

**DATE:** February 23, 2010

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Developer Incentives Package: Amend the Hayward Municipal Code to Increase the Term of the Initial Approval of Development Applications and Subdivision Maps and Clarify Various Related Provisions, and to Allow Deferral of Payment of Supplemental Building Construction and Development Tax and Park-In-Lieu Fees

#### **RECOMMENDATION**

That the City Council adopts the attached resolution (Attachment I) approving a Negative Declaration associated with text changes to the Zoning and Subdivision Ordinances and introduces the attached ordinances that will amend the:

- (1) Zoning Ordinance by changing the initial approval period for various development applications and clarifying various practices and provisions (Attachment II);
- (2) Subdivision Ordinance by changing the initial approval period for tentative maps and clarifying various practices and provisions (Attachment III); and
- (3) Municipal Code to allow through end of 2012, the deferral of payment of the Supplemental Building Construction and Improvement Tax and the Park Dedication In-Lieu Fee for residential development. The option to defer would also be offered to residential developers who build green when not required to do so (Attachment IV).

#### **SUMMARY**

In an effort to stimulate development in Hayward and to align the process and approval of Zoning Ordinance development applications with tentative maps, staff and the Planning Commission are recommending changes to the Zoning and Subdivision Ordinances. During these trying economic times and depressed housing market, staff is proposing a stimulus package to reduce the financial burden on developers that are having difficulty securing development loans and may have difficulty paying all development impact fees due to their inability to sell homes that are ready for occupancy. As part of that package, staff is recommending that through the end of 2012, the payment of the Supplemental Building Construction and Improvement Tax, \$1,200 per single-family unit and the Park Dedication In-Lieu Fee for residential units (nearly \$12,000 for a single-family home) be allowed to be deferred from the time of issuance of certificate of occupancy until the sale of the property, but no longer than one year after the issuance of certificate of occupancy.

To reduce the risk that the fees would not be paid by the developer, staff is also recommending that a promissory note and deed of trust be executed that stipulate the terms associated with the deferral, including that all costs be borne by the developer. The promissory note would obligate the developer to pay the deferred fees and all collection costs, while the deed of trust would be recorded to provide security for the note. To encourage green building, staff is also recommending such deferral be afforded permanently to any residential developer who builds in accordance with Hayward's Green Building Ordinance for Private Development and who is not otherwise required to do so.

## **BACKGROUND**

On June 23, 2009, during a work session, staff presented City Council with a set of recommendations to encourage green building and assist developers during these difficult market conditions. The proposed incentives included extensions of the initial period for discretionary approvals, allowing deferral of payment of certain development impact fees, revisions to Hayward's Inclusionary Housing Ordinance (IHO), and enhancements to the City's development review processes. Staff was directed by Council to proceed with development of the incentive package. At the June work session, staff summarized for Council a few internal improvements to the development review process, and is continuing to make further enhancements, and will provide Council with a summary of these additional efforts in April.

Related to the Inclusionary Housing Ordinance (IHO), Council will be requested in late spring to consider amendments to the IHO, which may include changes to the affordable housing unit in-lieu fee, based on a nexus analysis being prepared by the City's consultant. The Council will also consider further emergency developer relief/incentive measures and revisions to the IHO as recommended by legal counsel. The revisions to be proposed may include:

- 1) Changes to the IHO eliminating requirements for on-site affordable units in rental housing projects, and requiring an impact fee;
- 2) Changes to the IHO In-Lieu Fee Resolution, to adjust to current market conditions;
- 3) Review of in-lieu fees based on a nexus study, and possible conforming changes in the IHO;
- 4) Interim developer relief provisions regarding allowing a "fee-by-right" allowance for newly approved developments, and payment of such fee at certificate of occupancy or close of escrow on sale

*Planning Commission Action* - At the January 28, 2010 Planning Commission meeting, the Commission unanimously (one absent) recommended approval of all proposed changes to the Zoning and Subdivision Ordinances (see later discussion). Commissioners raised a concern whether approval of extensions to the development application approvals would relieve the developer of the responsibility of conforming to seismic regulations and the Green Building Ordinance that would be in place at the time the project was developed. Unless exempt, a development must conform to whatever codes and regulations are in effect at the time a building permit is issued (see attached draft minutes, Attachment V). For example, projects that have already been approved with vesting tentative maps are exempt from Hayward's Green Building Ordinance.

The Planning Commission also recommended approval of a Negative Declaration associated with text changes to the Zoning and Subdivision Ordinances, in accordance with the California Environmental Quality Act (CEQA). The Initial Study and Negative Declaration determined that the changes to the ordinances will have no significant environmental impact. The deferral of fees does not require environmental evaluation, as deferring fees does not have the potential to affect the environment.

## DISCUSSION

Zoning Ordinance Amendments - Staff and the Planning Commission recommend changes to the Zoning Ordinance that would extend the life of initial approvals of Zoning Ordinance development applications, which include Site Plan Review (SPR), Administrative Use Permit (AUP), Conditional Use Permit (CUP), and Variance applications. Recommended changes would also coordinate the processing and approval times of development applications associated with tentative maps. Specifically, staff and the Planning Commission recommend the following changes to the Zoning Ordinance:

- Extend the initial approval time of development applications from one year to thirty-six months;
- Clarify that decisions on development applications will be made by the Planning Commission when processed with a tract subdivision map;
- Clarify that the approval terms for a development application associated with a subdivision shall coincide with that of the subdivision tentative map;
- Clarify that the Planning Director has the authority to approve extensions to development application approvals up to 24 months; and
- Clarify that conditions of approval may be added or modified by the Planning Director as a result of processing an extension of time.

These changes are intended to allow time for the developer to secure funding for construction, align process and life of development application approvals with those of associated tentative maps, and clarify that the Planning Director is authorized to approve extensions and add or modify conditions of approval if appropriate.

Additional modifications are being recommended to correct typographical errors and minor items and to clarify current practices with regards to submittals of building permits, which include:

- Prior to the expiration of the thirty-six-month period, a building permit application must be submitted and accepted for processing by the Building Official, or a time extension of the approval must be granted by the Planning Director.
- If a building permit is issued for construction of improvements authorized by a development application approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the administrative use permit approval.

A request for an extension must be submitted in writing to the Planning Division at least fifteen days prior to the above date.

- Business operations must commence during the approval period in accordance with all applicable conditions of approval.

These revisions would be applicable to any new development application and those existing applications that are not expired as of the effective date of the ordinance revisions.

Subdivision Ordinance Modifications and Changes - Staff and the Planning Commission also recommend changes to Hayward's Subdivision Ordinance, which would affect tentative tract maps, vesting tentative tract maps, tentative parcel maps, and vesting tentative parcel map. These changes include:

- Change the initial tentative map approval time limits from twenty-four months to thirty-six months as currently prescribed in the State Subdivision Map Act;
- Redefine map type definitions to conform with the Subdivision Map Act;
- Clarify approval authorities, such as the Planning Commission having the final jurisdiction to approve, conditionally approve, or disapprove vesting tentative tract maps without variances, and the Planning Director, or his or her designee, administering the provisions of the State Subdivision Map Act pertaining to Certificates of Compliance or Conditional Certificates of Compliance, Certificates of Merger, and Lot Line Adjustments; and
- Clarify the process in which the life of a tentative map may be extended either by the State Legislature or by the local approving body.

These changes are intended to allow time for developers to secure funding for projects and allow the Planning Director, versus the Planning Commission or City Council, to approve the first extension request for a tentative tract map. The ability for the Director to approve initial extensions would reduce the review cycle and processing costs incurred by the developer and would only be made upon the determination that the circumstances under which the map was approved have not changed to the extent that would warrant a change in the design or improvement of the tentative map. These changes would have Hayward's ordinance match the current practices of surrounding local agencies.

Finally, staff proposes several minor changes for clarification, such as the definitions of subdivision map types and clarifying the process in which the life of a tentative map may be extended either by the State Legislature or by the local approving body.

Development Fees Associated with Building Permits - There are several fees associated with building permits, most of which are collected at the time the building permit is issued, such as plan check review and inspection fees. Most California cities collect development impact fees, such as Hayward's Park Dedication In-Lieu (Park In-Lieu) fee and the Supplemental Building Construction and Improvement Tax, when building permits are issued or when certificates of occupancy are issued. In Hayward, the collection of those two fees is already deferred until issuance of a certificate of occupancy or final inspection.

In order to further assist residential developers<sup>1</sup> during these difficult market conditions through the end of calendar year 2012, staff recommends that residential development projects be allowed to defer payment of Park in-Lieu Fee and the Supplemental Building Construction and Improvement Tax until the close of escrow or one year after the issuance of a certificate of occupancy, whichever occurs first. This allows the developer time to secure a buyer for completed homes prior to paying these fees.

