in packs containing fewer than five (5) cigars.
- Reinforce compliance with local, federal and state laws pertaining to tobacco and tobacco product sales, licensing and advertising and display to allow enforcement at local level.
- Create local enforcement provisions (enforcement by Code Enforcement).
- Create provisions for existing tobacco retail sales establishments considered legal non-conforming (regardless of zoning district).

- Require all *new* and *existing* Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments.

### **How will this affect you as an existing Tobacco Retailer?**

Upon adoption of the proposed regulations, all existing tobacco retail sales 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. All existing establishments will be required to obtain an annual TRL and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments.

### **What is the purpose of a TRL?**

The purpose of the TRL is to allow the City to regulate the establishments that sell tobacco products in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices. The TRL would help the City limit youth access to tobacco by controlling the location and density of tobacco retailers. It would also allow the City to provide additional restrictions on the sale and promotion of tobacco products to be enforced at the local level. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give the City the ability to issue administrative fines, fees, penalties and/or citations or abatement notices to violators of the provisions of the ordinance. The issuance of a TRL will be subject to an annual fee of \$400.

The full draft of the proposed Tobacco Retail Sales Regulations and related Municipal Code amendments can be viewed on the City's website at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/>. Please feel free to contact me if you would like additional information or wish to comment on this item but are unable to attend the Planning Commission Meeting. The goal of staff is to receive and provide as much community feed back to our Council as possible, so we encourage you and appreciate any and all feedback you'd like to share. Thank you for your time and attention to this important community matter.

Regards,



Linda Ajello, AICP  
Associate Planner  
City of Hayward, Planning Division  
777 "B" Street  
Hayward, CA 94541  
Phone: (510) 583-4207  
Fax: (510) 583-3649  
e-mail: [linda.ajello@hayward-ca.gov](mailto:linda.ajello@hayward-ca.gov)

Ty Tauer - (510) 4160-5585 / 94542

Gabriel Rodriguez - (510) 207-8048 / 94601

Sarah v. Terano (510) 470-3970 - 94541

Phil Ginn - (510) 927-8715 - 94541

Karla Ramirez (323) 423-6232 ~~Karla~~ ~~94541~~ 94542

Nick Lodeas (510) 470-5856

Clara Mantley (510) - 695 - 8823

Karen Kinder (510) - 695-6360

Karen Kennedy (510) - 695-6361

Victoria Knight (510) 501-7372

Devik Dimodana 415-955-7992

Kevin Reese 925. 989-6839

SEAN PENNY 925 640 4840 94541

Seah Prayo 925-577-5311 94541

Spencer Britselugi 650-218-6800

Angel Vega 661-236-8581 94544

Diego Cornejo 661-992-2637 94544

Corrina Nunes 510 - 798 - 1660 94541

John Nunes 510-355-5734 94541

Heather Christensen 510-475-0334 94542

Jose Moliver 510 672 7369 94546

Bo McGee 94541 (510) 600413

Adrian R

510-689-3812

Vincent Amato 94541 510-938-3142

David Blake (510) 755-7568

Anthony Giraldez (510) 314-7016

94541

Kelly Cole (510) 961-9620

John Doe

650 430 9024

94541

Greg Fisher

510-909-6049

~~John Doe~~

(510) 862-4982

94578

Donny Brown

(510) 432-7722

94541

John Doe (510) 432-2095

Jeanne B

(510) 938-8074

Nam Tran 510-366-4834

Beau Pridemore (510)-700-9919

Robert Lewis (510) 875-9745

Tday Stinson (510) 812-2759

Justin Schullon (650) 787-3624

Peter Gielow (650) 464-2887

Sean Choy

510 393-8345

94542

Brendan Schroeder <sup>94500</sup> 925 321-0899

Jessica Beard 94587 7025392331

Keola Kalahiki 96744 8083619671

Kalei Kalahiki 96744 8082067853

Nabeel Ammani 510 566 3004

BRANDON PEREZ 94544 510 917-2521

Amanda Stotts 94541 510-299-2777

Mason Jordan 93635 510-579-2617

Heaven Moore 94544 510-397-1497

Robert Freedell 94541 510-318-2084

ant pimentel 94544 510 677-4319

Amir Ammani 94544 415-613-7007

Ben Oglin 94541 - 538-1291

Tommy NESS 94542 - 510 582-6924

Debbie NESS 94542 - 510 582-6924

Jamie Barragin 94542 510 582-6924

Chris NESS 94542 510 582-6924

Noah NESS 94542 510 582-6924

Anthony Joubert 510 470-4281 94541

Nick Sullivan (707) 899-9122 94591

Mallachi Winnett 415 1-341-7860

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- ROBERT TANAKA	94542	(510) 290-0087
HELEN TANAKA	94542	(510) 290-0044
JAIMÉ CHAVEZ	94541	(510) 209-0279
Megan Woods	94541	(510) 921-8842
Carlos Hernandez	94544	(916) 877-0776
JOE PEREZ	94541	(510) 677-1314
Carl Reed	94519	925-787-7882
Noah Ha	94541	510) 565-2616
Jonathan Milla	94544	(510) 480-9296
Christopher Gomez	94544	(510) 359-9602
Aristeo Macias	94541	(510) 423-5529
Landen Patten	94546	510-557-8872
Walter Dugan	94560	510 938-8575
Anna Paetard	94560	510 491-5837
Garl Berry	94541	510 305-1630
Kyle Royer	94542	510 303-4290
Aaron Work	94541	510-305-5412
amber lynn	94541	510 460-0724
Bob Reynolds	94536	925 322 7637
Tom McBree	94541	510 828-5985
Nicholas Ness	94542	510 460-0056

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- ① Jason Hughes *Jason Hughes* 5/20/14
- ② Diana Waring 05/20/14
- ④ Cristina Esquivel May 20, 2014
- ⑤ Ashley Ramos 5/20/14
- ⑥ Joseph Paul 5/20/14
- ⑦ Rosemary Galicia 5/20/14
- ⑧ J. Yau 5/20/14
- ⑨ Victoria Montoya 5/20/14
- ⑩ Karina Salinas 5/20/14
- ⑪ *[Signature]* 5/21/14

(510)  
4/11/2014

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 22 Sonni Cottrell 31183 Faircliff st Hayward CA 94544
- 23 ALFREDO ANTUNEZ 325 Saint Andrews st Hayward CA 94544
- 24 LAURA MARTINEZ 325 SAINT ANDREWS ST  
HAYWARD, CA 94544
- 25 Candice Day 14302 Convallis St., San Leandro 94579
- 26 Diondre Valentine 700 willow st. Oakland CA, 94607
- 27 ANN MARGARET SANCHEZ 31517 MEDINAH ST. HAYWARD, CA 94544
- 28 Ninh Nguyen 4380 Holt St. U.C. 94587
- 29 Rodney Byrd 2650 98th 94605
- 30 Christine Huan 252 Revere Ave Hay 94544
- 31 Leena Terbeek 30921 Vanderbilt St Hay 94544
- 32 Alice Thompson Alce Thompson 9 Presal St Hayward, Ca 94544
- 33 LARRY WONG SUN 31446 BRAVERC AVE Hayward, CA 94544
- 36 PAL RINDI
- 37 JAMES HANSEN 440 Rousseau St Hayward 94544
- 38 THOMAS CHRISTENSEN 28528 Aragon 94544
- 39 WILLIAM H. STURGEON 31351 PEBBLE BEACH CT HAYWARD 94544
- 40 Sade Okoronkwo 5108279355 325 Populaski dr. a
- 41 Santija Wilkens 707-307-9801
- 42 Shaeura Henderson on 510-584-6215
- 43 Michael Espinoza (650) 504-9387

- 249 Angie Sabanal - 48 Schuyler Ave. Hayward, CA. 94544
- 250 Briana Smith 63 Schuyler Ave, Hayward, CA
- 251 Rhonda Carr 946 Northfield Dr. Hayward CA 94544
- 252 Charles Sabdivie 29431 Middleborough Way Hayward CA. 94544
- 253 Nicole Leshar 683 Tamarack Dr. Union City CA. 94587
- 254 Chynah Price 30495 Carroll Ave Hayward CA 94544
- 255 Chido Lopez 360 Lexington Ave Hayward CA, 94544
- 256 Louie 31118 Meadow br. Av Hayward CA, 94544
- 257 GIOVANNI 29449 PROVIDENCE HAYWARD 94544
- 258 Lamar 699 Algaire Parkway 94544
- 259 Jose 446 Lexington Ave 94544
- 260 Tony Fernandez #38 TIPC HAYWARD CA. 94544
- 261 Robert Ribeiro 332 Pinebrook Way Hayward, CA 94544
- 262 LISAFUENTES 3245 Wm Deeto CA 94544
- 263 Michael Rego 130 De Vera way Hayward, CA 94544
- 264 Sonia Au 31156 Brae Bum Ave 94, Hayward, CA 94544
- 265 ROSA LUIS MIGUEL 657 CARMARST Hayward CA
- 266 Linda Gutierrez 148 Lafayette AVE Hayward CA 94544
- 267 JANEY SMITH 316 BROOKTREE WY Hayward, CA 94544
- 268 Pam Colyer 532 Jilliens Way Hayward CA 94544
- 269 Deborah Bushong 31932 Olean St Hayward CA 94544

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 2 Shawn Bailey 270 Parkside Dr., Union City, CA 94587
- 3 Marco Canares 2451 REGAL DR. Union City CA 94587
- 4 ORLANDO MIRAMONTES 49 Hermitage Ln Union City CA 94544
- 5 JANET PHILPOTT 247 BERRY AVE HAYWARD CA 94544
- 6 EDGARDO PLO 22432 CENTER ST. CASTRO VALLEY, CA. 94546
- ~~7 [REDACTED]~~
- 8 Melissa Dutrow 29212 Whalebone Way Hayward CA 94544
- 9 Tapdeep Sandhu 145 Tamarack dr, Union City CA 94587
- 109 Summa Matheo 2 Union City CA 94587
- 10 Lynn Camara ~~30970 Carroll Ave Hayward CA 94544~~
- 11 Judith Hill 33300 Mission Blvd #224, Union City 94587 Judith Hill
- 12 Vivian Le Holly 32243 Cordination Drive Union City Ca. 94589
- 13 Myoung Medina 32001 Carroll Ave Hayward CA 94544
- 14 Ruben Santiago 29250 Whalebone Way Hayward CA 94544
- 15 Joseph M. Belachian 21957 AUBURNWAY HAYWARD CA. 94544
- 16 Mike O'Connor 520 BERRY PL HAYWARD 94544
- 17 Pauline Martin (45 JUNE ST HAYWARD) 94544
- 18 JASON LUN 3028 Willow Brook Hayward 94544
- 19 Chee Cavender 30545 Flossmoorway Hayward 94544
- 20 Ozo Zuniga 1424 Lindfield Hayward 94545
- 21 Cecilia Gomes 29869 Clearbrook Circle Hayward 94544
- 22 A. Soyuro 1424 Fairview Hayward CA 94544

- 145 JEFFREY GLEN JOHNSON 27505 Tampa Ave #6 Hayward, CA 94544
- 146 Christopher Martinko 668 GISLER Way Hayward Ca. 94544
- 147 Juan A. Guenero Pret...
- 148 ~~ALBERTO VALLS~~ 2026 Montez ~~Way~~
- 149 NEIL Hayden 627 Tins way Hay.
- 150 Kathy Leshar 683 Tamarack Dr. U.C.
- 151 BRENN PALLAR 30561 Flossmoor way Hayward
- 152 ~~MURPHY~~ 472 MEDINA ET, HAYWARD
- 153 Joe Hayden 627 Tins way
- 154 Juvenal Linoco 33857 8<sup>th</sup> ST Union city
- 155 ~~BOBBI LANE~~ 29282 JARVIS AVE. Hayward, CA
- 156 Arlene Walker - 32331 Seneca Street Hayward
- 157 Delia Johnson - 29405 Dixon St #29 Hayward
- 158 Stuart Flehr 3212 Round Hill Dr Hayward
- 159 James R PUGANDE 31260 Chicago Street Hayward
- 160 Grace Buden ~~31260 Chicago Street Hayward~~ - Grace Buden
- 161 Carlo Cervantes affordwash@yahoo.com
- 162 Julian Cervantes juliancervantes1@hotmail.com
- 163 Yvonne Sanchez ALGRAND60@GMAIL.COM
- 164 Christine Chavez 715 Schuyler Ave Hayward CA 94544
- 165 Jordan Finney - 460 Division St #11 Fremont CA 94536

