

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-__

Introduced by Council Member _____

RESOLUTION CALLING A MUNICIPAL ELECTION IN THE CITY OF HAYWARD FOR THE PURPOSE OF AMENDING THE CITY OF HAYWARD CHARTER; SETTING FORTH THE STATEMENT OF THE MEASURE TO BE VOTED UPON; AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY TO PROVIDE FOR THE CONSOLIDATION OF THE MUNICIPAL ELECTION WITH THE PRESIDENTIAL ELECTION TO BE HELD ON NOVEMBER 3, 2020, AND TO PROVIDE ELECTION SERVICES

WHEREAS, under the provisions of the Hayward City Charter, a General Municipal Election for the election of officers shall be consolidated with the General Election held in even numbered years; and

WHEREAS, a Presidential General Election will be held on Tuesday, November 3, 2020.

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

SECTION 1.

That the City of Hayward General Municipal Election is hereby called and ordered to be consolidated with the Presidential Election to be held on Tuesday, November 3, 2020, for the purpose of submitting to the voters Charter amendments modifying Section 900 and replacing gender-specific pronouns with non-gender specific titles set forth in Exhibit A.

SECTION 2.

That a ballot measure question is to appear on the ballot as follows:

<p>Shall amendments to the Hayward City Charter be adopted?</p> <p>To create more opportunities for residents to volunteer, and to honor Hayward's commitment to diversity, shall the Charter of the City of Hayward be amended to eliminate the requirement of being a qualified elector/registered voter to serve on City Council-appointed advisory commissions, and shall the Charter be amended to eliminate gender-based designations and titles and instead use neutral, gender-free designations and titles?</p>	<p>YES</p>
	<p>NO</p>

SECTION 3.

That the vote requirement for the measure to pass is a majority (50%+1) of the votes cast.

SECTION 4.

That the City Clerk is authorized and directed to certify the adoption of this resolution and to transmit a copy thereof so certified to the County Clerk of the County of Alameda. The City Clerk is further authorized and directed to prepare, execute and transmit to the Alameda County Registrar of Voters all documents necessary to carry out the purposes of this resolution.

SECTION 5.

The City Attorney is hereby authorized and directed to prepare and transmit to the City Clerk the impartial analysis and the official ballot title.

- a) The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure.
- b) The analysis shall include a statement indicating the measure was placed on the ballot by the City Council.
- c) In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the voter information guide, there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of Measure_. If you desire a copy of the ordinance or measure, please call the election official's office at (510) 583-4400 and a copy will be mailed at no cost to you."
- d) The impartial analysis shall be filed by the date set by the City Clerk.

SECTION 6.

That the City Clerk is directed to publish a synopsis of the measure pursuant to Elections Code Section 12111 and Government Code Section 6061.

SECTION 7.

That the City Council shall meet at a regular meeting to review the canvass of the returns of the Municipal Election and declare the results thereof.

IN COUNCIL, HAYWARD, CALIFORNIA July 14, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

**EXHIBIT A TO RESOLUTION
PROPOSED CHARTER AMENDMENTS**

The following Charter amendments are proposed by the City Council, on its own motion, to be submitted to the voters of the City of Hayward at the Presidential General Election to be held November 3, 2020:

1. Proposed Charter amendment providing for the modification of Section 900 by eliminating the requirement for U.S. citizenship as a criterion for service on the Council's appointed boards, commissions, committees, task forces and similar advisory bodies.

TEXT OF CHARTER AMENDMENT

The City Council proposes that Section 900 of the Hayward City Charter be amended to read in full as follows:

SECTION 900. IN GENERAL.

There shall be the boards and commissions enumerated in this Article which shall have the powers and duties stated herein. The number of members to comprise any board or commission shall be determined by ordinance or resolution of the Council. No member of any board or commission shall be a member of any other board or commission or hold any paid office or employment, in the City Government. ~~In order to be eligible for any appointment to any board or commission, a person shall be a qualified elector of the City. An applicant for any appointment to any board or commission shall be a resident of the City but need not be a qualified elector.~~

In addition, the Council may create by ordinance or resolution such boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter.

2. Proposed Charter amendment providing for the elimination of gender-specific pronouns and their replacement with non-gender specific titles.

