



CITY OF  
**HAYWARD**  
HEART OF THE BAY

**CITY COUNCIL AGENDA**  
**OCTOBER 14, 2014**

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**MAYOR BARBARA HALLIDAY**  
**MAYOR PRO TEMPORE GREG JONES**  
**COUNCIL MEMBER FRANCISCO ZERMEÑO**  
**COUNCIL MEMBER MARVIN PEIXOTO**  
**COUNCIL MEMBER AL MENDALL**  
**COUNCIL MEMBER SARA LAMNIN**  
**COUNCIL MEMBER ELISA MÁRQUEZ**

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CITY OF  
**HAYWARD**  
HEART OF THE BAY

SPECIAL CITY COUNCIL MEETING FOR OCTOBER 14, 2014  
777 B STREET, HAYWARD, CA 94541  
[WWW.HAYWARD-CA.GOV](http://WWW.HAYWARD-CA.GOV)

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**REVISED AGENDA**

**CLOSED SESSION**

**Closed Session Room 2B – 5:00 PM**

**1. PUBLIC COMMENTS**

2. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Pending Litigation

- Hackney v. City of Hayward, U.S. District Court, N.D. CA, No. C-14-1714
- Russell City Energy Company, LLC v. City of Hayward, U.S. District Court, N.D. CA, No. C-14-3102
- Sipple v. City of Alameda, et al., Los Angeles County Superior Court, No. BC462270

3. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Anticipated Litigation

One Case

4. Conference with Labor Negotiators

Pursuant to Government Code 54957.6

- Lead Negotiators: City Manager David; City Attorney Lawson; Assistant City Manager McAdoo; Finance Director Vesely; Director of Maintenance Services McGrath; Director of Public Works-Engineering and Transportation Fakhrai; Acting Human Resources Director Collins; Deputy City Attorney Vashi; 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 Acquisition

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 (Outside Legal Counsel)

6. Conference with Property Negotiators

Pursuant to Government Code 54956.8

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

Property Negotiators: City Manager David, Assistant City Manager McAdoo, City Attorney Lawson, Assistant City Attorney Brick, Finance Director Vesely, Economic Development Manager Hinkle and Heather Gould and Rafael Yaquian of Goldfarb Lipman (Outside Legal Counsel)

7. Adjourn to Special City Council meeting

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**SPECIAL CITY COUNCIL MEETING**  
**Council Chambers – 7:00 PM**

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

**ROLL CALL**

**CLOSED SESSION ANNOUNCEMENT**

**PUBLIC COMMENTS**

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*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.*

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**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.)*

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

1. Update on Status of Exclusive Negotiations with Waste Management of Alameda County for New Garbage and Recycling Services(Report from Utilities & Environmental Services Director Ameri)  
[Staff Report](#)  
[Attachment I Summary of Outreach Effort](#)
- 

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

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**CONSENT**

2. Approval of Minutes of the City Council Meeting on September 16, 2014  
[Draft Minutes](#)
3. Approval of Minutes of the Special Joint City Council/Redevelopment Successor Agency Meeting on September 23, 2014  
[Draft Minutes](#)

October 14, 2014



4. Adoption of Ordinance Amending Sections 4-7.09, 4-7.11 and 4-7.13 of Article 7 of Chapter 4 of the Hayward Municipal Code Relating to Alarms

[Staff Report](#)

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5. Approval of a Letter Agreement with BART to Reimburse the City for all Expenses Related to the Extension and Relocation of Water and Sewer Facilities at the BART Hayward Maintenance Complex (HMC) Project

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Project Location Map](#)

[Attachment III Water Line Location Map](#)

6. Recycled Water Project: Authorization for City Manager to Submit an Application for State Water Resources Control Board Revolving Fund Loan

[Staff Report](#)

[Attachment I Resolution](#)

7. Consideration of Resolution in Support of Measure L: Hayward Unified School District Prop 39 School Bond Measure

[Staff Report](#)

[Attachment I Resolution](#)

8. Consideration of Resolution in Opposition to Proposition 47: The Safe Neighborhoods and Schools Act

*(Continued to October 21, 2014)*

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*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*

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## **PUBLIC HEARING**

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

[Staff Report](#)

[Attachment I](#)

[Attachment Ia](#)

October 14, 2014



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*Information items are presented as general information for Council and the public, and are not presented for discussion. Should Council wish to discuss or take action on any of the “information” items, they will direct the City Manager to bring them back at the next Council agenda as an Action Item.*

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## **INFORMATION ITEMS**

10. Public Works Contracts - Administrative Change Order (***Report from Public Works-Engineering and Transportation***)

[Staff Report](#)

## **CITY MANAGER’S COMMENTS**

An oral report from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

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

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

## **ADJOURNMENT**

**NEXT MEETING – 7:00 PM, TUESDAY, October 21, 2014**

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***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.*

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***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.*

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***\*\*\*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. \*\*\****

October 14, 2014



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*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.*

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***Please visit us on:***



October 14, 2014





**DATE:** October 14, 2014

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT:** Update on Status of Exclusive Negotiations with Waste Management of Alameda County for New Garbage and Recycling Services

### **RECOMMENDATION**

That Council reviews and comments on this report.

### **BACKGROUND**

The City entered into the most recent franchise agreement with Waste Management of Alameda County (WMAC) for services effective June 1, 2007. This agreement had an initial period of seven years, set to expire on May 31, 2014; however, on November 5, 2013, Council authorized a one year extension so that the contract is now set to expire on May 31, 2015. Under the original agreement, the City has the option of extending the contract for two more one-year terms, with the same terms and conditions as the current contract. So, if necessary, under the original terms, the current franchise can be extended through May 31, 2017. Earlier this year, the City and WMAC amended the original ultimate expiration date and agreed to allow the City to extend the final expiration of the franchise through December 31, 2017, if necessary.

On July 9, 2013<sup>1</sup>, staff considered its options for securing solid waste and recycling services after the expiration of the current franchise. After review of the various options, staff determined that negotiating a new agreement with the current service provider could potentially be the most cost-effective and efficient approach. Based on this recommendation, Council authorized an initial 120-day exclusive negotiation period with WMAC. Council then authorized 120-day extensions on November 5, 2013<sup>2</sup> and March 4, 2014<sup>3</sup>. On July 1, 2014<sup>4</sup>, Council authorized a 150-day extension, which will expire on December 8, 2014. These extensions were authorized due to incremental but steady progress made in the negotiations.

Since July 2013, staff has engaged in exclusive negotiations with WMAC to determine whether it is possible to develop an agreement that would continue to provide Hayward customers with

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

<sup>2</sup> See Item 9 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca110513full.pdf>

<sup>3</sup> See Item 3 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca030414full.pdf>

<sup>4</sup> See Item 14 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca070114full.pdf>

services they currently receive from WMAC, along with required or desirable additional and enhanced services.

## DISCUSSION

The City formed a negotiating team including the Assistant City Manager, Director of Utilities & Environmental Services, Environmental Services Manager, and Solid Waste Manager. The City Team started meeting with representatives of WMAC beginning in July 2013, shortly after Council authorized negotiations with WMAC.

The City entered into negotiations with WMAC with the following principles:

1. Holding the rates as low as possible;
2. Meeting the City Council and the community's expectations for service enhancements;
3. Meeting new state and local regulations related to new mandatory services;
4. Meeting the Council's expectations with effort to achieve the Council's sustainability goals regarding reducing solid waste that is sent to the landfill; and
5. Meeting Council's direction regarding WMAC's responsibility to mitigate its impact on the community infrastructure related to delivery of its services.

The company, on the other hand, was primarily concerned with improving its revenue picture, while responding to City service needs.

It is noteworthy that the nature of past WMAC contracts, including the existing one, has been to rely on, at times, unrealistic expectations for economic and population growth to generate new business and revenue increases. These assumptions have resulted in the company finding in the out years of the contract that they are unable to meet their revenue projections. The company has been not only unable to achieve its anticipated return on investments, but is even unable to meet the revenue requirements to cover their costs. The result is that every time that WMAC enters into a new franchise agreement, regardless of the municipality, there usually is a substantial rate hike just to bring the company to a reasonable starting point to have a sustainable business model.

Case in point is the City's current contract with WMAC. When the City negotiated its current contract in 2007, it resulted in a 31.6% increase in rates. This was deemed necessary to stem the company's losses and give it what turned out to be an approximately 5% return on investment in the first year of the contract. Neighboring jurisdictions have experienced similar increases. For example, Castro Valley saw more than a 30% jump in 2012 and Newark a 25% jump in 2012. Just recently, the City of Oakland negotiated a contract, *after a bid process*, with WMAC and California Waste Solutions for an initial increase of 36% and additional substantial planned increases in subsequent years.

Hayward's current contract has been impacted by lower revenues resulting from built-in rate adjustment formulas that did not, by design, keep up with inflation, as well as from the great recession starting in 2008. Business activities contracted rather than expanded and they did not begin to improve until about 2012. In light of this, at the onset of current negotiations, WMAC's initial requests for rate increases started at the low- to mid- 20% range, and as the company analyzed their costs more closely, rose to mid- 30%, and eventually higher. Crucially, the

company was also asking that the City tie its future rate increases to WMAC's labor cost increases, as has been done by various other jurisdictions, including most recently by the City of Oakland.

With assistance from HFH Consultants, the City Team, and WMAC spent several months discussing their respective positions. Understandably, sufficient progress was not made in the initial months. However, these sessions resulted in the City Team making its position known that it believes that as a private, for-profit, company, WMAC is entitled to a fair and reasonable profit that they are apparently not making now. WMAC, on the other hand, realized that while the City Team understood and appreciated the company's need for a reasonable return on investment, it was not in a position to recommend a 30% plus rate increase to Council through exclusive negotiations. They also acknowledged that the City of Hayward was a long-term, stable, fair, and valuable customer and deserved to be treated as such. The negotiating teams then started working earnestly on finding mutually acceptable terms, realizing that both parties had to compromise to reach a resolution.

After several more weeks of negotiations, the City Team offered a proposal whereby WMAC's first year revenue would increase by 10% plus the negotiated cost of any new services. The company would then receive a fixed 3% increase in each of the next two years and a CPI increase in the out years with a floor and a ceiling. Reflecting on the current contract where WMAC received an initial adjustment of 31.6% only to see an erosion of revenue and earnings due to the economic recession, WMAC was reluctant to accept terms with fixed increases. A compromise was reached in the form of the City agreeing to review WMAC's revenues and expenses in year three, and if, based on the findings of a formal, audited third-party review, it is shown that the company is not realizing a reasonable return on investment (ROI), then the City could consider adjusting rates in that year to enable the company to earn a reasonable ROI.

Following several weeks of review, WMAC responded that they would agree to such an arrangement only if they could be assured of an after-tax minimum ROI of 10% in year four. The City Team took that under advisement, and after reviewing the company's Hayward Franchise performance over the past several years, offered a minimum ROI of 5.5%. Several more weeks of negotiations sessions ensued before WMAC finally agreed to the City's counter offer.

### CONTACT TERMS

The following section outlines the key contract terms that have been negotiated between the City Team and WMAC for review and consideration by the City Council.

Duration: New contract duration will be identical to the current one: a seven year initial term, plus three one-year extensions at the sole discretion of the City.

Franchise Fees: No change.

#### Revenue and/or Rate Increases:

- **Initial Year:** 10% when new Franchise takes effect plus the cost of any new services directed by City. (WMAC will receive a 10% increase in revenue, which will come from a combination of fees/rates for new services, new fees on existing

- services, and an increase in rates.)
- Year two: 3% rate increase at the anniversary of the New Franchise Agreement
- Year three: 3% rate increase at the anniversary of the New Franchise Agreement
- Year four: Rate adjustment to ensure WMAC receives an after-tax ROI of 5.5% with a rate adjustment cap of 10%
- Year five: Rate adjustment equal to the Consumer Price Index (CPI) (minimum 3%, maximum 6%)
- Year six: Rate adjustment equal to CPI (minimum 3%, maximum 6%)
- Year seven: Rate adjustment equal to CPI (minimum 3%, maximum 6%)
- Extensions: Rate adjustment equal to CPI (minimum 3%, maximum 6%)

Details of year four rate review:

- City agrees to adjust the rates in year four such that WMAC's After-Tax ROI in that year will be 5.5%
- WMAC will provide the City with audited financials for year three
- WMAC will pay cost of City's review of the audited financials, not to exceed \$40,000
- City will complete review of audited financials before the anniversary of franchise agreement (FA) in year four
- Any necessary rate increase to reach after-tax ROI of 5.5% will be capped at 10%
- If the 5.5% ROI would require more than a 10% rate increase in year four, WMAC will have the following options:
  - Accept the 10% rate increase and continue with the FA under the same terms and conditions for the remaining term, or
  - Request a higher rate increase from the City
- If WMAC requests a higher rate increase and the City refuses to grant or negotiate the increase, then WMAC will have the following options:
  - Accept the 10% rate increase and continue with the FA under the same terms and conditions for the remaining term, or
  - Give notice to City to terminate the FA
- If WMAC gives the City notice to terminate the FA, the City will have 36 months from the next anniversary of the FA after the notice is given to terminate its FA with WMAC.
- If ROI calculations show a higher required rate increase in year four but WMAC agrees to continue with the 10% capped rate, then City agrees to negotiate in good faith with WMAC to find mutually acceptable solutions to address the revenue shortfall. If negotiations fail, WMAC could give the City notice to terminate the FA and the City would then have 36 months from the next anniversary of the FA to find another service provider.