The deferral of fees is not applicable to commercial and industrial development as they are not required to pay Park in-Lieu fees. The Supplemental Building Construction and Improvement Tax is calculated based on the square footage of the building instead of a set fee like that established for residential development. In many cases, commercial and industrial construction consists of speculative buildings, for which the perspective number of tenants and the size of their units would not have been determined at the time of issuance of certificate of occupancy.

Staff of the Hayward Area Recreation and Park District (HARD) has indicated concerns with allowing deferral of payment of the Park In-Lieu fees, because doing so would increase the chances that such fees would not be paid. Although the impacts to parks would not be generated until homes are occupied, HARD staff is also indicating that a developer who may not be able to sell soon after issuance of a certificate of occupancy can delay seeking the certificate until such sale is imminent. The only restriction on delaying such request for final inspection and issuance of certificate of occupancy is that certificates of occupancy and final inspections must occur within 12 months after the previous inspection. In summary, HARD staff has concerns with allowing deferral of Park In-Lieu fees because of the lack of City control to ensure they will be paid, and feels other means are available to developers to allow payment of fees to occur near the time of sale.

Assurance of payment of these fees by the developer will be through a promissory note and a deed of trust. The deed of trust would be recorded against the property prior to occupancy. Deferral of these fees would terminate at the end of the year 2012, unless extended by City Council by a subsequent Code amendment. The deferral would remain in effect for entitled residential projects that are voluntarily built in compliance with Hayward's Green Building Ordinance for Private Development. As presented to Council at the June 23, 2009 work session, the total number of approved units that are not obligated to conform to the Green Building Ordinance is approximately 1,700. Such incentive is recommended to be offered to developers for these projects to encourage these units to be built "green" which will help conserve water and use less energy.

Both the promissory note and the deed of trust must be signed by the developer and the deed of trust must be recorded prior to issuance of a certificate of occupancy. Note that fee deferral would not be available if the developer is unwilling to sign the note and deed of trust. The note would set the terms of the deferral of fees and the deadlines for payment. The note would require that payment of the fees must occur by the close of escrow or one year after the issuance of a certificate of occupancy, whichever occurs first. Administrative fees, approximately \$500, would be borne by the developer, as stipulated in the note. Interest of 10% per year will be charged if payment is

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<sup>1</sup> For the purpose of this discussion, the developer is assumed to be the property owner. Should the City encounter a project where the developer and the property owner are separate entities, both the developer and the property owner would be required to sign all documents allowing fee deferrals.

delayed past the deadline; and the developer must pay all costs of collection, if any, including staff costs and/or attorney's fees. Although the City has the right to foreclose on the property if the fees are not paid, in most instances, staff intends to turn the matter over to a collection agency rather than exercise foreclosure.

The purpose of recording the deed of trust is to ensure that the fees are paid upon sale of the property and that the City has a means of enforcing the developer's obligation. In a typical escrow, where a homebuyer is obtaining a mortgage from a commercial lender, the lender will demand that the seller (the developer) pay off all deeds of trust encumbering the property. The City will then receive a request for a "payoff demand" from the title company and, as a condition to removing ("reconveying") its deed of trust from the property, will demand that the developer pay all sums due. It would be highly unusual for a title company to miss the existence of a deed of trust recorded against the property, but it would be advisable for the City to obtain title insurance for its deed of trust (at the developer's expense) to ensure that the deed of trust is properly recorded and signed by the appropriate legal entity.

The general process to allow deferral of payment of the two fees would require the following general steps:

1. *Initial Request/Submittal:* After requesting deferral prior to City conducting the final inspection and issuing certificate of occupancy, the developer would provide the City with a preliminary title report with a legal description of the property and title insurance identifying the person(s) authorized to sign the deed of trust and promissory note on behalf of the developer.
2. *City Processes Request:* The City would then prepare the promissory note and deed of trust and after obtaining signatures and verifying accuracy of information in the deed and note, would forward the deed of trust to a title company for recordation, thereby putting a lien on the property.
3. *Payment of Fees:* Upon payment of the deferred fees, the lien is removed from the property by the title company at close of escrow, or will do so when the City indicates to the title company fees have been received. In cases where the developer has not paid the deferred fees by one year after the issuance of a certificate of occupancy, the City would send a letter requesting payment of fees and if not resolved, would turn the matter over to a collection agency or pursue other remedies for obtaining payment of the fees.

There are several risks to the City associated with the proposed fee deferral program:

1. Property under development is often encumbered by multiple deeds of trust that may exceed the value of the property. (Banks may require developers to secure construction and other loans against multiple properties that they own.) Should a senior lender foreclose on the property, the City's deed of trust would probably be eliminated in the foreclosure. While the promissory note indicates that the obligation to pay is set by ordinance and independent of the note and deed of trust, often developers set up single-asset LLCs for development purposes, and the entity signing the note may not have any assets other than the property. Similarly, a developer filing bankruptcy may have no assets to pay the fees. Should the

property be foreclosed upon or the developer file bankruptcy, the City would likely have to file a lawsuit and place a lien on the property to ensure payment of fees

As an option, the City could require that the developer post a letter of credit, which would require that the developer place funds matching the cost of the deferred fees into an interest bearing account. Although this guarantees payment to the City, it would make the program less attractive as the developer would tie-up his/her money prior to issuance of a certificate of occupancy.

2. There is little risk in not receiving deferred fees when properties are sold with conventional financing through a title company as the lender will almost certainly demand that the City's deed of trust be paid off prior to sale of the home. If a homebuyer is paying cash or otherwise using unconventional financing, a title company may not be involved and there is a small risk that the developer would not be required to pay the deferred fees prior to sale of the home.
3. The program involves additional administrative time. City staff will need to require developers to provide title reports and to utilize a title company to ensure that the deed of trust is correctly signed and recorded. Staff will need to respond promptly to requests for payoff demands. If a large number of properties do not pay the deferred fees within one year of occupancy, significant staff time could be involved if developers challenge efforts by the collection agency to collect the fees or simply refuses to pay the fees.

## **ECONOMIC IMPACT**

Although it is not possible to predict what specific economic impact the proposals would have, the changes would be favorable to developers and would hopefully help encourage a more rapid increase in development in Hayward. The changes would certainly help promote Hayward as a development-friendly city.

## **FISCAL IMPACT**

With the deferred collection of Park-in-Lieu fees and the Supplemental Building Construction and Improvement Tax, there could be a negative impact to the fiscal revenues for FY 2011 and FY 2012. For example, a recently approved seven-unit townhouse development would generate \$67,571 in Park-in-Lieu fees and \$6,720 for Supplemental Building Construction and Improvement Tax. These fees would be deferred until the close of escrow or up to one year after the issuance of a certificate of occupancy. However, there are risks associated with the program, as explained above. But it is anticipated that with the stimulus package in place, development in Hayward should increase and provide an additional benefit in the following years with the benefits outweighing the risks.

There may be cases where, after a deferred fee package has been processed, the developer files bankruptcy, the property is foreclosed upon, or the developer simply fails to pay the fee in which the City would most likely lose the amount of the deferred fee. If the developer is unable to sell the unit prior to one year after the issuance of the certificate of occupancy and fails to make payment, a

collection agency may not be able to recover all monies owed to the City. In those cases the City would need to make a decision whether it could recover the fees through litigation.

If the program is implemented, it is impossible to know how many developers will take advantage of it. If this program places too much burden on limited staff resources, staff will return to the City Council for consideration of further action.

## **PUBLIC CONTACT**

On January 18, 2010, a Notice of Public Hearing and Availability of a Negative Declaration was published in *The Daily Review* for the January 28 Planning Commission hearing. The Planning Division did not receive any correspondence related to such notice. There were no comments from the public during the Planning Commission hearing.

On February 12, 2010, a Notice of Public Hearing was published in *The Daily Review*. At the time of completion of this report, the Planning Division had not received any correspondence related to such notice.

Additionally, staff offered to meet with a local developer and representative from the Home Builders Association of Northern California who previously advocated for fee deferrals, to discuss staff's proposed recommendations. Unfortunately, those individuals indicated that their schedules did not allow them to meet, that they appreciated that the City was continuing to look at potential cost saving measures in an effort to stimulate residential construction in Hayward, and they looked forward to providing specific comments on the fee deferral proposal prior to the hearing. Staff will summarize any input received from the individuals prior Council at the hearing.

## **NEXT STEP**

If the attached resolution is adopted and the attached three ordinances are introduced, the ordinances will be presented to Council for adoption at the March 2 meeting. The Zoning Ordinance changes would be effective immediately upon adoption, and the fee deferral ordinance and Subdivision Ordinance changes would be effective 30 days after adoption.