- 183 Zack Botelho (S)
- 184 Peshra Jenkins 31010 Brae Burn Ave #A8 Hayward 94544
- 185 T.J Jenkins 26221 Erading Rd Hayward CA 94542
- 186 J. Doley 313 Bridgecreek Way Hayward CA 94544
- 187 A. Nichols 346 WASSMUND HAYWARD CA 94544
- 188 Ben Vargass 238 Farway St. HAYWARD 94544
- 189 Brian Dupino 30676 CARROLL AVE. HAYWARD 94544
- 190 Alexandra B Lira 31140 Birkdale Way Hayward 94544
- 191 Dano Lash ~~32278~~ 32278 Alaska Drive, Hayward 94544
- 192 Sabrina Hedgecock 31475 High Way Hayward 94544
- 193 Jareesa A Eleanor Place Hayward CA 94544
- 194 Jafaja Herron Eleanor Pl. Hayward, CA 94544
- 195 Sharon Howard 31005 Faircliff St Hayward 94544
- 196 Rodney Lyanna 4761 Central Ave Fremont 94533
- 197 DARRIN BRADLEY 1280 VETERANS Blvd
- 198 Jan Brown
- 199 Abhinash Francis 31256 Brae Burn Ave. Ht. J3 Hayward CA 94533
- 200 Carrie O'Neill 37912 Canyon St Fremont, CA 94536
- 201 LUPE LINDA HERRERA 33521 7th St UNION CITY 94587
- 202 JUAN AGUILLEN 33521 7th St. UNION City, 94587
- 203 Ramon D 31184 Brae Burn Ave Hayward CA 94544

729 BARBARA DUNN ~~Barbara Dunne~~

730 220-9187  
Rogelio Lopez B.

731 Vanessa Gainer-Vejar 510 449-1827

732 Dois DiB (510) 706 3275

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

711 Xiamara Medina 408-205-9772

712 Marcia Tomiello (41 Cypress St  
Hayward Ca 510 489-3512

713 Joseph Costa  
Des Bayona

714 Fernando Dellanoc 510-706-9060

715 JERRY SOPHANO 510-320-8000

716 James Doerr 510-441-8002

717 Steven Bales 209 743-1163

718 Greg Brock → 510 475-8604

719 MIKE O'NEILL 603 667 8965

720 Animi Grover 510-441-8777

721 Elizabeth 510-258-6058

722 ~~Stewart~~ 510-862-1839

723 Serrena L. Taylor (510) 467-6101

724 Suzanne Nguyen (510) 861 4103

725 Yalanda Linn 510 792 3844

726 Anne Kelly 510-228-6237

727 Bandejas 510 487-8139

728 Kent L. 510-783-5986

# Stop the Regulation of Retail tobacco Sales

1. Anthony Williams 32331 Seneca St Hayward California
- 733 2. Felicia Stroughter 3007 80<sup>th</sup> Ave Oakland, Ca. 94621
- 734 3. Liliana Pham 22675 Linden St. Hayward Ca, 94541
- 735 4. Jai Loveira Young 3007 El ~~7<sup>th</sup>~~ #1 Oakland CA 94601
- 736 5. Antonio Stroughter 22675 Linden Street Hayward, CA 94541
- 737 6. Anthony Eaglin 32331 Seneca St. Hayward Ca. 94541
- 738 7. Andrea Carr 32331 Seneca St Hayward Ca. 94541
- 739 8. ARLAN GOMEZ 510-258-8028. Hayward Ca. 94541
- 740 9. ARLINA SOLANO 510 677-1414 Hayward Ca, 94544
- 741 10. Marcus Mwanadi 510 300-4839 Union City CA 94597
- 742 11. Gedrock Hakudra 510-94-6810 Hayward Ca. 94544

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

166 Malcolm Walker 32331 Seneca St

167 - Franco Murtug 324 Raymond Dr. Hayward

168 Russel Muto 130 Geneva Ave Hayward

169 Mike S. Sutton 130 Geneva Ave. Hay

170 Emmanuel J. ... 23436 Compass Court Hayward

171 Frank ... 1384 Parcel Ct. Milpitas, CA

172 Rebecca Miehuis 346 Nassau Ln. Hayward, CA

173 Linda K. ... 29414 Sandburg Way Hayward CA

174 Gedy Lynch 3142x Greenbrier Ln Hayward 94544

175 - Greg Garry 24894 Taylor Ave Hayward, CA 94544

176 Andy Davis 31363 Meadowbrook Ave, Hayward

177 SUSAN GALZA 29076 Alton Rd Hayward CA

178 Sean Brown 3212 Braeburn St - 477 9873

179 Ann Navarro 17195 Redwood Rd Castro Valley 510-314-7005

180 Joseph Benjamin 302 Rivercrest Ln Hayward CA 94544

181 JOSEPH ACEVEDO 31121 Mission Blvd #290 Hayward CA 94544

182 Debbie Maltrot 302 Rivercrest Ln., Hay., Ca 94544

(2)

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below:

- CONRADO ELIPSE 2500 MEDALLION DR APT. 209 UNION CITY, CA
- Dora Rodriguez 211 LAFALETTE AVE HAYWARD CA
- CHRISTI DOEHNE 31147 OAKHILL WY HAYWARD, CA 94544
- Brad Allenton 19116 Stanton Castro Valley
- Agnes Frances 31256 Braeburn Ave Apt #3 Hayward, CA 94546  
94544
- Chris Rojas 28638 Cole Rd 94544
- Arndt van Kampen 584 Carner St 94544
- Arcadio J. Fraticelli 20481 Hartz Ave Costa Mesa
- D. MOTTAN - 31290 Meadowbrook AVE HAYWARD CA 94544
- Victoria Barbay 30962 Prestwick Ave Hayward CA 94544
- Helene Clark 30847 Prestwick Ave HAYWARD 94544
- Juanne Miramontes 49 Heritage Ln. Hayward 94544
- Ken Morin 29831 Clear Brook Cr. APT 9 Hayward 94544
- RATON M. SOLIS 31068 HOLWAY HAYWARD 94544
- Timothy R. T 30830 Carroll Hayward, ca. 94544
- Dorothy Moody 33300 Mission Blvd U.C. 94587
- Rafael A. Tijero 32923 Pulaski Dr. Hayward CA 94544
- Case Murrell 344 Lexington Ave Hayward CA 94544
- Eric Speed Turlock CA 95380
- Tom Breau 34429 Torrey Pine Lane Union City, CA 94587
- SERENA SANTOS 31772 Carroll Ave Hayward CA 94544
- TOPPE WILLIAMS 2855 Central Circle Hayward, CA 94544

- 81 Francine Hills 30509 Prestwick Ave Hayward 94544 ~~III~~
- 82 CAROL GALANTI-Youngs 31141 OAKHILLWAY, Hayward ~~III~~
- 83 Anthony Williams 32331 Seneca St Hayward California ~~III~~
- 84 O.B. Chaluff 29871 Vanderbilt<sup>#3</sup> Hayward, CA 94544
- 85 ~~Tor Tor~~ 2092 ~~Constitution~~ C Ave
- 86 Jan Rigg 2233 Medallion Dr<sup>#3</sup> ~~Hayward~~ 94587
- 87 Jim (Paul) 2100 Eric Ct 1 94587
- 88 Erik Grasso 420 St. Andrews
- 89 Bert Francisco 35838 Prestwick Xue. Hay. 94544
- 90 ADRIAN FLORES 33342 6TH STREET ~~Q~~
- 91 Steven East-McCormack 30866 Vanderbilt St.
- 92 Steven East-McCormack ~~Sub.~~
- 93 Carlos Sanroman 33335 University Pr, Union City
- 94 ~~Wm W~~
- 95 Anthony manchez 337 tippecanoe Hayward CA
- 96 James Gotant 31495 CORROLOVE HAYWARD CA
- 97 Gabe Gotant 31495 CORROLOVE HAYWARD CA
- 98 RAYMOND SHARP 585 JONATHAN<sup>WAY</sup> UNION CITY CA
- 99 PETER L VAN BLAGCOM 33128 Hemlock Dr Union City
- 100 Alex Leal 207 Whipple Rd Union City

- 62 CHRISTINE 29324 DIXON ST HAYWARD CA 94544
- 63 NICK 29324 DIXON ST HAYWARD CA 94544
- 64 KIM 6412 Montingau<sup>way</sup>, Hayward 94608
- 65 Adrianna Butler 335 Gresla Hayward CA 94544
- 66 ~~Adrianna Butler~~ 42318 Blacow Rd Fremont, CA, 94538
- 68 Michael O Quonant Newark, CA 94560
- 69 Mayer Fleeg 32520 Palasti Dr
- 70 Sandra Juante 31260 Chicoine Ave.
- 71 Lina Bris 212 Revene Ave. Hayward.
- 72 ~~Adrianna Butler~~ 592 Sillione Way Hayward
- 73 Olga 565 Carue St Hayward
- 74 NGHIA 2506 Carpio Hayward
- 75 Sandra Brock 31375 Pebble Beach Cit. Hay. 94544
- 76 Babes Neitt 31363 " " " " "
- 77 E61E 22880 CITY CENTER DRIVE HAYWARD
- 78 MARIA CASARAS — 452 ROUSSEAU ST HAYWARD CA 94544
- 79 Domingo Quintana 26877 Tyrrell Ave Hayward CA 94544
- 80 EDWARD SINGAYAN 30550 PRINCEWICK AVE HAYWARD CA 94544

- 1 Shannon Roper -510-584-8674
- 2 Jennifer Moore 6 GREEN ST Hayward CA 94544 (510) 750-9675
- 3 GEORGE COSIO 2452 BALMORAL ST. U.C 94527
- 4 Nidal Halaweh 877 Willow St. S.T. 408-387-2663
- 5 Lynette Jimenez 2804 OLIVER DR 347 362-0385
- 6 ERIC PALMER 350 CORNELL AV. HAYWARD
- 7 ROBERT RICHARDSON 29873 CLEARBROOK CIR.#139 HAYWARD
- 8 Christopher R. Schmitt 33908 10th st. U.C. 94587
- 9 Roxanne Melonzon 33908 10th st. U.C. 94587
- 10 Jorge Escobar 33635 2nd ST U.C. 94587
- 11 Jesus Camacho 33440 4th St Union City 94587
- 12 Austin Schader 510-677-3237 hayward 94544
- 13 Bert McCaffery 31051 Faircliff St. Hayward Ca 94544
- 14 Everett Brown 31074 BRAEBURN AVE Hayward CA 94544
- 15 Chrystal S. Blue 2801 E. 13th Street Joplin mo 64801
- 16 Michelle Beard 1531 Katherine Joplin 64801
- 17 Shana Tyson 3097 1/2 Meadows Blvd
- 18 Jim Tyson " "
- 19 Joel Tyson " "
- 20 Deja Flores 31770 Alvarado blvd union city Ca.
- 21 Tyrrel Johnson " "