NEW OR ENHANCED SERVICES AND ASSOCIATED COSTS

Increased Diversion of Waste from Landfill:

- City's diversion rate for 2013 was 74%. Council has a goal of 75% diversion. Staff is confident that with continued effort and program enhancements, this goal can be achieved in the next year or two.

- CalRecycle, the state agency responsible for solid waste issues, is considering changes to what is allowed to be included in the calculation of diversion; the changes could effectively lower the City's current diversion rate.
- WMAC has agreed to implement programs to divert an additional 15,000 tons from the landfill in the next three years.
- Diversion of the additional 15,000 tons from the landfill would increase the City's diversion rate to nearly 80% by the end of the proposed Franchise Agreement.
- The additional 15,000 tons of diversion can help ensure that the City's diversion will remain above 75%, if CalRecycle decides to disallow some diversion credits.
- Cost TBD.

#### 2<sup>nd</sup> Annual Bulky Pickup for Single Family Homes (All customers on cart service)

- Current contract provides for a single annual appointment to collect two cubic yards of trash per household, as well as three large appliances, three household furniture items, four passenger tires, two mattresses, and two televisions or other electronic waste items
- Current participation rate is approximately 20%
- New Franchise Agreement will provide for a second appointment each year that would accept all of the same items and quantities listed above
- Twice annual opportunity can help increase participation in the program
- Final negotiated cost: \$57,000 annually

#### Bulky Pickup for Multi-Family

- Currently no service is provided (i.e., none embedded in the rates)
- This has been a top request of multi-family dwellers and property owners and managers
- New Franchise will provide four cubic yards per household per year (same as single family)
- Property manager or HOA may arrange to use the property's four-cubic-yard allocation by scheduling delivery of roll-off containers at its convenience
- Property managers at smaller complexes will have the option to schedule appointments for individual dwelling units, similar to the single-family service
- Negotiated cost of \$164,240 annually

#### Illegal Dumping

- WMAC will remove within 24 hours of notification
- City will investigate possibility of allowing requests from Access Hayward to be automatically forwarded to WMAC
- Maintenance Services staff will continue to complete much of this work and has asked that WMAC handle six pickups each month
- Negotiated cost of \$46,000 annually

#### Big Belly Trash Receptacles

- The pilot use of three pairs of Big-Belly trash and recycling containers on B Street in the Downtown has been successful
- The container openings make it difficult to stuff large household trash in the trash receptacles

- The recycling container makes scavenging difficult due to the locked door and small access holes
- City has requested 20 pairs to be added to the current three pairs
- The new pairs will not be solar powered
- The new containers will be placed in the Downtown and elsewhere
- Negotiated cost of \$66,652 (one-time cost)

#### Organics Collection for Multi-Family

- If Council authorizes the City's participation in Phase 2 of the Alameda County Waste Management Authority's (ACWMA) mandatory recycling ordinance, all multi-family properties in Hayward would be eligible for and required to participate in organics collection.
- Assumes approximately 420 properties and 15,000 units will be included
- Carts or bins will be provided to each multi-family property, and presentations will be made to property managers and tenants
- Cost of service will be embedded in the regular rate as it is for single-family
- Negotiated cost of service: TBD

#### Bin Service for Recyclables for Multi-Family

- Collection of recyclables is currently provided by Tri-CED using carts and 14 cubic yard roll-offs.
- Some multi-family complex managers have asked for availability of bin service
- Tri-CED currently does not have the capability to provide bin service as the company does not have the necessary vehicles or bins
- Upon request by individual multi-family property managers for larger complexes, WMAC will provide collection of recyclables using bins
- For those complexes that choose to not use cart service but request bin service, there will be a nominal surcharge, equivalent to 20% of the cost of comparable bin size garbage service, to switch to bins.

#### Commercial Recycling

- In the current Franchise, businesses recycling service is provided free of charge
- This was a successful pilot program, but is not sustainable in the long run.
- City team is proposing to set the rate for commercial recycling at 50% of the commercial garbage rate, to keep this service an attractive alternative to garbage service.
- In order to manage this increase properly and not cause undue hardship on businesses, this new rate will be implemented at 20% of the comparable commercial rate for the first two years, and then gradually increased.
- One scenario could be: Cost in the first two years will be 20% (of comparable garbage rate); third year 30%; fourth year 40%; and fifth year and beyond 50%. Staff is currently refining this rate approach.

#### Coupons for Self-Haul to Davis Street

- WMAC currently offers 100 coupons per month on a first come, first served basis.
- Under the new franchise, each residential (single-family and multi-family) dwelling unit will be eligible for one self-haul coupon each year.

- WMAC may provide electronic tracking so that paper coupons are not necessary.
- Electronic tracking may require modifications to WMAC computer systems.

Main Street Customer Service Office

- No change from current contract. The downtown office will remain open to serve WMAC’s customers, including all residents and businesses.

Street Impact Fee

- Council had expressed a desire for any future franchisee to pay a street (vehicle) impact fee.
- New Franchise will include a new fee for street repairs and rehabilitation.
- Beginning year four, WMAC will provide 1% of annual revenue.

Street Sweeping Fee

- No change from the current contract, which requires WMAC to provide 2.5% of annual revenue.

Measure D Fund Augmentation

- The City receives funds from StopWaste to implement or continue recycling services.
- The funds are allocated based on the tons of garbage disposed at the landfill.
- Approximately 80% of the annual Fund revenues pay for recycling and sustainability program staff costs, with the rest paying for public education and programs such as the Earth Day Poster & Essay Contest.
- As tonnage recycled through various programs has increased, the total funds received has decreased to one-half that of several years ago, and the fund balance is dwindling fast.
- To maintain services, the City needs to replenish the City’s Recycling Fund.
- Beginning in year four, WMAC will provide 1% per year of annual revenue.

Costs Related to Negotiations

- WMAC will provide as pass-through (estimated at approximately \$150,000).

Total Required Revenue Increase:

The following is a listing of all WMAC’s additional expenses as of this writing:

New Services:

2 <sup>nd</sup> Bulky Pick up for Single Family Customers:	\$57,000
Bulky Pickup for Multi-Family Complexes:	\$164,240
Illegal Dumping Assistance:	\$46,000
Organics Collection for Multi-Family:	\$TBD
Coupons for Self-Haul:	No Charge
Additional Public Education:	\$TBD

One-Time Expenses:

Big Belly Trash and Recycling Receptacles:	\$66,652
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Cost of the City's Current Consultant (HFH):	\$150,000
Third year audit cost:	\$40,000

Additional City Fees (beginning in year four):

Street (Vehicle) Impact Fee	1% of Revenue
Measure D Augmentation	1% of Revenue

Potential Sources of Revenue:

In addition to the new revenue related to a commercial recycling fee, there are other areas of potential additional revenue.

Commercial Recycling Fees – Staff is working on a formula for these fees. The eventual rate will not exceed 50% of comparable garbage rates.

Construction and Demolition Debris Recycling – A relatively significant source of revenue is related to charges for construction and demolition (C&D) debris recycling services. While under the current franchise, WMAC has almost exclusive rights for providing C&D recycling using roll off boxes, there are several other companies that have entered the Hayward market and may be in violation of the City's Franchise Agreement. By tightening the enforcement of C&D service regulations, some more revenues can be generated thus reducing the pressure for a general rate increase.

Demurrage Charge for Roll Off Boxes – When a customer requests a roll off box, WMAC charges a City-approved rate to deliver and remove the box. The rate is the same regardless of whether the customer keeps the box for one week or much longer. A “demurrage charge” would be applied when a customer asks for a roll-off box and does not arrange to have the roll-off serviced for an extended period of time, resulting in loss of revenue to the company. By placing a reasonable demurrage charge on this activity, customers would be more diligent about when to call for service, and in the cases of unavoidable or desired extended usage, the customer could keep the box longer and the company would be authorized to collect a reasonable fee.

Staff is still calculating the final costs of services and potential new revenues that may offset rate increases. However, the proposed rate increases will not exceed 10% as shown above, which may be necessary in order to ensure that the company will receive a 10% increase in revenue plus the cost of new services and fees.

**FISCAL IMPACT**

Negotiation activities and drafting the new Franchise Agreement has no impact on the General Fund. WMAC has agreed to pay the cost of the City's consultant assisting with the negotiations. There has been and will continue to be staff time, especially that of the City's negotiating team, the City Attorney and City Manager's offices. However, they are all within the budgeted hours for the respective departments. Any cross departmental charges will be absorbed by special funds such as the Recycling Fund.

The new Franchise Agreement would benefit the City's General Fund with higher Franchise Fees related to higher revenues for the company resulting from new services revenues and general rate increases. There would also be benefits to certain special funds such as the Stormwater Fund, which pays for the cost of street sweeping, the street maintenance fund which would receive new street impact fees, and Recycling Fund which will receive revenues that would augment the declining Measure D funds.

## **ECONOMIC IMPACT**

The most significant impact would be any rate increase on residential and commercial customers. While the calculations are not completed yet, it is expected that the customers would see rate increases of less than 10% for each group of customers. Commercial customers would also see a new rate related to the cost of commercial recycling. The new rate would start at a nominal amount (i.e., 10% of comparable garbage service rate) and would be capped in year five at 50% of the comparable garbage service rate.

The following is a rough comparison of Hayward's current rate and its potential new rate, for residential single family customers with standard service, compared with those of some nearby agencies:

- Current Hayward residential monthly rate: \$27.29
  
- What some area agencies with newer franchises are paying for monthly residential service:
  - Newark (Republic): \$27.72 (Will adjust again in the fall)
  - Hayward's New Rate \$TBD
  - Fremont (Republic): \$33.39 (Approved a 9% increase in January 2014)
  - Oakland : \$36.82 (23.5% increase, with RRI+1.5% increases in years 2-5)
  - Castro Valley (WMAC): \$36.92 (After bid process, a 40+% increase two years ago)
  - Union City (Republic): \$39.43

## **PUBLIC CONTACT**

During the months of March through July 2014, staff solicited input from various community groups regarding potential new services, enhancements to existing services and to identify any current service deficiencies. These needs have been evaluated, including any related cost impact, for inclusion in the new Franchise. Attachment I is a summary of the feedback. Staff attempted to balance requests for new services with the desire to minimize rate increases.

In accordance with the requirements of Proposition 218, a notice is scheduled to be prepared and mailed at a future date when the outstanding issues have been negotiated and all rate increases are known. As some of the cost information and this rate impacts are not available yet, a date for this mailing has not been selected yet. The notice must be mailed for 45 days prior to the public hearing.

## **SCHEDULE**

The estimated schedule for completing this effort is summarized below:

*COMPLETED:*

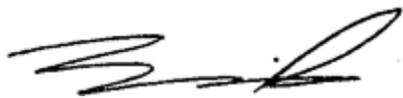
Council Authorized Initial Negotiating Period	July 9, 2013
Council Extended Negotiating Period	November 5, 2013
RFP Issued for Consultant Services for Selecting the Franchisee	December 2013
Council Extended Negotiating Period and Authorized Contract with HF&H	March 4, 2014
Report to Council Summarizing Results of Public Outreach, Request to Extend Negotiating Period, and Request for City option for possible further extension of the current Franchise at City's option.	July 2014
Council Work session to receive an update	October 14, 2014 (scheduled)

*IN PROGRESS:*

Prepare and mail Prop 218 Public Hearing Notice	October 2014
Conclude Negotiations with WMAC/Council consideration of new Agreement and participation in Phase 2 of the ACWMA Mandatory (business) Recycling Ordinance	December 2014 and January 2015
Begin New Service	March 2015

*Prepared and Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Fran David, City Manager

Attachment:

Attachment I      Summary of Community Outreach Effort and Feedback

## Summary of Community Outreach Effort and Feedback

Staff made a presentation and obtained comments from the City Council Sustainability Committee (CSC) regarding potential new services and changes to existing services. The services, described in the April 2, 2014 Council Sustainability Committee Report<sup>1</sup>, include a second bulky item appointment for single-family residents, removal of bulky items for multi-family properties, removal of abandoned debris placed in the public right-of-way, and separate collection of organics from multi-family properties. Committee members indicated support for removing abandoned debris from the public right-of-way, implementing separate collection of organics from multi-family properties, and siting new public containers in the Downtown and along other major arterials, if possible. Members expressed some uncertainty regarding the costs and need for a second bulky item appointment for single-family households because approximately 20% of eligible households currently participate in the service annually. Some members also expressed concern regarding the costs to remove bulky items for multi-family properties, for continued use of alternative fuel vehicles (AFVs) and for an annual compost give-away event.