FULL TEXT OF CHARTER AMENDMENT

The City Council proposes that the Hayward City Charter be amended in its entirety as set forth in Attachment I to this exhibit.

REDLINED HAYWARD CITY CHARTER

HAYWARD CITY CHARTER

The City of Hayward Charter was adopted on March 7, 1956. The City Charter outlines the incorporation of the city, defines its powers, and establishes the municipal government to be a Council-Manager form of government.

SECTION 100. - NAME OF CITY.

The City of Hayward shall continue to be a municipal corporation under its present name of "City of Hayward" and shall be possessed of all the property and interest of which it was possessed at the time this Charter takes effect.

SECTION 101. - RIGHTS AND LIABILITIES.

The City of Hayward shall remain vested with and continue to have, hold and enjoy, all property, rights and privileges now possessed, enjoyed, owned or held by it, and shall be subject to all the duties and obligations now pertaining to or incumbent on said City, not inconsistent with the provisions of this Charter.

SECTION 102. - BOUNDARIES.

The boundaries of the City shall be the boundaries as established at the time this Charter takes effect until otherwise changed in the manner provided by law.

SECTION 103. - ORDINANCES.

All ordinances, resolutions, rules and regulations of the City, consistent with this Charter and in force when it takes effect, are hereby continued in force until the same shall have been duly repealed or amended.

SECTION 104. - CONTINUANCE OF PRESENT OFFICERS AND EMPLOYEES.

Present officers and employees shall continue to perform the duties of their respective offices and employments without interruption and for the same compensations and under the same conditions, until the election or appointment and qualification of their successors, but subject to the provisions of this Charter. The terms of office of elective officers whose offices are hereby made appointive shall expire upon the appointment of their successors.

SECTION 105. - EFFECTIVE DATE OF CHARTER.

This Charter shall take effect from the time of its approval by the Legislature of the State of California.

SECTION 200. - GENERAL POWERS.

The City shall have the power to make and enforce all laws and regulations in respect to municipal affairs, subject only to such restrictions and limitations as may be provided in this Charter and in the Constitution of the State of California. It shall also have the power to exercise any and all rights, powers and privileges heretofore or hereafter established, granted or prescribed by any law of the State, by this Charter, or by other lawful authority, or which a municipal corporation might or could exercise under the Constitution and laws of the State of California.

The enumeration in this Charter of any particular power shall not be held to be exclusive of, or any limitation upon, this general grant of power.

The City shall have the power and may act pursuant to any procedure established by any law of the State, unless a different procedure is established by this Charter or by ordinance.

SECTION 201. - CONTRACT FOR MUNICIPAL SERVICES.

The City shall have the power to contract with any competent public or private body or agency for the performance of any municipal function.

SECTION 300. - COUNCIL-MANAGER FORM.

The municipal government established by this Charter shall be known as the "Council-Manager" form of government.

SECTION 400. - GENERAL MUNICIPAL ELECTIONS.

General municipal elections for the election of officers and for such other purposes as the Council may prescribe, shall be consolidated with the California State General Election held in even numbered years.

(AMENDED: STATS. 1994 CH. 22; amended by [Initiative Charter Amendment](#), adopted June 7, 2016)

SECTION 401. - SPECIAL MUNICIPAL ELECTIONS.

All other municipal elections that may be held by authority of this Charter, or of general law, or by ordinance, shall be known as special municipal elections.

SECTION 402. - PROCEDURE FOR HOLDING ELECTIONS.

Unless otherwise provided by ordinances hereafter enacted, all elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in cities of the sixth class, insofar as the same are not in conflict with this Charter.

SECTION 403. - INITIATIVE, REFERENDUM AND RECALL.

Except insofar as is otherwise provided by ordinances hereafter enacted, the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, governing the initiative, the referendum and the recall of municipal officers shall apply to the use thereof in the City insofar as the same are not in conflict with this Charter.

SECTION 500. - ENUMERATION (ELECTIVE OFFICERS).

The elective officers of the City of Hayward shall consist of a Council of seven members, to be composed of six ~~Councilmen~~ Council members and a Mayor, all to be elected by the qualified voters of the City at large.

The first Mayor hereunder shall be elected at the General Municipal Election next following the effective date of this section.

