



CITY OF
HAYWARD
HEART OF THE BAY

**SPECIAL JOINT
CITY COUNCIL/HOUSING AUTHORITY
AGENDA
JANUARY 13, 2015**

**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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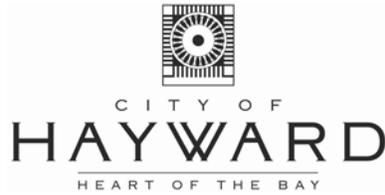
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**SPECIAL JOINT CITY COUNCIL/HOUSING AUTHORITY MEETING
FOR JANUARY 13, 2015
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV**

**CLOSED SESSION
Closed Session Room 2B – 5:00 PM**

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

➤ Performance Evaluation

City Attorney

3. 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; Engineering & Transportation Director Fakhrai; Human Resources Director Collins; Assistant City Attorney Vashi; Community and Media Relations Officer Holland; Jack Hughes, Liebert, Cassidy and Whitmore

Under Negotiation: All Groups

4. Conference with Property Negotiators

Pursuant to Government Code 54956.8

➤ Property Transaction

Under Negotiation: APNs 415-023-0072-00; 415-023-0073-00; 415-023-0074-00; 415-023-0075-00; 415-023-0076-00; 415-023-0077-00; 415-023-0078-00; 415-023-0079-00. Located at 22400, 22412, and 22422 Rockaway Lane, Hayward, CA

Property Negotiators: City Manager David, Assistant City Manager McAdoo, Engineering & Transportation Director Fakhrai, City Attorney Lawson; Assistant City Attorney Brick; Director of Development Services Rizk; Heather Gould, Goldfarb & Lipman

5. Adjourn to Special City Council meeting

**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

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

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

CONSENT

1. Approval of Minutes of the City Council Meeting on December 16, 2014
[Draft Minutes](#)
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-2013-0092 Relating to a Residential Development at 1818 Hill Avenue
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4. East Bay Dischargers Authority: Approval of Fourth Amended Joint Exercise of Powers Agreement
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5. Water Pollution Control Facility (WPCF) Digesters Improvement Project: Authorization for the City Manager to Execute a Professional Services Agreement for Engineering Services
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6. New Highland 1530 Reservoir: Approval of Plans and Specifications and Call for Bids
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 7. Adoption of Resolution Authorizing the City Manager to Negotiate and Execute a Contract for up to \$50,000 with Buchalter-Nemer for Development of Land Use/Zoning Regulations and Related Environmental Impact Analysis for the Hayward Executive Airport Influence Area
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 8. Mission Aqueduct Seismic Improvements Project: Award of Contract and Appropriation of Funds
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Resolution](#)
[Attachment III Project Location Map](#)
[Attachment IV Bid Summary](#)
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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*
-

PUBLIC HEARING

9. Introduction of an Ordinance to Approve an Amendment to the City of Hayward's Contract with the California Public Employees Retirement System (CalPERS) (Report from Human Resources Director Collins)
[Staff Report](#)
[Attachment I](#)
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LEGISLATIVE BUSINESS

10. Massage Therapy Permit Ordinance: New Ordinance Regulating Massage Therapy Establishments Following the Enactment of AB 1147 (Report from City Attorney Lawson, Police Chief Urban and Development Services Director Rizk)
[Staff Report](#)
[Attachment I](#)
[Attachment II](#)



Information items are presented as general information for Council and the public. Should Council wish to take action on any of the “information” items, they will direct the City Manager to bring them back on a future Council agenda as an Action Item.

INFORMATION ITEMS

None

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 REGULAR MEETING – 7:00 PM, Tuesday, January 20, 2015

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

PLEASE TAKE NOTICE *that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*

PLEASE TAKE FURTHER NOTICE *that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

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



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

Please visit us on:



January 13, 2015





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

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

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Mendall, Peixoto, Lamnin, Márquez
MAYOR Halliday
Absent: Council Member Jones

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson announced that the Council met in closed session regarding three items: (1) City Manager's performance evaluation pursuant to Government Code 54957; (2) conference with labor negotiators pursuant to Government Code 54957.6 regarding all groups; and (3) conference with legal counsel pursuant to Government Code 54956.9 regarding two pending litigation cases: a) City of Hayward v. OQ Enterprises Inc. et al., Alameda County Superior Court Case No. HG13692335; b) City of Hayward v. Baryalai Feroz et al., Alameda County Superior Court Case No. HG13692333. City Attorney announced that there was no reportable action for items 1 and 2. With respect to item 3 (a) and (b), the Council unanimously provided direction to staff about the final offers of compensation for the two properties that the City was proposing to take by eminent domain.

PUBLIC COMMENTS

City Manager David and Mayor Halliday presented Maintenance Services Director McGrath with a Certificate of Commendation upon his retirement from the City of Hayward and in honor of his over thirty years of dedicated service to the community of Hayward. Director McGrath thanked the Council for such recognition.

Mr. Gil Hesla, City employee and Service Employees International Union (SEIU) Local 1021 member, presented gifts from SEIU Local 1021 and 21 to the South Hayward Parish for distribution to low-income families.

Ms. Linda Reid, City employee and SEIU Local 1021 member, noted the passing of former Council Member Doris Rodriguez and her support for the unions and presented the gifts in her memory.

Mr. Jim Drake, Hayward resident, spoke about the lack of parking in the City Hall's basement garage and advocated for more police officers to patrol the streets.

Ms. Evelyn Cormier, Hayward resident, urged the Council to consider keeping the proposed library open on Sundays.

Mr. Frank Goulart, Hayward resident, disagreed that Council Member Jones had to recuse himself from discussion on the proposed development at the former Mervyns' site due to a conflict of interest. Mr. Goulart favored reusing the former site for a hotel and convention center and suggested the developer establish a ten percent tax credit toward the affordability of the project.

Mr. Ralph Farias Jr., Hayward resident, shared having received multiple mailings for the same violation and noted it was not a good use of City resources.

CONSENT

Council Member Lamnin requested to remove Consent Item No. 5 for separate vote as she needed to recuse herself from discussion and voting on the item.

1. Approval of Minutes of the City Council Meeting on December 2, 2014

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously with Council Member Jones absent, to approve the minutes of the City Council Meeting on December 2, 2014.

2. Approval of Minutes of the Special City Council Meeting on December 9, 2014

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously with Council Member Jones absent, to approve the minutes of the Special City Council Meeting on December 9, 2014.

3. Revisions to the City's Conflict-of-Interest Code

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated December 16, 2014, was filed.

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

Resolution 14-198, "Resolution Accepting the Additions and Revisions to the Conflict of Interest Code"

4. Approval of Award of Contract to L.N. Curtis and Sons for Self-Contained Breathing Apparatus (SCBA) in the Amount of \$797,013

Staff report submitted by Fire Chief Contreras, dated December 16, 2014, was filed.

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

Resolution 14-199, "Resolution Directing the City Manager to Negotiate and Enter Into an Agreement on Behalf of the City with L.N. Curtis and Sons to Purchase Self-Contained Breathing Apparatus (SCBA)"



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

5. Authorization to Renew a Rental Housing Subsidy Grant Agreement with Abode Services to Provide Rental Assistance to Emancipated Youth through “Project Independence” and to Utilize HOME Funds for that Purpose

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

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

Resolution 14-203, “Resolution Authorizing the Use of HOME Funds for Rental Assistance to Emancipated Youth through Abode Services’ Project Independence and Authorizing the City Manager to Negotiate and Execute the Rental Housing Subsidy Grant Agreement”

6. Adoption of Resolution Extending the Inclusionary Housing Interim Relief Ordinance for a Three-Month Period

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

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

Resolution 14-200, “Resolution Extending to March 31, 2015, the Provisions of an Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions and Finding that the Extension is Exempt from the California Environmental Quality Act (CEQA)”

7. Recycled Water Project Environmental Assessment: Adoption of Initial Study/Mitigated Negative Declaration (IS/MND)

Staff report submitted by Senior Utilities Engineer England, dated December 16, 2014, was filed.

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

Resolution 14-201, “Resolution Adopting an Initial Study/Mitigated Negative Declaration in Accordance with the California Environmental Quality Act for the Recycled Water Project, and Adopting a Mitigation Monitoring and Reporting Program”

8. Adoption of Resolution Approving an Amendment to the City of Hayward Salary Plan for Fiscal Year 2015

Staff report submitted by Human Resources Director Collins, dated December 16, 2014, was filed.

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

Resolution 14-202, “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”

WORK SESSION

9. Economic Development Strategic Plan Catalyst and Opportunity Site Analysis

Staff report submitted by Economic Development Manager Hinkle, dated December 16, 2014, was filed.

City Manager David announced the report. Mr. Dominic Dutra with Dutra Cerro Graden (DCG) presented a synopsis of the findings for three catalyst sites: City Center site; former Mervyn’s site; and South Hayward CalTrans-owned Rt. 238 properties. Mr. Thomas Callahan with PKF Consulting presented findings from the hotel feasibility study.

Discussion ensued among Council members, City staff, Mr. Dutra and Mr. Callahan about the opportunity sites, the hotel study and demand generators for a hotel.

Council members offered the following comments: downtown needed foot traffic during the day and that could be accomplished by office space or a select-service hotel; a more focused session on the South Hayward site and about making it a point of destination would be desirable; incorporating input from downtown merchants and downtown residents in the Downtown Specific Plan would be valuable in order to make decisions; consider more supermarkets and a police station; consider the property at Santa Clara Street and Jackson Street and the Eden Area Regional Occupational Program (ROP) as opportunity sites; and a continued site-specific session would be valuable.



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

10. Measure C Implementation and Funding Plans

Staff report submitted by City Manager David, Police Chief Urban, Assistant City Manager McAdoo, and Director of Finance Vesely, dated December 16, 2014, was filed.

City Manager David provided a synopsis of the staff report and highlighted that the proposed annual cost for the new Fire Station #6 Training Center had the potential to be more costly.

Discussion ensued among Council members and City staff. There was general agreement with the funding priorities for the sales tax measure and how the first year funds might be utilized. Council members offered the following recommendations: consider targeting some social services capital funding to address public safety needs; consider adding bicycle patrols to South Hayward and areas where there is a high crime rate; provide 24/7 police presence in downtown; consider Sunday hours for the new library; provide Council with the final Police staffing study prior to final allocations of Measure C funds for additional police services; consider eliminating the automated telephone information system for the Police Department; provide Council with cost comparisons and financing plans for street projects to preserve flexibility for other needs and save on interest; and reconsider repaying the Fire Station Loan of \$3.2 million from Water Fund and allocating \$500,000 for general technology needs during the first year.

PUBLIC HEARING

11. Proposed construction of sixteen single-family detached homes, eight attached homes and common areas on a 2.26-acre site at 1818 Hill Avenue, requiring Adoption of a Resolution and Introduction of an Ordinance for a General Plan Amendment from Low Density Residential to Medium Density Residential, Zone Change from Single Family Residential to Planned Development, Vesting Tentative Tract Map 8120, and a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program. Sunny Tong, Westlake Urban, LLC (Applicant/Owner)

Staff report submitted by Associate Planner Ajello, dated December 16, 2014, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report. Associate Planner Ajello indicated that Condition of Approval No. 45 and No. 47 were duplicative and one of them was going to be eliminated. Project applicant, Ms. Gaye Quinn, with Westlake Urban, LLC, presented the proposal. Mr. Mike Pyatok, project architect, was in attendance at the meeting.

Discussion ensued among Council members, City staff, and Ms. Quinn about the staff report related to parking and lighting requirements for the proposed project.

There being no public comment Mayor Halliday opened and closed the public hearing at 10:24 p.m.

Council Member Mendall offered a motion per staff recommendation with one amendment to Condition of Approval 111(j) by adding language that the Homeowner's Association (HOA) be required to inspect the garages periodically and that homeowners be required to open the garages to confirm that garages were being used for parking. Mr. Mendall added that such language could be added as a standard condition for future Conditions of Approval and Covenants, Conditions and Restrictions (CC&Rs) and asked City staff to draft the appropriate language. Council Member Zermeño seconded the motion.

Council Member Márquez supported the motion and the amendment.

Council Member Lamnin concurred with the motion and spoke positively of the small house concept, community room, edible landscaping, and solar features. Ms. Lamnin suggested that staff consider language that would control the number of renters so that homeowners are not outnumbered by renters.