*Prepared by:* Tim R. Koonze, Associate Planner

*Recommended by:* David Rizk, Development Services Director

Approved by:



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Gregory T. Jones, City Manager

**Attachments:**

Attachment I	Draft Resolution Adopting Negative Declaration
Attachment II	Draft Ordinance Amending Zoning Ordinance Provisions
Attachment III	Draft Ordinance Amending Subdivision Ordinance Provisions
Attachment IV	Draft Ordinance Amending Provisions Related to Payment of Supplemental Building Construction and Improvement Tax and Park Dedication In-Lieu Fee
Attachment V	Draft Planning Commission Meeting Minutes for the January 28, 2010 Meeting
Attachment VI	Negative Declaration and Initial Study
Attachment VII	Planning Commission Report, dated January 28, 2010 (without attachments)

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

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

RESOLUTION CERTIFYING THAT THE INITIAL STUDY  
AND NEGATIVE DECLARATION HAVE BEEN COMPLETED  
IN COMPLIANCE WITH THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT AND APPROVING TEXT  
AMENDMENT NO. 2009-0595

WHEREAS, Text Amendment No. 2009-0595 amends the Zoning and Subdivision ordinances to increase the term of approval for development applications; and

WHEREAS, an Initial Study and Negative Declaration have been prepared and processed in accordance with City and CEQA guidelines; and

WHEREAS, the Planning Commission held a public hearing on January 28, 2010, regarding the proposed amendments to the Zoning Ordinance and Subdivision Ordinance, in accordance with the procedures contained in the Hayward Zoning Ordinance, codified as Article 1, Chapter 10 of the Hayward Municipal Code, and recommended approval of the Initial Study and Negative Declaration and the proposed text amendments; and

WHEREAS, the City Council of the City of Hayward has independently reviewed and considered the information contained in the Initial Study upon which the Negative Declaration is based; certifies that the Negative Declaration has been completed in compliance with the requirements of the California Environmental Quality Act; and finds that the Negative Declaration reflects the independent judgment of the City of Hayward.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD as follows:

1. The proposed amendments to the Zoning Ordinance and Subdivision Ordinance will not have a significant impact on the environment pursuant to the California Environmental Quality Act. Approval of Text Amendment PL-2009-0595 will not cause a significant impact on the environment as documented in the Initial Study. A Negative Declaration has been prepared in accordance with the California Environmental Quality Act (CEQA) guidelines. The Initial Study and Negative Declaration reflect the independent judgment of the City of Hayward.

2. Substantial proof exists that the proposed changes will promote the public health, safety, convenience and general welfare of the residents of Hayward in that the text changes are designed to provide a stimulus package encouraging developers to build in Hayward, particularly during depressed a depressed economy. Development would stimulate growth while improving neighborhoods by developing underutilized properties.

3. The proposed text amendments are in conformance with the purposes of the Zoning Ordinance and all applicable, officially adopted policies and plans in that the text changes are designed to support the General Plan Policies that promotes infill development and expands the housing supply.

4. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the amendment is adopted in that the amendment does not alter the review process designed to ensure that development is consistent with the available services.

5. All uses permitted when the amendment is adopted will be compatible with present and potential future uses as the amendment does not propose any change to the type of permitted uses.

BE IT FURTHER RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD that, based on the findings noted above, the text amendments are hereby approved, subject to the adoption of the companion ordinances .

IN COUNCIL, HAYWARD, CALIFORNIA February 23, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

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

ORDINANCE AMENDING ARTICLE 1 OF CHAPTER 10 OF  
THE HAYWARD MUNICIPAL CODE AND ADOPTING NEW  
APPROVAL PERIODS FOR DEVELOPMENT APPLICATIONS  
AND OTHER RELATED AMENDMENTS

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

Section 1. This City Council incorporates by reference the findings contained in Resolution \_\_\_\_\_, approving the text changes requested in Zone Change Application PL-2009-0595.

Section 2. Zoning Ordinance Section 10-1.120(c) is hereby repealed, and, in substitution thereof, a new Section 10-1.120(c) is hereby enacted to read as follows: "The Director of Development Services, hereinafter referred to as 'Planning Director,' shall perform the duties and functions of day-to-day and long-range management of the Development Services Department. This includes the acceptance and processing of all land use permit applications (i.e., variances, development permits, etc.) All officers and employees who have the primary responsibility for the administration and interpretation of this Zoning Ordinance may act in his or her stead. The Planning Director has final approval authority for and enforcement of Administrative Use Permits, Site Plan Reviews, Administrative Variances and extensions of time. In addition, the Planning Director may impose conditions of approval or make interpretations of this Zoning Ordinance. Any decision of the Planning Director regarding the entitlements referenced above may be appealed to the Planning Commission."

Section 3. Zoning Ordinance Section 10-1.160(c) is hereby enacted to read as follows: "When processed as part of a subdivision map application, the term of approval for all development applications shall be co-terminus with that of the subdivision map."

Section 4. Zoning Ordinance Section 10-1.3010(b)(1), relating to site plan reviews for subdivisions, is hereby repealed, and, in substitution thereof, a new Section 10-1.3010(b)(1) is hereby enacted to read as follows:

"b. Subdivision.

(1) When an application for a site plan review involves a subdivision map requiring approval by an advisory agency, as that term is defined in the City's Subdivision Ordinance, the project shall be processed and reviewed concurrently by the Planning Commission. An application approved by the Planning Commission shall also be reviewed by the City Council on appeal or on a call-up basis. The action of the City Council shall be final."

Section 5. Zoning Ordinance Sections 10-1.3055(a), relating to lapses of approval for site plan reviews, is hereby repealed, and, in substitution thereof, new Sections 10-1.3055(a)(1), (2) and (3) are hereby enacted to read as follows:

“a. General. Site Plan Review approval is void 36 months after the effective date of approval unless:

(1) Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official, or a time extension of the approval has been granted by the Planning Director.

(2) If a building permit is issued for construction of improvements authorized by the site plan review approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the site plan review approval. A request for an extension must be submitted in writing to the Planning Division at least 15 days prior to the above date.

(3) Business operations have commenced in accordance with all applicable conditions of approval.”

Section 6. Zoning Ordinance Section 10-1.3055(b)(1), relating to extensions of approvals for site plan reviews, is hereby repealed and, in substitution thereof, a new Section 10-1.3055(b)(1) is hereby enacted to read as follows:

“b. 24- Month Extension.

(1) The Planning Director may grant an extension(s) for whatever time period is deemed appropriate, provided that the cumulative total of time extension(s) does not exceed 24 months. Decisions of the Planning Director regarding time extension(s) may be appealed to the Planning Commission or the City Council, as appropriate.”

Section 7. Zoning Ordinance Section 10-1.3055(b)(5), relating to extensions of approvals for site plan reviews, is hereby enacted to read as follows: “Conditions of approval may be added or modified by the Planning Director as a result of the processing of an extension of time.”

Section 8. The second paragraph of Zoning Ordinance Section 10-1.3120, relating to administrative options for administrative use permits, is hereby amended to read as follows: “If after applying for an administrative use permit application, the applicant fails to provide changes or additional information necessary to make a decision on the project and there is no activity taking place in connection with the application for a period of 6 months, the application shall be closed and the applicant so informed.”

Section 9. Zoning Ordinance Sections 10-1.3155(a), relating to lapses of approval for administrative use permits, is hereby repealed, and, in substitution thereof, new Sections 10-1.3155(a)(1), (2) and (3) are hereby enacted to read as follows:

“a. General. Administrative Use Permit approval is void 36 months after the effective date of approval unless:

(1) Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official, or a time extension of the approval has been granted by the Planning Director.

(2) If a building permit is issued for construction of improvements authorized by the administrative use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the administrative use permit approval. A request for an extension must be submitted in writing to the Planning Division at least 15 days prior to the above date.

(3) Business operations have commenced in accordance with all applicable conditions of approval.”

Section 10. Zoning Ordinance Section 10-1.3155(b)(1), relating to extensions of approvals for administrative use permits, is hereby repealed, and, in substitution thereof, a new Section 10-1.3155(b)(1) is hereby enacted to read as follows:

“b. 24- Month Extension.

(1) The Planning Director may grant an extension(s) for whatever time period is deemed appropriate, provided that the cumulative total of time extension(s) does not exceed 24 months. Decisions of the Planning Director regarding time extension(s) may be appealed to the Planning Commission or the City Council, as appropriate.”

Section 11. Zoning Ordinance Section 10-1.3155(b)(4), relating to extensions of approvals for administrative use permits, is hereby enacted to read as follows: “Conditions of approval may be added or modified by the Planning Director as a result of the processing of an extension of time.”

Section 12. The second paragraph of Zoning Ordinance Section 10-1.3220, relating to administrative options for conditional use permits, is hereby amended to read as follows: “If after applying for a conditional use permit application, the applicant fails to provide changes or additional information necessary to make a decision on the project and there is no activity taking place in connection with the application for a period of 6 months, the application shall be closed and the applicant so informed.”