- 44 Jennifer Alves 2545 Franklin Ave. 94587
- 45 Julie Mammad 2323 Royal Ann Dr  
Union City, CA 94587
- 46 Carlos Estrade 33215 Mission Blw Apt B117  
Union City CA 94587
- 42 Luis Luso 668 Chevy Chase Way  
Hayward CA.
- 48 Lisa Baskett 38767 Altura St. Fremont, CA
- 49 Laura Small 32330 Seneca St. Hayward CA.
- 50 John Mendo 29588 Vanderbilt #114, Hayward, CA 94544
- 51 Julie Cottrell 31183 Faircliff St. Hayward, CA 94544
- 52 Rich Cottrell 31183 Faircliff St. Hayward CA 94544
- 53 Joseph Wilkins 21995 Prospect St Hayward CA 94541
- 54 Jamie Heger 33300 Mission Blvd. #201 Union City, CA  
94587
- 55 John Parenteau 33300 Mission Blvd. #201 Union City, CA
- 56 Enrique Jacques 31010 Brae Burn Ave 94587.
- 57 ~~John Parenteau~~ 30973 Brae Burn Ave Hayward <sup>Hayward CA</sup> 94544 94544
- 58 ~~John Parenteau~~ Mission. Hayward - 510-706-5700
- 59 Trentink 30962 Prestwick Ave Hayward CA 94544
- 60 Subra Ganbay 30830 Carroll Ave Hayward CA 94544
- 61 Tracey Thompson

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 388 Amy Saito, 650-683-0014 P.O. Box 66412  
San Hayward
- 389 Michael Saito, 650-454-0014 " "
- 390 Danica Collins (510) 475-1992 31932 Olean St.  
Hayward CA 94544
- 391 Robert Lexton 510 316 0952 31212 Brae Burn Ave  
Apt 12 94544
- 392 Hector Cano 510-432-1142 157 Tamarack Dr.  
Union City Ca. 94687
- 393 Raymond Cano 510-329-5859 151 Tamarack Dr.  
Union City.
- 394 Michael Kieran 612-355-0933 595 ELEANOR DRIVE  
Hayward
- 395 Mark Kieran 510-856-7122 595 ELEANOR DRIVE  
Hayward, CA
- 396 Rudy V Cruz (510) 881-1396 27451 Hemlock Rd.  
Hayward CA
- 397 Sheila Sandholdt (510) 441-0240 319 Westchester St  
Hayward, Ca 94544
- 398 Gracie Nunes (510) 887-2018 29240 Harpoon Way  
Hayward, Ca. 94544
- 399 Barbara Viens 510-427-3687 Lexington Ave, Hayward.  
Hayward CA. 94544
- 400 Yolanda Love (510) 586-4848
- 401 Robert Woodridge 510 324 1571 29233 APT 1 Hayward Delon
- 402 Robert Bittner 530 520 9402 519 Ellery Pl, Hayward
- 403 Barbara Tombaugh 510-303-9981 33554 6th St, UC
- 404 Nora Gonzalez 510-706-2265 36602 Jennifer St  
Newark, CA 9456
- 405 Josepe Diaz (510) 677-4519 36662 JENNIFER ST.  
NEWARK, CA.
- 406 DANIEL DIAZ (510) 677-4519
- 407 Tony Braden 510-828-4567 31291 ORKHILL WAY  
Hayward
- 408 GREG COOPER 510-479-2494 447  
Westchester St Hayward

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below:

- 366 Maria Regan (510) 441-1555
- 362 Gerry Yest (415) 757-1564
- 368 Fe Sternberg (510) 489-7376
- 369 Nita Rebotor (510) 489-7376
- 370 Henry Jap (510) 987-8054
- 371 Margarita Urquiza 510 487-2566
- 372 ~~Juanita~~ (415) 816-4359
- 373 Efren (510) 677 8608
- 374 ~~Goillego~~ Goillego (510) 441 6817
- 375 Rose 510 296 6622
- 376 Harry Barcelona (510) 952 9103
- 377 Ana Hernandez (510) 324-1517
- 378 Mike Anderson (510) 889-1212
- Gilly Cadell (510) 827-0389
- Dennis Cozad (510) 688-6691
- NATHAN RUNGE (510) 586-7890
- Alejandro Barron (510) 491-5851
- Mark Upshaw 510-875-9224

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 317 John Kelly 31596 Mac Donald W
- 318 ALICE SANTOS 94544 Hay  
32412. KENNY ST. HAYWARD.
- 314 Mer Gonzalez 31644 Trevor St., Hayward 94544
- 320 KEIBEN TOLEDO 31889 Chiccoine Ave Hayward, 94544
- 321 Kent 36506 Flossmoor Way Hayward CA 94544
- 322 Fred Aguinado 32272 Trevor Ave. Hayward CA 94544
- 323 Norio Sabar 318444 Kennel St Hayward CA 94544
- 324 As Sanyal 112 Outches Ln Hayward 94544
- 325 Vineet Khosh 316 Annapohead way, Hayward 94544
- 326 Niko Castillo 127 Teddy Drive Ct. 94587 unity CA.
- 327 Eugene Madry 33300 Mission Blvd 94587
- 328 Melody Schmeden Same
- 329 Mike Delgado "
- 330 Salvador Arana Jr 531 Ellery Pl Hayward, CA
- 331 GIBBY WEBBER 65 HERMITAGE LN, HAYWARD, CA
- 332 SHANNON WEBBER 65 HERMITAGE LN, HAYWARD, CA
- 333 Andreg L Stow 2172S Westfield Ave Hay. Ca
- 334 Matthew Walt 21600 Westpark St Hayward CA
- 335 Clifford Pagan Cufful Pagan 1605 H St, U.C., CA 94587
- 336

- 337 Jane Johnson 29317 Whitehome Hayward 94544
- 338 - Bijan K. Moham Ph # (510) 431-3575
- 339 - Theresa Vltz 510-363-5472
- 340 - Monique Ramirez 510-915-7441
- 341 Jesse Self 415 670 6579
- 342 John Bass 510-783-3348
- 343 Rada Josten 510-977-0341
- 344 Pamela Miramontes 510-635-8986
- 345 Oscar Torres
- 346 ~~Pat Young~~
- 347 Pamela Mills 510 247-0511
- 348 Goni P. Smith 510 415 4090
- 349 Adgo Moya 510-688-3456
- 350 Kabinet Key 925-455-2953
- 351 Mahiro
- 352 DAVID MELLO 510-489-1278
- 353 Destinie Hill 925-202-5869
- 354 Brandon Middel 510-600-1130
- 355 Steve P. Harris 510 473 6637
- 356 Joann Brown Ellis 510-415-9450
- 357 Kelly Dillow 510 673-5338
- 358 Samantha Dillow (510) 584-1361
- 359 Carolyn Harris (510) 435-9988
- 360 Rowell 510-461-4114
- 361 Julio Calderon 510 258 9131
- 362 Chr Wany
- 363 Mary M... 510-676-2295  
510-862-1561
- 47 Marti Olayue 786 2631  
DOB 4/5/10 510 398 4088

- 366 THOMAS DANIELA 510-489-9320  
367 PAUL LIND (408) 823-5149  
368 Paige Bennett 510-816-0954  
369 Sam Alon 650-690-0972  
370 Helen Soriano 415-415-8582  
371 T. Nishra 910-972-0049  
372 Maurice Garibay 510-471-8496  
373 Richard 510-4313156  
374 Carol S. 215 778 - 0000  
375 Karen/Victor 510-909-9557  
376 Gabriel Tufts (501) 329-5588  
377 Donna Powers (510) 489-0340  
378 Merianne Pharo 510.918.4622  
379 Con Fan 510 470-2122  
380 Kevin Huan (510) 305-1698  
381 Amber K. Watkins (510) 228-5376  
382 Reba A Hills (510) 366-8702  
383 ~~Francine~~ Francine Hills (510) 502-3590  
384 FRANK AVRSKO 510 881-6730  
385 Benjamin Treusch 510 604 6541  
386 Jessie Chacon (510) 200-1080  
387 Cristina Barrantos (510) 512-3028

- 409 Catherine Baker (530) 737-7746  
410 EDWARD BALLAR (510) 427-7363  
411 Angela Sias (510) 435-3911  
412 ~~Francis [unclear]~~  
413 Kar Inyell (510) 887-0139  
414 Tyler Roberts  
415 William Omas 650.630.0690  
416 John Rene 552.72.0561  
417 Richard Maddox 510 921 1702  
418 Pedro Suarez  
419 Dr. J. 510.366.7688  
420 Tom Cant  
421 DAVID LGARRET  
422 Michael Collins (510) 253-6097  
423 JERRY BAXLEY  
424 JUAN Villanueva (510) 2693694  
425 ~~[REDACTED]~~  
426 RAY MARTINEZ 510-231-1231  
427 Erica Brindire (510) 408-8294  
428 JIM ESPALDON  
429 Chance McCaffky  
430 Matt Happe  
431 meissa villalobos - 510 491-3542

- 507 Geoffrey R. Gonzalez (510) 677-4736
- 508 Mary Sakijama (510) 471-5171
- 509 BRITA WONE 510-395-1053
- 510 AZIZ ALKHALIF 570 789-3932
- 511 WILLIAM WHITE (510) 487-2984
- 512 Lena Woods (510) 750-4883
- 513 Evan Brooks 415, 410, 1287
- 514 Wendy Lockhart 510-471-6478
- 515 Nadia Martinez 510 596 0113
- 516 Robert Meier
- 517 Michelle Vuun 810 209 7901
- 518 Aida Hubbard 510.688.4529
- 519 Joseph Niehuis 510 420-0139
- 520 Donald Bushong 510 3902667
- 521 E. Sonya Hauck 510 677-3302
- 522 Robert Senguer 510 706-6214
- 523 Robert (510) 406-2386
- 524 ~~Robert~~
- 525 Chio Hyun 920-889 9296
- 526 Jay Lee 510 489-0370
- 527 Steve Dale 510 471 5501
- 528 Russ Bellard 510-489-3192
- 529 David Ober 510-393-6664
- 530 Phoebe P Lind phoebe.lind@g-mail.com

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 288) ~~Robert Pinder~~ 31494 Medinah St
- 289
- 290 Arnee Davis 31363 meadowbrook<sup>Ave</sup> Hayward Ca 94544
- 291 Ezell Humphrey 394 RIVERIA DR. 94587 UNION CITY
- 292 LARRY DOWD 338 TOWNEMAN WAY Union City  
~~LARRY DOWD~~
- 293 Arnech chand ~~Arnech~~
- 294 605 gorenson RD  
APT 12
- 295 John McRAE 7760 Country Lane, Pleasanton,
- 296 Maria Jenner 33323 8th Street Union City CA 94587 CA. 94566
- 297 Mason Robraher
- 298 Juanito Antago
- 299 Edna Baeen 31661 TRENOR AVE Hayward CA 94516
- 300 RANDI RIZ RAM. 31435 MEADOWBROOK AVE Hayward CA.
- 301 BLUNT SCHADON 31447 MEADOWBROOK Hayward CA.
- 302 Jimmy OTEZ 29354 12<sup>th</sup> ST Hayward 94504
- 303 Amber Maravilla 31681 Greenbrae Ln Hayward CA
- 304 Gabriel Pagan 31681 Greenbrae Ln Hayward CA, 94504

- 551 Rand John 925 719 4920
- 552 Maryjo Kelly 510 471-5377
- 553 Jim Solomon 408-464-3679
- 554 Harold MOTA 510-921-4974
- 555 Carlos Caspade
- 556 Jaslyn Western 570 378 5571
- 557 AM E. LISA 510 298-8378
- 558 Susan Jeffrey
- 559 Walter Gray 978 Fall River Dr.
- 560 Roxa M. Magan 510-860-8837
- 561 Jeffrey wetzel 510-491-7266
- 562 Joshua salmeron (510) 305-8696
- 563 Jacob Fuchs (510) 731-9136
- 564 Tony Sigue (510) 209-4500
- 565 Jesus Torralba 510 294-5409
- 566 Chris Kelly (510) 487-4699
- 567 Ephraim Jr. Susan 2414 Angelina Ln. Hayward, CA 94594
- 568 William Delaney 23436 compass court Hayward, CA
- 569 Eric Reiz 510-411-7873
- 570 Renatta Ribeiro 510 822-2190
- 571 Pam Vin Liang Panyang 510 477 0916
- 572 KUMKA HONG
- 573 Lynda AREN 510-471-4551
- 574 Candy Collier 510-886-2508
- 575 Shawn Brooks 510-400-9372
- 576 ADRIEL OSIAS (510) 378-2261
- 577 James Foo 510-394-7791
- 578 Lisa DONGHERTY 510-925-594-0437