Mayor Halliday expressed overall support for the concept, community rooms, edible landscaping, open space, and noted that, while it was fine, the limited parking ought to be included in the development's marketing plan. Mayor Halliday was concerned about the amendment as it seemed intrusive for homeowners and offered a revised language that would require the HOA to enforce parking provisions with inspections as deemed necessary.

Council Members Mendall and Zermeño were amenable to the revised motion.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried with Council Member Jones absent with an amendment to Condition of Approval 111 (j), to read as follows: “The garage of each unit shall be maintained for off-street parking of two vehicles and shall not be converted to living or storage areas. ***The HOA shall conduct at least semi-annual inspections to confirm that all residents are using their garages for parking their cars and not for storage. Residents shall make garages available for such inspections, as appropriate.*** An automatic garage door opening mechanism shall be provided for all garage doors.”

Resolution 14-204, “Resolution Adopting the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program and Approving General Plan Amendment Application PL-2013-0091, Zone Change Application PL-2013-0092 and Vesting Tentative Tract Map Application PL-2013-0361 Pertaining to the Development of Sixteen Attached and Eight Detached Single-Family Homes at 1818 Hill Avenue in the Upper B Street Neighborhood”



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

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-2013-0092 Relating to a Residential Development at 1818 Hill Avenue”

LEGISLATIVE BUSINESS

12. FY 2014 Preliminary Year-End General Fund Review

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

Director of Finance Vesely provided a synopsis of the staff report.

Discussion ensued among Council members and City staff about the Annual Required Contribution (ARC), the general fund forecast and the gap between revenues and expenditures, and the Alameda County Assessor’s Office and delinquent tax collection. Council Member Márquez suggested that staff look into disbursing applicable expenditure from the General Fund to the Enterprise Fund.

Mayor Halliday noted the City’s financial picture could have been worse if it were not for the employees’ concessions and acknowledged the importance of keeping the City solvent and controlling expenditures.

INFORMATION ITEMS

There were none.

CITY MANAGER’S COMMENTS

There were none.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño and Mayor Halliday wished everyone a Happy Holiday season.

Mayor Halliday announced that the next Council meeting would be on January 13, 2015.

City Manager David announced that the City would close non-essential services from December 24, 2014 through January 1, 2015.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 11:04 p.m., in memory of Mr. Joe Cabrera, Mr. Michael M. Manick, Mr. John F. Guinee, and Ms. Doris Rodriquez.

Mr. Joe Cabrera was a retired Facilities Serviceworker of the City of Hayward who served from 1990 through 2006 and did not miss a day of work during his tenure.

Mr. Michael M. Manick began his career in law enforcement as a Police Officer in the City of Tiburon in 1967 and served as Chief of Police in Tiburon, Arcata, Union City and Hayward. He retired as Chief of Police from the City of Hayward in 1989.

Mr. John F. Guinee, lived in Hayward for 59 years, was an active member of the Lions Club and the Chamber of Commerce; was devoted to the Hayward Emergency Shelter Program, Hayward Centennial Committee, Mended Hearts Group, and the Salvation Army; earned the 2007 City of Hayward Lifetime Award; was instrumental in forming the Hayward Attorney's Referral Service and served as president of the Alameda County Bar Association.

Ms. Doris Rodriquez, served as Hayward's City Council Member from 1991 to 2004 and from 2006 to 2008; served on the Citizens Advisory Commission from 1977 to 1984 and on the Planning Commission from 1984 to 1991; helped build a library for Southgate Elementary School in the 1960s; served as the president of the Hayward Arts Council; and was a board member of the St. Rose Hospital Foundation. City Manager David noted that former Council Member Rodriquez was a mentor to her and City staff relied on her for advice; her death was a loss to the City of Hayward.

Mayor Halliday asked City staff to work with the four families and find suitable places to plant trees in memory of Joe Cabrera, Michael M. Manick, John F. Guinee and Doris Rodriquez.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: January 13, 2015
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: 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-2013-0092 Relating to a Residential Development at 1818 Hill Avenue

RECOMMENDATION

That the City Council adopts the Ordinance introduced on December 16, 2014.

BACKGROUND

The Ordinance was introduced by Council Member Mendall at the December 16, 2014 meeting of the City Council with the following vote:

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

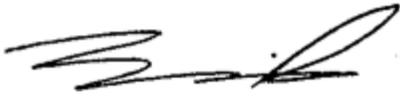
The motion was carried with an amendment to Condition of Approval 111 (j) to read as follows:

“The garage of each unit shall be maintained for off-street parking of two vehicles and shall not be converted to living or storage areas. The HOA shall conduct at least semi-annual inspections to confirm that all residents are using their garages for parking their cars and not for storage. Residents shall make garages available for such inspections, as appropriate. An automatic garage door opening mechanism shall be provided for all garage doors.”

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, January 10, 2015. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:

Attachment I Summary of Ordinance Published on 1/10/15

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

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE HAYWARD
MUNICIPAL CODE BY REZONING CERTAIN PROPERTY IN CONNECTION WITH
ZONE CHANGE APPLICATION NO. PL-2013-0092 RELATING TO A RESIDENTIAL
DEVELOPMENT AT 1818 HILL AVENUE

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

Section 1. Rezoning.

Article 1 of Chapter 10 of the Hayward Municipal Code is hereby amended to rezone the property located at 1818 Hill Avenue (APNs: 416-0150-092-00 and 416-0150-093-00) from Single-Family Residential (RS) to Planned Development (PD) District.

Section 2. Severance.

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

Section 3. Effective Date.

This ordinance shall become effective immediately upon adoption.

Introduced at a regular meeting of the Hayward City Council held December 16, 2014, the above-entitled Ordinance was introduced by Council Member Mendall.

This Ordinance will be considered for adoption at a special meeting of the Hayward City Council, to be held on January 13, 2015, 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: January 10, 2015
Miriam Lens, City Clerk
City of Hayward

DATE: January 13, 2014
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Resignation of Sarahi Bautista from the Hayward Youth Commission and Appointment of Vicky Tran to Fulfill Bautista's Unexpired Term

RECOMMENDATION

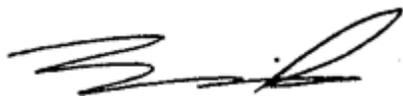
That the City Council accepts the resignation of Ms. Sarahi Bautista from the Hayward Youth Commission and adopts a resolution appointing Ms. Vicky Tran to fulfill Ms. Bautista's unexpired term.

BACKGROUND

Ms. Bautista was appointed to the Hayward Youth Commission on June 23, 2009. Her resignation became effective immediately per the attached resignation letter (Attachment II). Ms. Tran will be selected from the Hayward Youth Commission Alternate List to fill Ms. Bautista's term, which will expire June 30, 2015.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution
Attachment II	Resignation Letter

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE RESIGNATION OF SARAHI BAUTISTA FROM THE HAYWARD YOUTH COMMISSION AND APPOINTING VICKY TRAN TO FULFILL SARAHI BAUTISTA’S TERM

WHEREAS, Ms. Sarahi Bautista was appointed to the Hayward Youth Commission on June 23, 2009,

WHEREAS, the Council hereby accepts the resignations of Sarahi Bautista from the Hayward Youth Commission; and commends her for her civic service to the City,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Ms. Vicky Tran will be selected from the Hayward Youth Commission Alternate List to fill Ms. Sarahi Bautista’s term, which will expire June 30, 2015.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015.

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

December 22, 2014

To whom it may concern,

Through this letter I would like to notify my resignation as a commissioner and vice chair of the Hayward Youth Commission, effective on December 15, 2014. The motive for such sensible decision has been due to my desire to continue pursuing my higher education, which at this close stage of transferring to a 4-year university, has become more time and energy demanding. Truly, this has been a hard decision for me to take, but I leave with a happy heart from all my peers, advisers, and city staff that have respected my decision and have supported me all along. It has been my pleasure and most absolute privilege to have served in the commission since the fall of 2009. I've learned a lot through it, and surely do I also know that this experience will continue to enrich my life. Once again, I thank all with a full heart.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Bautista', with a long horizontal flourish extending to the left.

Sarahi Bautista

DATE: January 13, 2015

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: East Bay Dischargers Authority: Approval of Fourth Amended Joint Exercise of Powers Agreement

RECOMMENDATION

That Council adopts the attached resolution approving the fourth amended Joint Exercise of Powers Agreement.

BACKGROUND

The East Bay Dischargers Authority is a Joint Powers Authority (“JPA”) of which Hayward is currently a member. The JPA was formed in 1974 by a “Joint Exercise of Powers Agreement” (“JPA Agreement”) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District. The JPA currently provides a transport system and outfall to collect effluent from six (6) wastewater treatment plants in the East Bay, including two non-member agencies. East Bay Dischargers Authority treats wastewater to remove chlorine and any associated toxicity and provides sufficient dilution so that water discharged into the San Francisco Bay presents no harm to water quality.

The JPA Agreement has been amended three times since its creation in 1974. Amendments were approved in 1978, 1986, and 2007. Recently, the JPA Commission, consisting of one representative appointed by each member agency, recognized the need to once again update and revise the JPA Agreement.

DISCUSSION

The JPA Commission determined that the most efficient way to revise the JPA Agreement would be to initiate a two-step process. First, the JPA would make administrative changes to ensure that all policies are up to date and accurately reflect state law. Once the first phase is completed, the JPA will utilize the revised documents as a starting point for negotiations among all the JPA agencies to determine how to best structure the JPA in the future and what substantive changes might be necessary to accomplish these goals.

The proposed changes in the first phase are summarized as follows:

1. Deletion of outdated references to Phase I Project Facilities, Reclamation/Reuse Studies, and the Water Quality Management Program Phase I Project Report.
2. Update division of responsibility pertaining to the roles of controller, auditor, and treasurer.
3. Update minor provisions to ensure conformity with current requirements of State law.
4. Inclusion of information pertaining to the confidentiality of closed sessions.
5. Additional editorial and conforming changes.

The revisions in their entirety are available in the City Clerk's Office. In order for the JPA to be amended, it must be approved by each of the Authority's member agencies. Approval of the attached resolution will authorize the City Manager to sign the amended JPA.

ECONOMIC AND FISCAL IMPACT

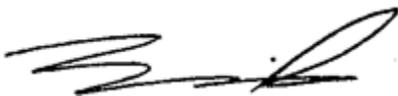
There are no economic or fiscal impacts associated with the requested action.

NEXT STEPS

Assuming Council approval, staff will execute the necessary documents. The City will remain fully engaged in future discussions regarding the JPA and staff will continue to brief the City Council on the possible impacts, if any, of these negotiations on the City of Hayward. Any future amendments to the JPA Agreement would return to Council for approval.

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-_____

Introduced by Council Member _____

A RESOLUTION APPROVING THE FOURTH AMENDED
JOINT EXERCISE OF POWERS AGREEMENT OF THE EAST
BAY DISCHARGERS AUTHORITY; AND AUTHORIZING
THE CITY MANAGER TO EXECUTE THE FOURTH
AMENDED JOINT EXERCISE OF POWERS AGREEMENT

WHEREAS, the East Bay Dischargers Authority is a Joint Powers Authority (the “JPA”) of which the City of Hayward is currently a member; and

WHEREAS, the JPA was formed in 1974 by a “Joint Exercise of Powers Agreement” (the “JPA Agreement”) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Union Sanitary District, and Castro Valley Sanitary District; and

WHEREAS, the JPA provides a transport system and outfall to collect effluent from six (6) wastewater treatment plants in the East Bay and treats the collected wastewater to remove chlorine and any associated toxicity and provides sufficient dilution so that water discharged into the San Francisco Bay presents no harm to water quality; and

WHEREAS, the JPA Agreement has been amended three times, in 1978, 1986, and 2007; and

WHEREAS, the JPA recognized the need to update and revise the JPA Agreement to ensure that it is current with all agency policies and state law and to eliminate historical references that are no longer relevant; and

WHEREAS, the JPA Commission determined that the most efficient way to revise the JPA Agreement would be to initiate a two-step process during which the JPA would first make administrative changes to ensure that the JPA policies are up to date, and then utilize the revised documents as a starting point for negotiations among all the JPA agencies to determine how to best structure the JPA in the future; and

WHEREAS, the partner cities and special districts and their counsel have had the opportunity to review and contribute to the phase one revisions; and

WHEREAS, the City of Hayward desires to execute the revised Fourth Amended JPA, now titled the East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hayward hereby approves the East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to execute the East Bay Dischargers Authority Fourth Amended Joint Exercise of Powers Agreement for and on behalf of the City of Hayward, subject to approval as to form by City Attorney, and to take any other action consistent with the intent of this Resolution.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

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: January 13, 2015

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: Water Pollution Control Facility (WPCF) Digesters Improvement Project:
Authorization for the City Manager to Execute a Professional Services Agreement
for Engineering Services

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Manager to execute a professional services agreement with West Yost Associates for engineering services for the WPCF Digesters Improvement Project in an amount not-to-exceed \$675,000.