Staff made a similar presentation to the Planning Commission on April 10, 2014. The potential services described in the April 10, 2014 Planning Commission Report<sup>2</sup> are the same as those presented to the CSC. Commissioners indicated support for removing abandoned debris from the public right-of-way, removal of bulky items from multi-family properties, separate collection of organics from multi-family properties, and web-based services for customers. Some Commissioners also expressed interest in siting new public containers in the Downtown and in offering a second bulky item appointment for single-family residents. Several members expressed concerns regarding the costs to require continued use of AFVs.

Surveys – Surveys were prepared for single-family residents, multi-family residents, multi-family property managers and business owners. Each of the four surveys posed open-ended questions regarding the quality of the current services provided and whether they would like certain additional services. Those additional services include a second annual appointment to remove bulky items for single-family residents. Possible services listed in the surveys to multi-family residents include removal of bulky items and separate collection of organics. Multi-family property owners were also asked about these two services and whether they would like a choice of carts or a bin for recycling services. Business owners and managers were similarly asked for any suggested new services or enhancements to current services. All of the surveys solicited suggestions for additional outreach to the community.

Residents who are also multi-family property managers or business owners are encouraged to complete each of the surveys that apply to them. The surveys for single- and multi-family residents are also available in Spanish. The surveys are posted on the City's website and copies

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<sup>1</sup> 'Potential New and Enhanced Solid Waste Services,' April 2, 2014 City Council Sustainability Committee Meeting, Item 5; <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2014/CSC-CCSC040214full.pdf>

<sup>2</sup> 'Potential New and Enhanced Solid Waste Services,' April 10, 2014 Planning Commission Meeting, Item 1; <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2014/PCA14PDF/pca041014full.pdf>

have been and are still available in the City's Revenue Division, the Permit Center, the City Clerk's Office, the Utilities & Environmental Services office, and at both libraries. The survey can also be completed by visiting the City's home page and selecting the link 'Waste Management Survey,' or by selecting this link: <http://www.hayward-ca.gov/GREEN-HAYWARD/waste.shtm>.

Staff made presentations and provided copies of the surveys to the following community groups: two presentations to the Keep Hayward Clean and Green Task Force, the Latino Business Roundtable, and two meetings with the Rental Housing Owners' Association of Southern Alameda County. Copies of the surveys were mailed to members of the Business Improvement Association, the Hayward Area Recreation and Park District, the Rotary Club, and a wide variety of faith-based groups.

Staff hosted a table at the following events where we asked participants to complete one or more of the surveys, as applicable: the Cinco de Mayo Festival, the Asian American Heritage Festival, the Chamber of Commerce Mixer at the Golden Peacock Restaurant, the Farmers' Market on the City Hall Plaza, and the open house at the Hayward Executive Airport. The Chamber of Commerce also invited staff to speak at two workshops convened for restaurants and food processors held at City Hall in March and May.

Summarized below are the results of the surveys received:

- **Single-Family Residents' Responses:** A total of 75 single-family residents responded to the survey. Of that total, 45% (34 of 75) indicated an interest in a second annual bulky item appointment, while 36% (29 of 75) were not interested. The balance, 12% (16 of 75) did not respond to the question. Respondents also indicated an interest in information on the City's website, videos on the City's website and neighborhood meetings with City staff to discuss questions. Several indicated that the brochures included in the garbage bills were useful and asked that they be continued. In addition, 61% (46 of 75) indicated that the quality of the services were acceptable; the balance did not respond to the question.
- **Multi-Family Residents' Responses:** A total of 29 multi-family residents completed a survey. Of that total, 62% (18 of 29) indicated an interest in a bulky item appointment, 24% (7 of 29) were not, and the balance did not respond to that question. Respondents also indicated an interest in additional information on the City's website and neighborhood meetings with City staff to discuss their questions. In addition, 39% (9 of 23) indicated that the quality of the services were acceptable; the balance did not respond to the question.
- **Multi-Family Property Managers' Responses:** Four surveys were received from multi-family property owners or managers. None indicated an interest in implementing separate collection of organics, and one indicated interest in arranging for a bin, rather than a cart, for separate collection of recyclables. During a meeting with the Rental Housing Owners Association of Alameda County, two property managers recommended issuing a RFP to obtain competitive rates, and two explained that WMAC assesses fees to

remove small amounts of excess trash. All indicated an interest in additional literature on the City's website and neighborhood meetings with City staff to discuss their questions. Three of the four respondents to the surveys indicated that the quality of the services were acceptable. The comments by the fourth respondent have been resolved.

- Business Owner Responses: Eleven surveys were received from business owners or managers. None requested additional services or enhancements to current services. Two requested videos on the City's website regarding separate collection of recyclables and organics and others asked that the literature included in their garbage bills be continued. Two other respondents cited specific collection service requests that have been addressed. All of the businesses indicated that the quality of the services were acceptable.



**MINUTES OF THE CITY COUNCIL MEETING  
OF THE CITY OF HAYWARD  
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777 B Street, Hayward, CA 94541  
Tuesday, September 16, 2014, 7:00 p.m.**

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

**ROLL CALL**

Present: COUNCIL MEMBERS Zermeño, Mendall, Jones, Peixoto, Lamnin,  
Márquez  
MAYOR Halliday  
Absent: None

**CLOSED SESSION ANNOUNCEMENT**

Mayor Halliday reported that the Council met in closed session regarding six items: (1) Official City Council photograph; (2) Conference with legal counsel pursuant to Government Code 54956.9 regarding pending litigation: Huynh v. City of Hayward, et al., Alameda County Superior Court No. RG10510409; Russell City Energy Company, LLC v. City of Hayward, U.S. District Court, N.D. CA, No. CV-03102-JSW; Chrysler Group Realty Company, LLC v. City of Hayward, Alameda County Superior Court No. RG 14722275; (3) Conference with labor negotiators pursuant to Government Code 54957.6 regarding all groups; (4) Conference with real property negotiators pursuant to Government Code 54956.8 regarding 3792 Depot (APN 439-0070-006-00); 3760 Depot (APN 439-0070-005-02); 3774 Depot (APN 439-0070-005-01); (5) Conference with real property negotiators pursuant to Government Code 54956.8 regarding South Hayward BART land purchase and acquisition; (6) Conference with property negotiators pursuant to Government Code 54956.8 regarding 22632 Main Street (APN 428-0066-024-00); 22654 Main Street (APN 428-0066-039-00); 22696 Main Street (APN 428-0066-038-02); 1026 C Street (APN 428-0066-037-00); 1026 C Street (APN 428-0066-038-01); (7) Conference with real property negotiators pursuant to Government Code 54956.8 regarding City Center properties: 22292 Foothill Blvd, APN 415-0250-111-02 (former Centennial Hall site); 22300 Foothill Blvd, APN 415-0250-112-00 (former City Hall site); 22321 Foothill Blvd, APN 415-0250-113-00 (parking structure site). The Council took no reportable action.

**PUBLIC COMMENTS**

Mr. Phillip Gallegos, Hayward resident, announced the Sun Gallery's Annual Gala on September 26, 2014, and noted that the proceeds would benefit the children's programs.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, invited all to be part of Leadership Hayward; and announced two events: the Mariachi Festival on October 3, 2014, and the 29<sup>th</sup> Annual Business Expo on October 8, 2014.

Mr. Kristopher Cabanesas, drum major of the Mt. Eden High School Instrumental Music Program, noted the Mt. Eden Wind Ensemble and Full Orchestra were invited to play at the Carnegie Hall and

the Lincoln Center; and the Program was organizing three fund raising events: 2<sup>nd</sup> Annual Pancake Breakfast on September 27, 2014, Fuddrucker's Fundraiser on September 29, 2014, and Chili's Give Back on October 15, 2014.

Mr. Jim Drake, Hayward resident, spoke about the need of more police personnel in Hayward.

Mr. Charlie Peters, Hayward resident, spoke about the article "Pump to Kick Oil Addiction" which he provided for the record. Mr. Peters also asked the Council to review the procedures for the Council appointment process.

Ms. Wynn Grcich, Hayward resident, provided materials for the record that addressed chemicals known to cause medical conditions, geoengineering, cell phone towers, and Agenda 21.

Mr. Matthew DeCambra, Editor in Chief of Hayward High School newspaper "HAYWIRE," thanked supporters of the school's newspaper and spoke about efforts to raise funds for a journalism convention.

Mr. Christopher Haynes, Hayward resident, expressed concern that the 293-7000 non-emergency police phone number was now answered by an automated service.

Council Member Mendall shared an idea of designating a portion of the industrial area as a technology corridor in order to attract technology businesses and employees to Hayward.

Council Member Zermeño thanked all high school students for attending the meeting and encouraged everyone to support their events.

## **BOARDS, COMMISSIONS, COMMITTEES AND TASK FORCE**

### **1. Appointments and Reappointments to Council's Appointed Bodies and Swearing In**

Staff report submitted by City Clerk Lens, dated September 16, 2014, was filed.

City Clerk Lens provided a synopsis of the staff report.

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

Resolution 14-144, "Resolution Confirming the Appointment and Reappointment of Members of Various Boards, Commissions, Committees and Task Forces"

City Clerk Lens administered the oath of office to the appointed and reappointed members of the Council's appointed bodies.



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**CONSENT**

Consent Items 7, 8, and 12 were removed for discussion.

2. Approval of Minutes of the Special City Council Meeting on July 8, 2014

It was moved by Council Member Jones, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council Meeting on July 8, 2014.

3. Approval of Minutes of the City Council Meeting on July 15, 2014

It was moved by Council Member Jones, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the City Council Meeting on July 15, 2014.

4. Approval of Minutes of the Special Joint City Council/Housing Authority Meeting on July 22, 2014

It was moved by Council Member Jones, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special Joint City Council/Housing Authority Meeting on July 22, 2014.

5. Approval of Minutes of the Special City Council Meeting on July 29, 2014

It was moved by Council Member Jones, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council Meeting on July 29, 2014.

6. Resignation of Carolina Abatayo from the Keep Hayward Clean and Green Task Force

Staff report submitted by City Clerk Lens, dated September 16, 2014, was filed.

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

Resolution 14-145, "Resolution Accepting the Written Resignation of Carolina Abatayo from the Keep Hayward Clean and Green Task Force"

7. Median Landscape Improvement Project FY14 – Winton Avenue (Southland Drive to Southland Place): Award of Contract and Appropriation of Funds

Staff report submitted by Assistant City Engineer Owusu, dated September 16, 2014, was filed.

Mr. Jim Drake, Hayward resident, inquired if the project was a competitive bid project. City staff confirmed it was a competitive bid project.

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

Resolution 14-151, “Resolution Awarding Contract to Alfred Joseph Landscaping, Inc., for the Median Landscape Improvement Project FY14 – Winton Ave (Southland Drive to Southland Place), Project No. 05157”

Resolution 14-152, “Resolution Amending Resolution 14-098, As Amended, The Budget Resolution for Capital Improvement Projects for Fiscal Year 2015, Relating to an Appropriation of Funds from the Street System Improvements Fund (450) to the Median Landscape Improvement Project FY14 – Winton Ave (Southland Drive to Southland Place), Project No. 05157”

8. West A Street Safety Improvement Project: Award of Contract and Appropriation of Funds

Staff report submitted by Assistant City Engineer Owusu, dated September 16, 2014, was filed.

Mr. Jim Drake, Hayward resident, inquired if this was a competitive bid project. City staff confirmed it was a competitive bid project.