Section 13. Zoning Ordinance Sections 10-1.3255(a), relating to lapses of approval for conditional use permits, is hereby repealed and, in substitution thereof, new Sections 10-1.3255(a)(1), (2) and (3) are hereby enacted to read as follows:

“a. General. Conditional Use Permit approval is void 36 months after the effective date of approval unless:

(1) Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official or a time extension of the approval has been granted by the Planning Director.

(2) If a building permit is issued for construction of improvements authorized by the conditional use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the conditional use permit approval. A request for an extension must be submitted in writing to the Planning Division at least 15 days prior to the above date.

(3) Business operations have commenced in accordance with all applicable conditions of approval.”

Section 14. Zoning Ordinance Section 10-1.3255(b)(1), relating to extensions of approvals for conditional use permits, is hereby repealed, and, in substitution thereof, a new Section 10-1.3255(e)(1) is hereby enacted to read as follows:

“b. 24- Month Extension.

(1) The Planning Director may grant an extension(s) for whatever time period is deemed appropriate, provided that the cumulative total of time extension(s) does not exceed 24 months. Decisions of the Planning Director regarding time extension(s) may be appealed to the Planning Commission or the City Council, as appropriate.”

Section 15. Zoning Ordinance Section 10-1.3255(b)(4), relating to extensions of approvals for conditional use permits, is hereby enacted to read as follows: “Conditions of approval may be added or modified by the Planning Director as a result of the processing of an extension of time.”

Section 16. Zoning Ordinance Sections 10-1.3355(a), relating to lapses of approval for variances, is hereby repealed and, in substitution thereof, new Sections 10-1.3255(a)(1), (2) and (3) are hereby enacted to read as follows:

“a. General. Variance approval is void 36 months after the effective date of approval unless:

(1) Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official or a time extension of the approval has been granted by the Planning Director.

(2) If a building permit is issued for construction of improvements authorized by the variance approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the conditional use permit approval. A request for an extension must be submitted in writing to the Planning Division at least 15 days prior to the above date.

(3) Business operations have commenced in accordance with all applicable conditions of approval.”

Section 17. Zoning Ordinance Section 10-1.3355(b)(1), relating to extensions of approvals for variances, is hereby repealed and, in substitution thereof, a new Section 10-1.3355(b)(1) is hereby enacted to read as follows:

“b. 24- Month Extension.

(1) The Planning Director may grant an extension(s) for whatever time period is deemed appropriate, provided that the cumulative total of time extension(s) does not exceed 24 months. Decisions of the Planning Director regarding time extension(s) may be appealed to the Planning Commission or the City Council, as appropriate.”

Section 18. Zoning Ordinance Section 10-1.3355(e)(4), relating to extensions of approvals for variances, is hereby enacted to read as follows: “Conditions of approval may be added or modified by the Planning Director as a result of the processing of an extension of time.”

Section 19. This provisions of this ordinance relating to the 36-month initial approval period shall apply all site plan reviews, administrative use permits, conditional use permits and variances that have not expired at the time this ordinance becomes effective.

Section 20. 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 21. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

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

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

APPROVED AS TO FORM:

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

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

ORDINANCE AMENDING ARTICLE 3 OF CHAPTER 10 OF  
THE HAYWARD MUNICIPAL CODE AND ADOPTING NEW  
APPROVAL PERIODS FOR SUBDIVISION MAP  
APPLICATIONS AND OTHER RELATED AMENDMENTS

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

Section 1. This City Council incorporates by reference the findings contained in Resolution \_\_\_\_\_, approving the text changes requested in Zone Change Application PL-2009-0595.

Section 2. Subdivision Ordinance Section 10-3.115(c), relating to tentative maps, is hereby repealed, and, in substitution thereof, a new Section 10-3.115(c) is hereby enacted to read as follows: "Tentative Map - Final Map. It is also commonly referred to as a tentative map or a tentative tract map. A tentative map or tentative tract map is a map made for the purpose of showing the design and improvement of a proposed major subdivision and the existing conditions in and around the proposed subdivision. A tentative map is required for all subdivisions creating five or more parcels, as codified in Subdivision Map Act Section 66426 or its successor."

Section 3. Subdivision Ordinance Section 10-3.115(d), relating to parcels maps, is hereby repealed, and, in substitution thereof, a new Section 10-3.115(d) is hereby enacted to read as follows: "Tentative Map - Parcel Map. It is also commonly referred to as a tentative parcel map. A tentative parcel map is a map made for the purpose of showing the design and improvement of a proposed minor subdivision and the existing conditions in and around the proposed subdivision."

Section 4. Subdivision Ordinance Section 10-3.115(e), relating to vesting maps, is hereby repealed, and, in substitution thereof, a new Section 10-3.115(e) is hereby enacted to read as follows: "Vesting Tentative Map. A vesting tentative map (c) or (d) is a map that meets the requirements of the Subdivision Map Act Section 66452 or its successor. The vesting tentative map must have printed conspicuously on its face the words 'Vesting Tentative Map' when filed to obtain the rights conferred by Chapter 4.5 of the Subdivision Map Act."

Section 5. The heading and first sentence of Subdivision Ordinance Section 10-3.150(a), relating to advisory agency/approval authority for tentative maps - final maps, is hereby amended to read as follows: "Tentative Map. If the tentative map is a tentative tract map or vesting tentative tract map, the Planning Commission, or the City Council in the case of referral, shall have final jurisdiction to approve, conditionally approve or disapprove the tentative map where:." The second-to-last sentence of Subdivision Ordinance Section

10-3.150(a) is hereby amended to read as follows: “The Planning Commission shall be the advisory agency, and the City Council shall have final jurisdiction to approve, conditionally approve, or disapprove all other tentative maps.”

Section 6. The heading and first sentence of Subdivision Ordinance Section 10-3.150(b), relating to advisory agency/approval authority for parcel maps, is hereby amended to read as follows: “Tentative Parcel Map; Vesting Tentative Parcel Map. The Planning Director, or his or her designee, on the Planning Commission in the case of referral, shall have final jurisdiction to approve, conditionally approve, or disapprove tentative parcel maps or vesting tentative parcels maps where:.” The second-to-last sentence of Subdivision Ordinance Section 10-3.150(b) is hereby amended to read as follows: “The Planning Commission, or the City Council in the case of referral, shall have final jurisdiction to approve, conditionally approve, or disapprove all other tentative parcel maps.”

Section 7. Subdivision Ordinance Section 10-3.150(c) is hereby repealed, and, in substitution thereof, a new Section 10-3.150(c) is hereby enacted to read as follows: “Lot Line Adjustment Map. The Planning Director, or his or her designee, or the Planning Commission in the case of referral, shall have final jurisdiction in the review and approval of Lot Line Adjustments pursuant to Subdivision Map Act Section 66412(d), or any successor statute.”

Section 8. Subdivision Ordinance Section 10-3.150(d) is hereby repealed, and, in substitution thereof, a new Section 10-3.150(d) is hereby enacted to read as follows: “Certificate of Compliance. The Planning Director, or his or her designee, shall have the authority to approve or conditionally approve the application for a Certificate of Compliance pursuant to Subdivision Map Act Section 66499.35.”

Section 9. Subdivision Ordinance Section 10-3.150(e), relating to certificates of merger, is hereby enacted to read as follows: “Certificate of Merger. The Planning Director, or his or her designee, shall have the authority to approve or deny the application for a Certificate of Merger authorized by Section 10-3.499 of this Subdivision Ordinance, in accordance with the provisions of Subdivision Map Act Section 66499.20.3/4.”

Section 10. Subdivision Ordinance Section 10-3.165(a) is hereby repealed, and, in substitution thereof, a new Section 10-3.165(a) is hereby enacted to read as follows: “The Director of Development Services/Planning Director (referred to herein as the ‘Planning Director’) shall be responsible for reporting to the Planning Commission and the City Council as to whether the design and improvements of proposed subdivisions are consistent with the General Plan and any special plans adopted by the City.”

Section 11. Subdivision Ordinance Section 10-3.165(b) is hereby repealed, and, in substitution thereof, a new Section 10-3.165(b) is hereby enacted to read as follows: “The Planning Director, or his or her designee, shall administer the provisions of Subdivision Map Act Section 66499.35 and issue Certificates of Compliance or Conditional Certificates of Compliance.”

Section 12. Subdivision Ordinance Section 10-3.165(c) is hereby repealed, and, in substitution thereof, a new Section 10-3.165(c) is hereby enacted to read as follows: “The Planning Director, or his or her designee, shall administer the provisions of Subdivision Map Act Section 66499.36 (Notice of Violation). The Planning Director shall act as the advisory agency on these matters. Appeals of the Planning Director’s actions shall be in the same manner as under Certificates of Compliance.”