BACKGROUND

The City's WPCF provides wastewater treatment for Hayward's residential and business communities. The facility treats an annual average of 12 million gallons per day (MGD) and meets current requirements to discharge treated effluent to the deep waters of the San Francisco Bay. Like most wastewater treatment agencies, Hayward utilizes a facilities' Master Plan to identify short-term and long-term facility needs for reliable and efficient operation, and to develop projects and make operational adjustments to meet current and future system demands. The City recently completed a comprehensive update of the WPCF's Master Plan in October 2014. The Master Plan contains recommendations to rehabilitate or replace old systems that have reached the end of their useful life, as well as recommendations for new systems to expand treatment capabilities and/or enhance treatment reliability and improve plant performance, as needed, to address future regulatory requirements. The first project the City plans to implement as a result of the updated Master Plan is to address needed improvements to the WPCF's digesters and waste gas burner system.

The City operates three anaerobic digesters ranging in volume from 0.9 to 1.4 million gallons. The Master Plan identified needed improvements to the bio-gas collection and conveyance systems, including new digester gas safety equipment (dual pressure relief valves, flame arresters, pressure measurement, gas flow measurement, and sediment/drip traps installed for each digester dome). These improvements address aged facilities in need of replacement, improved safety and reliability, and process reliability improvements (gas flow measurement and pressure measurement) to safely manage and better control the gas flow to the City's new cogeneration engine.

The WPCF currently operates two digester waste gas burners in the wastewater treatment plant. The function of the waste gas burners is to safely burn bio-gas primarily during the times that the City's co-generation system, which uses the bio-gas during normal operation, may be out of service for maintenance or repairs. Burning the gas greatly reduces Greenhouse Gas (GHG) emission into the environment and is a WPCF air permit requirement. In January 2014, The City retained Whitley Burchett to perform an evaluation of the digester gas burner condition and flaring capacity in anticipation of the plant producing more gas due to the recently commissioned Fats, Oils, and Grease (FOG) receiving station. The evaluation reported that the inlet piping to the flares is undersized for the amount of gas production anticipated. Without sufficient flaring capacity, the plant risks having the digester pressure relief valves open on high gas pressure causing methane gas to be released directly to the atmosphere, an undesirable condition due to methane being a precursor to greenhouse gases. Construction of a new flare is included in this project.

The plant currently feeds thickened sludge from the Gravity Belt Thickener (GBT) process, scum from the vacuators and clarifiers, and FOG to the digesters. The Master Plan identified the need for a blending tank for combining and mixing the sludge, scum, and FOG upstream of the digesters. A blending tank is necessary to provide more uniform feed to each digester in order to better optimize the gas production in each digester. In addition to the blending tank, digester feed valve automation will allow staff to step feed blended sludge on an operator adjustable timer control basis to enhance the process reliability.

The existing digester heating and mixing facilities are aged and in need of improvement. Staff has identified needed reliability and safety upgrades, including redundant pumping and piping improvements, better access around equipment, improved lighting and ventilation, and repair of concrete surfaces.

DISCUSSION

Staff issued requests for proposal to three consulting firms with experience and knowledge in digesters and rehabilitation projects of the kind needed at the WPCF. Staff received three proposals on October 31. After review of the proposals, staff has determined West Yost Associates to be the best qualified firm to perform the required engineering services based on its approach, innovative ideas, experience of the project manager on similar projects, qualifications of the team, and reasonableness of level of effort and rates. The firm focuses on water and wastewater related projects and provides a team uniquely qualified in digester rehabilitation type projects, including work performed for the City of Davis, the City of Vacaville, the City of Millbrae, and other public agencies. Staff contacted other agencies for which West Yost Associates has performed digester related engineering services and has received favorable comments.

West Yost Associates' initial proposal cost was one of the lowest among the three proposals received. Staff has negotiated a detailed scope of work and a proposal fee of \$605,300 with West Yost Associates. There are some inherent uncertainties in the final design scope of work and engineering services during construction that may result based on decisions made during the preliminary design phase and possible change in final design scope of work. This is especially the case given the fact that

all of the components of this project relate to working around existing old systems and units and there is some potential for unexpected conditions to occur. Staff proposes a not-to-exceed amount of \$675,000 to allow funding for possible changes in the final design scope and/or for changes to engineering services during construction.

ECONOMIC AND FISCAL IMPACT

The total cost of the Digester Improvements Project is estimated to be \$3,475,000, including optional services. The FY2014 Capital Improvement Program (CIP) includes funding for the projects described in both the Sewer Capital Improvement Fund (Fund 612) and the Sewer Replacement Fund (Fund 611). The projects are described in the CIP as follows:

Fund	Project No.	Description	Budget
612	07564	Digester Gas Flare Project	\$ 425,000
612	07565	Digester Piping and Gas Metering Optimization	630,000
612	07566	Digester Sludge Mixing Tank	1,465,000
611	07643	Digester Feed Valve Automation	75,000
611	NEW	Heating & Mixing Buildings Improvements	540,000
		Total	<u>\$3,135,000</u>

The breakdown for project costs is as follows:

<u>Total Project Cost</u>	
Design (Consultant)	\$ 675,000
Design Administration – City Staff	50,000
Construction Contract (Estimated)	2,720,000
Inspection and Testing (Estimated)	<u>30,000</u>
Total	\$3,475,000

The current estimated cost is about 11 % higher than the amount included in the CIP. Staff will request funds to augmenting the project budget as part of next year’s Capital Improvement Program.

SCHEDULE

The following schedule has been developed for this project:

City Council Approval:	January 13, 2015
Notice to Proceed:	January 20, 2015
Completion of 100 % Plans and Specifications	November 2015
Construction Completion	December 2016

NEXT STEPS

Following Council approval, staff will finalize a professional services agreement with West Yost Associates and a Notice to Proceed will be sent out accordingly. Staff will return to the City Council for approval of the final design plans and specifications and call for bids.

Prepared by: Suzan England, Senior Utilities Engineer

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

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF HAYWARD AND WEST YOST ASSOCIATES, FOR PROFESSIONAL SERVICES FOR DESIGN SERVICES FOR THE DIGESTER IMPROVEMENTS PROJECT NO. 07566 IN AN AMOUNT NOT TO EXCEED \$675,000.

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute, on behalf of the City of Hayward, a professional services agreement with West Yost Associates for design services for the Digester Improvements Project, Project No. 07566 in an amount not to exceed \$675,000, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

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: January 13, 2015
TO: Mayor and City Council
FROM: Director of Utilities & Environmental Services
SUBJECT: New Highland 1530 Reservoir: Approval of Plans and Specifications and Call for Bids

RECOMMENDATION

That the City Council adopts the attached resolution to approve the plans and specifications for the New Highland 1530 Reservoir Project and calls for bids to be received on February 17, 2015.

BACKGROUND

The vesting tentative tract map (Vesting Tentative Map No. 5354) for Stonebrae Country Club was approved by the City Council in September 2002. The first Final Map Tract 5354 for Village A was approved on April 19, 2005 and recorded on July 29, 2005. The second Final Map Tract 7736 for Village B was approved on November 14, 2006 and recorded on May 24, 2007. Condition of Approval No. 171, in its original form, required the developer to construct two 2.85 million gallon (MG) water storage reservoirs in the water system's 1530 elevation zone. The developer constructed the first tank, and the City now owns, operates and maintains it.

The Conditions of Approval required the developer to construct the second tank prior to issuance of building permits for more than 365 single-family residences. On April 5, 2011, City Council approved a reduction in the size of the second tank to approximately 1.2 MG, due to demonstrated better-than-expected water conservation results, improved technology for metering irrigation flow, and less acreage for golf course and common area landscaping. The combined total storage of 4.05 MG between the two tanks will fully meet the projected water demand for the development. On January 15, 2014, the City entered into an agreement with Stonebrae L.P. for design and construction of the new water storage reservoir under the City's auspices and for reimbursement of all City costs by Stonebrae L.P.

DISCUSSION

In order to accommodate and provide adequate capacity for the new development in the upper zone of Highland 1530, the proposed new reservoir will be constructed of a 1.2 MG welded steel tank in compliance with the latest seismic standards, and with one-foot freeboard to accommodate the sloshing forces. The project also includes the installation of valve vault and accompanying appurtenances, modifying existing electrical and mechanical equipment, and site improvement with modification of drainage systems and paving area.

With the completion of the new water tank at Highland 1530, reservoir level and equipment can be monitored and controlled remotely from the Utilities Center through the City’s Supervisory Control and Data Acquisition (SCADA) system. A qualified consultant will be retained to program the SCADA system as needed.

ENVIRONMENTAL REVIEW

The City certified a Supplemental Environmental Impact Report (SEIR) for the Stonebrae Development project in 1998 and thereafter adopted an Addendum to the SEIR when it approved the Precise Development Plan and Vesting Tentative Tract Map in 2002. Staff has reviewed the requested amendment to Condition of Approval 171 and determined that it is in substantial compliance with the existing condition, as amended in April 2011, and does not present any new or increased environmental impacts not previously analyzed; thus, no additional environmental review under the California Environmental Quality Act (CEQA) Guidelines is required. Therefore, the SEIR with the Addendum is sufficient from a CEQA perspective for the City Council to adopt the attached resolution approving this phase of the project.

ECONOMIC IMPACT

There are no economic impacts to Hayward customers as a result of the recommended change in project administration and management. The upfront costs of design and construction will be paid from reserves in the Water System Capital Improvement Fund, and, in accordance with the terms of the agreement mentioned in the second paragraph under Background in this report, the developer will reimburse the City for all costs, with interest, as new homes are constructed and connected to the water system. To date, the City has received the reimbursement amount of \$413,050 (50 units).

PUBLIC CONTACT

City staff has worked closely with representatives of Stonebrae L.P. through all elements of this project. There is no material impact on other Hayward residents and businesses.

FISCAL IMPACT

The estimated project costs are as follows:

Professional Engineering Services – Consultant	\$ 120,000
Project Administration – City Staff	\$ 70,000
Testing and Inspection Services	\$ 50,000
Construction of New Reservoir	<u>\$ 1,650,000</u>
Total:	\$ 1,890,000

The current total estimated cost to design and construct the water reservoir is \$1.89 million. Sufficient funds are available in the Water System Improvement Fund. A total of \$1,890,000 has been appropriated for this project in the Water System Capital Improvement Fund in the FY 2014-15 Program. As mentioned previously, Stonebrae L.P. will be responsible for reimbursing the City for all costs related to this project.

SCHEDULE

The estimated schedule for this project is summarized as follows:

Award Construction Contract	March 17, 2015
Begin Construction	May 2015
Construction Completion	November 2015

Prepared by: Henry Louie, Senior Utilities Engineer

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

Approved by:



Fran David, City Manager

Attachments: Attachment I – Resolution
 Attachment II – Project Location Map

HAYWARD CITY COUNCIL

RESOLUTION NO.15-_____

Introduced by Council Member _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE NEW HIGHLAND 1530 RESERVOIR PROJECT AND CALL FOR BIDS, PROJECT NO. 07184

WHEREAS, the City Council certified the Supplemental Environmental Impact Report (SEIR) for the project in 1998, and thereafter adopted an Addendum to the SEIR when it approved the Precise Development Plan and Vesting Tentative Map in 2002; and

WHEREAS, the City Council, under Resolution No. 06-137, on November 14, 2006, approved Final Map Tract 7736, which primarily encompasses Village B of the Stonebrae Country Club development; and

WHEREAS, Condition of Approval No. 171 for Final Map Tract 7736, as amended by the City Council on April 5, 2011 under Resolution No. 11-030, requires a second 1.2 million gallon water storage reservoir to be constructed at the Highland 1530 Zone before the City issues building permits for more than 365 single-family homes; and

WHEREAS, Stonebrae L.P. has requested an amendment to Condition of Approval 171 of Final Map Tract 7736 to allow the City to manage the design and construction of the second water storage reservoir, with all cost to be paid by Stonebrae L.P.; and

WHEREAS, staff has reviewed Stonebrae L.P.'s request and determined that the amendment of Condition No. 171 as it related to the entity designing and constructing the second water storage reservoir does not present any new or increased environmental impact not previously analyzed in the SEIR and the Addendum to the SEIR; and

WHEREAS, Stonebrae L.P. and the City have agreed upon a reimbursement method whereby Stonebrae shall pay to the City a fee for each new single-family residence prior to issuance of building permit; and

WHEREAS, City and Stonebrae L.P. entered an agreement that the City will be reimbursed for all costs associated with the design and construction of the second water storage reservoir.