(AMENDED: STATS. 1964 CH. 41)

SECTION 501. - VACANCY IN ELECTIVE OFFICE.

An elective office becomes vacant when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, convicted of a felony, or of an offense involving a violation

of ~~his~~ the officer's official duties, or ceases to be a resident of the City, or neglects to qualify within ten days following election or appointment, or shall have been absent from the State without leave for more than sixty consecutive days, or fails to attend the meetings of the body of which ~~he~~ the officer is a member for a like period without being excused therefrom by said body.

A vacancy in an elective office shall be filled by appointment by the City Council, such appointee to hold office until the first Tuesday following the next General Municipal Election and until ~~his~~ the officer's successor is elected and qualified. At the next General Municipal Election following any such appointment, the person so elected shall serve for the remainder of any unexpired term.

No appointment to fill a vacancy in an elective office shall be made during such time prior to a General Municipal Election that nomination papers may be filed for candidates seeking office at said election.

In the event that Council shall fail to fill a vacancy by appointment within thirty days after such office shall have become vacant, it shall forthwith cause an election to be held to fill such vacancy.

(AMENDED: STATS. 1964 CH. 41)

SECTION 600. - ELECTIVE OFFICERS.

(Term of Office) Except as otherwise provided herein and in Section 501 of this Charter, Elective Officers shall hold office for a term of four years from and after the first Tuesday following their election and shall continue in office until their respective successors qualify.

The City Council shall adopt an ordinance providing for a modification of the terms of Council Members to assure the smooth transition of office. Terms of either incumbents or incoming members may be lengthened or shortened.

Ties among candidates for any office shall be settled by the drawing of lots.

(AMENDED: STATS. 1964 CH. 41; 1994 CH. 22)

SECTION 600(a). - COUNCIL COMMITTEES.

The Council may organize among its members such standing committees as it may determine, each of which shall act as a fact-finding committee for the purpose of considering all available information on proposed legislation or matters of policy referred to such committee by council and making recommendations thereon to the council as a whole.

SECTION 601. - ELIGIBILITY.

No person shall be eligible to be nominated for or hold office as a member of the Council unless ~~he~~ the Council member is and shall have been for at least one year next preceding ~~his~~ the Council member's election or appointment, a resident and qualified elector of the City or of territory annexed thereto.

SECTION 602. - ~~COUNCILMAN~~ COUNCIL MEMBER TO HOLD NO OTHER OFFICE.

No member of the Council shall hold any other city office or city employment, the compensation of which is paid out of municipal funds, nor be elected or appointed to any office created or the compensation of which is increased by the Council, while ~~he~~ the Council member is a member thereof, until one year after the expiration of the term for which ~~he~~ the Council member was elected.

SECTION 603. - COMPENSATION (MEMBERS OF COUNCIL).

Any compensation to be paid members of the Council shall be established by ordinance, and shall apply to all incumbent members of the Council. The Council may likewise change such compensation;

however, such change shall not be effective until one or more members of Council becomes eligible for such change in compensation by virtue of beginning a new term of office.

In addition, each member of the Council shall receive reimbursement on order of the Council for Council authorized traveling and other expenses when on official duty.

(AMENDED: STATS. 1964 CH. 41)

SECTION 604. - MAYOR (POWERS AND DUTIES).

Until the General Municipal Election next following the effective date of this section, the Council's presiding officer shall be selected and hold office as provided theretofore. Thereafter, the elected Mayor shall be recognized as the official head of the City for all ceremonial purposes, and by the Courts for the purpose of serving civil processes. The Mayor shall be the presiding officer of the Council, shall preside at the meetings of the Council and shall sign the official documents of the Council. ~~He~~The Mayor shall be included as a member of the Council at all meetings of the Council for the purpose of determining the presence of a quorum. ~~He~~The Mayor shall be entitled to a vote on all matters coming before the Council, but shall possess no veto power. ~~He~~The Mayor may use the title of Mayor in all cases, but the same shall not be construed as conferring upon ~~him~~the Mayor's administrative or judicial functions or other powers or functions of a Mayor under the general laws of the State. (AMENDED: STATS. 1964 CH. 41)

SECTION 605. - MAYOR PRO TEMPORE.