NAMEPhone #Address

<u>NAME</u>	<u>Phone #</u>	<u>Address</u>
456 Nick Herrera	(510) 688-3341	
457 Jessica A. Malicoat	(510) 695-6649	
458 Segui T. Clarke	(510) 586-8696	
459 <del>John</del>	(510) 800-4680	
460 <del>Mary</del>	510-780-0503	
461 Christine McNeal	440-343-7730	
462 Thomas Lopez	510-585-1439	
463 George Kanuse	510-828-4835	
464 Maria Ace	510 690-4865	
465 GATY. LANE	510 828-0432	
466 Sonia Chand	510 258-8393	
467 Ricardo Jara	(510) 200-3547	
468 JOANNE BROCK	(510) 475 8604	
469 GREGORY BROCK	(510) 475 8604	
470 Jenni Wilson	510 599 8676	
471 <del>Greg</del>	510 706 4993	
472 <del>Pat</del>		
473 Reynaldo Viana	510-586-9128	
474 Ed <del>Plat</del>	510-471-6373	
475 Jose Martinez	510-471-6373	
476 HONBERTO TORO	510-324-8002	
477 Dorra Talla	510-626-3477	
478 Beth Merrill	510 487-5160	
479 <del>Michele</del>	510 688-5969	
480 Anac Nguyen	510 375-0598	
481 <del>David</del>	510-566-6458	
482		
483		
484		
485		

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below:

- 531 Chanel Lara (510-586-4115)
- 532 Roslyn BOWSER (571-268-8102)
- 533 ANTHONY WASHINGTON (510-470-3033)
- 534 ~~Peter~~ V Contreras (510) 541-3936
- 535 Aileen Marcelo (510) 376 7739
- 536 Ray Marcelo 510 376 7740
- 537 Ramin A 510 612 4138 ~~u/c~~
- 538 Kem M. Bailey (415) 745-4640
- 539 Oscar Gonzalez (831) 2470927
- 540 Adilene Fernandez (831) 707-4688
- 541 Edgan Gonzalez (831) 234-2783
- 542 Jade Tran (510) 220-2043
- 543 Dontae Reader (510) 549-1183
- 544 JAMES HARTIN (510) 363-2278
- 545 Calvin Hotaki (510) 684-9586
- 546 Mona Shanon 510 798 4621
- 547 Javier Vargas (510) 489-8517
- 548 C.S. Ramirez (510) 471-1477
- 549 Aileen 510 612 6917
- 550 Harry Jordan 510-303-4389

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below:

- 432 Chris Hebluf (510) 880-9608
- 433 MARISA MITCHELL (510) 880-9608
- 434 Candace Bryant (510) 253-5557
- 435 Foster (510) 414 4565.
- 436 Diane Jensen 301-500-5889
- 437 ~~Priscilla~~ (650) 305-0434  
510-785-5569
438. Mercedes Pimentel
- 439 Joann D. Stanton 510-303 4N-9556
- 440 Robin Peomes Prestwick Ave 510 372 4865
- 441 Pam W
- 442 Junior Rosales -510-921-4360
- 443 Jim Quetta 510 471 6302
- 444 ~~Al~~ 415 519-2486
- 445 Joe Vasquez (510) 861-9177
- 446 Dominique Duncan (510) 417-7515
- 447 Lenore M-Cracken (510) 530-7304
- 448 TRUDY CRAWFORD (510) 331-4050
- 449 Andy GONZALES (510) 471-8220  
925 759 2972
- 450 Jeff Mitchell
- 451 Elina
- 452 Paul Hernandez (510) 342-8498
- 453
- 454
- 455

305

Math Rajic

310-299-5254

306

E. stringer

510-456-5843

307

NALINETTE TOPPER

(408) 386-3800

308

NAUSA TOPPER

(408) 394-2253

309

NATHAN TOPPER

(408) 600-6779

(29083 MISSION BLVD  
# 114 HAYWARD, CA)

310

Isabelle Medeiros

311

Mary Calmeyer (510) 471-3068

312

Ernest R Cox 471-1126

313

Jay Johnson

(650) 269-7962

314

John J Martinez

510-489-1486

315

Jane Wiblett

510-487-0583

316

KURSHARAN SINGH

510-460-8743

Thomas Casey

190 CHERRY GAP RD Auburn

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 486 Susan Hughes (510) 586-3804 (Cm. m)
- 487 Michele Dalkner 510 324 323 97 Grand St
- 488 Kristy East (510) 475-5672-30866 Vanderbilt St.
- 489 EDNA WASHINGTON 510.441.2033 30495 Carroll Av Hayward  
94544
- 490 Fabian Agredano (510) 401-4809
- 491 Atish Singh (510) 364-1370
- 492 Anthony Sanchez (408) 250-9571
- 493 *[Signature]* Hdspidey@aol.com
- 494 Leonard Galarsa, Biglenoak@Hotmail.com
- 495 Dale Baxley dalebaxley@yahoo.com
- 496 *[Signature]* 510 489 5723
- 497 *[Signature]* 510 468 0325
- 498 Ashley Casarez (408) 209 0463
- 499 Raymond Rojo 510-305-8848
- 500 Veronica Morello 510 208-402-0782
- 501 Nikolas Alves (510) 921-1869
- 502 Terrell Aaron (510) 677-4599
- 503 TONE MENDES (510) 788-9219
- 504 FATIMA MENDES \_\_\_\_\_
- 505 Kathleen Rhodes \_\_\_\_\_
- 506 Kenneth Rhodes \_\_\_\_\_

- 507 Geoffrey J. Gonzalez (510) 677-4736
- 508 Tracy Sakujama (510) 471-5171
- 509 BRIA WINE 510-395-1053
- 510 AZIZ ALKHALIL 570 789-3932
- 511 WILLIAM WHITE (510) 467-2784
- 512 Lena Woods (510) 750-4883
- 513 Evan Brooks 415, 410, 1287
- 514 Wendy Lockhart 510-471-6478
- 515 Wadia Martinez 510 596 0113
- 516 Robert Meier
- 517 Michelle Vumm 810 209 7901
- 518 Aida Hubbard 510.688.4529
- 519 Joseph Niehuis 510 420-0139
- 520 Donald Bushong 510 3902667
- 521 E. Sonya Tauc 510 677-3302
- 522 Robert Senguer 510 700-6214
- 523 Ron S. (510) 406-2386
- 524 ~~John S.~~
- 525 Chris Lynn 920-889 9296
- 526 Jay Lee 510 489-0370
- 527 Steve DeLuca 510 471 5501
- 528 Russ Bellard 510-489-3192
- 529 David Ober 510-393-6664
- 530 Phoebe P Lind phoebe.lind@g-mail.com

- 551 Rand John 925 719 4920
- 552 Maryjo Kelly 510 471-5377
- 553 Jim Solomon 408-464-3679
- 554 Roberto MOTA 510-921-4974
- 555 Carlos Caspate
- 556 Jaslyn Western 570 378 5571
- 557 Ann E. LISA 510 298-8378
- 558 Susan Jeffrey
- 559 Walter Jay 978 Fall River Dr.
- 560 Rosa M Hagan 510-860-8837
- 561 Jeffrey Wetzler 510-491-7266
- 562 Joshua Salmeron (510) 305-8696
- 563 Jacob Fritts (510) 731-9136
- 564 Tony Sigue (510) 209-4506
- 565 Jesus Lopez 510 294-5409
- 566 Charles Kelly (510) 487-4699
- 567 Ephraim Jr. Susan 2414 Angelina Ln. Hayward, CA 94574
- 568 William Delaney 23436 compass court Hayward, CA
- 569 Eric Rep 510-441-7873
- 570 Renatta Ribeiro 510 822-2190
- 571 Pam Vin Liang Pamy
- 572 KIMIKO HIRANO 510 477 0916
- 573 Lynda AREN 510-471-4551
- 574 Candy Collier 510-886-2508
- 575 Shawn Brooks 510-400-9372
- 576 ABDEL OSMA (510) 378-2261
- 577 James Fao 510-394-7791
- 578 Lisa DONBERTY 510-925-594-0437

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

288) ~~Rob~~ ~~Finch~~ 31494 Medinah St  
289

290 Arnee Davis 31363 meadowbrook <sup>Ave</sup>  
Hayward Ca 94544

291 Ezell Humphrey 394-RIVERIRA DR. 94587 UNION CITY

292 ~~LARRY DONALD~~  
~~LARRY DONALD~~ 338 TOWNEAN WAY UNION CITY

293 Aineely chand ~~Donald~~

294 605 gorenson RD  
APT 12

295 John McRAE 7760 Country Lane, Pleasanton,

296 Maria Ganner 33323- 9th Street  
Union City CA 94587 CA. 94566

297 Mason Robacher

298 Juanito Antepo

299 ~~Ed~~ ~~Breen~~ 31681 Greenbrae Ln  
Hayward CA 94516

300 RANDI R RAM. 31435 MEADOWBROOK AVE HAYWARD CA.

301 BRONT SCHADEN 31447 MEADOWBROOK HAYWARD CA.

302 JIMMY OPTZ 2935 4<sup>TH</sup> ST HAYWARD 94504

303 Amber Maravilla 31681 Greenbrae Ln Hayward CA

304 Gabriel Pagan 31681 Greenbrae Ln Hayward CA 94516

NAME

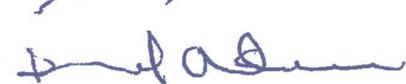
Phone #

Address

- 456 Nick Herrera
- 457 Jessica A. Malicoat
- 458 Segi T. Clarke
- 459 ~~John~~
- 460 ~~Judy Mary~~
- 461 Christine McNeal
- 462 Thomas Lopez
- 463 George Kanuse
- 464 Maria Bee
- 465 GATY. LANE
- 466 Sonia Chard
- 467 Richard Jara
- 468 JOANNE BROCK
- 469 GREGORY BROCK
- 470 Jenni W. Jooz
- 471 ~~Steph~~
- 472 Palawan
- 473 Reynaldi Nava
- 474 Ed. Plata
- 475 Jose Martinez
- 476 HERBERTO TORO
- 477 Dorra Talar
- 478 Beth Merrill
- 479 inuhlermann
- 480 Quoc Nguyen
- 481 Daniel V. [Signature]
- 482
- 483
- 484
- 485

- (510) 688-3341
- (510) 695-6649
- (510) 586-8696
- (510) 300-4680
- 510-780-0503
- 440.343-7730
- 510-555-1439
- 510-828-4835
- 510 690-4865
- 510 828-0432
- 510 258-5393
- (510) 200-3547
- (510) 475 8604
- (510) 475 8604
- 510 599 8676
- 510 1 706 4993
- 510-566-9128
- 510-471-6373
- 510-471-6373
- 510-324-8002
- 510-676-3477
- 510 487-5160
- 510 688-5969
- 510 375-0596
- 510-566-6458

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 624 - Irma Carranza 510-3785714
- 625  510-3785714
- 626 To Benito 415-209-4769
- 627  408 8582906
- 628 Shaun Duncan 510 622 2321
- 629 Demario Briggs (213) 981-7702
- 630 Mario Saldan 540 861-0622
- 631  510 755 5455
- 632 Edgar Rother (510) 371-1168
- 633 Martin Monoz (510) 688-3504
- 634 Dorian Morillo (510) 704-5011
- 635 Jose Becerra (510)
- 636 Alfonso Lopez (510) 688 4139
- 637 Jose Galvez 510 677-5120
- 638 Jencia Escobalceta (510) 677-2496.
- 639 Robert Hoff 510-565-6874
- 640 Yolanda V. King 510-418-3394
- 641
- 642 Vanessa Garcia 510-324-2246
- 643 Mariano Rivas 510-427 4812
- 644 Marvin Querra (510) 921-8328
- 645 Jorge Marin (510) 706-3568
- 646 Bay Odele (510) 471-0867
- 647 
- 648  510-501-4585