WHEREAS, those certain plans and specifications for the New Highland 1530 Reservoir, Project No. 07184, on file in the office of the City Clerk, are hereby adopted as the plans and specifications for the project;

WHEREAS, the City Clerk is hereby directed to cause a notice calling for bids for the required work and material to be made in the form and manner provided by law;

WHEREAS, sealed bids therefor will be received by the City Clerk's office at City Hall, 777 B Street, Hayward, California 94541, up to the hour of 2:00 p.m. on Tuesday, February 17, 2015, and immediately thereafter publicly opened and declared by the City Clerk in Conference Room 4D, City Hall, Hayward, California.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will consider a report on the bids at a regular meeting following the aforesaid opening and declaration of same.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

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

DATE: January 13, 2015

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Adoption of resolution authorizing the City Manager to negotiate and execute a contract for up to \$50,000 with Buchalter-Nemer for development of land use/zoning regulations and related environmental impact analysis for the Hayward Executive Airport influence area

RECOMMENDATION

That the City Council adopts the attached resolution.

SUMMARY

The work associated with this contract would provide clarity regarding land use and zoning regulations within the Hayward Executive Airport influence area, which will help streamline our development review process, particularly related to future growth at Southland Mall. The objectives of the work to be completed via this contract are:

- Ensure Hayward’s development regulations are consistent with Federal and State laws and Caltrans’ Division of Aeronautics Handbook;
- Ensure Hayward’s ability to secure FAA grants/funding for the airport are not undermined or reduced;
- Ensure the most flexibility exists for future development at our regional mall, Southland Mall, in compliance with Federal and State regulations; and
- Satisfy the policies and implementation programs of our General Plan.

As explained in this report, there is no longer a need to refer projects to the ALUC (and take any associated overrule action), but development in the airport influence area must comply with state and federal regulations. Such requirement is the justification for this work.

BACKGROUND

Past Actions – After several letters and resolutions opposing aspects of the draft Hayward Executive Airport Land Use Compatibility Plan (ALUCP), a new ALUCP was adopted by the Alameda County Airport Land Use Commission (ALUC) on July 18, 2012. The City Council and Planning Commission had expressed concerns in 2011 and 2012 regarding how the ALUCP could negatively

affect economic development at Southland Mall, which is summarized in a [February 26, 2013, City Council work session staff report](#).

At that work session, Council directed staff to develop findings for an overrule action concerning Section 2.7.5.7 of the ALUCP and incorporate compliance provisions into the 2014 General Plan Update in order to protect redevelopment and economic growth at Southland Mall and address public safety measures. ALUCP Section 2.7.5.7 – Special Conditions, subsection (a) Infill, (b) Nonconforming Uses, and (e) Parcels Lying within Two or More Compatibility Zones, contained provisions that could limit redevelopment and economic growth at Southland Mall, and also had the potential to delay the development review process for certain projects in the Airport Influence Area.

On May 28, 2013, upon recommendation by the Planning Commission, the City Council adopted with findings a resolution of intention (Resolution 13-075) to overrule Section 2.7.5.7 of the ALUCP. The resolution with findings was forwarded to the ALUC and to the State Division of Aeronautics. Both entities provided extensive responses to findings and staff subsequently determined a more comprehensive approach was warranted, including a possible overrule action on the entire ALUCP if the ALUC determined the General Plan was inconsistent with the ALUCP. Also, staff planned to incorporate relevant provisions of state and federal airport regulations through implementation of policies in the Hayward General Plan. Therefore, staff never brought back revised findings to Council for final overrule action regarding ALUCP Section 2.7.5.7.

Current Status- Public Utilities Code (PUC) Section 21676(b) states that prior to the amendment of a general plan, qualifying cities must refer the plan to the applicable airport land use commission for a determination of consistency with the airport land use compatibility plan. Hayward satisfied that requirement by sending a draft of its new general plan to the ALUC in January of 2014. Although the City staff received some comments from ALUC staff in March of 2014, no notice of determination of inconsistency of the Hayward General Plan with the ALUCP was or has ever been received from the ALUC. Under PUC Section 21676(d), the ALUC had 60 days from the January referral to make a determination regarding consistency. In the absence of a determination of inconsistency, the General Plan was automatically deemed consistent. Therefore, by operation of law, there is no longer a need to refer projects to the ALUC if they are in the Hayward Airport influence area.

DISCUSSION

General Plan Policies - The 2014 General Plan contains the following relevant policies, which provides the framework for developing implementing regulations:

Mobility Chapter Policies:

M-10.2 Airport Land Use Compatibility

The City shall ensure uses surrounding the Hayward Executive Airport are compatible with existing and planned airport operations and comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of

written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

Hazards Chapter Policies:

HAZ-7.1 Land Use Safety Compatibility and Airspace Protection Criteria

The City shall consider all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection when evaluating development applications within the Airport Influence Area of the Hayward Executive Airport.

HAZ-7.2 Airport Land Use Compatibility Plan

The City shall require all development projects within the Airport Influence Area designated in the Airport Land Use Compatibility Plan of the Hayward Executive Airport to comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

HAZ-8.14 Airport Noise

The City shall monitor noise impacts from aircraft operations at the Hayward Executive Airport and maintain and implement the noise abatement policies and procedures outlined in the Airport Noise Ordinance and Airport Land Use Compatibility Plan.

HAZ-8.15 Airport Noise Evaluation and Mitigation

The City shall require project applicants to evaluate potential airport noise impacts if the project is located within the 60 dB CNEL contour line of the Hayward Executive Airport or Oakland International Airport (as mapped in the Airport Land Use Compatibility Plan). All projects shall be required to mitigate impacts to comply with the interior and exterior noise standards established by the Airport Land Use Compatibility Plan.

HAZ-8.16 Airport Disclosure Notices

The City shall require that all new development within an airport-defined over-flight zone provide deed notices disclosing airport over-flights and noise upon transfer of title to future residents and property owners.

On November 7, 2014, the Development Services Department solicited proposals seeking Consultants to develop airport-related regulations and standards for the Hayward Executive Airport's Influence Area. A proposal was submitted by Barbara Lichman of Buchalter- Nemer to provide such services, including legal counsel necessary for the development of airport-related regulations and standards. The Scope of Work includes the following nine major tasks:

- Task 1: Initial meeting with City staff
- Task 2: Review relevant documents, policies and information
- Task 3: Develop draft regulations that satisfy stated objectives
- Task 4: Revise draft regulations based on City staff input

- Task 5: Prepare a staff report (1) and attend City Council and Planning Commission work sessions (2)
- Task 6: Attend a public/community meeting
- Task 7: Finalize draft regulations
- Task 8: Prepare CEQA analysis on regulations
- Task 9: Develop draft staff reports for Planning Commission and City Council public hearings

It is anticipated the work can be completed prior to the end of this fiscal year.

FISCAL IMPACT

Funding for this project will be absorbed within the approved FY 2015 budgets for Development Services Department (\$23,000), Economic Development Division of the City Manager's Office (\$17,000), and the Airport Special Fund (\$10,000), and will have no additional impact on the General Fund.

PUBLIC CONTACT

No public contact has occurred associated with this action.

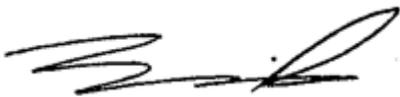
NEXT STEPS

Upon Council approval of this resolution, staff will execute an agreement with Buchalter-Nemer.

Prepared by: Jade Kim, Administrative Analyst

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I Draft Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT FOR UP TO \$50,000 WITH BUCHALTER-NEMER FOR DEVELOPMENT OF LAND USE/ZONING REGULATIONS AND RELATED ENVIRONMENTAL IMPACT ANALYSIS FOR THE HAYWARD EXECUTIVE AIRPORT INFLUENCE AREA.

WHEREAS, an updated Hayward Executive Airport Land Use Compatibility Plan (ALUCP) was approved by the Alameda County Airport Land Use Commission (ALUC) on July 18, 2012; and

WHEREAS, City staff forwarded a draft of the new Hayward General Plan in January of 2014 to the ALUC, which did not take action regarding determining the General Plan inconsistent with the ALUCP within 60 days as required by Section 2167(d) of the California Public Utilities Code, and

WHEREAS, such inaction by the ALUC resulted in the General Plan being deemed consistent with the ALUCP by operation of law and therefore, eliminated the need to refer projects within the airport influence area to the ALUC; and

WHEREAS, the City of Hayward seeks to ensure compliance with state and federal laws regarding land use near an airport and continued ability to receive FAA grants for the Hayward Executive Airport; and

WHEREAS, the City of Hayward General Plan 2040, adopted on July 1, 2014, contains the following applicable policies:

Mobility Chapter Policies:

M-10.2 Airport Land Use Compatibility

The City shall ensure uses surrounding the Hayward Executive Airport are compatible with existing and planned airport operations and comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA’s Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

Hazards Chapter Policies:

HAZ-7.1 Land Use Safety Compatibility and Airspace Protection Criteria

The City shall consider all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA’s Airport

Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection when evaluating development applications within the Airport Influence Area of the Hayward Executive Airport.

HAZ-7.2 Airport Land Use Compatibility Plan

The City shall require all development projects within the Airport Influence Area designated in the Airport Land Use Compatibility Plan of the Hayward Executive Airport to comply with all applicable federal statutes (including 49 U.S.C. 47107), federal regulations (including 14 Code of Federal Regulations 77 et seq.), the FAA's Airport Compliance Manual, FAA Advisory Circulars and other forms of written guidance, and State law, with respect to criteria related to land use safety and airspace protection.

HAZ-8.14 Airport Noise

The City shall monitor noise impacts from aircraft operations at the Hayward Executive Airport and maintain and implement the noise abatement policies and procedures outlined in the Airport Noise Ordinance and Airport Land Use Compatibility Plan.

HAZ-8.15 Airport Noise Evaluation and Mitigation

The City shall require project applicants to evaluate potential airport noise impacts if the project is located within the 60 dB CNEL contour line of the Hayward Executive Airport or Oakland International Airport (as mapped in the Airport Land Use Compatibility Plan). All projects shall be required to mitigate impacts to comply with the interior and exterior noise standards established by the Airport Land Use Compatibility Plan.

HAZ-8.16 Airport Disclosure Notices

The City shall require that all new development within an airport-defined over-flight zone provide deed notices disclosing airport over-flights and noise upon transfer of title to future residents and property owners; and

WHEREAS, on November 7, 2014, the Development Services Department solicited proposals for consultant services to assist in the development of airport regulations and standards for the Hayward Executive Airport's Airport Influence Area; and

WHEREAS, Buchalter-Nemer ("Consultant") submitted a proposal to provide such services; and

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services that will be required.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD that the City Manager is authorized to negotiate and execute an Agreement up to \$50,000 with Buchalter-Nemer to provide consultant services to assist in the development of airport-related regulations and development standards for the influence area of the City of Hayward's Executive Airport, in a form acceptable to the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



DATE: January 13, 2015
TO: Mayor and City Council
FROM: Director of Utilities & Environmental Services Department
SUBJECT: Mission Aqueduct Seismic Improvements Project: Award of Contract and Appropriation of Funds

RECOMMENDATION

That Council adopts the attached resolutions (Attachments I and II):

1. Approving Addenda No. 1, providing minor revisions to the Plans and Specifications, and Awarding a Contract to Cratus, Inc. in the amount of \$831,365.60; and
2. Appropriating an additional \$542,146 for this project from the Water System Improvements Fund.