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

Resolution 14-153, “Resolution Awarding Contract to W. Bradley Electric, Inc., for the West A Street Safety Improvement Project, Project No. 05198”

Resolution 14-154, “Resolution Amending Resolution 14-098, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2015, Relating to an Appropriation of Funds from the Street System Improvements Fund (450) to the West A Street Safety Improvement Project, Project No. 05198”

9. Resolution Authorizing the City Manager to Execute Agreements for Occupational Health Services

Staff report submitted by Acting Senior Human Resources Analyst Guimond, dated September 16, 2014, was filed.

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



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Resolution 14-146, “Resolution Authorizing the City Manager to Execute Agreements for Occupational Health Services”

10. Amend FY 2015 Master Fee Schedule to Add Convenience Fee for Online and Telephone Payments

Staff report submitted by Administrative Analyst II Barnes, dated September 16, 2014, was filed.

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

Resolution 14-147, “Resolution Adopting a Revised Master Fee Schedule for FY 2015, Adding a New Convenience Fee in the Amount of \$3.95 for Online and Telephone Credit Card Payments”

11. Authorizing the City Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax

Staff report submitted by Director of Finance Vesely, dated September 16, 2014, was filed.

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

Resolution 14-148, “Resolution Authorizing the City Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax”

12. Consideration of Resolution in Support for the Extension and Augmentation of the Existing Transportation Sales Tax Ballot Measure (Measure B)

Staff report submitted by Management Fellow Stefanski, dated September 16, 2014, was filed.

Council Member Peixoto clarified that the measure on the November ballot was Measure BB and, if approved, it would allocate \$8 billion for Alameda County transportation improvements and \$190 million for City of Hayward transportation funding opportunities. Mr. Peixoto encouraged the Council to share with constituents the importance of voting for Measure BB.

Mayor Halliday noted that if passed, Measure BB would help keep Hayward roads safe and provide mass transportation infrastructure opportunities.

Council Member Márquez supported Measure BB and added the measure would also address transportation for seniors and people with disabilities.

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

Resolution 14-155, “Resolution in Support for the Extension and Augmentation of the Existing Transportation Sales Tax Ballot Measure (Measure BB)”

13. Approval of Contract with Godbe Research for Completion of the Biennial Resident Satisfaction Survey

Staff report submitted by Management Fellow Stefanski, dated September 16, 2014, was filed.

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

Resolution 14-149, “Resolution Authorizing the City Manager to Negotiate and Execute a Contract with Godbe Research to Conduct the 2014 Biennial Resident Satisfaction Survey”

14. Resolution Authorizing the Issuance of Legislative Subpoenas Necessary to Calculate the Utility Users Tax Due Relating to the Russell City Energy Center

Staff report submitted by Assistant City Attorney Brick, dated September 16, 2014, was filed.

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

Resolution 14-150, “Resolution Authorizing the Issuance of Legislative Subpoenas Necessary to Calculate the UUT Due Relating to the Russell City Energy Center”

**PUBLIC HEARING**

15. Adoption of a Resolution to Approve a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Vesting Tentative Tract Map Application (Tract 8151), and Introduction of an Ordinance to Approve a Zone Change from Single Family Residential/B4 Special Lot Standards Combining District (RS/B4) to Planned Development District (PD), associated with Thirteen Detached Single-Family Homes on a 1.45-Acre Parcel Located at 24582 and 24570 Eden Avenue and 24655 Mohr Drive; Che Chen and Shu Fen Liu (Applicant & Owner)



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Staff report submitted by Senior Planner Golubics, dated September 16, 2014, was filed.

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

Discussion ensued among Council members and City staff regarding green features of solar energy and LEED certification; the tot lot near a bioretention area; traffic impacts; colors for the project; Homeowner's Associations (HOA) and adequate funding; mitigated measures to address fire concerns surrounding the evergreen trees; and an additional Condition of Approval that required a full bathroom on the first floor.

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:00 p.m.

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

Council Member Lamnin thanked the applicant for the green features and encouraged him to reach out to the League of Conservation Voters and the Sierra Club to help with marketing, and asked him to consider the City's mural program for the public art requirement. Ms. Lamnin requested that as part of the creation of the Conditions, Covenants, and Restrictions (CC&R's), the tot lot safety be addressed as well as protocols for monitoring the bioretention area.

Council Member Mendall supported tying the public art into the City's mural program to help beautify an entire area.

Mayor Halliday supported the motion and noted the proposed development was a continuation of a plan for the Mt. Eden area; shared safety concerns for the tot lot and traffic concerns for residential neighborhoods; and concurred with Council Member Peixoto's concern about HOAs and funding capabilities. Ms. Halliday suggested the Neighborhood Partnership Program could review the traffic impact to residential neighborhoods.

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

Resolution 14-156, "Resolution Adopting the Mitigated Negative Declaration and the Mitigated Monitoring and Reporting Program and Approving Vesting Tentative Tract Map Application PL-2013-0351 and Zone Change Application PL-2013-0350 Pertaining to the Development of Thirteen Detached Single-Family Homes at 24582 and 24570 Eden Avenue and 24655 Mohr Drive in the Mt. Eden Area"

Introduction of Ordinance 14-\_, “An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2013-0350 Relating to a Residential Development at 24582 and 24570 Eden Avenue and 24655 Mohr Drive”

## LEGISLATIVE BUSINESS

Council Member Lamnin noted that she would recuse from discussion on Item No. 16 due to a conflict of interest, and left the Council Chambers at 8:06 p.m.

### 16. Adoption of the Community Development Block Grant (CDBG) Compliance Policy Manual; and Review of a Proposed Substantial Amendment to the FY 2015 CDBG Annual Action Plan

Staff report submitted by Community Services Manager Jaeger, dated September 16, 2014, was filed.

Director of Library and Community Services Reinhart provided a synopsis of the report and noted that the FY 2015 CDBG Annual Action Plan would be presented to Council for final review and authorization on October 21, 2014.

Discussion ensued among City Council and staff. Council members offered the following recommendations to staff: consider shovel-ready projects that could use the reconciled CDBG funds and be completed within eighteen months; have in place proactive program oversight and monitoring strategies; review the CDBG Compliance Policy Manual and rectify the language so there is consistency with the use of the words “resident” and “citizen;” and consider if speed humps would qualify as an improvement for the proposed Hayward Promise Neighborhood Street Improvement project.

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:41 p.m.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried unanimously with Council Member Lamnin absent, to adopt the following:

Resolution 14-157, “Resolution Adopting the Community Development Block Grant (CDBG) Compliance Manual and Authorizing the City Manager to Implement the Policies Contained Therein”

Council Member Lamnin returned to the Council Chambers at 8:42p.m.

### 17. Approval of Temporary Appointment of Administrative Analyst III

Staff report submitted by Director of Public Works - Utilities and Environmental Services Ameri, dated September 16, 2014, was filed.



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

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:48 p.m.

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

Council Member Mendall noted it had been a pleasure working with Ms. Mosher and her expertise would be greatly missed.

Council Member Márquez supported the motion and appreciated the cost benefit of appointing Ms. Mosher in order to avoid having to hire a costly outside consultant.

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

Resolution 14-158, “Resolution for the Exception to the 180-Day Wait Period and Approval of Temporary Appointment to the Position of Administrative Analyst III”

18. Conditional Authorization of Issuance of Multi-Family Housing Revenue Bonds (South Hayward BART Family and Senior Affordable Apartments) 2014 Series A and Execution of Related Documents

Staff report submitted by Housing Development Specialist Cortez, dated September 16, 2014, was filed.

Assistant City Manager McAdoo provided a synopsis of the report.

There being no public comments, Mayor Halliday opened and closed the public hearing at 8:52 p.m.

Council Member Zermeño noted the development of the South Hayward BART Family and Senior Affordable Apartments project was positive for Hayward.

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

Resolution 14-159, “Resolution of the City of Hayward Authorizing the Issuance, Sale and Delivery of the City of Hayward Multifamily Housing Revenue Bonds (South Hayward BART Family and Senior Affordable Apartments) 2014 Series A, Authorizing the Execution and Delivery of a Indenture of Trust, a Loan Agreement and a Regulatory Agreement and Declaration of Restrictive Covenants, and Authorizing the Execution and Delivery of and Approving Other Related Documents and Approving Other Related Actions in Connection Therewith”

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

Council Member Zermeño and Council Member Márquez acknowledged that September 16, 2014 was Mexican Independence Day and September 15, 2014, was Independence Day for Central American countries.

Council Member Lamnin noted she represented the City at the closing of the Lighthouse Community Center, which served the LGBTQ community. Ms. Lamnin reported that the Lighthouse Community Center donated its rainbow flag to the City and she suggested flying it during pride day celebrations and placing it in a location where diversity could be represented.

Council Member Márquez noted that along with Council Member Mendall, she participated in a clean-up event at the Glassbrook Elementary School on September 13, 2014, which was organized by Mr. Greg Galati.

Mayor Halliday noted the Council attended a Candlelight Vigil on September 11, 2014, at the future site for the 9/11 memorial. Madam Halliday announced the October 7, 2014 Council meeting was canceled because the Council had to attend the annual Volunteer Recognition and Awards Dinner at the St. Rose Hospital Grand White Tent. Mayor Halliday added that the September 23, 2014 Council meeting would be chaired by Mayor Pro Tempore Jones because she was not going to be in attendance.

## **ADJOURNMENT**

Mayor Halliday adjourned the meeting at 9:01 p.m.

## **APPROVED:**

Barbara Halliday  
Mayor, City of Hayward

## **ATTEST:**

Miriam Lens  
City Clerk, City of Hayward



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT  
SUCCESSOR AGENCY MEETING OF THE CITY OF HAYWARD**  
**City Council Chambers**  
**777 B Street, Hayward, CA 94541**  
**Tuesday, September 23, 2014, 7:00 p.m.**

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The Special Joint City Council/Redevelopment Successor Agency meeting was called to order by Mayor Pro Tempore Jones at 7:00 p.m., followed by the Pledge of Allegiance led by Council/RSA Member Peixoto.

**ROLL CALL**

Present: COUNCIL/RSA MEMBERS Zermeño, Mendall, Peixoto, Lamnin, Márquez  
MAYOR PRO TEMPORE/ACTING CHAIR Jones  
Absent: MAYOR/CHAIR Halliday

**CLOSED SESSION ANNOUNCEMENT**

Mayor Pro Tempore Jones reported that the Council met in closed session regarding four 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 public right-of-way at 623 Jackson Street (APN 444-0027-006-02), 631 Jackson Street (APN 444-0027-005-02), 653 Jackson Street (APN 444-0027-004-03), 659 Jackson Street (APN 444-0027-002-00), and 675 Jackson Street (APN 444-0027-001-00); (3) Conference with real property negotiators pursuant to Government Code 54956.8 regarding South Hayward BART land purchase and acquisition; and (4) Conference with property negotiators pursuant to Government Code 54956.8 regarding 22632 Main Street (APN 428-0066-024-00), 22654 Main Street (APN 428-0066-039-00), 22696 Main Street (APN 428-0066-038-02), 1026 C Street (APN 428-0066-037-00), 1026 C Street (APN 428-0066-038-01). Mayor Pro Tempore Jones noted that there was no reportable action.

Mayor Pro Tempore Jones noted there were two new items on the agenda called “Information Items” and “City Manager’s Comments.” Mr. Jones noted that the public could comment on Information Items during the Public Comments section, and the new section was a written report provided to Council with no action required. He added that if the Council wished to discuss or take action on Information Items, the Council could direct staff to bring them back at a future Council agenda as an action item.

**PUBLIC COMMENTS**

Ms. Felicia Sandoval, Hayward resident and Service Employees International Union (SEIU) - Local 1021 member, urged Council to lift the imposition and settle fair and equitable contracts with SEIU Local 1021 and International Federation of Professional & Technical Employees - Local 21.

Ms. Betty Deforest, Hayward resident, suggested that part of the \$1.38 million unspent Community Development Block Grant (CDBG) funds could be used to secure a home and support services for homeless residents, who are no longer at the Maple Court house.

Mr. Michael Urioste, Hayward resident and President of the Prospect Hill Homeowner's Association, spoke about the downtown loop and its negative impact on traffic, surrounding neighborhoods, street lights, crosswalks and downtown merchants.

Mr. Jim Drake, Hayward resident, requested that percentages be included in the quarter progress for the Police Department. Mr. Drake expressed concern about the cost of maintaining streets acquired from Caltrans.

Mr. Ray Baker, with business office in Hayward, said property and business owners were impacted with traffic issues caused by the Route 238 Corridor project and suggested making A Street a two-way street.

Mr. Charlie Peters, with Clean Air Performance Professionals, encouraged the Council to support making ethanol voluntary and having an audit process to make sure that cars that fail a smog check get repaired.