Section 13. Subdivision Ordinance Section 10-3.165(d) is hereby repealed, and, in substitution thereof, a new Section 10-3.165(d) is hereby enacted to read as follows: “The Planning Director, or his or her designee, shall have final jurisdiction to approve, conditionally approve, or disapprove Lot Line Adjustment applications.”

Section 14. Subdivision Ordinance Section 10-3.165(e) is hereby enacted to read as follows: “The Planning Director, or his or her designee, shall administer the provisions of the Subdivision Map Act Section 66499.20.3/4 and is authorized by Section 10-3.499 of this Article to approve and issue Certificates of Merger.”

Section 15. Subdivision Ordinance Section 10-3.246, relating to time extensions for tentative and vesting maps, is hereby repealed and, in substitution thereof, a new Section 10-3.246 is hereby enacted to read as follows:

“SEC. 10-3.246 TIME EXTENSION - TENTATIVE (TRACT MAP OR PARCEL MAP) MAP AND VESTING TENTATIVE (TRACT MAP OR PARCEL MAP) MAP.

- a) Expiration. An approved or conditionally approved tentative map shall expire 36 months after its approval. The expiration of the tentative map terminates all proceedings, and no final or parcel map may be filed without first processing a new tentative map, unless an extension is granted as set forth below.
- b) Statutory Extensions.
  1. Off-Site Public Improvements. If the subdivider is required to expend \$178,000 or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Subdivision Map Act Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with

Subdivision Map Act Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

Commencing January 1, 2005, and each calendar year thereafter, the amount of one hundred seventy-eight thousand dollars (\$178,000) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

For purposes of this section, final map 'filing' date is the date of the City Council meeting at which the Council receives the map.

2. Development Moratorium. The period of time specified in Section 10-3.246(a) of this Article on shall not include any period of time during which a development moratorium, defined by the Subdivision Map Act Section 66452.6(f), and imposed after approval of the tentative map, is in existence. The length of the moratorium shall not exceed five years. Once a development moratorium is terminated, the tentative map shall be valid for the same period of time as was left to run on the tentative map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the tentative map shall be valid for 120 days following the termination of the moratorium.
3. Development Agreement. A tentative map on property subject to a development agreement authorized by Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, Subdivision Map Act Section 65864, et. seq., and the provisions of Article 9, Chapter 10 of the City of Hayward Municipal Code may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement.

c) Discretionary Extensions.

1. General. Prior to the expiration of an approved or conditionally approved tentative map, the person filing the tentative map may request an extension of the tentative map approval or conditional approval by written

application to the Planning Director, such application to be filed at least fifteen days before the approval or conditional approval is due to expire. The application shall state the reasons for requesting the extension. Upon a timely filing of the application for extension by the subdivider, the tentative map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. In granting an extension, new conditions may be imposed or existing conditions may be revised. Upon application of the subdivider, the first extension of the term of the map, not exceeding 36 months, may be granted by the Planning Director, who is designated the advisory agency for this purpose, upon the determination that circumstances under which the map was approved or conditionally approved have not changed to the extent which would warrant a change in the design or improvement of the tentative map. If the Planning Director denies the subdivider's application for an extension, the subdivider may appeal to the Planning Commission within 15 days after the Planning Director has denied the initial extension. The Planning Commission may grant, conditionally grant, or deny subdivider's request for extension. The time at which the map expires may be extended or a period or periods not exceeding a total of six years. If the Planning Commission denies a subdivider's application for an extension, the subdivider may appeal to the City Council within 15 days after the Planning Commission has denied the extension.

2. Pending Litigation. The period of time specified in Section 10-3.246(a) above shall not include any period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction if the stay of such period of time is approved by the City Council. Not later than ten days after service of the initial petition or complaint in such lawsuit upon the City, the subdivider may file a written request with the City Clerk for such a stay. Within forty days after the filing of such request, the City Council shall either stay the time for up to five years, or deny the requested stay. The City Council shall act upon such request after a hearing, notice of which shall be given to the subdivider. The subdivider shall be entitled to present evidence at the hearing in support of said stay, and the City Manager and the City Attorney may recommend to the City Council whether to grant or deny said stay. The decision of the City Council shall be final and shall be subject to judicial review within the time and to the extent provided by law.

- d) Subdivision Map and Improvement Plans Review. A tentative map remains valid during the period that the review of a subdivision map (final map or parcel map) and improvement plans by the City is underway, and the subdivider is actively pursuing approval of a final map or parcel map. However, under no circumstances

will the map remain valid for a period of more than 12 months after the expiration date of the approved or conditional approved tentative map. In addition, if the City Engineer determines at any time during the review period that the subdivider is not actively pursuing the approval of the final map or parcel map, as evidenced by the subdivider's failure to adhere to time deadlines as set forth by the City Engineer, the privileges granted by this section will end and the map will expire, provided the expiration date of the tentative map has passed."

Section 16. Subdivision Ordinance Section 10-3.247, relating to time extensions for vesting parcel maps, is hereby repealed.

Section 17. 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 18. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of \_\_\_\_\_, 2010, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

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

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

APPROVED AS TO FORM:

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

ORDINANCE NO. 10-\_\_\_\_\_

AN ORDINANCE AMENDING SECTION 8-15.04 AND SECTION 10-16.30, SUBSECTION (C), OF THE HAYWARD MUNICIPAL CODE RELATING TO PROVISIONS FOR PAYMENT OF CERTAIN DEVELOPMENT FEES

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

Section 1. Section 8-15.04 of the Hayward Municipal Code, relating to the time of payment of the Supplemental Building Construction and Improvement Tax, is hereby amended to read as follows:

“SEC. 8-15.04 TIME OF PAYMENT.

“(a) The amount of tax imposed for the construction of any building, or portion thereof, shall be due and payable at the time a certificate of occupancy is issued or at the time of final inspection should no occupancy permit be required.

“(b) Notwithstanding subsection (a) of this Section, if the residential developer is eligible pursuant to subsection (c) of this Section, the developer may elect to defer the payment of the tax until the earliest of the following to occur:

"1. Close of any escrow for the sale of the property on which the building is located,  
or

"2. One year after issuance of the certificate of occupancy (or one year after final inspection should no occupancy permit be required);

"Provided that the property owner enters into a contract with the City to pay the tax at the time specified and all associated administrative and other costs, which contract shall be secured by a recorded lien against the property.

“(c) The deferral of payment permitted by subsection (b) may be permitted only for the following:

“1. For any residential developer seeking a certificate of occupancy or final inspection until December 31, 2012;

“2. For any residential developer who elects to voluntarily comply with all provisions of Article 22, Chapter 10 of the Hayward Municipal Code, “Green Building Requirements for Private Developers,” who is not otherwise required to do so.”

[Type text]

Section 2. Section 10-16.30, subsection (c), of the Hayward Municipal Code, relating to the payment of fees in lieu of land dedication, is hereby amended to read as follows:

“(c) Payment of In Lieu Fees.

“1. Fees shall be paid to the City prior to the date of the final inspection or the date the certificate of occupancy is issued for the development, whichever occurs first. Where occupancy of a development is phased, fees shall be paid on a prorata basis for each dwelling unit prior to final inspection or issuance of a certificate of occupancy for said unit, whichever occurs first.

“2. Notwithstanding subsection (c)(1) of this Section, if the developer is eligible pursuant to subsection (c)(3) of this Section, the developer may elect to defer the payment of the fees until the earliest of the following to occur:

“a. Close of any escrow for the sale of the property on which the building is located, or

“b. One year after issuance of the certificate of occupancy (or one year after final inspection should no occupancy permit be required);

“Provided that the property owner enters into a contract with the City to pay the fees at the time specified and all associated administrative and other costs, which contract shall be secured by a recorded lien against the property.

“3. The deferral of payment permitted by subsection (c)(2) may be permitted only for the following:

“a. For any developer seeking a certificate of occupancy or final inspection until December 31, 2012;

“b. For any developer who elects to voluntarily comply with all provisions of Article 22, Chapter 10 of the Hayward Municipal Code, “Green Building Requirements for Private Developers,” who is not otherwise required to do so.

“The City may require the payment of fees at an earlier date when the City determines that the fees will be collected for park and recreational improvements or parkland acquisition for which an account has been established and funds have been authorized by the City, and for which a schedule or plan has been adopted that proposes construction or acquisition to occur prior to the date of final inspection or issuance of the certificate of occupancy. Under such circumstances, the City may require payment at the time of building permit issuance or final or parcel map approval.”

Section 3. 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

[Type text]

ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. 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 \_\_\_\_ day of \_\_\_\_, 2010, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2010, 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

**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, January 28, 2010, 7:30 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chair Mendall.