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 579 Thomaslynn 510 259-6284
- 580 Joann Pua Same
- 581 P. Miraglia ✓
- 582 Katrina Kay
- 583 ~~Michael~~
- 584 ~~John~~ 415-410-7832
- 585 ~~John Morgan~~
- 586 John Morgan 510-402-7224
- 587 ~~John~~ 510-909-8274
- 588 Jo Singh 650-271-7810
- 589 ~~John~~
- 590 M. HOLLAND - 510-429-7398
- 591 Alex C 510-677-3413
- 592 JOSEPH SANTIAGO (510) 750-9947
- 593 ARMANDO V (510) 246-6429
- 594 SAM ALICEA 510-302-5287
- 595 TERRY THOMPSON 209-230-0442
- 596 Sheena Garcia 510-487-2141
- 597 Myra Lu (510) 706-2829
- 598 Arhelia Rivas 510-427-4813
- 599 ~~John~~ Sun 510<sup>193</sup> 427-9910

- 205 Adolfo Amador Ocean St 31916 Hayward CA
- 206 Dion Herrera 523 Eleanor Pl 94544
- 207 Jarod Rixis 343 Appan Way Union City CA
- 208 Mercedes Resto 619 Tiner way. Hayward. Ca
- 209 Jaime Lopez 20384 Belvedere Ct. Apt. 3 Hayward, CA
- 210 James Christy 3417 River Crest Liv (Hayward), CA
- 211 Matx Fernandez 30853 Carroll Hwy Hayward CA
- 212 Chris Hylad 951 Heath Ct Hayward, CA
- 213 Edmond Marez 7825 Shorehaven Ave Newark, CA
- 214 Mario Ibarra 31013 Carroll Ave Hayward CA
- 215 Victor Montoya 31121 mission blvd #290 Hayward, CA
- 216 Franki Martinez 663 Whipple Road Union City, CA
- 217 Giovanni Martinez 663 Whipple Road Union City, CA
- 218 Vanessa Ponce 81919 Albany St.
- 219 Zachary Lopez 357 Dutches Lane, Hayward, CA 94544
- 220 Joseph Gallegos 789 E St Union City, CA 94587
- 221 Santiago Gallegos 3396A 8th Street Union City, CA
- 222 David Higler 33540 10th Street  
UNION CITY, CA 94587
- 223 Luis Sierra 551 Eleanor Place  
Hayward Ca 94544
- 224 Carlos Ochoa Union City, CA
- 225 HAYWARD, CA, 355 Monte Carlo  
Union City CA 94587
- 226 E. P. [Signature]
- 227 MARIA PARAZO [Signature]

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 270 Steven Henning 212 Revere Ave. Hay, Ca 94544
- 271 Cesar Arriola 31021 Birkdale Way CA 94544
- 272 Angela HERRERA 212 REVERE AVE Ca. 94544
- 273 Barbara Sheppard 324 BROOKTREE COULT, HAYWARD CA 94544
- 274 Mithi Muthini 598 Blue Jay St Hayward CA 94544
- 275 DUSTIN BRILL 662 W. SUNSET BLVD HAYWARD CA 94521
- 276 Remy Santiago 30830 Cadroll ave ca 94544
- 279 Luis Miranda 33540 10th St CA - 94587
- 278 Nancy Henning 140 Lafayette Ave CA 94544
- 279 Arlene Caldwell 581 Fairway St 94540
- 280 DESIREE WEST 1093 Silver Maple Ln Hayward 94544
- 281 Jan Lynn 31426 Greenbrier ✓ 94544
- 282 Tony Berilaque 535 TAM ROK DR
- 283 Michael Quinconi -
- 283 Nathan Carothers 31030 Oakhill Way 94544
- 284
- 285 Nani - Sue 3234. Utica St 94544
- 286 Kevin Ponke 31285 Brookburn Ave 94544
- 287 AVTAR SIMAN - 31083 Mission Blvd, Hayward ca 94544

- 600 Sandra Lebrun  
601 Sonya MOORE  
602 DAVE MANALANG  
603 Wynnessa Lane  
604 Mike Gebresalassie  
605 Martin Medina Jr  
606 Jessie Belfrey  
607 Wesley ~~PERKINS~~  
608 ~~John Morales~~ (510) 240-7625  
609 Suzanne Burns  
610 Grace Ori 582-7256  
611 Joe Oakes  
612 Ryan Lynn 976-0856  
613 William Oliver  
614 Leland Keys 400-3623  
615 Ron Ruybal email: ronruybal@aol.com  
616 Olga Ardeva 3107436490  
617 Tadeo A. Rijo (510) 471-8450  
618 Silena Shaffer (510) 755-9338  
619 Gabriela Wuthwa 415 377 3942  
620 Jacob Hernandez  
621 Austin Muse  
622 Sergio Merzivan 415 377 3942  
623 Steve Hernandez 510 862 8907

- 649 Fred Alvarez
- 650 Elisa McGill
- 651 Julia Ray 482 Norfolk DR
- 652 Stephanie Ross Hayward CA
- 653 BRENDA MEJIA (510) 386-5248
- 654 Fren Castellanos  
MISSION 150 916 821 23 73
- 655 Joel Martinez
- 656 MISSION 130 916 392 82 74
- 657 German Ochoa
- 658 MISSION 150 916 372 83 10
- 659 Stephanie Pedraza (510) 586-7040
- 700 Antonio Anderson 510-754-8600
- 701 Janell Whitt (510) 731-9143
- 702 Mon Mureset (510) 421-1727
- 703 Oliva Valle (510) 938-3265
- 704 Sylvia Ramirez (510) 695-6490
- 705 Herronq Gloun 510-731-9065
- 706 - Surinder Shafiq - 510-791-8035
707. Amritpal Shafiq - 510-487-6453
- 708-Tami Santos 510 432-2346
- 709 ANITA ANDREWS-BROWN 510-583-0686
- 710 Samuel A Wilson 510-499-6585

If you oppose the amendment to the City of Hayward Zoning Ordinance to establish Tobacco Retail Sales Regulations. Please sign below :

- 21 Mitchell Torres 787 Rock Rose Ct. Hayward CA  
22 Ruth M. Navarro 31740 Carroll Ave, Hayward Ca 94544  
23 Jerry - Vespa 4755480 - Hayward  
24 Dan + Katelyn Sellen 30566 prestwick Ave. Hayward  
25 Tani Kaimana 143 RUBIO way Hayward, Ca. 94544  
26 Joe Kaimana 143 RUBIO way Hayward Ca. 94544  
27 Tran de Castro 4900 Dulzura Ave Atascadero, CA 93422  
28 MIKE MYERS 31214 Topic Pl #24 Hayward 94544  
29 Francisco Garcia 27981 Edgecliff way Hayward Ca 94542  
30 JAMIZE GREGS  
31 Ray Trujillo RAYSCASH@GMAIL.COM  
32 Carl Canillo 393 NASSAU, DR. HAY.  
33 Mallery Linaner 31578 Highway Hayward Ca. 94544  
34 Ana R Acosta 31108 Brae Burn Ave Hayward CA 94544  
35 ALFONSO Miranda  
36 Ramonita Rodriguez 151 Revere Ave. Hayward, CA 94544.  
37 Rosalind Rice 31108 Brae Burn Ave #F14  
38 Anne Wolosz 31568 McDonald way - Hayward CA  
39 TONY RAMIREZ  
40 Peter Simms 32036 Lincoln Ave Hayward CA  
41 Romner Proulx 91610 Greenbrae Ln. HAYWARD, CA.

Daniel Gutierrez	94544	510-584-1235
Daniella Bastidas	94544	510-690-3576
Johnny Dennis	94571	510-604-2825
HAC ELLIS	94541	828-638-0495
Carlos Rodriguez	94546	5108258211
Christina Munoz	559-93704 396-1653	
Randall Hagan	510-688-7608	94544
Gute GUZMAN	510 886-8334	94544
Wm. Foster	708-769-1257	94506

**DATE:** June 24, 2014

**TO:** Mayor and City Council  
Chair and Housing Authority Board Members

**FROM:** Assistant City Manager

**SUBJECT:** Approval of Disposition, Development, and Loan Agreement for disposition of certain real property located at 123-197 A Street and a \$600,000 loan of Housing Authority funds, both for the development of a ten (10)-unit affordable homeownership project to be constructed by Habitat for Humanity East Bay/Silicon Valley, Inc. and Approval of Categorical Exemption under Section 15332 of the CEQA Guidelines for the Project

#### **RECOMMENDATIONS**

That the City Council:

- 1) Adopts the attached resolution (Attachment I) approving a Disposition, Development and Loan Agreement (“DDLA”) with Habitat for Humanity East Bay/Silicon Valley, Inc. (“Habitat”) for the disposition of certain real property located at 123-197 A Street (A & Walnut Streets, the “Property”) for the development of a ten (10)-unit affordable homeownership project (the “Project”) and finding that the Project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines.
- 2) Holds a public hearing and makes specified findings to allow for disposition of the Property in compliance with California Health and Safety Code Section 33433.

That the Board:

- 1) Adopts the attached resolution (Attachment II) approving the DDLA with Habitat for: a) the disposition of the Property for the development of the Project; and b) the provision of a \$600,000 loan of Housing Authority (the “Authority”) funds to Habitat to help finance the construction of the Project (the “Loan”).
- 2) Holds a public hearing and make specified findings to allow for disposition of the Property in compliance with California Health and Safety Code Section 33433.
- 3) Authorizes the Executive Director to execute the DDLA and such other documents as may be necessary to implement the transaction contemplated by the DDLA.

- 4) Adopts the attached resolution (Attachment III) approving the appropriation of Housing Authority funds in the amount of \$600,000 for the Loan to Habitat and \$20,000 for legal and administrative costs in connection with the Project.

## **BACKGROUND**

In June of 2009, the Former Redevelopment Agency of the City of Hayward (“Former Agency”) used Low and Moderate Income Housing (“Low-Mod”) funds to acquire from the City of Hayward (“City”) a 0.7 acre parcel of land located at 123-197 A Street (at Meekland) for the sum of \$705,000.

In February (with an amendment in May) of 2011, Habitat made a proposal to the City to construct ten single-family for-sale homes on the Property that would be made available to residents earning at-or-below 80% of the Alameda County Area Median Income (“AMI”). Perhaps due to the Property’s narrow triangular shape, affordable (rental) housing developers approached by staff did not demonstrate an interest in developing the Property. In light of this and the fact that the site is more suitable for a homeownership development, staff decided to partner with Habitat to develop the Property. To this end, on July 26, 2011, Council authorized staff to negotiate a Disposition and Development Agreement (a “DDA”) with Habitat for the development of the Property and to submit an application to the State Department of Housing and Community Development (“HCD”) for funding under the Building Equity and Growth in Neighborhoods (“BEGIN”). However, at the end of June 2011, the Governor of California approved the State Budget for FY 2011/12, and signed a number of implementing trailer bills. Two of these trailer bills significantly modified the California Community Redevelopment Law (“CRL”) and fundamentally altered the future of California redevelopment: ABx1 26 (the “Dissolution Act”) and ABx1 27 (the “Voluntary Program Act”).

Following a suit by former redevelopment agencies across the State to challenge the legality of the Governor’s actions, at the end of 2011, the State Supreme Court issued a decision upholding the legality of the “Dissolution Act.” As a result, redevelopment agencies were ultimately eliminated. The use of funds from former agencies (committed or not) and all the assets were “frozen” until the State Department of Finance (DOF) issued a final letter of determination that those funds and assets were legitimate housing assets and, therefore, not subject to a claw back. This would only be possible if those assets were included by the Housing Successor Agency on a “Housing Asset Transfer List” (the “Housing List”).