Ms. Barbara Fields, Hayward resident, provided information for the record and asked about plans for the Route 238 trail and the historical site near the Hayward Little Theater, and urged Council to assist the Hayward Area Recreation and Park District preserve the theater parking lot.

Mr. Rocky Johnson Jr., Hayward High School student, noted the Route 238 Corridor Improvement Project was an improvement for the city, but there were traffic and pedestrian issues that needed to be addressed.

Council Member Lamnin reported that AT&T had contributed almost \$300,000 to the Hayward Promise Neighborhood Program for drop-out prevention. Ms. Lamnin also mentioned there were postcards from AC Transit about a study of AC Transit's transportation system.

## **WORK SESSION**

City Manager David introduced a video about the Commission on Accreditation of Law Enforcement Agencies (CALEA) and noted the Hayward Police Department had earned reaccreditation by CALEA. Ms. David added that the video would be used to show the public that Hayward was moving forward in the area of public safety.

### **1. Review of 4th Quarter Progress for Police Department Council Priorities FY 2014**

Staff report submitted by Police Programs Analyst Sugayan, dated September 23, 2014, was filed.

Police Chief Urban provided a synopsis of the report and Traffic Sergeant Corsolini provided a synopsis of the information about collisions throughout the city.

Discussion ensued among Council members and City staff related to: auto theft; AB109 and its impact to Hayward; "Operation Downtown Facelift;" the downtown loop and traffic speed; gang-



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City Council Chambers  
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related data and awareness/education prevention; larceny; Post Release Community Supervision; Nixle; license plate reader; enforcement actions related to DUI; bicycle program in the downtown; progress on technology; traffic accidents; parking on Mission Boulevard; community policing and engagement; and latent print identification.

Council members congratulated the Police Department on the CALEA reaccreditation. Council Member Márquez asked for a report on hate crimes, domestic violence and rape.

## **CONSENT**

Consent Item No. 3 was removed for discussion.

2. Adoption of Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2013-0350 Relating to a Residential Development at 24582 and 24570 Eden Avenue and 24655 Mohr Avenue

Staff report submitted by City Clerk Lens, dated September 23, 2014, was filed.

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

Ordinance 14-19, “An Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property in Connection with Zone Change Application No. PL-2013-0350 Relating to a Residential Development at 24582 and 24570 Eden Avenue and 24655 Mohr Drive”

3. Park in-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Greenwood Park Expansion, Christian Penke Park Walking Path, Hayward Plunge Patio Fence, Schafer Park Fence and Weekes Community Center Kitchen ADA Upgrades Projects

Staff report submitted by Landscape Architect Koo, dated September 23, 2014, was filed.

Council Member Mendall encouraged staff to have conversations with the Hayward Area Recreation and Park District, and the Hayward Unified School District about utilizing park-in-lieu fees to expand existing parks in Hayward. Mr. Mendall noted his family visited the Dennis the Menace Park in Monterey and he recommended exploring the idea of bringing something similar to Hayward.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously with Mayor Halliday absent, to adopt the following:

Resolution 14-164, “Resolution Approving Request of Hayward Area Recreation and Park District for Appropriation of Park Dedication In-Lieu Fees for the Greenwood Park Expansion, Christian Penke Park Walking Path, Hayward Plunge Patio Fence, Schafer Park Fence and Weekes Community Center Kitchen ADA Upgrades Projects”

4. Resolution Approving an Amendment to the FY 2015 Salary Plan

Staff report submitted by Acting Director of Human Resources Collins, dated September 23, 2014, was filed.

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

Resolution 14-160, “Resolution Approving the Amended Fiscal Year 2015 Salary Plan Designating Positions of Employment in the City Government of the City of Hayward and Salary Range; and Superseding Resolution No. 14-129 and All Amendments Thereto”

5. Adopt Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the South Hayward BART Owner Participation Agreement

Staff report submitted by Project Manager DeClercq, dated September 23, 2014, was filed.

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

Resolution 14-161, “Resolution of the City Council of the City of Hayward Authorizing the City Manager to Negotiate and Execute an Amendment to the Owner Participation Agreement for the South Hayward BART Transit Oriented Development Project and Amendments to the State of California Infill Infrastructure Grant Documents to Release the City from Liability to Repay Grant”

6. Resignation of May Shay and separation of Dion Griffin from the Downtown Hayward Business Improvement Area Advisory Board

Staff report submitted by City Clerk Lens, dated September 23, 2014, was filed.

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



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Resolution 14-162, “Resolution Accepting the Written Resignation of May Shay and the Separation of Dion Griffin from the Downtown Hayward Business Improvement Area Advisory Board”

7. Approval of Recognized Obligation Payment Schedule and Successor Agency Administrative Budget for the Period January Through June 2015

Staff report submitted by Assistant City Manager McAdoo, dated September 23, 2014, was filed.

It was moved by Council/RSA Member Zermeño, seconded by Council/RSA Member Mendall, and carried unanimously with Mayor/Chair Halliday absent, to adopt the following:

Redevelopment Successor Agency Resolution 14-04, “A Resolution of the City Council of the City of Hayward, Acting as the Governing Board of the Hayward Successor Agency, A Separate Legal Entity, Approving the Recognized Obligation Payment Schedule for the Period January through June 2015 (“ROPS 14-15B”) and the Administrative Budget for the 2014-15 Fiscal Year, and Directing the City Manager to Take All Actions Necessary to Effectuate Requirements Associated with this Approval”

#

8. Authorization to Amend Professional Services Agreements with Townsend Public Affairs, Inc. and Capitol Advocacy Partners to Extend the Terms of the Agreements Through December 31, 2014 for Assistance in Securing State and Federal Funding and Legislative Advocacy Services

Staff report submitted by Assistant City Manager McAdoo, dated September 23, 2014, was filed.

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

Resolution 14-163, “Resolution Authorizing the City Manager to Negotiate and Execute Amendments to Professional Services Agreements with Townsend Public Affairs, Inc. and Capitol Advocacy Partners to Assist in Securing State and Federal Funding for Affordable Housing, Economic Development, Public Safety, Library, Infrastructure, and Transportation Related Activities, and Public Facilities”

## **PUBLIC HEARING**

9. Amendment of 2010 Urban Water Management Plan to Revise City's Water Shortage Contingency Plan; and Implementation of Stage I Water Conservation Measures

Staff report submitted by Administrative Analyst III Mosher, dated September 23, 2014, was filed.

Director of Utilities and Environmental Services Ameri provided a synopsis of the staff report.

Council Member Lamnin recommended that staff place a signage by the City Hall Plaza fountain to educate the public that the water is recirculated and not safe to drink or play in.

Council Member Mendall, Hayward's representative to the Bay Area Water and Supply Conservation Agency (BAWSCA), noted that at the last BAWSCA meeting, it was reported that the drought was the worst three year drought on record in California. Mr. Mendall pleaded everyone to conserve water.

There being no public comments, Mayor Pro Tempore Jones opened and closed the public hearing at 8:42 p.m.

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

Resolution 14-165, "Resolution Amending the 2010 Urban Water Management Plan to Revise the Water Shortage Contingency Plan and Implementing Stage I Water Shortage"

## **LEGISLATIVE BUSINESS**

10. Introduction of an Ordinance Amending Article 7 of Chapter 4 of the Hayward Municipal Code relating to False Alarm Fees, Violations, and Fines

Staff report submitted by Records Administrator Perez, dated September 23, 2014, was filed.

Police Chief Urban introduced Records Administrator Perez who provided a synopsis of the report.

Discussion ensued among Council members and City staff related to reducing the time for a responsible party to respond to the scene of an activated alarm to thirty minutes. Council Member Márquez suggested considering lockboxes to gain entry to businesses in the event of emergencies.

There being no public comments, Mayor Pro Tempore Jones opened and closed the public hearing at 8:53 p.m.



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Council Member Zermeño offered a motion per staff recommendation and Council Member Lamnin seconded the motion.

Council Member Lamnin supported the recommendation to reduce the time to thirty minutes and supported the idea of a lockbox system to gain access to a business.

It was noted that the alarm application could address a lockbox system.

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

Introduction of Ordinance 14-\_, “Ordinance of the City of Hayward, California Amending Sections 4-7.09, 4-7.11 and 4-7.13 of Article 7 of Chapter 4 of the Hayward Municipal Code Relating to Alarms”

### **INFORMATION ITEMS**

#### **11. Route 238 Corridor Improvement Project – Report on Status and Accomplishments**

Mayor Pro Tempore Jones noted the Route 238 Corridor Improvement Project was a written report on the status and accomplishments of the project, and there would be not discussion or action by Council.

### **CITY MANAGER’S COMMENTS**

There were no comments.

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

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force was having a litter clean-up and graffiti removal event on September 27, 2014, at the Palma Ceia Neighborhood and Hesperian Boulevard.

### **ADJOURNMENT**

Mayor Pro Tempore Jones adjourned the meeting at 8:57 p.m.

### **APPROVED:**

Greg Jones  
Mayor Pro Tempore, City of Hayward  
Acting Chair, Redevelopment Successor Agency

**ATTEST:**

Miriam Lens  
City Clerk, City of Hayward  
Secretary, Redevelopment Successor Agency

**DATE:** October 14, 2014  
**TO:** Mayor and City Council  
**FROM:** City Clerk  
**SUBJECT:** Adoption of Ordinance Amending Sections 4-7.09, 4-7.11 and 4-7.13 of Article 7 of Chapter 4 of the Hayward Municipal Code Relating to Alarms

**RECOMMENDATION**

That the City Council adopts the Ordinance introduced on September 23, 2014.

**BACKGROUND**

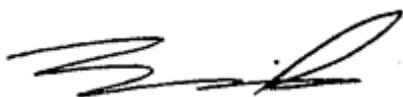
The Ordinance was introduced by Council Member Zermeño at the September 23, 2014 meeting of the City Council with the following vote:

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

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, October 11, 2014. Adoption at this time is therefore appropriate.

*Prepared and Recommended by:* Miriam Lens, City Clerk

Approved by:



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Fran David, City Manager

Attachment:

Attachment I      Summary of Ordinance Published on 10/11/14

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

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING  
SECTIONS 4-7.09, 4-7.11 AND 4-7.13 OF ARTICLE 7 OF CHAPTER 4  
OF THE HAYWARD MUNICIPAL CODE RELATING TO ALARMS

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

Section 1. Article 7 of Chapter 4 of the Hayward Municipal Code is hereby amended to read as follows:

SEC. 4-7.09 STANDARDS FOR ALL ALARM SYSTEMS.

SEC. 4-7.11 STANDARDS FOR MONITORED ALARM SYSTEMS – DURESS ALARMS  
– ROBBERY ALARMS.

SEC. 4-7.13 FALSE ALARM FEES, VIOLATIONS AND FINES.

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

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

Introduced at the meeting of the Hayward City Council held September 23, 2014, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on October 14, 2014, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: October 11, 2014  
Miriam Lens, City Clerk  
City of Hayward



**DATE:** October 14, 2014

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT:** Approval of a Letter Agreement with BART to Reimburse the City for all Expenses Related to the Extension and Relocation of Water and Sewer Facilities at the BART Hayward Maintenance Complex (HMC) Project

### **RECOMMENDATION**

That Council adopts the attached resolution (Attachment I) authorizing the City Manager to execute a Letter Agreement and two Waterline Easement Purchase and Sales Agreements with BART. The Letter Agreement with BART will define a scope of work to extend and relocate water and sewer facilities at the BART Hayward Maintenance Complex (HMC) Project and will reimburse the City for all related expenses.

### **BACKGROUND**

The San Francisco Bay Area Rapid Transit District (BART) operates and maintains 104 miles of track and forty-three stations, generating an average of 360,000 passenger trips every weekday in the counties of San Francisco, Alameda, Contra Costa, and San Mateo. The eighty-eight-acre Hayward Yard is one of four BART maintenance facilities. Over the next thirty years, BART will require additional vehicles and storage facilities to meet future demand associated with regional population growth, system expansions for the Warm Springs and Silicon Valley/San Jose Extension projects, and additional riders from the Oakland Airport Connector, eBART, and Livermore projects. In order to meet this demand, the BART Board approved an expansion to the Hayward Yard in 2011, called the Hayward Maintenance Complex (HMC) project.

On December 14, 2010, BART staff gave a presentation at a City Council work session as part of its outreach efforts prior to the approval of the HMC project<sup>1</sup>. The presentation was informational only because, as an entity of the State, BART is generally not subject to local building and zoning regulations. At the time, BART had released a draft Mitigated Negative Declaration (MND) that identified potential significant environmental impacts from the project and mitigation measures to reduce or eliminate those impacts. In addition to the December Council meeting, there were two community meetings held on December 10, 2010 at the New Haven Adult School in Union City and on January 20, 2011 at the Fairway Park Baptist Church in Hayward. At all three meetings, Council Members and the public expressed concerns about the project related to various items, primarily

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<sup>1</sup> See staff report at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2010/cca121410full.pdf>

lighting and noise. City staff, including Hayward Fire Department staff, provided feedback to BART related to the proposed project and associated draft MND.