**ROLL CALL**

Present:	COMMISSIONERS:	McKillop, Márquez, Loché, Peixoto, Lavelle
	CHAIRPERSON:	Mendall
Absent:	COMMISSIONER:	Thnay

Commissioner McKillop led in the Pledge of Allegiance.

Staff Members Present: Conneely, Koonze, Nguyen, Patenaude, Philis

General Public Present: 0

**PUBLIC COMMENTS**

None

**PUBLIC HEARING**

2. **Text Amendment Application No. PL-2009-0595 / City of Hayward (Applicant) – Request to Amend the Zoning and Subdivision Ordinances to Increase the Term of the Initial Approval of Development Applications**

Associate Planner Tim Koonze gave a brief synopsis of the report.

Commissioner Lavelle asked what happens to the development application when the land is sold. Associate Planner Koonze said the approval stays with the land. Mr. Koonze also confirmed that the extension of 36 months for the initial tentative map approval would go to the new owner.

Commissioner McKillop asked if staff had received any input from major developers in the area and if there were any downsides to these proposals. Planning Manager Richard Patenaude said staff has had some informal discussions with various developers and all of them favored the amendments.

Chair Mendall clarified that currently, if the developer hadn't started the project in 36 months they would have to start over and Mr. Koonze said yes, the developer would have to submit a new application. Chair Mendall also confirmed that the applicant would have to meet all current seismic and Green building requirements and Mr. Koonze said yes. Planning Manager Patenaude pointed

out that requirements, such as seismic and Green building standards, are applicable when the developer applies for a building permit, not the approval of development applications.

When Chair Mendall expressed some confusion, Mr. Patenaude explained that the amendments proposed pertain to the development applications, which is the first step in the process. Once the development application receives City approval then the developer applies for a building permit. Mr. Patenaude said by extending the approval time for the planning application that would give developers more time to fine-tune projects before requesting a building permit.

Chair Mendall confirmed that when the developer applies for a building permit it is at that point that any seismic or Green building requirements are applied to that project and Planning Manager Patenaude said yes. Chair Mendall referred to some previous projects that were deemed exempt from the Green building requirements and Mr. Patenaude explained that the Green building ordinance was approved by Council after those projects had been granted approval.

There being no public comments Chair Mendall opened and closed the Public Hearing at 7:40 pm.

Commissioner Peixoto made a motion to approve staff recommendation that City Council adopt the negative declaration and approve the text amendments. Commissioner McKillop seconded the motion.

There being no other comments, the motion passed with the following vote:

AYES:	Commissioners McKillop, Márquez, Loché, Peixoto, Lavelle Chair Mendall
NOES:	None
ABSENT:	Thnay
ABSTAINED:	None

### **ADDITIONAL MATTERS**

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

Planning Manager Patenaude pointed out two documents the Commissioners received including a supplemental to the Planning Commissioners Journal, which provides examples and tips for Commissioners, and The Smart Growth Manual, which relates to Form-based code projects such as the South Hayward BART station project. Mr. Patenaude said staff has been working on the South Hayward BART project and he's really excited about what's going to come to the Commissioners for approval. "It's going to be much different than how we've handled land use in the past," he said. He said Form-based code will provide more flexibility but at the same time more assurance for what's going to happen in these areas.

Commissioner Lavelle asked for the status of the Fresh and Easy market slated for the Fairway Park Shopping Center in South Hayward. Mr. Patenaude said while there is presently no movement, they are holding their leases and still making their lease payments. He said he's heard several things,

**MINUTES OF THE REGULAR MEETING OF THE  
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---

including that they are waiting for the Stockton warehouse to open. He said he would provide updates to the Commissioners as they come in.

Mr. Patenaude said there will be no Planning Commission meetings in February, but there are already items slated for March.

**4. Commissioners' Announcements, Referrals**

Commissioner Lavelle complimented city staff on the new street pole banners around downtown. She said they are very attractive, modern, eye-catching and refer to the City's various art programs including those at public high schools.

Chair Mendall again requested a meeting with a traffic engineer to discuss the new traffic lanes created at Industrial and Hesperian Boulevards. "It can be vastly improved," he said.

**APPROVAL OF MINUTES**

5. Minutes from January 14, 2010 were unanimously approved.

**ADJOURNMENT**

Chair Mendall adjourned the meeting at 7:47 p.m.

**APPROVED:**

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Elisa Márquez, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk



**DEPARTMENT OF  
COMMUNITY AND ECONOMIC DEVELOPMENT  
Planning Division**

**NEGATIVE DECLARATION**

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

**I. *PROJECT DESCRIPTION:***

**Request to Amend the Zoning Ordinance and Subdivision Ordinance To Provide Stimulus for Development By Increasing the Term of the Initial Approval of Development Applications**  
City of Hayward (Applicant)

**II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:***

The proposed project could not have a significant effect on the environment.

**III. *FINDINGS SUPPORTING DECLARATION:***

1. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.
2. The project will not result in any development that would adversely affect any scenic resources.
3. The project will not result in any development that would have an adverse effect on agricultural land.
4. The project will not result in any development that would have significant impacts related to changes in air quality.
5. The project will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.
6. The project will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.

7. The text amendment will not affect on geological hazards.
8. The text amendment will not affect water quality standards.
9. The text amendment is not in conflict with the policies of the City General Policies Plan, and the Zoning Ordinance.
10. The text amendment could not result in a significant impact to mineral resources since no construction will take place as part of this project.
11. The text amendment could not result in a significant noise impact.
12. The text amendment could not result in a significant impact to public services.
13. The text amendment could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.
14. The text amendment could not result in a significant impact to parking.

**IV. PERSON WHO PREPARED INITIAL STUDY:**

Signature: Tim R. Koonze  
Tim R. Koonze, Associate Planner

Dated: December 18, 2009

**V. COPY OF INITIAL STUDY IS ATTACHED**

For additional information, please contact the City of Hayward Planning Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4207

**DISTRIBUTION/POSTING**

- Provide copies to project applicants and all organizations and individuals requesting it in writing. Provide copy to Alameda County Clerks Office.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.



DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
Planning Division

INITIAL STUDY CHECKLIST FORM

**Project title:** Revisions to the Zoning Ordinance and Subdivision Ordinance -- Request to Amend the Zoning Ordinance and Subdivision Ordinance To Provide Stimulus for Development By Increasing the Term of the Initial Approval of Development Applications - City of Hayward - Applicant.

**Lead agency name and address:**

City of Hayward, 777 "B" Street, Hayward, CA 94541-5007

**Contact person:**

Tim R. Koonze, Associate Planner  
(510) 583-4207 tim.koonze@hayward-ca.gov

**Project location:**

Citywide

**Project sponsor's name and address:**

City of Hayward  
777 B Street  
Hayward, CA 94541

**General Plan:**

N/A

**Zoning:**

N/A

**Description of project:**

Request to amend the Zoning Ordinance and Subdivision Ordinance To provide stimulus for development by increasing the term of the initial approval of development applications.

**Surrounding land uses and setting:**

N/A

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

None

**ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:**

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

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

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

On the basis of this initial evaluation:

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

Signature:

Tim R. Koonze  
Tim R. Koonze, Associate Planner, City of Hayward

Date: April 9, 2009

**ENVIRONMENTAL ISSUES:**

**I. AESTHETICS -- Would the project:**

- a) Have a substantial adverse effect on a scenic vista?      
*Comment: The text amendment would not result in any development that would have an effect on a scenic vista.*
- b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?      
*Comment: The text amendment would not result in any development that would substantially damage scenic resources.*
- c) Substantially degrade the existing visual character or quality of the site and its surroundings?      
*Comment: The text amendment would not result in any development that would substantially degrade the existing character or quality of the site and its surroundings.*
- d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?      
*Comment: The text amendment would not result in any development that would create a new source of substantially light or glare which would adversely affect day or nighttime views in the area.*

**II. AGRICULTURE RESOURCES:** In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?      
*Comment: The text amendment would not result in any development that would affect farmland.*
- b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?      
*Comment: Refer to II.a) above.*
- c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?      
*Comment: Refer to II.a) above.*

**III. AIR QUALITY --** Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

- a) Conflict with or obstruct implementation of the applicable air quality plan?      
*Comment: The text amendment would not obstruct implementation of the Bay Area Air Quality Management District's Clean Air Plan.*

- b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?

**Comment:** *The text amendment would not violate any air quality standard or contribute substantially to existing or projected air quality violation.*

- c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?

**Comment:** *Refer to III.a).*

- d) Expose sensitive receptors to substantial pollutant concentrations?

**Comment:** *The text amendment would not result in any development that would expose sensitive receptors to substantial pollutant concentrations.*

- e) Create objectionable odors affecting a substantial number of people?