BACKGROUND

The City of Hayward has two aqueducts that deliver water from the San Francisco Public Utilities Commission's (SFPUC) Hetch Hetchy Bay Division Pipelines: A 24-inch aqueduct constructed in 1948 that extends from the SFPUC turnout on Mission Boulevard near Callery Court in Fremont to the City's Decoto Booster Pump Station located in Union City and continues north on Mission Boulevard to the Walpert Street Reservoirs; and a 42-inch aqueduct constructed in 1963 that extends from the SFPUC turnout on Hickory Street near Thornton Avenue in Newark to the City's Hesperian Booster Pump Station. Both aqueducts were constructed of mortar lined and coated bar-wrapped steel cylinder pipe (BWCP) and are considered essential facilities of the City's water system.

The Mission 24-inch Aqueduct crosses the Hayward Fault in the area of Mission Boulevard and Nursery Avenue in the Niles District of Fremont. In this location, the Hayward Fault has a creep rate of one to two inches every ten years. As a result of this creep, welded joints of the 24-inch pipeline have failed and separated five times since the pipeline was constructed. The most recent event occurred in early January of 2012 and resulted in the disruption of water service to the City through this smaller aqueduct for over two weeks. Given the importance of this transmission aqueduct, its age, and frequent failures, there is a need to construct a new pipe across the Hayward Fault, roughly parallel to the existing one, which is specifically designed for improved performance such that the Mission Aqueduct can tolerate over twenty years of fault creep and water supply can be quickly restored following a major seismic event.

On November 18, 2014, Council approved the plans and specifications for the Mission Aqueduct Seismic Improvements Project, called for bids to be received on December 16, 2014, and authorized the City Manager to execute a sole source purchase of Kubota Earthquake Resistant Ductile Iron Pipe (ERDIP) and fittings.

DISCUSSION

The work for this project will consist of, constructing approximately 800 feet of new 24-inch water main and bypass connections in Mission Boulevard at Nursery Avenue in Fremont. The new 24-inch water main will include of 660 feet of 24-inch ERDIP centered on the Hayward Fault and 130 feet of 24-inch welded steel pipe connecting the ERDIP to the existing 24-inch pipeline such that flow can be switched between the existing pipeline and the new one to facilitate future maintenance and repairs. The project also includes the installation of new valves, fittings, bypass system, traffic control, and restoration of the roadway. The work in Mission Blvd will be performed under a Caltrans Encroachment Permit and will be scheduled during off peak commute hours to minimize impacts to traffic and businesses.

The 24-inch ERDIP is being manufactured by Kubota Corporation of Japan, at their plant in Hayward's sister City, Funabashi, Japan, specifically for this project. The installation of the new 24-inch ERDIP across the Hayward Fault and associated improvements will significantly improve the seismic resistance and reliability of the Mission Aqueduct.

On December 16, 2014, the City received five (5) bids for the project. Cratus, Inc. submitted the low bid in the amount of \$831,365.60, which is approximately 13.9% over the Engineer's Estimate of \$730,000. JMB Construction, Inc. submitted the second lowest bid in the amount of \$839,453.60. The other bids received ranged from \$942,124.40 to \$1,141,023.20.

In an effort to optimize the bidding environment for the project, the bid period of the project was timed to occur when contractors are just beginning to line up their summer construction work. Staff is of the opinion that the five bids submitted for this specialized project is a sufficient number to result in a competitive low bid and that the bids were reasonable given the complexity of the project.

Staff has determined that all bid documents and licenses are in order. Staff recommends award of contract to the low bidder, Cratus, Inc., in the amount of \$831,365.60.

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."

FISCAL AND ECONOMIC IMPACT

The estimated project costs are as follows:

Seismic Study, Analyses and Design by Consultant	\$ 132,000
Re-design and Construction Administration – City Staff	50,000
Construction Contract	831,366
Earthquake Resistant Ductile Pipe	228,780
Inspection and Testing	50,000
<hr/> Total	<hr/> \$1,292,146

As shown above, the total project cost is estimated to be \$1,292,146. The FY 2014-15 Capital Improvement Program (CIP) includes \$750,000 appropriated for the Mission Aqueduct Seismic Improvements Project in the Water System Improvement Fund. An additional appropriation of \$542,146 is needed to complete the project. As referenced in Attachment II, staff recommends Council approve the resolution appropriating \$542,146 from the Water System Improvements Fund to complete the project. The Water System Improvements Fund contains adequate funds to accommodate this additional appropriation.

PUBLIC CONTACT

Prior to and during construction, staff will coordinate with the City of Fremont and provide notices to affected residents and property and business owners to inform them of the nature and purpose of the work, potential impacts, work schedule, and City contact for additional information. The temporary shutdown of the existing 24-inch Mission Aqueduct to accommodate project improvements will not result in any service interruption to Hayward water customers.

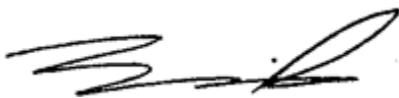
SCHEDULE

Open Bids	December 16, 2014
Award Contract	January 13, 2015
Begin Work	March 2015
Complete Work	October 2015

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

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

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution – Award of Contract
- Attachment II: Resolution – Appropriation of Funds
- Attachment III: Project Location Map
- Attachment IV: Bid Summary

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-_____

Introduced by Council Member _____

RESOLUTION AWARDED CONTRACT TO CRATUS, INC., FOR THE MISSION AQUEDUCT SEISMIC IMPROVEMENTS PROJECT, PROJECT NO. 07122

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

WHEREAS, by resolution 14-181 on November 18, 2014, the City Council approved the plans and specifications for the Mission Aqueduct Seismic Improvements Project, Project No. 07122, and called for bids to be received on December 16, 2014; and

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

WHEREAS, on December 16, 2014, five bids were received ranging from \$831,365.60 to \$1,141,023.20; Cratus, Inc., of San Francisco, CA submitted the low bid in the amount of \$831,365.60, which is 13.9 percent above the Engineer’s Estimate of \$730,000;

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

BE IT FURTHER RESOLVED that Cratus, Inc., is hereby awarded the contract for the Mission Aqueduct Seismic Improvements Project, Project No. 07122, in accordance with the plans and specifications adopted therefore and on file in the office of the City Clerk of the City of Hayward, at and for the price named and stated in the final proposal of the hereinabove specified bidder, and all other bids are hereby rejected.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute an agreement with Cratus, Inc., in the name of and for and on behalf of the City of Hayward, in an amount not to exceed \$831,365.60, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-_____

Introduced by Council Member _____

RESOLUTION AMENDING RESOLUTION 14-098, AS AMENDED, THE BUDGET RESOLUTION FOR CAPITAL IMPROVEMENTS PROJECTS FOR FISCAL YEAR 2015, RELATING TO APPROPRIATION OF FUNDS FROM THE WATER SYSTEM IMPROVEMENTS FUND (604) TO THE MISSION AQUEDUCT SEISMIC IMPROVEMENTS PROJECT, PROJECT NO. 07122

BE IT RESOLVED by the City Council of the City of Hayward that Resolution 14-098, as amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2015, is hereby amended by approving an appropriation of \$542,146 from the Water System Improvements Fund (604) to the Mission Aqueduct Seismic Improvements Project, Project No. 07122.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

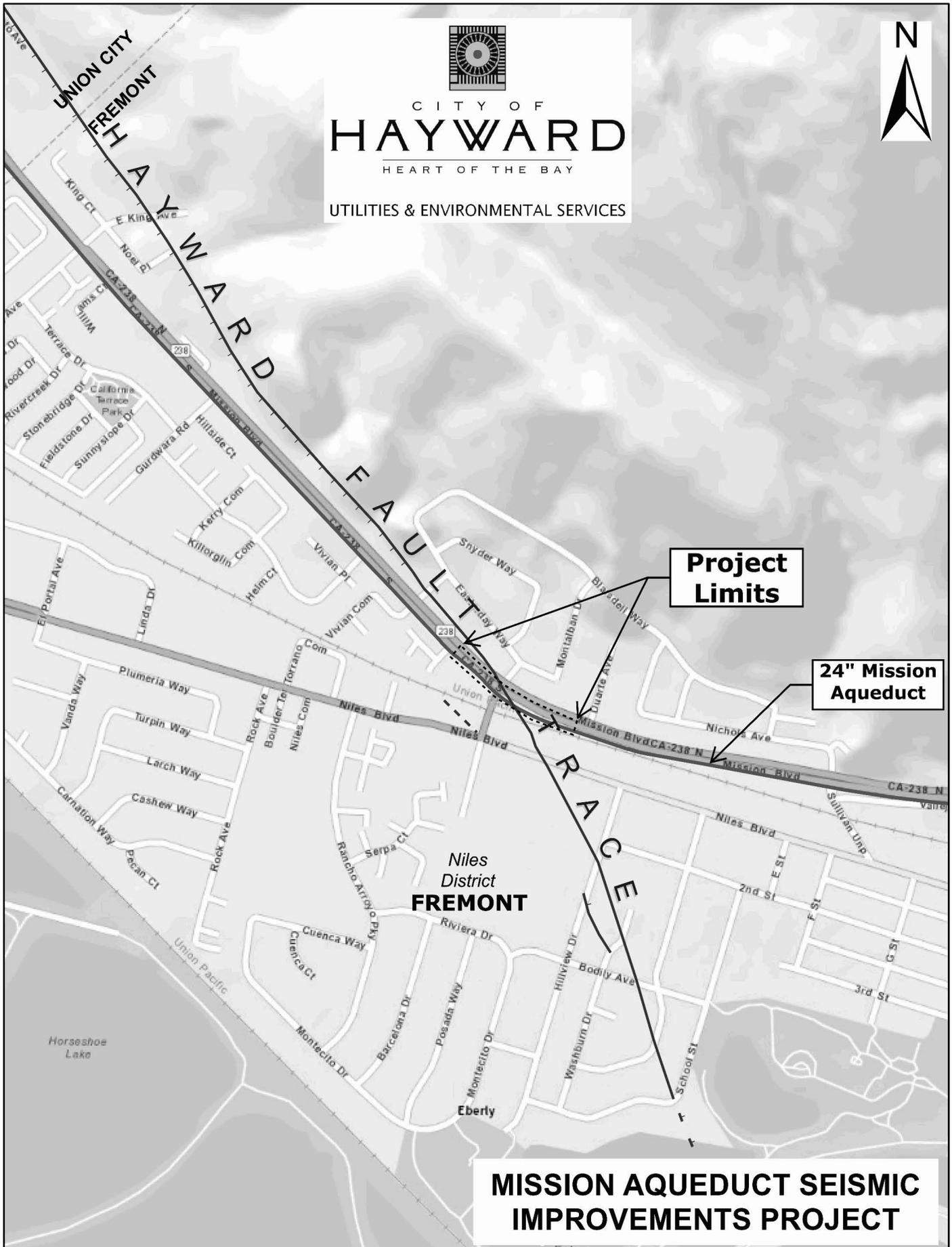
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



BID SUMMARY



UTILITIES & ENVIRONMENTAL SERVICES DEPARTMENT

CONSTRUCTION OF: **Mission Aqueduct Seismic Improvements**

PROJECT NO. : **07122**
 COUNCIL RESO DATE: **11/18/2014**
 BID ADVERTISE DATE: **11/21/2014**
 PREBID CONF DATE: **12/9/2014 at 2:30 PM**
 BID OPEN DATE: **12/16/2014 at 2:05 PM**
 NO. BIDS RECEIVED: **Five (5)**
 NO. OF ADDENDA: **One (1)**

Name:	Cratus, Inc.	JMB Construction Inc.	Ghilotti Construction Co., Inc.	California Trenchless Inc	A & B Construction
Mail Add.:	945 Taraval Street	132 South Maple Avenue	246 Ghilotti Avenue	2283 Dunn Road	1358 Fourth Street
Ste., #, etc.:	#302				
City, State, ZIP:	San Francisco, CA 94109	South San Francisco, CA 94080	Santa Rosa, CA 95407	Hayward, CA 94545	Berkeley, CA 94710
Phone:	(415) 559-1163	(650) 267-5300	(707) 585-1221	(510) 782-5335	(415) 362-2266
Fax:		(650) 267-5303	(707) 585-1601		
Email:	michael@cratusinc.com	chehir@jmbconstruction.com	annette@ghilotti.com	mjardin@californiatrenchless.com	sofia@a-bconstruction.net