Until the General Municipal Election next following the effective date of this section, the Council's Mayor Pro Tempore shall be selected and hold office as provided theretofore. Thereafter, the Council shall meet on the first Tuesday following each General Municipal Election and shall elect one of its members as Mayor Pro Tempore. The Mayor Pro Tempore shall serve at the pleasure of the Council, and shall be elected and removed by the affirmative votes of at least five (5) members of Council.

The Mayor Pro Tempore shall perform the duties of the Mayor during ~~his~~the Mayor's absence or disability.

(AMENDED: STATS. 1964 CH. 41)

SECTION 606. - POWERS OF THE COUNCIL.

All powers of the City shall be vested in the Council, subject to the provisions of this Charter and to the Constitution of the State of California. The Council may establish the method by which any of such powers may be exercised.

SECTION 607. - MEETINGS OF COUNCIL.

The Council shall, by ordinance or resolution, provide for the time and place of holding its meetings and the manner in which its special meetings may be called. All meetings of the Council, whether regular or special, shall be open to the public.

SECTION 609. - CITIZEN PARTICIPATION.

No citizen shall be denied the right personally, or through counsel, to present grievances or offer suggestions for the betterment of municipal affairs, at any regular meeting of the Council, nor to speak on the subject at any special meeting.

SECTION 610. - ADMINISTERING OATHS. SUBPOENAS.

Each member of the Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the Council. The Council shall have the power and authority to

compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas may be issued in the name of the City and be attested by the City Clerk. Disobedience of such subpoena or the refusal to testify (upon other than constitutional grounds), shall be deemed contempt and shall be punishable as provided by the general laws of the State.

SECTION 611. - RULES OF PROCEEDING.

The Council shall determine its own rules of procedure, may punish its members for disorderly conduct and compel their attendance at Council meetings.

SECTION 612. - METHOD OF ACTION. ORDINANCES AND RESOLUTIONS.

Legislative action shall be taken by the Council only by means of an ordinance or resolution.

SECTION 613. - AYES AND NOES.

The Council shall pass ordinances and resolutions only by taking the ayes and noes by an open vote, which shall be entered in the Minutes of the meeting. The ayes and noes shall be taken and recorded on all motions.

(AMENDED: STATS. 1964 CH. 41)

SECTION 614. - MAJORITY VOTE OF COUNCIL.

No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least four members of the Council.

SECTION 615. - SUBJECT OF TITLE.

Every ordinance or resolution shall be preceded by a brief title which shall indicate the subject and purport thereof.

SECTION 616. - ENACTING CLAUSE OF ORDINANCES.

The enacting clause of all ordinances adopted by the Council shall be substantially as follows: "The Council of the City of Hayward does ordain as follows":

SECTION 617. - REQUIREMENTS OF ORDINANCES, EMERGENCY ORDINANCES.

Except as hereafter provided, no ordinance shall be adopted by the Council on the day of its introduction, nor within one week thereafter, nor at any time other than at a duly assembled meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall be adopted at a meeting held at least one week after the date of such alteration.

At the time of introduction or adoption of an ordinance, the title thereto need only be read, unless reading of the ordinance in full is requested by any member of Council.

EMERGENCY ORDINANCES. Any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health or safety and containing a statement of the reasons for its urgency, may be introduced and adopted at the same meeting if passed by at least five (5) affirmative votes.

PUBLICATION REQUIREMENTS. Before final adoption of an ordinance, a notice indicating its title; a subject matter index; the date of its introduction; and the date, time, and place it will be considered for final adoption; and that copies of the full text thereof are available for examination by the public in the office of the City Clerk, shall be published once in a newspaper of general circulation within the City at least three days before the final adoption meeting date.

A similar notice indicating the adoption of an emergency ordinance and the vote thereon shall be published once within one week after its adoption.

(AMENDED: STATS. 1982 CH. 38)

SECTION 618. - RECONSIDERATION.

When any ordinance is put upon its final passage and fails to pass, and a motion is made to reconsider, the vote upon such motion shall not be taken except at a meeting of the Council, held not less than one week after the meeting at which such motion was made.

SECTION 619. - SIGNING AND ATTESTING.

All ordinances shall be signed by the Presiding Officer and attested by the City Clerk.