**Comment:** *The text amendment would not result in any development that would create objectionable odors affecting a substantial number of people.*

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

- a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

**Comment:** *The text amendment would not result in any development that would have a substantial adverse affect on any fish or wildlife species or regional plans, policies, or regulations set forth by the California Department of Fish and Game or US Fish and Wildlife Service.*

- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

**Comment:** *Refer to IV.a) above.*

- c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

**Comment:** *Refer to IV.a) above.*

- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

**Comment:** *Refer to IV.a) above.*

- e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

**Comment:** *Refer to IV.a) above.*

- f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?

**Comment:** *The text amendment would not result in any development that would conflict with any habitat conservation plans.*

V. CULTURAL RESOURCES -- Would the project:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?
- Comment: The text amendment would not result in any development that would cause a substantial adverse change in the significance of a historical resource as defined in §15064.5.*
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?
- Comment: The text amendment would not result in any development that would cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5.*
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- Comment: The text amendment would not result in any development that would directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.*
- d) Disturb any human remains, including those interred outside of formal cemeteries?
- Comment: The text amendment would not result in any development that would cause any human remains, including those interred outside of formal cemeteries to be disturbed.*

VI. GEOLOGY AND SOILS -- Would the project:

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
- i) Rupture of a known earthquake fault, as delineated on the most recent Hayward Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
- Comment: The text amendment would not result in any development that would expose people to any geological hazard.*
- ii) Strong seismic ground shaking?
- Comment: See VI.ai.*
- iii) Seismic-related ground failure, including liquefaction?
- Comment: See VI.ai.*
- iv) Landslides?
- Comment: See VI.ai.*
- b) Result in substantial soil erosion or the loss of topsoil?
- Comment: The text amendment would not result in any development that would result in substantial soil erosion or the loss of topsoil.*
- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?
- Comment: See VI.ai.*
- d) Be located on expansive soil, as defined in the Uniform Building Code, creating substantial risks to life or property?
- Comment: See VI.ai.*

- e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

**Comment:** *The text amendment would not result in the construction of any structure that would create a need for septic tank or alternative wastewater disposal systems.*

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

- a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

**Comment:** *The text amendment would not result in any development that would create any hazard related to hazardous materials.*

- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

**Comment:** *Refer to VI.ai.*

- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

**Comment:** *Refer to VI.ai.*

- d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

**Comment:** *Refer to VI.ai.*

- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

**Comment:** *The text amendment would not result in any development that would have an affect or be affected by a public or private airport.*

- f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

**Comment:** *Refer to VI.ai.*

- g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

**Comment:** *The text amendment would not have an affect or interfere with any known emergency response plan or emergency evacuation plan.*

- h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

**Comment:** *The text amendment would not result in any development that would cause people to be exposed to wild land fires.*

**VIII. HYDROLOGY AND WATER QUALITY -- Would the project:**

- a) Violate any water quality standards or waste discharge requirements?

**Comment:** *The text amendment would not result in any development that would cause a violation of any water quality standards or waste discharge requirements.*

- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

**Comment:** *The text amendment would not result in any development that would affect ground water supplies or interfere substantially with ground water recharge.*

- c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?

**Comment:** *The text amendment would not result in any development that would affect on the existing drainage pattern.*

- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?

**Comment:** *Refer to VIII.c.*

- e) Create or contribute runoff water which would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?

**Comment:** *Refer to VIII.c.*

- f) Otherwise substantially degrade water quality?

**Comment:** *The text amendment would not result in any development that would affect on the water quality.*

- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

**Comment:** *There is no housing associated with this project.*

- h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

**Comment:** *There are no structures associated with the text amendment.*

- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

**Comment:** *Refer to VIII.g.*

- j) Inundation by seiche, tsunami, or mudflow?

**Comment:** *Refer to VIII.g.*

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

- a) Physically divide an established community?

**Comment:** *The text amendment would not result in any development that would physically divide an established community.*

- b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

**Comment:** *The text amendment would not be in conflict with the Zoning Ordinance or the General Plan.*

- c) Conflict with any applicable habitat conservation plan or natural community conservation plan?
- Comment:** *The text amendment would result in any development that would conflict with a habitat conservation plan or a natural community conservation plan.*

**X. MINERAL RESOURCES – Would the project:**

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?
- Comment:** *The text amendment would not result in any development that would affect any mineral resource.*
- b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?
- Comment:** *Refer to X.a*

**XI. NOISE - Would the project result in:**

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?
- Comment:** *The text amendment would not result in any development that would expose of persons to or generate noise levels in excess of standards established in the local general plan or noise ordinance,*
- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?
- Comment:** *Refer to XI.a.*
- c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?
- Comment:** *Refer to XI.a.*
- d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?
- Comment:** *See XI.a.*
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?
- Comment:** *The text amendment would not result in any development that would have an affect or be affected by a public or private airport.*
- f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?
- Comment:** *Refer to XI.e.*

**XII. POPULATION AND HOUSING -- Would the project:**

- a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- Comment:** *The text amendment would not induce substantial population growth in any area of the City.*

- b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

**Comment:** The text amendment would not result in any development that would displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere

- c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

**Comment:** The text amendment would not result in any development that would displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

**XIII. PUBLIC SERVICES**

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

- a) Fire protection?

**Comment:** No new fire protection facilities will be required as a result of the text amendment.

- b) Police protection?

**Comment:** No new fire protection facilities will be required as a result of the text amendment.

- c) Schools?

**Comment:** No new school facilities will be required as a result of the text amendment.

- d) Parks?

**Comment:** The text amendment will not generate additional use of the park systems in the area.

- e) Other public facilities?

**Comment:** No other public facilities will be significantly impacted.

**XIV. RECREATION --**

- a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

**Comment:** The text amendment would not affect recreational facilities.

- b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

**Comment:** Refer to XIV.a.

**XV. TRANSPORTATION/TRAFFIC -- Would the project:**

- a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

**Comment:** The text amendment would not cause an increase in traffic which

is substantial in relation to the existing traffic load and capacity of the street system.

- b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?
- Comment: Refer to XV.a.*
- c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?
- Comment: Refer to XV.a.*
- d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?
- Comment: The text amendment would not include any construction that would modify a traffic or roadway design.*
- e) Result in inadequate emergency access?
- Comment: The text amendment would not include any construction that would result in inadequate emergency access.*
- f) Result in inadequate parking capacity?
- Comment: The text amendment would not affect parking capacity.*
- g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?
- Comment: The text amendment would not conflict with adopted policies, plans, or programs supporting alternative transportation.*

**XVI. UTILITIES AND SERVICE SYSTEMS - Would the project:**

- a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?
- Comment: Refer to VIII.a.*
- b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- Comment: Refer to VIII.a.*
- c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?
- Comment: Refer to VIII.a.*
- d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?
- Comment: The text amendment would not result in any development that would affect on sufficient water supply.*
- e) Result in a determination by the wastewater treatment provider, which serves or may serve the project, that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
- Comment: The text amendment would not result in any development that would affect on sufficient wastewater facilities.*
- f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?

**Comment:** The text amendment would not result in any development that would affect sufficient landfill capacity.

- g) Comply with federal, state, and local statutes and regulations related to solid waste?

**Comment:** The text amendment would not result in any development that would affect the ability to meet solid waste regulations.

**XVII. MANDATORY FINDINGS OF SIGNIFICANCE**

- a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

**Comment:** The text amendment is an extension of time, therefore would not result in any development that would have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.

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

**Comments:** The text amendment is an extension of time, therefore would not result in any development that would have a cumulative effect nor a substantial negative environmental effect.

- c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

**Comments:** The text amendment is an extension of time, therefore would not result in any development that would not have an adverse environmental effect on human beings.



**DATE:** January 28, 2010

**TO:** Planning Commission

**FROM:** Tim R. Koonze, Associate Planner

**SUBJECT:** **Text Amendment Application No. PL-2009-0595 – City of Hayward (Applicant) - Request to Amend the Zoning and Subdivision Ordinances to Provide Stimulus for Development by Increasing the Term of the Initial Approval of Development Applications**

### **RECOMMENDATION**

That the Planning Commission recommends that the City Council adopt the negative declaration and approve the text amendments subject to the attached findings.

### **BACKGROUND**

In light of the current recession and in pursuit of making Hayward a more desirable place to build and conduct business, the Planning Director is proposing various amendments to the Zoning and Subdivision Ordinances to increase the term of the initial approval of development applications. These text changes are designed to support the General Plan Policies that promote infill development and expand the housing supply.