BID ITEMS					ENGINEER'S ESTIMATE		BIDDER #1		BIDDER #2		BIDDER #3		BIDDER #4		BIDDER #5	
ITEM NO.	SPEC. SECTION	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	10-1.08	Mobilization	1	L.S.	\$10,000	\$10,000	\$25,000	\$25,000	\$65,000	\$65,000	\$48,000	\$48,000	\$50,000	\$50,000	\$36,000	\$36,000
2	10-1.12	Traffic Control System for Lane Closure	1	L.S.	\$80,000	\$80,000	\$7,500	\$7,500	\$50,000	\$50,000	\$12,000	\$12,000	\$50,000	\$50,000	\$26,000	\$26,000
3	10-1.33	Trench Shoring and Trench Safety	1	L.S.	\$25,000	\$25,000	\$5,000	\$5,000	\$23,000	\$23,000	\$11,000	\$11,000	\$75,000	\$75,000	\$25,000	\$25,000
4	10-1.24	Asphalt Concrete RHMA (Pavement Replacement & Restoration)	133	Ton	\$307.24	\$40,924.4	\$350	\$46,620	\$360	\$47,952	\$238	\$31,702	\$475	\$63,270	\$631	\$84,049.2
5	10-1.31	26" Welded Steel Pipe	105	L.F.	\$955	\$100,275	\$2,100	\$220,500	\$2,000	\$210,000	\$3,140	\$329,700	\$2,000	\$210,000	\$3,048	\$320,040
6	10-1.31	24" Earthquake Resistant DIP (City Provides Pipe & Fittings)	690	L.F.	\$300	\$207,000	\$380	\$262,200	\$220	\$151,800	\$318	\$219,420	\$550	\$379,500	\$468	\$322,920
7	10-1.31	24" Butterfly Valve	4	Each	\$25,000	\$100,000	\$15,000	\$60,000	\$20,000	\$80,000	\$13,200	\$52,800	\$5,000	\$20,000	\$21,000	\$84,000
8	10-1.31	12" Butterfly Valve	2	Each	\$5,000	\$10,000	\$5,000	\$10,000	\$3,500	\$7,000	\$4,000	\$8,000	\$2,500	\$5,000	\$3,750	\$7,500
9	10-1.31	8" Gate Valve	1	Each	\$2,000	\$2,000	\$3,000	\$3,000	\$2,500	\$2,500	\$1,940	\$1,940	\$2,000	\$2,000	\$3,000	\$3,000
10	10-1.31	12" Bypass Assembly	2	Each	\$9,000	\$18,000	\$7,500	\$15,000	\$11,000	\$22,000	\$14,500	\$29,000	\$15,000	\$30,000	\$15,000	\$30,000
11	10-1.31	8" Blowoff Assembly	1	Each	\$8,000	\$8,000	\$6,500	\$6,500	\$7,500	\$7,500	\$10,000	\$10,000	\$8,000	\$8,000	\$11,000	\$11,000
12	10-1.22	Vehicle Detector Loop Replacement	1	L.S.	\$20,000	\$20,000	\$3,500	\$3,500	\$3,000	\$3,000	\$3,000	\$3,000	\$7,500	\$7,500	\$5,500	\$5,500
13	10-1.06	Pothole Select Utility	11	Each	\$800	\$8,800	\$1,000	\$11,000	\$1,000	\$11,000	\$950	\$10,450	\$1,000	\$11,000	\$1,364	\$15,004
14	10-1.38	Administrative Change Orders	1	L.S.	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000
15	10-1.24	Asphalt Concrete HMA Type A, 3/4" Max.	316	Ton			\$176.0	\$55,545.6	\$186.0	\$58,701.6	\$238.0	\$75,112.8	\$200.0	\$63,120.0	\$225	\$71,010
TOTALS:						\$730,000		\$831,365.6		\$839,453.6		\$942,124.4		\$1,074,390		\$1,141,023.2

Percent Under/Above Engineer's Estimate: 13.89% Above 14.99% Above 29.06% Above 47.18% Above 56.30% Above

DATE: January 13, 2015

TO: Mayor and City Council

FROM: Human Resources Director

SUBJECT: Introduction of an Ordinance to Approve an Amendment to the City of Hayward's Contract with the California Public Employees Retirement System (CalPERS)

RECOMMENDATION

That the City Council introduces an Ordinance to approve an amendment to the City of Hayward's contract with CalPERS to reflect recently approved changes to the Hayward Police Officers' Association (HPOA) Memorandum of Understanding.

BACKGROUND/DISCUSSION

On October 14, 2014, the City Council adopted a Resolution of Intent to amend its contract with the California Public Employment Retirement System (CalPERS) to add Section 20516 "Employee Sharing Cost of Additional Benefits" for new police members. This action was taken to amend the CalPERS contract so that the agreements reached during recent discussions with Hayward Police Officers' Association (HPOA) for cost sharing are applicable to new CalPERS HPOA members.

Effective the pay period including July 1, 2014, the amended Memorandum of Understanding (MOU) between the City of Hayward and the Hayward Police Officers' Association (HPOA) 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 12.75% and an additional 2.25% cost share amount for a total of 15%.

To implement any changes to the retirement program, it is necessary to amend the City's existing contract with CalPERS. The approved Resolution authorizes staff to work with CalPERS to amend the contract to incorporate the changes. The proposed Ordinance approves the amendments and authorizes staff to execute the contract effective December 29, 2014.

FISCAL IMPACT

The cost sharing agreement with HPOA is part of the Addendum to and Extension of the HPOA MOU 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 over the previously existing contract. In addition, the changes are structural in nature and represent significant ongoing and permanent savings to the City's employee benefit costs.

SCHEDULE

In accordance with Section 617 of the City Charter, the adoption of the Ordinance will take place on January 20, 2015. The contract will be effective December 29, 2014, subject to final approval by CalPERS.

Prepared and Recommended by: Nina S. Collins, Human Resources Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Ordinance Authorizing an Amendment to the Contract between the City and CalPERS
- Attachment II: Exhibit to the Ordinance – Amendment to CalPERS Contract

ORDINANCE NO. 15-_____

AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE CONTRACT BETWEEN THE CITY OF HAYWARD AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

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

Section 1. Provisions.

1. That an amendment between the City Council of the City of Hayward and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.
2. The City Manager of the City of Hayward is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Hayward.

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

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 13th Day of January, 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 20th day of January, 2015, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



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%.

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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

PLEASE DO NOT SIGN "EXHIBIT ONLY"

DATE: January 13, 2015

TO: Mayor and City Council

FROM: City Attorney
Police Chief
Director of Development Services

SUBJECT: Massage Therapy Permit Ordinance: New Ordinance Regulating Massage Therapy Establishments Following the Enactment of AB 1147.

RECOMMENDATION

That the City Council introduces an ordinance repealing Section 6-10.00 to Section 6-10.27 of the Hayward Municipal Code, and adding Chapter 6, Article 10, regarding the regulation of massage therapy establishments.

SUMMARY

The City of Hayward (the “City”) last amended its massage permit ordinance in 2006, prior to the passage of both California Senate Bill 731 (passed in 2007) and Assembly Bill 1147 (passed in 2014), both of which altered the landscape of massage therapy regulation.

Senate Bill 731 (“SB 731”) created the California Massage Therapy Council (“CAMTC”), which is a nonprofit organization that is responsible for issuing certificates to massage therapists who meet certain educational and experiential criteria. CAMTC enforces its regulations by disciplining certified professionals who act unprofessionally. However, SB 731 limited local governments’ ability to regulate massage therapists and massage establishments.

Assembly Bill 1147 (“AB 1147”), effective on January 1, 2015, returns control to municipalities and authorizes local governments to adopt ordinances that require massage establishments to comply with reasonable health and safety requirements, as well as allows cities to effectively zone and regulate massage establishments.

BACKGROUND

Prior to the passage of SB 731, the massage therapy industry had a patchwork of regulations, each municipality forming its own set of rules. Massage therapists were required to conform to each jurisdiction’s distinct and separate requirements. For instance, a Bay Area massage therapist who was an independent contractor at several different massage businesses might have been responsible for complying with several different municipal ordinances.

What SB 731 sought was uniformity. It created a single, consistent set of rules throughout the state for certified massage therapists. Still, participation in CAMTC is voluntary. Massage therapists decide for themselves whether or not they want to be CAMTC certified. What this means is that CAMTC does not regulate *uncertified* massage therapists- this has remained a prerogative unto municipalities.

A year following the passage of SB 731, the bill was amended in April 2007. This amendment required that the land use and zoning of massage therapy establishments needed to be applied uniformly to all professional service businesses within a municipality. The amendment made it so municipal laws could not be solely directed at massage therapy establishments. SB 731 preempted municipal massage ordinances, and resultantly, local governments could only apply regulations to massage therapy establishments if the regulation was applied to all other professional and personal service businesses (like doctors, lawyers, dentists, and similar).

There were several unfavorable and unintended consequences that resulted from SB 731's implementation. Since SB 731 required uniformity among service providers, many city and county zoning and regulatory measures directed at the massage therapy industry were discontinued. Massage therapy establishments were able to operate unimpeded by local regulation. As a consequence, massage therapy establishments have proliferated throughout the state, both regulated and unregulated. Law enforcement agencies have connected massage therapy establishments with illegal sexual commerce.

It was against this backdrop that California Assembly Member's Bonilla, Gomez, and Holden proposed AB 1147. The purpose of the AB 1147 is described as follows:

“This bill would revise, recast, and update multiple provisions of current law to give local governments greater authority to regulate massage establishments and businesses while creating a more robust statewide regulatory system for massage professionals. Among its major provisions, this bill would return land use authority over massage establishments and businesses to cities and counties.”

The recent passage of AB 1147 has given municipalities the ability, and responsibility, to regulate massage therapy establishments. As stated by AB 1147 co-sponsor Assembly Member Holden, “the broad preemption of local land use authority for ‘certified-only’ massage professionals has been removed, returning local land use control back to the cities and counties. Now our communities will once again have a voice in the process.”

DISCUSSION

The Massage Therapy Ordinance Currently

As previously indicated, the City's massage therapy ordinance was last amended in 2006. This ordinance has not been enforced because of SB 731. Following is a discussion of the major components of the existing ordinance.

Land Use Regulations

Massage therapy establishments are allowed to operate in areas zoned Commercial or Residential/Commercial insofar those businesses within these districts receive Administrative Use Permits or Conditional Use Permits.

Massage Establishment Permit

The City's current ordinance requires that massage therapy establishments have a massage establishment permit. Applicants go through the application process, which includes submission of a written application, payment of a fee, and submission of background information on all massage therapists working for the establishment, disclosure of prior massage permit revocations, and providing proof of various certifications. The ordinance requires medical checks, inquiries into the business' employees and the business' organizational structure (such as whether the business is a corporation or partnership and the designations of officers).

Massage Technician Permit

The current ordinance also requires each massage therapist to obtain a permit. In the massage technician permit, similar background information is requested as in the massage establishment permit.

The Proposed Massage Therapist Permit Ordinance

The following recommendations are offered to provide the most stringent and robust regulations allowable under AB 1147. The proposed ordinance accomplishes the following:

Land Use Regulations

The proposed ordinance maintains all the same zoning laws currently in place. Administrative Use Permits or Conditional Use Permits will still be required for all massage therapy establishments operating within the City.

Massage Therapy Establishment Permit

A massage therapy establishment owner will be required to obtain a Massage Establishment Permit to operate such a business in Hayward. A massage therapy establishment owner will be liable for the actions of his or her employees, all of them, whether the employee's actions were sanctioned by the establishment or not. Violations of the proposed ordinance by massage therapists could potentially lead to the revocation of the massage therapy establishments' permit, and ultimately, shut down that enterprise. Massage therapy establishment owners could also be subject to civil penalties of \$2,500 for certain violations of the ordinance.

The specific changes recommended are guided by AB 1147's amendments to the Business and Professions Code. Violations of Business and Professions Code Section 4608 and Section 4609, under the proposed Ordinance, create grounds for permit revocation. Some examples of potential violations of these Business and Professions Code sections are the following:

- sexually explicit advertising

- acts of fraud or dishonesty
- failure to display CAMTC certifications or Massage Establishment Permit

Several additional grounds for permit suspension and revocation are provided in Section 6-10.10 of the proposed ordinance.

Massage Therapist Permit

Under the proposed ordinance, the City will only allow massage therapists who are CAMTC-certified to practice within the City. No other forms of certification will be allowable.

PUBLIC COMMENTS

On December 18, 2014, a community meeting was held to discuss possible changes to the City's massage therapy regulations. Announcements of this meeting were sent out to all massage therapy establishments practicing within the City of Hayward. Eight massage therapists and/or business owners attended the meeting. Also in attendance were staff members from the City Manager's Office, the Hayward Police Department, and the City Attorney's Office.