A Final Mitigated Negative Declaration was ultimately approved by the BART Board on May 26, 2011. City staff found the mitigation measures included in the final MND to be sufficient to reduce impacts to acceptable levels. Most of the noise impacts would occur south of Whipple Road in Union City. Also, some of the nearby Hayward residents expressed concerns with the existing lighting at the Maintenance Yard, which staff worked with BART staff to address. The existing lights, which are separate from the HMC project, were adjusted to minimize glare impacts to nearby properties.

The approved HMC project consists of the acquisition of and improvement to three properties on the west side of the existing Hayward Yard (see Attachments II & III for project location maps). Property improvements include the construction of additional storage tracks for a maximum of 250 vehicles and utility improvements to sanitary sewer, water supply, and fire protection systems. The total project is estimated to cost \$412 million. Information related to the project approval and [final MND](#) can be found on the BART website at: <http://www.bart.gov/about/projects/hmc>.

## **DISCUSSION**

This report addresses the City's role in the water and sewer utility improvements that are planned as part of the HMC project. To improve the water quality and water supply for fire protection, the HMC project will replace and extend approximately 3,400 feet of the existing twelve-inch water line within the maintenance yard and install approximately 700 feet of eight-inch water line. The new water line crosses the BART tracks, Union Pacific Railroad (UPRR), and two properties located at Carroll Avenue and Troy Place. The project also removes approximately 700 feet of ten-inch sanitary sewer pipe to accommodate the new tracks and reconnects to existing sewers all service laterals for existing buildings and new shops.

In order to complete this work, BART has agreed to execute a Letter Agreement with the City whereby it will reimburse the City for all actual costs, including time and materials, for City staff to perform plan reviews, inspection, utility project management, and performance of water main tie-ins and shut-offs.

In addition, staff has worked closely with BART representatives over the past two years to provide assistance with the acquisition of waterline easements, Temporary Construction Easements (TCE), and licenses from UPRR. These are needed to install the new water line. Upon execution of the Letter Agreement, all costs for these utility easements and associated work will be paid for by the City and reimbursed by BART, including staff costs. The total expected cost of the easements and TCEs is \$30,000.

On June 6, 2014, staff met with the property owners of 32199 Carroll Avenue and 35 Troy Place to start discussions about the proposed water line project and the intent to purchase waterline easements. Later that month, staff reached tentative agreements with the property owners on the conditions of the sale of the easements and TCEs.

Mr. Jamie Vera is the property owner of 32199 Carroll Avenue. The total cost of the 1,189 Square Foot (SF) Waterline Easement and 2,258 SF TCE for his property is \$25,000. This compensation includes all costs to the property owner to restore the existing landscaping and the back fence, which will need to be removed.

Mr. Octavio Silva is the property owner of 35 Troy Place. The total cost of the 632 SF Water Easement and 416 SF TCE for his property is \$5,000. As a part of the project, the City, on behalf of BART, will have to replace the existing concrete driveway fence. There is no other monetary compensation or in-kind work associated with receiving this easement.

## **ENVIRONMENTAL REVIEW**

The utility improvement work described above is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) Section 15301, Existing Facilities, which consists of “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.”

In regards to the overall HMC project, as stated above, the BART Board approved the Final Initial Study/Mitigated Negative Declaration on May 26, 2011, which satisfied CEQA requirements for the HMC project. In addition, on September 21, 2011, the Federal Transit Administration found the HMC project to be a categorical exclusion from the National Environmental Policy Act (NEPA) under 23 CFR Part 771.117 (d) “Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.”

## **ECONOMIC IMPACT**

There is no discernible economic impact on the Hayward community as a result of these utility improvements described above. BART estimates that approximately 215 new jobs will be created by HMC project. The proposed project will improve the reliability and to allow more trains to run more frequently to Hayward community.

## **FISCAL IMPACT**

As mentioned above, BART will be responsible for reimbursing the City for all costs related to the utility improvements at the HMC project, including staff time. A total of \$300,000 has been appropriated for these improvements in the Water System Capital Improvement Fund in the FY 2014-15 program with the corresponding reimbursement from BART. This amount will be sufficient to cover any up-front costs that the City needs to cover before it is reimbursed.

The following are the itemized costs that will be reimbursed by BART:

Waterline Easement Purchases	\$ 10,000
Temporary Construction Easement	\$ 20,000
UPRR License	\$ 13,000

Engineering Review and Management	\$ 55,000
Construction Inspection	<u>\$ 40,000</u>
Total:	\$138,000

**PUBLIC CONTACT**

City staff has worked closely with representatives of BART through all utility elements of this project. There will be no impact on other Hayward water customers as a result of the utility improvements at the HMC project. Because of the location of the improvements, no significant impact on neighboring properties is anticipated.

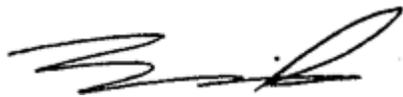
**NEXT STEPS**

Upon Council approval of the attached resolution, staff will execute the Letter Agreement and two Waterline Easement Purchase and Sales Agreements. Construction of the utility improvements is expected to begin in the first half of 2015. Construction of the overall HMC project is expected to be completed by June 2017.

*Prepared by:* Henry Louie, Senior Utilities Engineer

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:




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Fran David, City Manager

- |              |                 |                         |
|--------------|-----------------|-------------------------|
| Attachments: | Attachment I:   | Resolution              |
|              | Attachment II:  | Project Location Map    |
|              | Attachment III: | Water line Location Map |

HAYWARD CITY COUNCIL

RESOLUTION NO.14-\_\_\_\_\_

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

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A LETTER AGREEMENT WITH SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART) AND THE WATERLINE EASEMENT PURCHASE AND SALES AGREEMENTS FOR THE INSTALLATION OF A WATER MAIN LOOP TO SUPPLY BART HAYWARD MAINTENANCE COMPLEX, CITY PROJECT NO. 07180

WHEREAS, BART requires additional vehicles to meet future demand associated with regional population growth, system expansions for the extension projects and additional riders; and

WHEREAS, the utility improvements associated with sanitary sewer, water supply and fire protection systems of the Hayward Yard are required for the expanded maintenance and storage facilities to serve the expanded fleet; and

WHEREAS, in the past two years, staff has been working closely with the representatives of BART and agrees to provide assistances for the acquisitions of the waterline easements, temporary construction easements and licenses from Union Pacific Railroad; and

WHEREAS, waterline easements and temporary construction easements at the properties of 32199 Carroll Avenue (APN: 78G-2748-013) and 35 Troy Place (APN: 78G2784-001) are required to install a 8-inch water line to accommodate the BART's facility expansions; and

WHEREAS, staff has negotiated the Waterline Easement Purchase and Sales Agreements with the property owners which, if approved, will authorize the City to construct, operate, maintain and repair a 8-inch water line across the properties; and

WHEREAS, the Waterline Easement Purchase and Sales Agreement with Mr. Jaime Vera, Property Owner of 32199 Carroll Avenue (APN: 78G-2748-013) is for the purchase of 1,189 Square Feet (SF) necessary for the installation of 8-inch water line with the compensation cost of \$5,000 and approximately 2,258 SF of a Temporary Construction Easement (TCE) with the compensation cost of \$20,000. The property owner is responsible to restore the existing landscaping and the back fence within the property; and

WHEREAS, The Waterline Easement Purchase and Sales Agreement with Mr. Octavio Silva, Property Owner of 35 Troy Place is for the purchase of 632 SF necessary for the installation of 8-inch water line with the compensation cost of \$5,000 and approximately 416 SF of a Temporary Construction Easement with the City agreed to replace the existing concrete driveway and the existing fence with 6-foot tall wood fence along the property line that shared with Property located 32199 Carroll Avenue.; and

WHEREAS, the City agrees to provide the plan reviews, inspection, utility project management, and performance of required water main tie-ins and shut-offs based on time and material; and

WHEREAS, City and BART are agreeable to executing a Letter Agreement whereby the City will be reimbursed by BART for all costs associated with Hayward Maintenance Complex Project, City Project No. 07180;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

The City Manager is hereby authorized and directed to negotiate and execute a Letter Agreement with BART for Hayward Maintenance Complex Project.

The City Manager is hereby authorized by the City Council to execute the respective Waterline Easement Purchase and Sales Agreements with Jaime Vera, an unmarried man, and with Octavio Silva, a married man.

The City of Hayward hereby accepts the Waterline Easements on affected real properties as aforementioned, and more particularly described in the in the individual Grant of Waterline Easement to the City of Hayward, which have been executed and delivered hereunder.

The City of Hayward hereby consents to the recordation by the City Clerk of said Waterline Easement in the Official Records, County of Alameda.

This Resolution shall become effective immediately upon its adoption in 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:

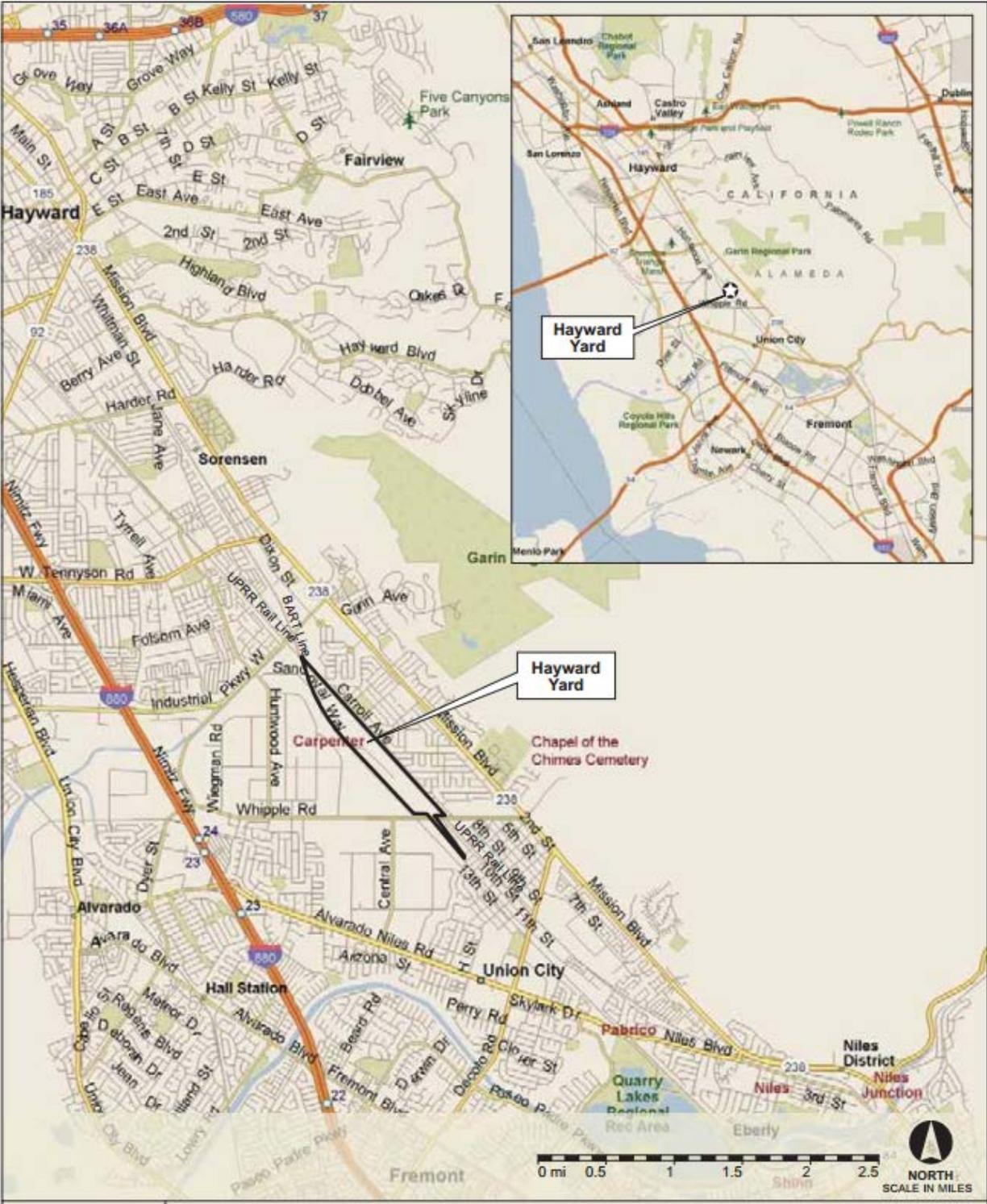
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