In anticipation of the Governor’s actions, during the early part of 2011, the Former Agency had reconveyed the Property to the City. However, as required under the redevelopment dissolution statutes, the City later reconveyed the Property to the Housing Authority, with the Authority acting in its capacity as the housing successor to the Former Agency. Also in conformance with dissolution statutes, the Property was identified as a “housing asset” on the Housing List prepared by the Authority. The Successor Agency’s Oversight Board and DOF later approved of such identification on the Housing List.

The City and Habitat continued working towards securing the funding for the Project and negotiating the DDA because legal counsel and staff were confident that the Property would be

recognized as a legitimate housing asset since it was originally acquired with Low-Mod funds<sup>1</sup>. Thus, early in 2012, Habitat obtained a \$600,000 allocation of CalHome funds and later in 2012, the City obtained a \$460,000 allocation of BEGIN funds, both from HCD to assist the homebuyers with down-payment assistance in the form of deferred loans. Habitat's Board of Directors also adopted a resolution with a pledge to fundraise funds and materials for the project. The Project was held up again, however, due to the unavailability of funds to cover the proposal's financing gap in the amount of \$600,000 which is typically funded by the local jurisdiction.<sup>2</sup>

## DISCUSSION

Staff and Habitat reinitiated negotiations of the DDA as soon as staff became aware that DOF had approved \$1,069,855 as a first installment/partial repayment to the Authority of the Supplemental Educational Revenue Augmentation Fund ("SERAF") loan deferred in Fiscal Years 09/10 and 10/11. Part of the moneys from this installment will be used to fund the Project's financing gap in the amount of \$600,000 and to pay some of the Authority's Project administrative costs in the amount of \$20,000. All funding secured for the Project two years ago (i.e. the BEGIN and CalHome funding) is still committed. Staff and Habitat are confident that any contractual or expenditure deadline in connection with that funding will be extended by the corresponding funding agencies.

Given that former redevelopment agencies were banned from incurring any indebtedness at the time Council authorized staff to negotiate the DDA (in July 2011), staff anticipated bringing the Project forward to Council (or the Board) two more times: first, to approve the DDA, and second, to request an allocation of funds for the Project, if housing funds became available. However, since staff is now recommending an allocation of Authority funds (the "Loan"), staff determined that it was more efficient to recommend that Council and the Board take related actions in a single meeting and to consolidate the transfer of the Property and loan provisions in a Disposition, Development, and Loan Agreement ("DDLA") instead of in a DDA.

*The Proposal.* Habitat's proposal calls for the construction of ten single-family homes affordable to low-income families – those earning at-or-below 80% of the AMI. Long-term affordability restrictions (with a maximum of thirty years) will be ensured through legal covenants recorded on the homes pursuant to the regulations governing the use of the different sources of funding for the Project, including CRL, and State HCD BEGIN and CalHome programs. To make homes affordable, Habitat utilizes a successful "sweat equity" model where home purchasers spend 500 hours working on their new homes in lieu of a down payment. Habitat then helps the homebuyers secure 30-year fixed mortgages.

Each unit is proposed to be a two-story 3- or 4-bedroom unit of approximately 1,200 to 1,500 square feet with a yard. The remainder of the Property will be improved with common area amenities, which could include a community gathering space, garden, and/or play area for the future residents. A site plan for the project is attached (see Attachment IV).

---

<sup>1</sup> DOF had initially rejected the inclusion of the Property as a housing asset.

<sup>2</sup> Due to the dissolution of redevelopment, all Low-Mod moneys not formally committed to other affordable housing projects or programs were clawed back by DOF, therefore leaving the Authority with no funds for the Project.

Habitat incorporates green building materials and techniques in its construction practices, so each home will be energy efficient and will provide a healthy environment for its residents. Green elements will include photovoltaic solar panels, radiant-barrier roof sheathing, double-pane, low-e windows, raised heel trusses, and recycling or reuse of more than 90% of construction waste. All of the landscaped areas will have drought tolerant and/or native landscaping. As with its other projects, Habitat intends to get the homes certified as sustainable through Build it Green’s Green Point Rated Program.

*The Homebuyers.* As mentioned in the previous section, Habitat’s proposal calls for ten homes affordable to low-income families – those earning at-or-below 80% of the AMI. However, due to newly-enacted dissolution trailer bills that further regulate the activities of housing successor agencies, Habitat intends to sell five homes to families earning 50% of AMI or less and five homes to families earning 80% of AMI or less. This will allow the Authority to claim credit under SB 341 targeting requirements for very low-income households. Current (2014) very low- and low-income limits for a four-person household are \$46,750 and \$67,600, respectively. SB 341 requires that Housing Successor Agencies, like the Housing Authority, follow certain rules when they provide financing like the \$600,000 Housing Authority Loan. Specifically, SB 341 requires Housing Successor Agencies to spend the majority of their housing dollars on families who earn less than 60% of AMI.

BEGIN and CalHome funding can only be used to assist first-time homebuyers. Therefore, potential buyers will have to meet this requirement. Targeted marketing will be used to promote this homeownership opportunity among local residents and workers – to the extent permitted by fair housing law. Finally, the buyers will have to invest 500 hours of “sweat equity” in their new homes, as required by Habitat’s homeownership model.

*The Sources of Funding.* Total Project Development Cost (TDC) is estimated at approximately \$4.03 million net of land. The following is a summary of the sources of funding for the Project:

Sources	Amount
Community Development Block Grant (CDBG)	\$ 29,500
Housing Authority Predevelopment Loan	\$ 600,000
HCD CalHome Development Loan	\$ 600,000
Conventional Construction Loan	\$ 1,747,574
Construction Loan Payoff	\$ (1,747,574)
Proceeds from sales of the homes	\$ 1,272,700
Affordable Housing Program (AHP) Loan from the Federal Home Loan Bank (FHLB)	\$ 200,000
HCD BEGIN Loan	\$ 460,000
Habitat for Humanity Fundraising	\$ 868,986
Total Sources:	\$ 4,031,186

As the above table illustrates, part of the Project financing includes a conventional construction loan which will be partially repaid with the proceeds from the sales of the homes. The balance of the construction loan will be paid out with other sources of funding.

City financing for the Project includes a \$29,500 Community Development Block Grant (CDBG) for infrastructure improvements from the City's Fiscal Year 08-09 CDBG allocation. City funding includes the \$600,000 Authority Loan as well. To the extent that the combined dollar amount associated with the liens that will be recorded against the homes does not exceed the value of the homes, the Loan will be converted into down payment loans to the homebuyers in order to be able to record monetary liens against the homes. This will provide the Authority with additional leverage to enforce the affordability restrictions on the homes in case of foreclosure or default by the homeowners.

The Property, which will be transferred to Habitat for one dollar (\$1.00), is valued at approximately \$705,000. This is part of the Authority's contribution to make the project feasible, although not shown in the above table.

*The DDLA and California Health and Safety Code Section 33433.* The DDLA includes the Loan provisions. One of those provisions is that the Loan would be used to pay for impact and permit fees and for Authority-approved predevelopment expenses. The DDLA also includes the terms of the land conveyance, including a development schedule and the contingencies that must be met before the Authority would be obligated to convey the Property to Habitat. Finally, the DDLA will govern the development of the Project.

Provisions of CRL also require that the Property be conveyed only after the procedures set forth in Health and Safety Code Section 33433 are followed. Health and Safety Code Section 33433 requires that the City, along with the Housing Authority, must approve the disposition of the Property. In addition, the City Council, at a public hearing, must find that the Project will eliminate blight, is consistent with the former Redevelopment Agency's implementation plan, and that the sales price is not less than the "fair reuse value" of the Property given the Housing Authority's affordability restrictions. In addition, Health and Safety Code Section 33433 requires that a copy of the proposed DDLA be provided to the public along with a "Section 33433 Report." The 33433 Report prepared in connection with this Project justifies the "fair reuse value" sales price, describes why the Project will eliminate blight and confirms that the Project is consistent with the former Agency's implementation Plan. This public hearing was appropriately noticed in the June 10, 2014 issue of the Daily Review and a copy of the DDLA and Section 33433 Report have been available for public inspection at the City Clerk's office since that date.

The Project is categorically exempt under Section 15332 of the CEQA guidelines because it qualifies as an "In-Fill Development." As required by Section 15332 of the CEQA guidelines, the Project is consistent with the applicable general plan designation and policies, as well as the applicable zoning designation and regulations. The Property is within the City, is less than five acres and is surrounded by urban uses. The Property has no value as habitat for endangered, rare or threatened species. Approval of the Project will not result in any significant effects relating to traffic, noise, air quality or water quality. Finally, the Property can be adequately served by all required utilities and public services.

## **ECONOMIC IMPACT**

According to 2010 Census data, the City of Hayward currently has an approximate 56% homeownership rate. The current national homeownership rate is almost 65%. This Project will help to further the City's goal of achieving a higher homeownership rate, especially for families that would normally not be able to afford a single family home.

The Project also has the capacity to create jobs and local supplies purchases. If the Project is initiated, Habitat will agree to a reasonable effort that 20% of local trade hiring and materials purchases will occur within the Hayward city limits. In addition, Habitat is exploring the possibility of partnering with a job training organization to offer hands-on construction opportunities to trainees.

The current state of the Property is incompatible with the surrounding land uses, that include mostly new residential construction to the west and commercial and light neighborhood retail uses on the east part of A Street. Habitat is required to remediate hazardous materials (if any) and to repair the curb, gutter, and sidewalk along Walnut Street if necessary, as required by the Project's Planning Conditions of Approval. The proposed Project will beautify a difficult-to-develop (due to its small and irregular lot size) surplus property by providing for the development of a new single-family residential development that will: a) provide quality affordable housing to ten income-eligible families, b) help continue the revitalization of the Project Area, and c) be an asset to the neighborhood, especially the nearby subdivision of newer duet and single-family townhomes.

## **FISCAL IMPACT**

The Project does not represent a fiscal impact to the City's General Fund. However, in addition to its economic benefits, the development of a blighted Property that has remained vacant for decades has potential fiscal benefits to the City. These benefits are derived from the fact that, as private property, owners of the future homes will pay property taxes and other assessments. The transfer of the Property to Habitat for one dollar in return for the development of ten deed-restricted affordable units is consistent with the requirements of CRL triggered by the Low-Mod funds used by the Former Agency to purchase the Property from the City.

As mentioned above, the Loan will be provided with moneys from the DOF-approved first installment/partial repayment to the Authority of the Supplemental Educational Revenue Augmentation Fund Loan. Therefore, the Loan to Habitat does not impact the City's General Fund either.

The BEGIN funds are an allocation from the State HCD to the City but these funds need not be repaid to the State. When the BEGIN down payment loans provided to the original buyers are repaid (if the homes are resold), the City may re-use the proceeds for future eligible homeownership projects or to provide down payment assistance to future owners of the homes.

## **PUBLIC CONTACT**

The following are key public contact activities in connection with the Property or the Project:

- June 16, 2009: in a joint session, the Council and the Former Agency Board approved the sale of the Property by the City and the purchase by the Former Agency.
- July 26, 2011: Council authorized staff to negotiate a DDA for the development of the Property and to submit the BEGIN funding application.
- June 18, 2012: Staff and Habitat held a community meeting to present the Project proposal and Habitat's qualifications to the Burbank Neighborhood Forum. The proposal was well received by the attendees who were thankful with City and Habitat staff for the opportunity to comment on a new development in their neighborhood.
- June 10, 2014: In compliance with California Health and Safety Code Section 33433, the public hearing being held at today's Council and Authority Board meeting was appropriately noticed on the Daily Review.