Attendees provided useful and insightful commentary on the new proposed regulations. Multiple attendees noted the burdens that the proposed ordinance will have on existing massage therapy establishments. Businesses expressed concern over the requirement that massage therapy establishments must keep their front door unlocked if there are three or more employees working at a massage therapy establishment. Massage therapy establishment owners also discussed discomfort with the fact that business owners, not massage therapists, will be subject to possible civil penalties for violations of the proposed ordinance. The public was also provided an opportunity to submit written comments, but no written comments were received.

The proposed ordinance does impose robust requirements on massage therapy establishments that are authorized under new state law. For example, the requirement concerning unlocked doors at certain massage therapy establishments is based upon the language of AB 1147. The proposed ordinance establishes reasonable health, safety and permitting requirements for massage therapy establishments that comply with the requirements of the new state law.

FISCAL IMPACT

It is unclear if the adoption of the proposed ordinance will have a fiscal impact on the City. The City will, however, be required to increase background checks and inspections of massage therapy establishments and employees to ensure such establishments are complying with the regulations. Staff proposes to report back to Council in 12 months regarding the proposed ordinance's financial impacts on the City.

APPLICATION FORMS AND PROCEDURES

The Chief of Police will formulate new application forms and application review processes consistent with the proposed ordinance by February 15, 2015.

AB 1147 become effective
New Massage Therapy Permit Application Forms Available

January 1st
February 15th

Prepared by: Justin Nishioka, Deputy City Attorney
Rafael Alvarado, Assistant City Attorney

Recommended by: Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments:

- I: Proposed Massage Therapy Permit Ordinance
- II: Map of all massage therapy establishments currently operating in Hayward

ORDINANCE NO.

AN ORDINANCE REPEALING SECTION 6-10.00 TO SECTION 6-10.27 OF THE CITY OF HAYWARD MUNICIPAL CODE AND ADDING CHAPTER 6, ARTICLE 10 TO THE HAYWARD MUNICIPAL CODE REGARDING MASSAGE ESTABLISHMENTS

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

Section 1. Upon the effective date of this ordinance, Hayward Municipal Code Sections 6-10.00 through 6-10.27 are hereby repealed and Article 10 of Chapter 6 of the Hayward Municipal Code is hereby enacted to read in full as follows:

ARTICLE 10

MESSAGE PERMIT ORDINANCE

Section	Subject Matter
6-10.00	TITLE
6-10.01	FINDINGS AND PURPOSE
6-10.02	DEFINITIONS
6-10.03	PERMIT REQUIREMENT
6-10.04	PERMIT EXEMPTIONS
6-10.05	MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE
6-10.06	APPLICATION REVIEW
6-10.07	PERMIT ISSUANCE OR DENIAL
6-10.08	DISQUALIFYING CONDUCT
6-10.09	HEARING ON DENIAL OF PERMIT
6-10.10	GROUND FOR SUSPENSION OR REVOCATION

OF PERMIT

- 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT
- 6-10.12 BURDEN OF PROOF
- 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT
- 6-10.14 MINIMUM AGE REQUIREMENT
- 6-10.15 PERMITS NONASSIGNABLE
- 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING
- 6-10.17 DISPLAY OF PERMIT
- 6-10.18 FACILITIES AND OPERATING REQUIREMENTS
- 6-10.19 RESPONSIBILITY OF EMPLOYER
- 6-10.20 PERMIT DURATION AND RENEWAL
- 6-10.21 APPLICABILITY TO EXISTING BUSINESSES
- 6-10.22 CEASE OF BUSINESS
- 6-10.23 INSPECTION
- 6-10.24 ENFORCEMENT

ARTICLE 10

MESSAGE PERMIT ORDINANCE

SEC. 6-10.00 TITLE. This ordinance shall be known as the Massage Permit Ordinance.

SEC. 6-10.01 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- a. The City of Hayward is authorized to regulate a lawful massage business pursuant to Government Code section 51030, et seq., Business and Professions Code section 4600, et seq., 37101, section 16000, or section 16100 of the California Business and Professions Code, or by virtue of Section 7 of Article XI of the Constitution of the State of California.
- b. There is significant risk of injury to massage clients by improperly trained and/or uneducated massage therapists and this Article provides reasonable safeguards against injury and economic loss.
- c. There is risk of prostitution and/or sex trafficking and this Article provides safeguards against these practices.
- d. The permit requirements and restrictions imposed by this Article are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Hayward, as well as to ward against illegal sexual commerce.

SEC. 6-10.02 DEFINITIONS. For the purpose of this Article, certain words and phrases shall be construed herein as set forth in this section, unless it is apparent from the context that a different meaning is intended:

- a. ‘Acupuncture.’ Whereas acupuncture is described as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electro acupuncture, cupping, and moxibustion; ‘Acupressure’ is based on a theory similar to acupuncture except that it stimulates acupuncture points by the application of pressure rather than needling.
- b. ‘Adult-oriented merchandise.’ Any sexually-oriented implements, paraphernalia, or novelty items, such as but not limited to: condoms and sexually-oriented items that are designed or marketed primarily for the stimulation of human genital organs.

- c. 'Applicant.' In the case of a massage establishment permit, means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of the massage establishment, who applies to obtain a permit under this Article. In the case of a massage therapist permit, "applicant" means an individual who applies for a permit under this Article.
- d. 'Chief of Police.' The Chief of Police of the City of Hayward or his or her designee.
- e. 'Employee.' Includes any owner, partner, operator, manager, supervisor or worker, (whether part-time, full-time, temporary, permanent, or independent contractor) whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
- f. 'Massage.' The scientific manipulation of the soft tissues. For purposes of this definition, the terms "massage", "massage therapy", and "bodywork" shall have the same meaning.
- g. 'Massage establishment.' A fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.
- h. 'Massage therapist.' Any person who provides massage therapy services to another person for compensation. For purposes of this definition, "Massage therapist", "Massage Technician", and "Masseuse" shall have the same meaning.
- i. 'Managing employee.' Any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.
- j. 'Out-call massage therapy.' A massage therapy performed or administered for money or other consideration by a licensed massage practitioner at a location other than a licensed massage establishment.
- k. 'Permit.' The permit to engage in the business of massage therapy as required by this Article.
- l. 'Permittee.' Any person possessing a permit required and issued under this Article, or any owner or operator of the permitted establishment.
- m. 'Person.' Any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.
- n. 'CAMTC.' California Massage Therapy Council

SEC. 6-10.03 PERMIT REQUIREMENT.

- a. **Massage Establishment Permit:**
 - (i) Except as otherwise provided in section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to this Article. A separate permit shall be obtained for each separate massage establishment and any change in ownership to any establishment.
 - (ii) Prior to commencing operations pursuant to a Massage Establishment Permit issued by the Chief of Police, applicants must also obtain appropriate land use approvals pursuant to the City's Zoning Ordinance.
 - (iii) A permit issued under this Article does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements, zoning/planning requirements, and all other applicable federal, state, and City of Hayward laws and regulations.
- b. **Massage Therapist Certification:** Except as otherwise provided in Section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on the function of a massage therapist without a current, valid certificate from the California Massage Therapy Council ("CAMTC"), or a current, valid license or certificate from the Department of Consumer Affairs to practice massage therapy.
- c. Persons practicing acupuncture under the direction of a licensed State of California acupuncturist shall obtain CAMTC certification as required in this Article.

SEC. 6-10.04 PERMIT EXEMPTIONS.

- a. The permit requirements of this Article shall not apply to the following persons while engaged in the performance of their duties:
 - (1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their respective professions in the State.
 - (2) Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses.

- (3) Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State.
- (4) Accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment.
- (5) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employments or within the scope of their curriculum.
- (6) Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons, or similar single occurrence athletic or recreational events.

SEC. 6-10.05 MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE.

- a. Each applicant for a massage establishment permit shall file a written application with the Chief of Police on a form provided by the Police Department. The application shall be forwarded to the Planning Director to determine if the use is allowed in the zoning district where the massage establishment is proposed to be located. A massage establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without valid CAMTC certification.
- b. Each application shall be accompanied by a nonrefundable fee, in an amount established by resolution of the City Council. The application fee shall be used to defray, in part, the costs of the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. Applicants are required to make payment to the Department of Justice for fingerprinting services as required by this Article. A copy of the receipt for the nonrefundable fee shall accompany the application. Separate checks are not required to pay the required fees as outlined in this Article.
- c. Each applicant shall submit the following information in the application under penalty of perjury:
 - (1) The full, true name under which the business will be conducted.
 - (2) The present or proposed address where the business is to be conducted.
 - (3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number or identification number, Social Security number, present residence address

and telephone number, gender, height, weight, color of hair, and color of eyes.

- (4) The names and addresses of all persons financially interested in the business.
- (5) The applicant's two most recent street addresses and the dates of residence at each address.
- (6) The name, street address, and telephone number of other businesses in which the applicant has owned or been employed within the past seven years. This shall include the dates of employment, positions held by the applicant, and a contact person at each location. Applicant shall disclose or declare that within the seven years preceding submission of the application, the owner, operator, manager, and/or responsible managing officer/employee has not:
 - (i) Had a massage establishment, massage therapist, or other similar permit or license denied, suspended, or revoked by the city, or any other federal, state or local agency;
 - (ii) Engaged in conduct or operated a massage therapy or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this Article; or Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions Code.
 - (iii) Owned or managed a massage establishment or similar establishment where persons required to be licensed were allowed to work without the required license or permit.
- (7) A statement of the permit history of the applicant which identifies whether or not such person has ever held a professional or vocational license or permit, other than as required under this Article, issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license; whether or not the permit or license is still in effect; if the permit or license is no longer in effect, whether or not it was revoked or suspended, and if so, the reason(s) therefore. The name and location of the jurisdiction or agency, which suspended or revoked such license, certificate, permit, or other authorization shall also be included.
- (8) The name and street address of any other massage business operated or managed by the applicant during the last seven years.
- (9) A statement whether the applicant intends to personally provide massage therapy services at the business. The applicant for a massage

establishment permit is required to obtain a certificate from CAMTC if that person intends to provide massage therapy services.

- (10) Written proof of the applicant's current, valid certification by CAMTC, and proof of certification for any employees or independent contractors who will perform massage services at the applicant's massage establishment.
- (11) Applicant's criminal convictions in California or any other jurisdiction for offenses other than traffic violations within ten years before the date of the application. For the purposes of this subsection, the term 'applicant' shall apply to:
 - (i) an individual if the applicant is an individual;
 - (ii) any officers, directors, stockholders holding more than 5 percent of the stock of the corporation, or the managing responsible officer, if the applicant is a corporation; and
 - (iii) a partner or the managing responsible officer, if the applicant is a partnership.
- (12) The name, street address, telephone number, and date of birth of each massage therapist or employee who is or will be employed at the massage establishment, regardless of the nature of the employment.
- (13) The name, street address, and telephone number of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
- (14) Documentation to prove that the applicant has a lawful right to work in the United States, to include but not limited to: Department of Justice Immigration and Naturalization Service Employment Authorization Document.
- (15) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.
- (16) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subsection

pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within 90 calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.

- (17) Two recent, identical, passport-size, color photographs of the applicant and any employees or independent contractors who will be performing massage services at the applicant's massage establishment.
- (18) Fingerprints taken by a representative of the Hayward Police Department and submitted to the Department of Justice for processing pursuant to this Article.
- (19) Written authorization for the city, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer/employee of the massage establishment.
- (20) Such other identification and information shall be provided as required by the Chief of Police, necessary to discover the truth of the matters specified and required in the application.

SEC. 6-10.06 APPLICATION REVIEW. The application and supplementary material shall be reviewed by the Chief of Police. If it is clear from the face of the application and supplementary material that the applicant is not qualified for the Massage Establishment Permit, or if the required fee has not been paid, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the Massage Establishment Permit, the Chief of Police shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

- a. The Hayward Police Department shall take a full set of the applicant's fingerprints, and shall submit the fingerprints to the Department of Justice for evaluation. Upon receipt of the report from the Department of Justice, the Chief of Police shall review the criminal history (if any) of the applicant;

- b. The Chief of Police may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a permit pursuant to this Article; and
- c. Upon receipt of an application for a massage establishment permit, the Chief of Police shall refer the application to other City of Hayward departments, as appropriate, for review of the application and inspection of the premises to ensure compliance with applicable local, state and federal laws and regulations, including, but not limited to, building, health, and fire safety regulations.