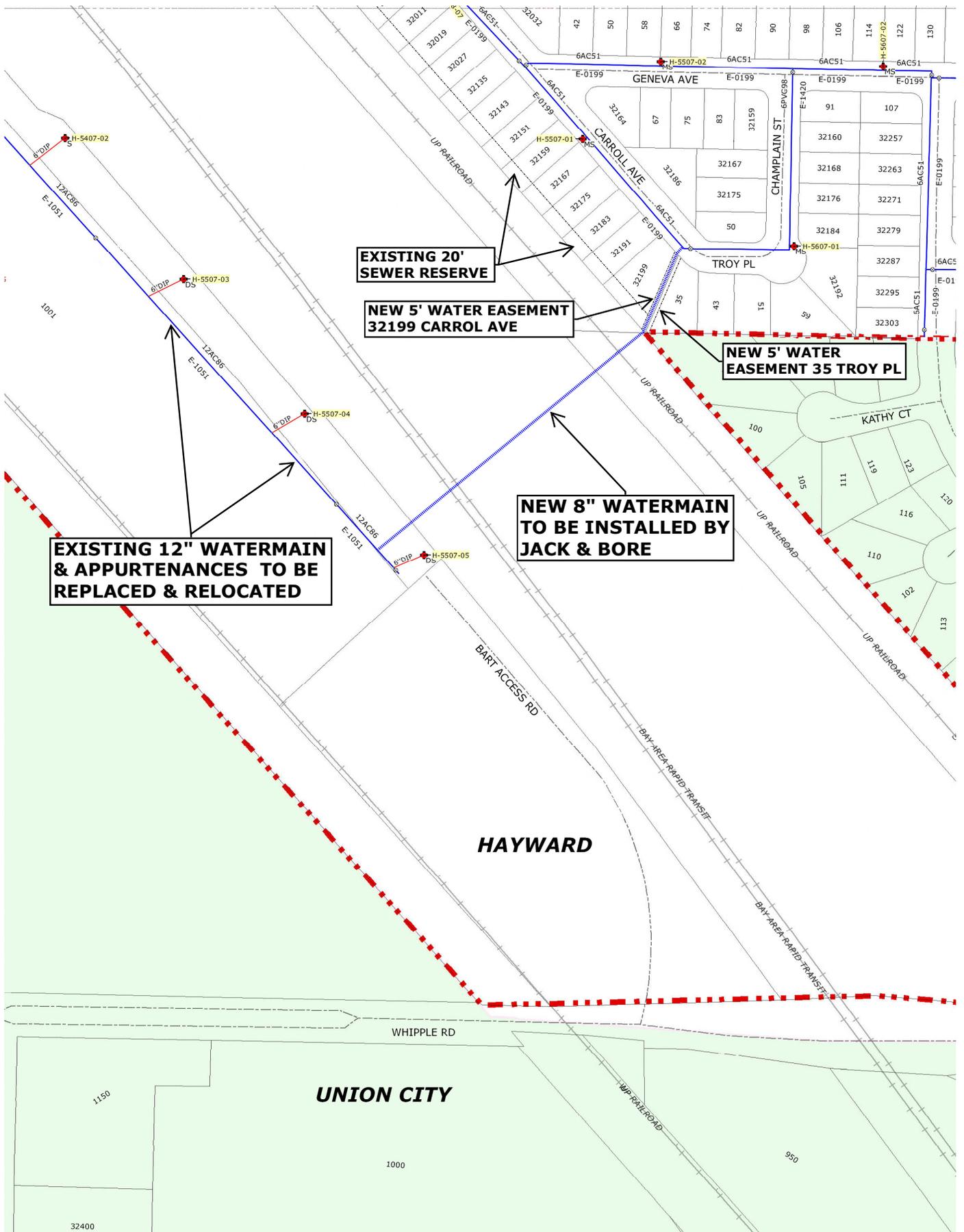
APPROVED AS TO FORM:

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



**PROJECT LOCATION MAP**

**BART Hayward Maintenance Complex Project**



**WATERLINE LOCATION MAP**  
BART Hayward Maintenance Complex

**DATE:** October 14, 2014

**TO:** Mayor and City Council

**FROM:** Director of Utilities & Environmental Services

**SUBJECT:** Recycled Water Project: Authorization for City Manager to Submit an Application for State Water Resources Control Board Revolving Fund Loan

### **RECOMMENDATION**

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to submit an application for a \$6 million State Water Resources Control Board Revolving Fund Loan for the City's Recycled Water Facility project.

### **SUMMARY**

The City is currently engaged in preliminary design and environmental review activities for the construction of a new recycled water facility and distribution system. It is anticipated that this project will be financed through a combination of California Clean Water State Revolving Fund Program (CWSRF) loan and other sources of state and/or federal funding. CWSRF is offering \$800 million in loans at one percent interest for water recycling projects that can be completed within three years of the Governor's January 17 drought declaration. Applications for funding must be submitted by December 2, 2015. In order to initiate the loan application process, the City Council must authorize the City Manager to submit an application of the City's behalf.

### **BACKGROUND**

The City prepared a Recycled Water Feasibility Study in 2007 that provided a conceptual overview of the potential for delivering highly treated wastewater for irrigation and other industrial uses. Based on the results of the Feasibility Study, a Recycled Water Facility Plan (Plan), partially funded by a grant from the State Water Resources Control Board (SWRCB), was completed in 2009 and updated in September 2013.

The Plan identifies potential users for recycled water within the City, presents a conceptual treatment and distribution system, and estimates project costs based on an assessment of prevailing conditions. The original Plan envisioned the City receiving excess recycled water from the Russell City Energy Center, operated by Calpine, which receives secondary treated wastewater from the City and utilizes its own facilities to treat the wastewater to tertiary level in

its cooling process. Staff continues to have preliminary discussions with Calpine representatives to this end; however, for several reasons, including Calpine's concerns about broaching this issue with the California Energy Commission before the facility was fully functional and approved by the Commission, adequate progress has not been made. Rather than delay implementation of the recycled water project, staff proposes to move forward with the necessary upfront work to plan and design the distribution system, and a small City-owned and operated treatment facility and distribution system, concurrent with ongoing discussions between the City and Calpine.

The City project currently consists of installing a new Recycled Water Facility (RWF) located at the City's Water Pollution Control Facility (WPCF), with capacity to produce an estimated 285 acre-feet per year of recycled water (equivalent to nearly ninety-three million gallons per year, or 250,000 gallons per day) and a 1.5-mile distribution system. The project would also include installation of over three miles of lateral pipelines and connections to customers. Upon completion, recycled water would be delivered to approximately twenty customers located to the north and south of the WPCF, primarily for irrigation, with some industrial uses in cooling towers and boilers. The City is pursuing a long-stalled agreement with Shell Oil to purchase an existing abandoned eight-inch diameter pipeline ("pipeline") that could form the backbone of the distribution system.

In June, the City entered into an agreement with SMB Environmental to prepare an Environmental Assessment for the project, pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) for the RWF and pipeline. The environmental assessment is currently being prepared. Staff will return to the City Council for review and consideration of the final environmental assessment report.

## **DISCUSSION**

In March, the State Water Resources Control Board (State Water Board) announced new low-interest financing terms for water recycling projects to help California produce an additional 150,000 acre-feet of recycled water annually, one of several actions Governor Brown called for in his Drought State of Emergency. The State Water Board's Division of Financial Assistance is offering \$800 million in loans with one percent interest, which is less than half the current interest rate of traditional SRF financing, for water recycling projects that can be completed within three years of the Governor's January 17 drought declaration. Applications for funding must be submitted by December 2, 2015.

In order to initiate the application process for this funding, the City Council must adopt a resolution that authorizes the City Manager to sign and file an application for financing with the State Water Board. Embarking on the application process with the State Water Board does not obligate the City in any way to execute the loan. Rather, the authorization to file an application is the first procedural step in beginning the technical, financial, and environmental review processes with the State Water Board. The Council will have an opportunity to review the financing and other aspects of the project and provide direction at several different points over the coming year.

## **ECONOMIC IMPACT**

As mentioned previously, the City's project would provide recycled water for irrigation and cooling purposes for approximately twenty commercial customers near the WPCF. This service will reduce those customers' potable water use and can provide cost savings to the businesses who opt initially or in the future to receive recycled water. Staff will evaluate the cost of treating and delivering recycled water and recommend a rate structure that would provide an incentive for eligible customers to use recycled water. At this time, it is unknown if those rates would cover the entire costs of the project. The benefit this project will provide to non-eligible customers is that with the availability of recycled water delivery, and the subsequent reduction in potable water use, there would be increased water supply. Given the current drought conditions, this factor could be significant in allowing for greater flexibility in the City's water supply.

## **FISCAL IMPACT**

A Capital Improvement Project, titled "Recycled Water Treatment and Distribution Facility," is included in the current Capital Improvement Program's Sewer Improvement Fund. The project budget is \$12 million, with an anticipated \$6 million CWSRF loan amount proposed to finance a portion of the project. The City intends to also pursue federal funding from the US Bureau of Reclamation under Title 16, as well as other grant opportunities for the final design and construction of the RWF. This project will not utilize any General Fund monies and the debt service incurred will be obligated to the Wastewater Enterprise Fund.

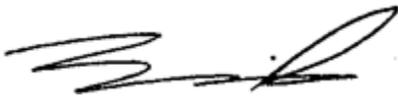
## **NEXT STEPS**

Following the City Council approval, staff will proceed with preparing the general CWSRF application to begin the loan review process with the State Water Board. The next critical project milestone will be completion and adoption of the Initial Study/Mitigated Negative Declaration, anticipated by the end of this year. Staff will then proceed with project design in the spring.

*Prepared by:* Corinne Ferreyra, Administrative Analyst II

*Recommended by:* Alex Ameri, Director of Utilities & Environmental Services

Approved by:



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Fran David, City Manager

Attachments:

Attachment I    Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

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

RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AND FILE  
A STATE WATER RESOURCES CONTROL BOARD STATE REVOLVING  
FUND LOAN FINANCIAL ASSISTANCE APPLICATION FOR CAPITAL  
IMPROVEMENT PROJECT #07507 – RECYCLED WATER TREATMENT  
AND DISTRIBUTION FACILITIES

WHEREAS, the City Council approved the 2015 Capital Improvement Program, which included Project #07507 – Recycled Water Treatment and Distribution Facilities; and

WHEREAS, State Revolving Fund financing is proposed to finance \$6 million of the project cost, with the total project cost of \$12 million; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to sign and file, for and on behalf of the City of Hayward, a Financial Assistance Application for a financing agreement from the State Water Resources Control Board for the planning, design, and construction of the Recycled Water Treatment and Distribution Facilities Project (#7507).

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a financial assistance agreement from the State Water Resources Control Board and any amendments or changes thereto.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is designated to represent the City in carrying out the responsibilities under the financing agreement, including certifying disbursement requests on behalf of the Entity and compliance with applicable state and federal laws.

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:** October 14, 2014

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Consideration of Resolution in Support of Measure L: Hayward Unified School District Prop 39 School Bond Measure

### **RECOMMENDATION**

That Council adopts the attached resolution (Attachment I) signifying the City's support for Measure L: Hayward Unified School District Prop 39 School Bond Measure, which will provide funding to make capital improvements throughout the Hayward Unified School District.

### **SUMMARY**

The Hayward Unified School District (HUSD) is at the heart of our community. However over the last few decades, the facilities that make up HUSD have become increasingly dated, unsafe and unable to adequately prepare the students of today for the challenges of tomorrow. Every child deserves to learn in a safe, modern, and high quality learning environment. Measure L funding will provide \$229 million in financing strictly for improving school safety, learning technology, modernizing classrooms, repairing or replacing crumbling infrastructure, improving energy efficiency, and providing better access for children with special needs. Staff recommends Council adopt the attached resolution to signify support for Measure L and HUSD in their efforts to provide a modern learning environment for the District's nearly 21,000 students.

### **BACKGROUND**

HUSD has educated generations of Hayward's children. Yet over the last few decades, the district's facilities have become antiquated and unable to provide a modern, safe, and accessible learning environment for the District's nearly 21,000 students. In 2007, as a means to address these concerns, the Hayward community approved a \$205 million bond measure, the first of three proposed bond measures aimed at addressing the district's aging facilities, antiquated technology, infrastructure, and safety needs at every school site. Now seven years later, Measure L is the next bond measure, which if approved by 55% of voters on November 4, 2014, will generate \$229 million in financing for much needed HUSD capital improvements.