SECTION 620. - ORDINANCES (EFFECTIVE DATE).

No ordinance shall become effective until thirty days from and after the date of its adoption, except the following which shall take effect upon adoption:

- (a) An ordinance calling or otherwise relating to an election;
- (b) An improvement proceeding ordinance adopted under State law or a procedural ordinance.
- (c) An ordinance declaring the amount of money necessary to be raised by taxation, or fixing the rate of taxation, or levying the annual tax upon property;
- (d) An emergency ordinance adopted in the manner provided for in this Charter;
- (e) An ordinance annexing areas to the City;
- (f) An ordinance relating to the zoning or rezoning of the City or portions thereof.

(AMENDED: STATS. 1964 CH. 41)

SECTION 621. - RECORD OF CITY ORDINANCES.

A true and correct copy of all ordinances shall be kept and certified to by the City Clerk in a book marked "City Ordinances." Such record copy, with such certificate, or the original ordinance, shall be prima facie evidence of the contents of the ordinance and of the due passage and publication of the same, and shall be admissible as such in any court or proceeding. Such records shall not be filed in any case, but shall be returned to the custody of the City Clerk. Nothing herein contained shall be construed to prevent the proof of the passage and publication of an ordinance in the usual way.

SECTION 622. - CODIFICATION OF ORDINANCES.

Any or all ordinances of the City which have been enacted in the manner required at the time of their adoption, and which have not been repealed, may be compiled, consolidated, revised, indexed and arranged as a comprehensive ordinance code, and such code may be adopted by reference, with the same effect as an ordinance, by the passage of an ordinance for such purpose. Such code need not be published in the manner required for other ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the City Clerk prior to the adoption thereof. Ordinances codified shall be repealed as of the effective date of the code. Subsequent amendments to the code shall be enacted in the same manner as herein required for the amendment of ordinances generally.

SECTION 623. - ORDINANCE VIOLATION. PENALTY.

A violation of any ordinance of the City shall constitute a misdemeanor unless by the terms of such ordinance its violation shall constitute an infraction. A violation of any ordinance of the City may be prosecuted in the name of the People of the State of California or may be redressed by civil action.

(AMENDED: STATS. 1982 CH. 38)

SECTION 700. - CITY MANAGER.

There shall be a City Manager who shall be the chief administrative officer of the City. ~~He~~ The City Manager shall be appointed for an indefinite term by the Council and shall serve at the pleasure of the Council. ~~He~~ The City Manager shall be chosen on the basis of ~~his~~ the City Manager's executive and administrative qualifications, with special reference to ~~his~~ his actual experience in, or ~~his~~ the City Manager's knowledge of, accepted practice in respect to the duties of ~~his~~ the City Manager's office as hereinafter set forth. ~~He~~ The City Manager need not be a resident of the City or State at the time of ~~his~~ the City Manager's appointment, but during ~~his~~ the City Manager's tenure of office, ~~he~~ the City Manager shall reside within the City, unless the Council authorizes ~~him~~ the City Manager to reside outside the City.

No ~~Councilman~~ Council member shall be eligible for appointment to the office of City Manager during the term for which ~~he~~ the Council member shall have been elected or appointed nor within two years thereafter.

SECTION 701. - POWERS AND DUTIES.

The City Manager shall be head of the administrative branch of the City government. ~~He~~ The City Manager shall be responsible to the Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, the City Manager shall have power and be required to:

1. Appoint, discipline and remove, subject to the personnel provisions of this Charter, except as otherwise provided by this Charter, all officers and employees of the City under this jurisdiction. ~~He~~ The City Manager may authorize the head of any department or office to appoint, discipline or remove subordinates in such department or office.
2. Prepare the budget annually and submit it to the Council and be responsible for its administration after its adoption.
3. Prepare and submit to the Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year.
4. Keep the Council advised of the financial condition and future needs of the City and make such recommendations on any matter as may to ~~him~~ the City Manager seem desirable.
5. Establish a centralized purchasing system for all City office, departments and agencies.
6. Prepare rules and regulations governing the contracting for, purchasing, inspection, storing, inventory, distribution or disposal of all supplies, materials and equipment required by any office, department or agency of the City government and recommend them to the Council for adoption by it.
7. Enforce the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City.
8. To make and execute contracts on behalf of the City for commodities or services included in the annual budget, or otherwise authorized by Council action.
9. Perform such other duties as may be prescribed by this Charter or required of ~~him~~ the City Manager by the Council not inconsistent with the Charter.