In addition to all the above outreach efforts, during Council, Former Agency, and/or Authority Board meetings, staff kept Council and the Authority Board apprised of the Property transfers in preparation for or in compliance with the Dissolution Act. Finally, Habitat will seek the Project's planning and entitlement approvals, which will be duly noticed and brought forward to the Planning Commission and Council.

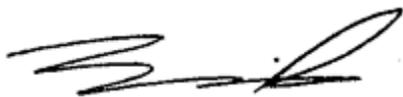
## **NEXT STEPS**

The DDLA is in substantially-complete form. Approval of staff's recommendations would authorize the Authority Executive Director and Habitat to execute the DDLA, which contains all the terms of the Loan and conditions for the Property conveyance. Therefore, other than the Planning Commission and/or Council approvals to seek Project entitlements, no other Authority Board or Council actions will be required to facilitate the development of the Project. The development schedule assumes Project completion within approximately three and a half years because of the sweat equity and volunteer work used in Habitat's construction model. However, it is the intent of Habitat and staff to accelerate the development process, whenever possible, and finish the homes sooner.

*Prepared by:* Omar Cortez, Housing Development Specialist

*Recommended by:* Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

- Attachment I Council Resolution Approving DDLA
- Attachment II Board Resolution Approving DDLA and \$600,000 Loan of Housing Authority Funds to Habitat
- Attachment III Board Resolution Approving the Appropriation of Housing Authority Funds in the Amount of \$620,000
- Attachment IV Project's Proposed Site Plan

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING EXECUTION OF A DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT FOR THE A & WALNUT/SEQUOIA GROVE HABITAT FOR HUMMANITY HOUSING DEVELOPMENT AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

WHEREAS, the Housing Authority of the City of Hayward (the “Housing Authority”) was formed to provide decent, safe and sanitary housing in the City of Hayward, and is designated as the housing successor to the dissolved Redevelopment Agency of the City of Hayward (the “Dissolved RDA”) pursuant to California Health and Safety Code Section 34176; and

WHEREAS, the City of Hayward (the “City”) adopted the Downtown Hayward Redevelopment Plan (the “Redevelopment Plan”) and the Redevelopment Plan sets forth a plan for redevelopment of the Downtown Hayward Redevelopment Project Area (the “Project Area”); and

WHEREAS, the Dissolved Agency acquired that certain property located at 123-197 “A” Street in the City of Hayward, California (the “Property”), located in the Project Area, with funds from the Dissolved Agency’s Low and Moderate Income Housing Fund established pursuant to California Health and Safety Code Section 33334.2; and

WHEREAS, the Dissolved RDA deeded the Property to the City and the City subsequently deeded the Property to the Housing Authority, with the Housing Authority acting in its capacity as the housing successor to the Dissolved Agency; and

WHEREAS, in order to effectuate the purposes of the Redevelopment Plan, the Housing Authority proposes to enter into a Disposition, Development and Loan Agreement (“DDLA”) with Habitat For Humanity East Bay/Silicon Valley, Inc. (“Habitat”), pursuant to which the Authority will sell the Property to Habitat and provide a loan in the approximate amount of Six Hundred Thousand Dollars (the “Authority Loan”) to Habitat for the development of ten (10) units of affordable ownership housing that will be affordable to low income households (the “Development”); and

WHEREAS, the sale of the Property, the Authority Loan, and the development of the Development is expected to implement the purposes of the Redevelopment Plan by causing the development of housing affordable to low income households on the Property and by developing

blighted and underutilized property in the Project Area with a new affordable housing development; and

WHEREAS, Health and Safety Code Section 33433 requires that before any property of the Authority acquired in whole or in part with tax increment revenue is sold, such sale shall first be approved by the City Council after a public hearing; and

WHEREAS, Health and Safety Code Section 33433 also requires that a Summary Report be made available for public inspection; and

WHEREAS, the Summary Report and a copy of the DDLA have been made available for public inspection in the manner required by Section 33433; and

WHEREAS, the development of the Property with the Development is categorically exempt as a Class 32 exemption pursuant to Section 15332 of the CEQA Guidelines because the Development is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, the Property is within the City, is less than five acres and is surrounded by urban uses, the Property has no value as habitat for endangered, rare or threatened species, approval of the Development will not result in any significant effects relating to traffic, noise, air quality or water quality, and the Property can be adequately served by all required utilities and public services.

NOW THEREFORE based on the evidence presented to the City Council, including the Staff Report accompanying this resolution and oral testimony in this matter, and the Summary Report prepared pursuant to Section 33433 of the California Health and Safety Code, the City Council does hereby find, determine, resolve and order as follows:

BE IT RESOLVED that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT RESOLVED that the DDLA will assist in the elimination of blight in the Project Area and will provide housing for low and moderate income persons and is consistent with the implementation plan for the Project Area adopted pursuant to California Health and Safety Code Section 33490.

BE IT RESOLVED that as detailed in the Summary Report, and pursuant to California Health and Safety Code Section 33433, the consideration for the Property is not less than fair reuse value at the use and with the covenants and conditions and development costs authorized by the DDLA.

FURTHER RESOLVED, that pursuant to Health and Safety Code Section 33433, the City Council hereby approves the DDLA and all ancillary documents; approves execution of the DDLA by the Authority's Executive Director, in substantially the form on file with the Authority Secretary with such changes as are approved by the Authority signatory and Authority General Counsel (such approval to be conclusively evidenced by the execution of the DDLA), and approves the negotiation and execution of all ancillary documents with such changes as are

approved by the Authority signatory (and approved by the Authority General Counsel); and approves the conveyance of the Property and the Authority Loan pursuant to the provisions of the DDLA.

FURTHER RESOLVED, that the City Manager is directed to file a Notice of Exemption with respect to the DDLA and Development in accordance with CEQA.

FURTHER RESOLVED, that this Resolution shall take immediate effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA June 24, 2014

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

HOUSING AUTHORITY OF THE CITY OF HAYWARD

RESOLUTION NO. HA 14-

Introduced by Board Member \_\_\_\_\_

RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF HAYWARD AUTHORIZING EXECUTION OF A DISPOSITION, DEVELOPMENT, AND LOAN AGREEMENT FOR THE A & WALNUT/SEQUOIA GROVE HABITAT FOR HUMMANITY HOUSING DEVELOPMENT AND MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

WHEREAS, the Housing Authority of the City of Hayward (the “Housing Authority”) was formed to provide decent, safe and sanitary housing in the City of Hayward, and is designated as the housing successor to the dissolved Redevelopment Agency of the City of Hayward (the “Dissolved RDA”) pursuant to California Health and Safety Code Section 34176; and

WHEREAS, the City of Hayward (the “City”) adopted the Downtown Hayward Redevelopment Plan (the “Redevelopment Plan”) and the Redevelopment Plan sets forth a plan for redevelopment of the Downtown Hayward Redevelopment Project Area (the “Project Area”); and

WHEREAS, the Dissolved Agency acquired that certain property located at 123-197 “A” Street in the City of Hayward, California (the “Property”), located in the Project Area, with funds from the Dissolved Agency's Low and Moderate Income Housing Fund established pursuant to California Health and Safety Code Section 33334.2; and

WHEREAS, the Dissolved RDA deeded the Property to the City and the City subsequently deeded the Property to the Housing Authority, with the Housing Authority acting in its capacity as the housing successor to the Dissolved Agency; and

WHEREAS, in order to effectuate the purposes of the Redevelopment Plan, the Housing Authority proposes to enter into a Disposition, Development and Loan Agreement (“DDLA”) with Habitat For Humanity East Bay/Silicon Valley, Inc. (“Habitat”), pursuant to which the Authority will sell the Property to Habitat and provide a loan in the approximate amount of Six Hundred Thousand Dollars (the “Authority Loan”) to Habitat for the development of ten (10) units of affordable ownership housing that will be affordable to low income households (the “Development”); and

WHEREAS, the sale of the Property, the Authority Loan and the development of the Property is expected to implement the purposes of the Redevelopment Plan by causing the development of housing affordable to low income households on the Property and by developing

blighted and underutilized property in the Project Area with a new affordable housing development; and

WHEREAS, Health and Safety Code Section 33433 requires that before any property of the Authority acquired in whole or in part with tax increment revenue is sold, such sale shall first be approved by the City Council after a public hearing; and

WHEREAS, Health and Safety Code Section 33433 also requires that a Summary Report be made available for public inspection; and

WHEREAS, the Summary Report and a copy of the DDLA have been made available for public inspection in the manner required by Section 33433; and

WHEREAS, the development of the Property with the Development is categorically exempt as a Class 32 exemption pursuant to Section 15332 of the CEQA Guidelines because the Development is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations, the Property is within the City, is less than five acres and is surrounded by urban uses, the Property has no value as habitat for endangered, rare or threatened species, approval of the Development will not result in any significant effects relating to traffic, noise, air quality or water quality, and the Property can be adequately served by all required utilities and public services.

NOW THEREFORE, based on the evidence presented to the Housing Authority Board, including the Staff Report accompanying this resolution and oral testimony in this matter, and the Summary Report prepared pursuant to Section 33433 of the California Health and Safety Code, the Housing Authority Board does hereby find, determine, resolve and order as follows:

BE IT RESOLVED that the Recitals above are true and correct and by this reference makes them a part hereof.

BE IT RESOLVED that the DDLA will assist in the elimination of blight in the Project Area and will provide housing for low and moderate income persons and is consistent with the implementation plan for the Project Area adopted pursuant to California Health and Safety Code Section 33490.

BE IT RESOLVED that as detailed in the Summary Report, and pursuant to California Health and Safety Code Section 33433, the consideration for the Property is not less than fair reuse value at the use and with the covenants and conditions and development costs authorized by the DDLA.

FURTHER RESOLVED, that pursuant to Health and Safety Code Section 33433, the Housing Authority hereby approves the DDLA and all ancillary documents, approves execution of the DDLA by the Authority's Executive Director, in substantially the form on file with the Authority Secretary with such changes as are approved by the Authority signatory and Authority General Counsel (such approval to be conclusively evidenced by the execution of the DDLA), and approves the negotiation and execution of all ancillary documents with such changes as are

approved by the Authority signatory (and approved by the Authority General Counsel), and approves the conveyance of the Property and the Authority Loan pursuant to the provisions of the DDLA.

FURTHER RESOLVED, that the Housing Authority Executive Director is directed to file a Notice of Exemption with respect to the DDLA and Development in accordance with CEQA.

FURTHER RESOLVED, that this Resolution shall take immediate effect upon its adoption.

HAYWARD, CALIFORNIA, June 24, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

CHAIR:

NOES: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST: \_\_\_\_\_  
Secretary of the Housing Authority  
of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
General Counsel of the Housing Authority  
of the City of Hayward

HOUSING AUTHORITY OF THE CITY OF HAYWARD

RESOLUTION NO. HA 14-

Introduced by Board Member \_\_\_\_\_

RESOLUTION AMENDING RESOLUTIONI HA 13-01, AS AMENDED, THE BUDGET RESOLUTION FOR FISCAL YEAR 2014 RELATING TO AN APPROPRIATION OF FUNDS FROM THE HOUSING AUTHORITY, FUND 245

BE IT RESOLVED by the Board of the Housing Authority of the City of Hayward that Resolution No. 13-104, as amended, the Budget Resolution for fiscal year 2014, is hereby further amended by approving an appropriation of \$620,000 in order to: a) provide a \$600,000 loan to Habitat for Humanity East Bay/Silicon Valley, Inc. for the development of ten (10) units of affordable ownership housing that will be affordable to low-income households (the "Project"), and b) pay for legal and administrative costs in connection with the Project in the approximate amount of \$20,000.