SEC. 6-10.07 PERMIT ISSUANCE OR DENIAL.

- a. The Chief of Police shall issue or deny the application for a Massage Establishment Permit within 60 calendar days of a completed application. When necessary, the Chief of Police may extend the time to issue or deny the permit.
- b. The Chief of Police shall deny a permit if any of the following circumstances exist:
 - (1) The application is incomplete and/or required supplementary material is not submitted within 30 calendar days of the date the material is requested;
 - (2) The applicant does not have sufficient proof of the required CAMTC certification requirements pursuant to section 6-10.05 of this Article;
 - (3) The operation as proposed by the applicant would not comply with all applicable ordinances and laws, including, but not limited to, the city's building, health, and fire safety ordinances;
 - (4) The applicant has previously had a massage establishment permit, massage therapist permit, or any similar license, certificate, or permit revoked by the city or any public agency;
 - (5) The applicant is found to have made a material misstatement or omission in the application or in a previous application.
 - (6) The applicant has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction; or
 - (7) The applicant has been convicted of any of the following offenses during the seven years preceding the date of the application:
 - (i) Conduct which requires registration under California Penal Code section 290.

- (ii) Conduct which is in violation of California Penal Code sections 220, 245.3, 245.5, 261, 264.1, 266(h), 266(i), 266(j), 286, 288, 314, 315, 316, 318, 647(a), 647(b), or 647(d).
 - (iii) Crimes that are designated in California Government Code section 51032(b).
 - (iv) Any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude.
 - (v) Conspiracy or attempt to commit any of the aforementioned designated offenses.
 - (vi) Convictions to a charge of a violation of California Penal Code sections 415 and 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage therapy.
 - (vii) Convictions that have been expunged and convictions under the laws of other jurisdictions which proscribe the same or similar conduct as therefore designated crimes shall be reported.
 - (viii) Been convicted of a Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058.
 - (ix) Whether the applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal code sections 11225 et seq. or any similar provisions of law in a jurisdiction outside the state.
- c. If prosecution is pending against the applicant either for conduct listed in section 6-10.08 or for conduct violating this Article's provisions, the Chief of Police may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by any City, County, State, or Government.
- d. The Chief of Police may postpone decision on a license or permit application until the City of Hayward receives the applicant's fingerprint review results from the California Department of Justice.

- e. The Chief of Police shall give written notice of the grounds for denial to the applicant personally or by first class mail, postage prepaid, at the address provided in the application. The notice shall advise the applicant of the right to appeal the decision.

SEC. 6-10.08 DISQUALIFYING CONDUCT.

- a. Conviction of, or entry of a plea of guilty or no contest to, an offense that requires registration under California Penal Code section 290, or which is a violation of sections 266(i), 314, 315, 316, 318 or 647(b) or the sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction, or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code section 1203.4;
- b. Conviction of, or entry of a plea of guilty or no contest to, an offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code section 1203.4;
- c. Conviction of, or entry of a plea of guilty or no contest to, a violation of Penal Code Section 415 as a result of an arrest for violation of Penal Code section 647(b).
- d. Any conduct presented in Section 6-10.10, or any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.09 HEARING ON DENIAL OF PERMIT. If a permit for a massage establishment is denied, an applicant may, within seven calendar days after such action is taken, request a hearing before the Chief of Police, at which time evidence will be received for the purpose of determining whether the action of the Chief of Police in denying the issuance of an annual permit should be sustained or reversed. The Chief of Police shall render his/her decision, in writing, within seven calendar days after the hearing has been concluded.

SEC. 6-10.10 GROUND FOR SUSPENSION OR REVOCATION OF PERMIT. The Chief of Police may revoke or suspend any permit granted under this Article if any of the following are found:

- a. The permittee does not possess the qualifications for the permit as required by this Article;
- b. The permittee has been found to be in violation of any provision of this Article;
- c. The permittee has engaged in conduct or operated a massage establishment or has engaged in conduct as a massage therapist in a manner which violates this Article,

any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;

- d. There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplementary material;
- e. An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;
- f. Upon a recommendation from the city and/or county officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health;
- g. Out-Call services not authorized by the Chief of Police, and/or out-call services not in accordance with any provision within this Ordinance, or Chief of Police out-call policy described in the massage establishment permit application, or applicable State or Federal statute, rule, or regulation; or
- g. Any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT. Prior to the suspension or revocation of any permit issued pursuant to this Article, a hearing as provided in section 6-10.09 of this Article, shall be held by the Chief of Police, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended or revoked, or whether the permit may be retained. The Chief of Police shall render his/her decision within seven calendar days after the hearing has been concluded.

SEC. 6-10.12 BURDEN OF PROOF. Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or permittee in any hearing or other matter under this Article.

SEC. 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT. Appeal from the decision of the Chief of Police to suspend or revoke a permit pursuant to section 6-10.11 may be appealed to the City Manager within seven calendar days of the decision of the Chief of Police.

SEC. 6-10.14 MINIMUM AGE REQUIREMENT.

- a. No person shall be employed in a massage therapy business or perform massage therapy or manage or hold an ownership interest in a massage therapy business who is not at least 18 years of age.
- b. It is unlawful for the owner, proprietor, managing employee, or any other person in charge of any massage establishment to employ any person under eighteen (18) years of age.

SEC. 6-10.15 PERMITS NONASSIGNABLE. No permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a massage business must submit a new application for a massage establishment permit in accordance with this Article.

SEC. 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING.

- a. No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.
- b. In the case of any proposed change of name, notification thereof shall be made to the Chief of Police at least 30 calendar days prior to the change. Any proposed change of name is subject to the approval of the Chief of Police.
- c. Any proposed change of location of a massage establishment is subject to the approval of the Chief of Police, in addition to compliance with all city ordinances and regulations.
- d. Any application for an expansion of a building of a massage establishment shall require compliance with this Article and all other applicable laws.

SEC. 6-10.17 DISPLAY OF PERMIT.

- a. The massage establishment permit and a copy of the CAMTC certification of each and every massage therapist employed in the establishment shall be displayed in an open and conspicuous place on the premises.
- b. Each massage therapist shall be issued a photograph identification badge from the Police Department. When visiting a location other than a massage establishment in order to give a massage, each massage therapist shall display the badge.

SEC. 6-10.18 FACILITIES AND OPERATING REQUIREMENTS.

- a. Every massage establishment and every massage therapist shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operations requirements:
 - (1) The massage establishment's premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating,

ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

- (2) Massage establishments and massage therapists shall at all times have an adequate supply of clean sanitary towels, coverings, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate receptacles.
- (3) In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
- (4) All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
- (5) If separate dressing rooms are offered, they may be occupied by no more than one person at a time. Dressing rooms need not be separate from the room in which the massage therapy is being performed.
- (6) Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- (7) A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.
 - b. Massage therapy shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 10:00 p.m. and 7:00 a.m.

- c. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.
- d. Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.
- e. No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage therapist contractor shall offer or perform, any service other than those permitted under this Article.
- f. No permittee or employee of a massage establishment shall:
 - (1) Expose the sexual or genital part of the permittee or employee in the course of a massage therapy; or
 - (2) Touch or expose the sexual or genital part of any other person in the course of a massage therapy.
 - (3) Perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron. Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.
 - (4) Perform any task or service associated with the massage establishment while nude, semi-nude, or dressed in lingerie, see-through or transparent attire.
- g. No permittee or employee of a massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available that is prohibited under this Article nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Article.
- h. The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.
- i. Condoms must not be kept or used for any purpose in the massage establishment.

j. Recordings.

- (1) No electrical, mechanical or artificial device shall be used by the operator and/or manager, massage therapist or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.
- (2) No surveillance cameras, or video recording devices of any type, may be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of a massage establishment or the surrounding area. No video recording devices may be installed into rooms in which massage services will be rendered.

k. Locks prohibited.

- (1) No massage therapy shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage therapy business which is fitted with a lock.
- (2) All entrance and exit doors on the premises of a massage therapy business shall remain unlocked during business hours unless the massage establishment is a business entity owned by one individual with one or fewer employees or independent contractors.

- l. All massage services shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.
- m. A massage establishment must not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.
- n. No person other than the client and the client's immediate family or guardian is allowed in the massage room while the client is dressing or undressing.
- o. No person other than the client, the massage therapist assigned to the client, and the client's immediate family or guardian are allowed in the

massage room if any door into the massage room is closed. Others may be in the massage room so long as all doors to the room are fully open.

- p. Massage establishment personnel or any massage therapist must not inquire as to whether any client is a peace officer.

SEC. 6-10.19 RESPONSIBILITY OF EMPLOYER. It shall be the responsibility of the massage establishment permittee who employs or allows any person acting or purporting to act as a massage therapist, or the employer of any person acting or purporting to act as a massage therapist, to ensure that such person complies with the requirements of this Article and all laws.

The massage establishment permittee shall be held responsible for the conduct of all persons on the premises who engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy, shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining whether the permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a massage establishment permit.

SEC. 6-10.20 PERMIT DURATION AND RENEWAL.

- a. A permit shall be valid for two years from the date of issuance unless revoked or suspended.
- b. A permittee may apply for a renewal of a permit 30 calendar days prior to the expiration of the permit. If, upon the 31st day after the expiration of a permit, an application of renewal has not been received, the permit shall be deemed expired. Any permit issued under this Article shall be returned to the Chief of Police within 48 hours of its expiration. No privilege to provide massage therapy shall exist until an application for renewal has been granted. After a permit expires, a new application may be filed.
- c. Permits may be renewed by filing an application for renewal under penalty of perjury updating information in the original application provided to the Chief of Police.
- d. Verification of continued certification, in good standing, from CAMTC.
- e. To renew a permit under this Article, the permittee shall pay the city a nonrefundable fee in an amount set forth by resolution of the City Council. A copy of the receipt for the nonrefundable fee shall accompany the application for renewal.
- f. After investigating the application for renewal, the Chief of Police shall renew the permit if the permittee continues to meet the requirements for the issuance of a permit, and none of the grounds for denial of a permit set

forth in this Article exist. The Chief of Police shall renew the permit within 30 calendar days of such request if the information upon which the original application was granted remains unchanged and no violations of this Article have been committed.

- g. The permittee must update the Chief of Police of any violation of this Article, violation of Business and Professions Code section 4609, or any change in the status of the CAMTC certification of any employee or independent contractor.

SEC. 6-10.21 APPLICABILITY TO EXISTING BUSINESSES.

- a. All persons currently holding a valid massage establishment permit shall have six months following the enactment of this Ordinance in which to comply with the requirements of this Article. Except as provided in section 6-10.24b., if a permittee does not attain compliance with this Article within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee's permit(s).
- b. The Chief of Police may issue a provisional permit to any massage establishment, for a period not to exceed six months, if the applicant is able to show that substantial compliance with the requirements of this Article has been met and that the remaining compliance can be achieved within the period of the provisional permit. This six-month provisional permit shall not be renewed.
- c. Any business that holds itself out as a massage establishment in any way will be subject to the provisions of this Ordinance.

SEC. 6-10.22 CEASE OF BUSINESS. If at any time during the duration of a permit issued under this Article a permittee ceases to do business as a massage establishment, the permittee shall:

- a. Return any permit issued under this Article to the Chief of Police within five business days; and
- b. Notify the Revenue Division of the Finance Department.

SEC. 6-10.23 INSPECTION. The Police Department shall, from time to time and during any hour in which a massage establishment is open for business, make an inspection of each massage establishment for the purpose of determining compliance with this Article.

SEC. 6-10.24 ENFORCEMENT.

- a. It is the duty of the Chief of Police to enforce rules and regulations in accordance with this Article.

- b. Pursuant to the City’s prosecutorial discretion, the city may enforce violations of the provisions of this Article as criminal, civil and/or administrative actions.
- c. If a person falsely states or advertises or puts out any sign or card or other device, or falsely represents to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner, that person shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, to be assessed and collected in a civil action brought by the City Attorney.

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

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Section 4. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3, of the California Code of Regulations) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) of the CEQA Guidelines (because it has no potential for resulting in physical change to the environment, directly or indirectly).

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the __ day of __ , 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2015, by the following votes of members of said City Council.

AYES:
 NOES:
 ATTEST:
 ABSENT:

APPROVED: _____
 Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



Massage Parlors