#### Zoning Ordinance -

Staff recommends the following changes to the Zoning Ordinance which would affect Site Plan Review (SPR), Administrative Use Permit (AUP), Conditional Use Permit (CUP) and Variance applications (Development Applications):

- Change the initial approval time of Development Applications from 12 months to 36 months;
- Clarify that Development Applications be processed by the Planning Commission when accompanying a tentative tract map;
- Clarify that the approval time for Development Applications associated with subdivisions shall coincide with that of the subdivision;
- Clarify that the Planning Director has the authority to approve extensions; and
- Clarify that conditions of approval may be added or modified as a result of processing an extension of time.

The extension to the initial approval time for development applications recognizes that, it may take a longer period of time before developers are prepared to move forward with their projects and it is unlikely that there would be significant changes in local ordinances or policies during that time. The 36 month approval would coincide with the proposed 36 month approval for subdivisions as provided for in the State Map Act; many applications are proposed in conjunction with a tentative map. The other changes to the Zoning Ordinance would clarify existing practices and the proposed extended approval times may provide incentive for developers to choose Hayward over other jurisdictions.

#### Subdivision Ordinance -

In addition to changes in the Zoning Ordinance, staff recommends the following changes to the Subdivision Ordinance which would affect Tentative Tract Map, Vesting Tentative Tract Map, Tentative Parcel Map and Vesting Tentative Parcel Map applications:

- Change the initial tentative map approval time limits from 24 months to 36 months as prescribed in the Subdivision Map Act;
- Clarify that conditions of approval may be added or modified as a result of processing an extension of time;
- Redefine subdivision map type definitions to conform with the Subdivision Map Act for clarity;
- Clarify approval authorities;
- Clarify the process in which the life of a tentative map may be extended either by the State Legislature or by the local approving body.

In addition to the changes mentioned above, a stimulus package is being proposed to City Council on February 23, 2010, that would include a deferment of payment of Park-in-Lieu fees and the Supplemental Building Construction and Improvement Tax. Currently these fees are paid prior to the issuance of a Certificate of Occupancy. If approved, the stimulus package would allow these fees to be deferred until the close of escrow or one year after the issuance of a Certificate of Occupancy, whichever occurs first.

#### Previous Reviews -

On June 23, 2009, during a work session, the City Council was presented a Local Economic/Incentives Stimulus Package to Encourage Green Building and New Development. The proposed incentives included extensions of initial period for discretionary approvals, deferring certain development fees, and revisions to the Inclusionary Housing Ordinance. Staff was directed by Council to proceed with the incentive program.

## DISCUSSION AND STAFF ANALYSIS

### Zoning Ordinance Modifications and Changes -

Staff is proposing to change the Lapse of Approval section of all Development Applications to change the initial approval period from one year to three years. Although most cities have 12 to 24 month initial approval periods, some of the more progressive cities such as the City of Sunnyvale, have extended the initial approval to 36 months. The additional 24 months would give applicants more confidence in the approval they received and allow them additional time to secure funds for their projects. In addition, the 36 month approval period coincides with the proposed 36 month initial approval for all subdivision applications (see Attachment B, Sec. 10-1.3055 a(1), Sec. 10-1.3155 a(1), Sec. 10-1.3255 a(1), and Sec. 10-1.3355 a(1)).

The current ordinance does not address what happens to the Development Application approval once a building permit application is submitted. Currently all development applications include a condition of approval that states that Development Application approval becomes void 24 months after issuance of the building permit, or 36 months after the Development Application approval, whichever is later. However, the development application approval may remain in effect if the Planning Director determines that there has been a substantial amount of construction done or substantial sums have been expended in reliance upon the Development Application. Staff is proposing to include this language in the Lapse of Approval section of all Development Application types (see Attachment B, Sec. 10-1.3055 a(2), Sec. 10-1.3155 a(2), Sec. 10-1.3255 a(2), and Sec. 10-1.3355 a(2)).

Zoning Ordinance Section 10-1.3010 currently provides that when a SPR application accompanies a "condominium" project the application shall be processed and reviewed by the Planning Commission. Staff is proposing to modify this provision by eliminating the word "condominium" and replacing it with "any subdivision requiring legislative approval". This requirement is also proposed to be included in the AUP, CUP and Variance sections (see Attachment B, Sec. 10-1.3010 b(1), Sec. 10-1.3155 a(1) and b(1), Sec. 10-1.3255 a(1) and b(1), and Sec. 10-1.3355 a(1) and b(1)).

The SPR, AUP and CUP sections of the Zoning Ordinance already provide that applications involved with subdivisions would have an initial life of 24 months. The intent of this provision is for Development Application approvals to have the same approval time as tentative maps. However, it is not uncommon for the State to extend the life of tentative maps during times of economic hardship.

For example, the State has passed legislation that allows an automatic 36 month approval beyond any approvals allowed by local ordinances. To ensure that Development Applications have the same life as subdivisions, staff is proposing to add Section 10-1.160(c) to the General Provisions section stating that the length of approvals for Development Applications associated with subdivisions shall be the same as the subdivision.

Current regulations allow two 12 month extension periods for Development Applications at the discretion of the Planning Director. A request for the one-year extension, approval of which is not

guaranteed, must be submitted to the Planning Division at least 15 days prior to the above date. This prohibits developers from prolonged inactivity after submittal or issuance of a building permit.

Staff is proposing to modify the Zoning Ordinance to allow the Planning Director the flexibility of granting extensions for periods of time that would be appropriate for the specific Development Application, as long as the total length of extensions would not exceed 24 months. The amendment would also allow conditions of approval to be modified or added as a result of granting a time extension. If this text amendment was to be approved, Section 10-1.120 of the General Provisions (Reviewing Authorities) would also have to be amended maintaining consistency throughout the ordinance (see Attachment B, Sec. 10-1.3055 b(1) and c, Sec. 10-1.3155 b(1) and c, Sec. 10-1.3255 b(1) and c, and Sec. 10-1.3355 b(1) and c).

#### Subdivision Ordinance Modifications and Changes -

The proposed changes ensure that the City's Subdivision Ordinance conforms to the current State Subdivision Map Act and clarify policies and practices already in use.

Staff is proposing to change the initial tentative map approval time limits from 24 months to 36 months (see Attachment C, Sec. 10-3.246 a). This additional initial life of the tentative map is allowed by the Subdivision Map Act. It is staff's opinion that it is unlikely that a significant ordinance or policy change affecting development would occur in the initial 36 month period. The additional 12 months would give applicants more confidence in the approval they received and allow them additional time to secure funds for their projects. In addition to the change of initial approval, staff is proposing to increase the extension of time applicants may request from 36 months to 72 months (see Attachment C, Sec. 10-3.246 c)1). Last July, the State Legislature passed Senate Bill 1185, giving local governments the discretion to grant an additional 12 months to the life of a map from 60 months to 72 months as codified in Section 66452.6(e) of the Subdivision Map Act. With signs pointing to a slow recovery for the new housing market, these extensions would give applicants with approved projects delayed by the economic downturn extra time to obtain a final map or a parcel map and avoid going through the entitlement process again.

Furthermore, amendment is made to allow the Planning Director's approval authority to approve the first extension request for a tentative tract map upon the determination that the circumstances under which the map was approved have not changed to the extent which would warrant a change in the design or improvement of the tentative map (see Attachment C, Sec. 10-3.246 c)1). Currently all requests for extensions are processed to the approving body; this amendment would reduce the review cycle and processing cost incurred by the developer. These changes match the current practices of surrounding local agencies.

Finally, staff proposes several minor changes for clarification such as the definitions of subdivision map types, clarifying the process in which the life of a tentative map may be extended either by the State Legislature or by the local approving body, and the approval authority of the Planning Director (see Attachment C, Sec. 10-3.115, Sec. 10-3.150, Sec. 10-3.165, Sec. 10-3.246, and Sec. 10-3.247).

## ENVIRONMENTAL REVIEW

An Initial Study and Negative Declaration have been prepared pursuant to the California Environmental Quality Act (CEQA) guidelines. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

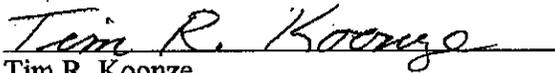
## PUBLIC OUTREACH

On January 18, 2010, a Notice of Public Hearing and Availability of a Negative Declaration was published in *The Daily Review*. At the time of completion of this report, the Planning Division had not received any correspondence related to such notice.

## SCHEDULE

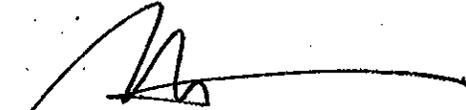
The text amendment along with the previously mentioned fee deferrals are scheduled for a public hearing before the City Council on February 23, 2010.

Prepared by:



Tim R. Koonze  
Associate Planner

Recommended by:



Richard Patenaude, AICP  
Planning Manager

Attachment A:	Findings for Approval
Attachment B:	Proposed Zoning Ordinance Changes
Attachment C	Proposed Subdivision Changes
Attachment D:	Negative Declaration and Initial Study