HAYWARD, CALIFORNIA, June 24, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

CHAIR:

NOES: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

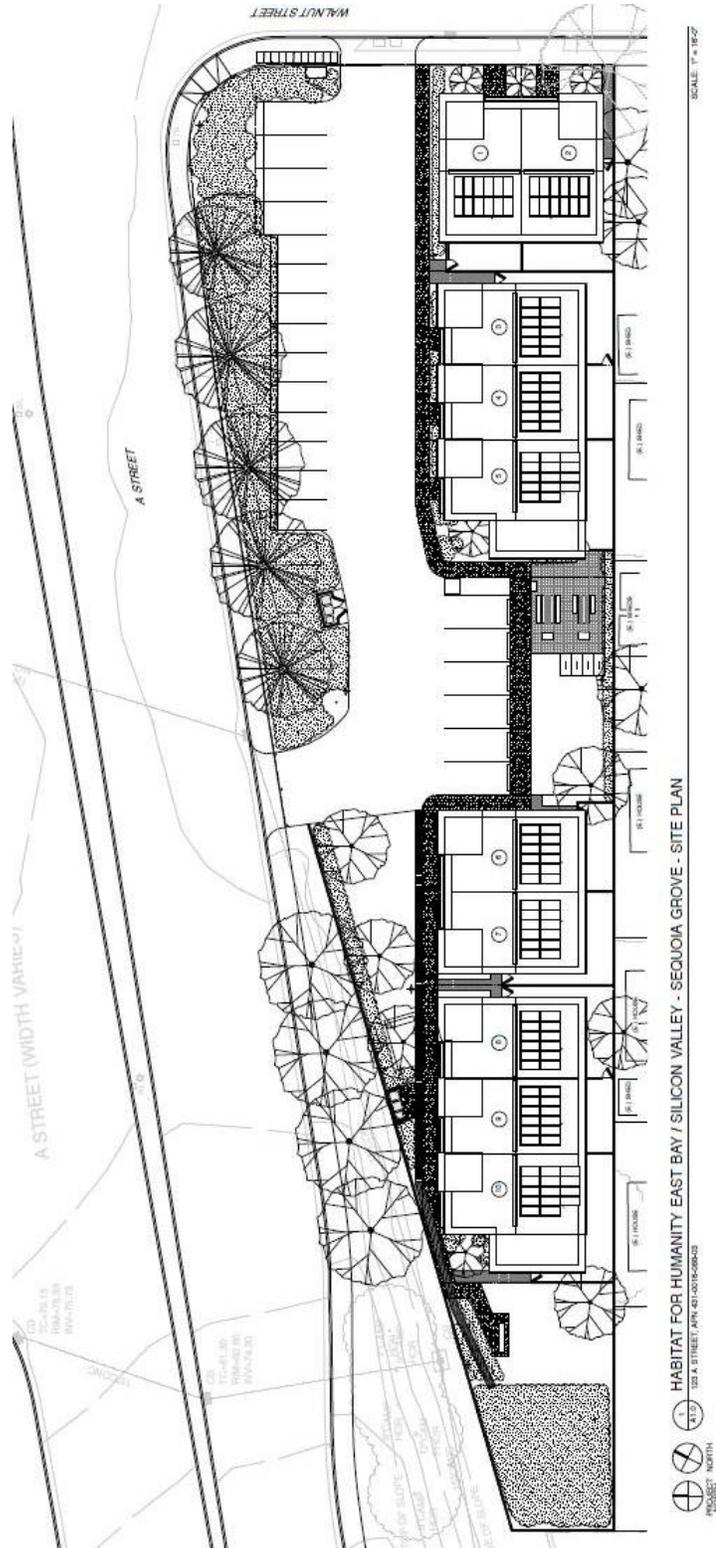
ATTEST: \_\_\_\_\_  
Secretary of the Housing Authority  
of the City of Hayward

APPROVED AS TO FORM:

---

General Counsel of the Housing Authority  
of the City of Hayward

PROJECT'S PROPOSED SITE PLAN





**DATE:** June 24, 2014  
**TO:** Mayor and City Council  
**FROM:** Director of Finance  
**SUBJECT:** Gann Appropriations Limit for FY 2015

### **RECOMMENDATION**

That City Council adopts a Resolution establishing an appropriations limit for Fiscal Year 2015.

### **BACKGROUND**

State Proposition 4, commonly known as the Gann Initiative, was approved by California voters in November 1979. Proposition 4 created Article XIII B of the State Constitution, which places limits on the amount of revenue that can be spent by government agencies. This is referred to as the Gann Appropriation Limit, or Gann Limit.

A subsequent related State initiative, Proposition 111, was approved by the voters in June 1990 and provided new adjustment formulas to make the Gann Limit more responsive to local growth issues and to address concerns regarding the accountability of local governments in adopting their limits. Prior to each fiscal year, city councils must adopt by resolution the Gann Appropriation Limit for the city for the upcoming year. In addition, cities are required to conduct a review of their limits during annual financial audits.

The appropriations limitation imposed by Propositions 4 and 111 creates a restriction on the amount of revenue that can be appropriated in any fiscal year. The limit is based on actual appropriations during the 1978-79 fiscal year and is increased each year using population and inflation growth factors. Only revenues that are classified as "proceeds of taxes" are subject to the limit. The use of "non-tax proceeds" (user fees, rental income, franchise fees, Gas Tax revenue) is not restricted.

### **DISCUSSION**

During any fiscal year, a city may not appropriate any proceeds of taxes it receives in excess of its established limit. Excess funds received in any year may be carried into the subsequent year for use if the city is below its limit for that year. Any excess funds remaining after the second year would be required to be returned to local taxpayers by reducing tax rates or fees. As an alternative, a majority of the voters may approve an "override" to increase the city's appropriation limit.

Senate Bill 1352 requires that 1) the governing body of each local jurisdiction shall, by a legislative action, establish its appropriations limit at a regularly scheduled or special meeting and that the documentation used in the determination of the appropriations limit shall be made available to the public fifteen days before that meeting. Government

Code Section 7910 requires that the City adopt its appropriations limit prior to the beginning of each fiscal year.

The Finance Department of the City of Hayward compiles the data and makes calculations incident to the determination of the XIII B appropriations limit. The amount of the Fiscal Year 2015 appropriations limit and the documentation substantiating this determination were posted in the Office of the City Clerk for public review on June 16, 2014. No comments were received.

## **FISCAL IMPACT**

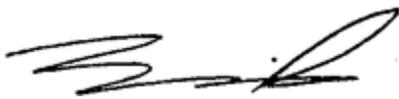
There are no present fiscal impacts related to establishing the limit for FY 2015. The amount of appropriations subject to the limit is the budgeted proceeds of taxes (e.g., all taxes levied; transfers from an enterprise fund to the extent those transfers exceed the cost of providing the services; discretionary state subventions; interest earned from the investment of proceeds of taxes, etc.), and the total of these budgeted revenues cannot exceed the total appropriations limit.

The City's actual appropriations in each fiscal year have been significantly below the limit, as they will be for Fiscal Year 2015. The table below summarizes the limit for FY 2015 and the preceding three years.

	<b>Appropriations Limit</b>	<b>Appropriations Subject to Limit</b>
<b>FY 2012</b>	215,163,426	76,362,500
<b>FY 2013</b>	226,378,611	74,542,885
<b>FY 2014</b>	253,404,723	83,291,710
<b>FY 2015</b>	256,614,221	87,400,385

*Prepared and Recommended by:* Tracy Vesely, Director of Finance

Approved by:



---

Fran David, City Manager

Attachments: Attachment I: Resolution  
Attachment II: Historical Information Regarding Appropriations Limit Calculation

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member \_\_\_\_\_

ADOPTION OF APPROPRIATIONS LIMIT FOR FISCAL YEAR 2015 PURSUANT TO  
ARTICLE XIII B OF THE CONSTITUTION OF THE STATE OF CALIFORNIA

WHEREAS, on November 6, 1979, the citizens of the State of California approved Proposition 4, which added Article XIII B to the Constitution of the State of California to place various limitations on the fiscal powers of State and local government; and

WHEREAS, Senate Bill 1352, Government Code Section 7900, et. seq. enacted by the California Legislature, provides for the implementation of Article XIII; and

WHEREAS, the Gann Limit for FY 2015 is calculated at \$265,614,221 and the appropriations in FY 2015 subject to this limit total \$87,400,385; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Hayward that at its meeting of June 24, 2014, Council will adopt a Resolution which establishes the appropriations limit for the 2015 Fiscal Year pursuant to Article XIII B of the Constitution of the State of California.

BE IT FURTHER RESOLVED that the documentation used in the determination of the appropriation limit for Fiscal Year 2015 was posted in the Office of the City Clerk of the City of Hayward for public review on June 16, 2014. No comments were received.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

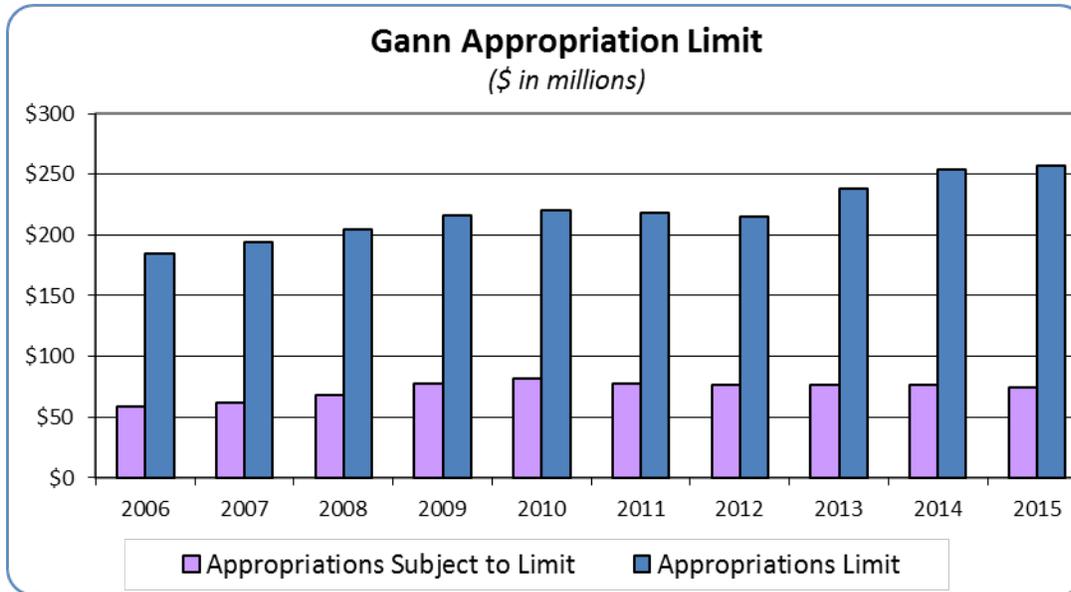
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



**Gann Appropriation Limit**

Fiscal Year	Population Factor	Inflation Factor	Total Adjustment Factor	Appropriations Limit	% Change	Appropriations Subject to Limit	% of Limit Appropriated
2005	0.7200	3.2800	1.040	\$173,764,360	4.0%	\$62,165,120	35.8%
2006	1.0300	5.2600	1.063	\$184,787,972	6.3%	\$68,399,894	37.0%
2007	0.7400	3.9600	1.047	\$193,526,595	11.4%	\$78,021,824	40.3%
2008	1.0700	4.4200	1.055	\$204,242,163	10.5%	\$82,136,688	40.2%
2009	0.0116	4.4500	1.019	\$216,147,439	11.7%	\$77,285,005	35.8%
2010	1.3000	0.6200	1.019	\$220,314,761	7.9%	\$76,355,082	34.7%
2011	1.4000	-2.5400	0.988	\$217,723,859	0.7%	\$75,558,103	34.7%
2012	1.3900	2.5100	1.039	\$226,291,051	2.7%	\$76,362,500	33.7%
2013	1.3900	3.7700	1.052	\$238,086,253	9.4%	\$74,542,885	31.3%
2014	1.2500	5.1200	1.064	\$253,404,723	12.0%	\$83,291,710	32.9%
2015	1.5000	-0.2300	1.267	\$256,614,221	1.3%	\$87,400,385	34.1%