### **DISCUSSION**

If approved, Measure L will allow the District to issue \$229 million in bonds. This money will go directly towards capital infrastructure. More specifically, funding will improve Harder Elementary School, Cherryland Elementary School, Lorin Eden School Elementary, Winton Middle School, Hayward High School, Mt. Eden High, School and Tennyson High School.

Additional Measure L projects, as listed on their website <http://www.husd.k12.ca.us/measurel>, include:

*SCHOOL SAFETY UPGRADES:* improved access for disabled students, security systems, exterior lighting, fencing, alarms, cameras, traffic flow and parking upgrades, energy and restroom upgrades, and repairs related to installation and use of modern fire safety/emergency communication systems at all schools.

*SPECIFIC FACILITY UPGRADES AT SPECIFIC HUSD SCHOOLS* - Harder, Cherryland, Lorin Eden and Winton Schools, as well as Hayward High, Mount Eden High, and Tennyson High Schools. Projects include: upgrading education technology and science labs, renovation and modernization of aging classrooms, labs, libraries and school facilities, installation of fire safety, security and emergency communications systems, rehabilitation of deteriorated roofs and roof drainage, heating, ventilation and air conditioning systems, plumbing, electrical and mechanical systems, athletic field upgrades for safety, one performing arts center, and land acquisition as needed for construction.

*EDUCATION TECHNOLOGY IMPROVEMENTS:* Technology infrastructure improvements including equipment, software, monitors, audio/video systems, network servers, interface devices, switches and routers, wireless network equipment, firewalls, security equipment, wiring, etc.

*SCHOOL SITE FURNISHINGS & EQUIPMENT:* defined or identified by project type in the District-Wide Facilities Master Plan (“Master Plan”) prepared in October of 2006, and continually amended in order to carry out the District’s mission to ensure quality and equity of HUSD school facilities District-wide.

The scope of specific projects, the order of construction, and their completion is contingent on the availability of needed funds. Passage of Measure L will authorize HUSD to complete the next set of essential school facilities upgrades to continue improving student safety, instruction and learning. Additionally, if approved by voters, Measure L will establish a Citizens Oversight Committee that will monitor bond finances. Measure L includes safeguards that prohibit the use of any funding to be allocated toward operational or personnel costs.

If the measure is approved, safety and emergency preparedness upgrades will be of the highest priority to be addressed. Passing Measure L will help to protect home values. Quality schools are a neighborhood amenity that can positively directly impact the value of homes. Supporting Measure L is aligned with the City Council Priority of “Fiscal Stability” by developing and supporting the necessary elements to provide high-quality educational opportunities for all, throughout the community and improving the academic performance of all k-12 students. By supporting Measure L, City Council is supporting a necessary element to provide high quality educational opportunities, especially for K-12 students.

## **FISCAL IMPACT**

If the measure passes, there will be no fiscal impacts to the City. The typical Hayward homeowner can expect to pay around \$147 a year.

## **NEXT STEPS**

The ballot measure will be voted on by the public in the November 2014 election.

*Prepared by:* John Stefanski, Management Fellow

*Recommended by:* Kelly McAdoo, Assistant City Manager

Approved by:



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Fran David, City Manager

Attachments:

Attachment I      Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

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

RESOLUTION IN SUPPORT OF MEASURE L: THE HAYWARD UNIFIED SCHOOL DISTRICT PROP 39 SCHOOL BOND MEASURE

WHEREAS, the Hayward Unified School District currently educates nearly 21,000 students, and

WHEREAS, the District’s schools have grown old and outdated, unable to provide a modern learning environment for today’s students; and

WHEREAS, the Hayward community last passed funding for similar projects in 2007, which have allowed the schools to improve; and

WHEREAS, Measure L will raise \$229 million in financing strictly for improvements for school safety, learning technology, modernizing classrooms, repairing or replacing crumbling infrastructure, improving energy efficiency, and providing better access for children with special needs; and

WHEREAS, Measure L will continue the progress of past infrastructure upgrades so that every Hayward Unified School District student will be able to learn in safe, modern school facilities; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby express its support for Measure L: Hayward Unified School District Prop 39 School Bond Measure.

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:** October 14, 2014

**TO:** Mayor and City Council

**FROM:** Acting Human Resources Director

**SUBJECT:** Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (“CalPERS”)

### **RECOMMENDATION**

That the City Council adopts the attached Resolution of Intention (Attachment I) to approve an amendment to the City of Hayward’s contract with CalPERS to add Section 20516 “Employee Sharing Cost of Additional Benefits” for new police members.

### **BACKGROUND AND DISCUSSION**

On June 24, 2014, the City Council approved an amendment to the Memorandum of Understanding (“MOU”) between the City of Hayward and the Hayward Police Officers’ Association (HPOA) that saves the City approximately \$10 million dollars over the contract period. Despite no contractual obligation to do so, HPOA agreed to concessions and the restructuring of salary increases and benefit changes that it was otherwise eligible for to help the City address its projected structural gap of approximately \$19.4 million in FY 2014 and an additional \$5 million in FY 2015.

Effective July 1, 2014, the amended MOU provides for new members to pay 15% of reportable wages or 50% of the normal cost rate as required by Government Code Section 7522.30, whichever is greater, to fund their pensions. Therefore, under the revised MOU provisions, new members will pay the current State mandated contribution of 12.25% and an additional 2.25% cost share amount for a total of 15%.

The Resolution under consideration authorizes staff to work with CalPERS to amend the retirement contract to include the changes discussed above.

### **FISCAL IMPACT**

The cost sharing agreement with HPOA is part of the Addendum to and Extension of the HPOA Memorandum of Understanding regarding Cost Savings Measures for FY 2015 through FY 2019 that went into effect July 1, 2014 and achieves a General Fund savings of over \$10 million during

the contract term. In addition, the changes are structural in nature and represent significant ongoing and permanent savings.

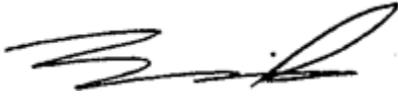
**NEXT STEPS**

If the Council approves the attached Resolution of Intention, Government Code Section 20471 imposes a mandatory twenty (20) day period between the adoption of the Resolution of Intention and the adoption of the final ordinance. The ordinance will be presented to the Council on November 18, 2014.

*Prepared by:* Julie Guimond, Acting Senior Human Resources Analyst

*Recommended by:* Nina S. Collins, Acting Human Resources Director

*Approved by:*



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Fran David, City Manager

Attachments:

Attachment I: Resolution of Intention  
Attachment Ia: Exhibit 1: Contract Amendment

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

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

RESOLUTION AUTHORIZING INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND THE CITY OF HAYWARD

WHEREAS, the Public Employees’ Retirement Law permits the participation of public agencies and their employees in the Public Employees’ Retirement System by the execution of a contract and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedure to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change: To provide Section 20516 (Employees Sharing Additional Cost) of 2.25% for new police members.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that it does hereby give notice of its intention to approve an amendment to the contract between the City of Hayward and the Board of Administration, California Public Employees’ Retirement System (“CalPERS”) a copy of said amendment being attached here to as an “Exhibit 1” and by this reference made a part hereof, and to authorize staff to work with CalPERS to finalize such contract amendments.

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



## EXHIBIT

California  
Public Employees' Retirement System



# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Hayward



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1950, and witnessed August 7, 1950, and as amended effective effective January 16, 1952, January 1, 1956, April 1, 1959, January 1, 1960, November 1, 1962, April 1, 1965, December 1, 1969, July 1, 1973, July 16, 1973, June 1, 1978, April 23, 1979, January 12, 1981, March 9, 1981, July 11, 1986, October 10, 1988, June 21, 1991, June 19, 1992, March 8, 1996, January 1, 2001, April 1, 2001, July 1, 2001, August 26, 2002, May 23, 2008, July 4, 2011 and February 24, 2014 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective February 24, 2014, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
  1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after October 1, 1950 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **PERSONS EMPLOYED AFTER JANUARY 16, 1952 AS CROSSING GUARDS; AND**
  - b. **PERSONS EMPLOYED AFTER JANUARY 30, 1959 AS PART-TIME LIFEGUARDS AND PART-TIME LIBRARY AIDES.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after August 26, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after August 26, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.
  - b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage) for local safety members only.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 21027 (Military Service Credit for Retired Persons).
- g. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
- h. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
- i. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local miscellaneous members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- l. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
- m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for classic local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%.

Section 21362.2 (3% @ 50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for classic local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

n. Section 20516 (Employees Sharing Cost of Additional Benefits):

From and after February 24, 2014, 3.75% for new local fire members.

From and after the effective date of this amendment to contract, 2.25% for new local police members.

10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on June 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
  - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
  - c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF HAYWARD

BY \_\_\_\_\_  
RENEE OSTRANDER, ACTING CHIEF  
CUSTOMER ACCOUNT SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

Customer Account Services Division  
Retirement Account Services Section  
P.O. Box 942709  
Sacramento, CA 94229-2709  
(888) CalPERS (225-7377)

**CERTIFICATION OF COMPLIANCE WITH  
GOVERNMENT CODE SECTION 20516**

I hereby certify that in accordance with Section 20516 of the Government Code, City of Hayward and its new local police employees have agreed in writing to share the additional costs of:

Section 20516 (Employees Sharing Additional Cost) of 2.25% for new local police members.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

**RESOLUTION OF INTENTION  
TO APPROVE AN AMENDMENT TO CONTRACT  
BETWEEN THE  
BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
AND THE  
CITY COUNCIL  
CITY OF HAYWARD**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

Section 20516 (Employees Sharing Additional Cost) of 2.25% for new local police members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

By: \_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date adopted and approved

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

**GOVERNMENT CODE SECTION 20516**

**COST SHARING BALLOT**

For use by the local police members of the City of Hayward to determine their approval or disapproval of the proposal of said agency's governing body to amend its contract with the Board of Administration of the California Public Employees' Retirement System to provide Section 20516 (Employees Sharing Additional Cost).

Government Code Section 20474 requires a secret ballot election by the employees affected whenever the contract is amended to provide a benefit which changes the employees' rate of contribution, pursuant to Government Code Section 20469.

Shall the contribution rate of the designated employees of the Public Agency named above share an additional 2.25% pursuant to Section 20516 (Employees Sharing Additional Cost)?	YES	[ ]
	NO	[ ]

**NOTE: The change in the member contribution rate will be effective as of the effective date of the amendment to the contract.**



**DATE:** October 14, 2014  
**TO:** Mayor and City Council  
**FROM:** Director of Public Works – Engineering & Transportation  
**SUBJECT:** Public Works Contracts - Administrative Change Order

### **INFORMATION ITEM**

Staff will be changing the practice of including the Administrative Change Order (ACO) amount on the Bid documents for the City's Public Works projects advertised for bids. This report is for informational purposes only.

### **BACKGROUND**

When estimating project costs for the City's Public Works projects, it is typical to assign 10% of the construction budget for contingencies that may come up during construction. As a current practice, this amount is shown as a line item on the Bid Sheet with a specific dollar amount that a contractor or bidder adds to their overall bid.

### **DISCUSSION**

The current practice has the convenience of receiving Council authority to expend an amount of money for unforeseen conditions or contingencies so that staff will not have to return and seek additional Council approval every time there is a change order. This allows construction to proceed in a timely fashion without significant delays. However, the current procedure has several demonstrated disadvantages, such as:

1. When a significant amount of money (depending on project size and type, contingencies can vary from 5% to 20% of construction cost) is stated on the Bid Sheet for potential changes, it can be construed as a lack of confidence in the project design, which may result in contractors to likely bid higher for the project.
2. While the stated ACO is reserved for unforeseen conditions or changes, typically, contractors feel entitled to the stated ACO. In practice, they have the tendency to look for faults in the design in order to secure as much of the ACO amount as possible.

Staff research points to only two other agencies (Fremont and Union City) that follow this practice. No other agency in Alameda County, and only a few in the greater Bay Area, discloses to potential bidders the amount of money they intend to spend for contingencies. Caltrans, whose Standard Specifications are adopted and used for city projects, does not follow this practice either. Most public agencies ask their councils or legislative bodies to authorize an amount of money for

contingencies at the award of construction contract, but they do not disclose or advertise the amount to contractors or bidders in advance.

Going forward, staff will be removing the line item for the ACO on the Bid Sheet. Instead, a request for a contingency budget, which will be part of the estimated overall project cost, will be presented for Council's authorization at the time of the award of construction contract.

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