SECTION 702. - PARTICIPATION IN COUNCIL ACTION.

The City Manager shall be accorded a seat at the Council table and at all meetings of boards and commissions and shall be entitled to participate in their deliberations, but shall not have a vote. ~~He~~ The City Manager shall receive notice of all special meetings of the Council, boards and commissions.

SECTION 703. - RULES AND REGULATIONS.

The City Manager may prescribe such general rules and regulations as ~~he~~ the City Manager may deem necessary or expedient for the general conduct of the administrative offices and department of the City under ~~his~~ the City Manager's jurisdiction.

SECTION 704. - MANAGER PRO TEMPORE.

The City Manager shall appoint, subject to the approval of the Council, a qualified administrative officer or employee to serve as Manager Pro Tempore during the absence or disability of the City Manager. If the Manager fails to make such designation, the Council may designate an officer of the City to serve as Manager Pro Tempore during the absence or disability of the City Manager.

SECTION 705. - NON-INTERFERENCE WITH ADMINISTRATIVE SERVICE.

Neither the Council nor any of its members shall interfere with the execution by the City Manager of ~~his~~ the City Manager's powers and duties, or order, directly or indirectly, the appointment by the City Manager, or by any of the department heads in the administrative service of the City, of any person to any office or employment, or ~~his~~ the person's removal therefrom. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately. The City Manager shall take ~~his~~ orders and instructions from the City Council only when it is sitting in a lawfully held meeting.

SECTION 800. - ENUMERATION.

The officers of the City of Hayward shall consist of the Council, a City Manager, a City Attorney, a City Clerk, a Director of Finance, a Director of Public Works, a City Engineer, a Planning Director, a Chief of Police, a Chief of the Fire Department and such other subordinate officers, assistants, deputies and employees as the Council may deem necessary to provide by ordinance or resolution.

SECTION 801. - APPOINTMENT AND REMOVAL.

The City Manager, City Attorney and City Clerk shall be appointed by and may be removed by the affirmative votes of no less than four members of the Council.

The Director of Finance, Director of Public Works, City Engineer, Planning Director, Chief of Police and Chief of the Fire Department and all other officers and department heads of the City shall be appointed by the City Manager and shall serve at the pleasure of the City Manager.

SECTION 802. - DUTIES OF OFFICERS AND EMPLOYEES.

The Council may provide by ordinance or resolution, not inconsistent with this Charter, for the powers and duties of all officers and employees of the City.

The Council may transfer or consolidate functions of the City Government to or with appropriate functions of the state or county government, or make use of such functions of the state or county government, and in such case, the provisions of this Charter providing for the function of the City government so transferred or consolidated, shall be deemed suspended during the continuance of such transfer or consolidation, to the extent that such suspension is made necessary or convenient and is set forth in the ordinance or resolution establishing such transfer or consolidation. Any such transfer or consolidation may be repealed in like manner.

SECTION 803. - COMPENSATION OF OFFICERS AND EMPLOYEES.

The compensation of all City officers and employees, except as otherwise provided in this Charter, shall be by salary to be fixed by ordinance or resolution. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation aside from the salary or compensation as fixed by the Council, but all fees received by ~~him~~ the officer or employee in connection with ~~his~~ the officer or employee's official duties shall be paid by ~~him~~ the officer or employee into the City Treasury.

SECTION 804. - OATH OF OFFICE.

Every officer of the City, before entering upon the duties of ~~his~~ his office, shall take the oath of office as provided for in the Constitution of this State, and shall file the same with the City Clerk.

SECTION 805. - OFFICIAL BONDS.

The Council shall fix by ordinance the amounts and terms of the official bonds of all officials or employees who are required by ordinance to give such bonds. All bonds shall be executed by responsible corporate surety, shall be approved as to form by the City Attorney and shall be filed with the City Clerk. Premiums on official bonds shall be paid by the City.

There shall be no personal liability upon, or any right to recover against, a superior officer, or ~~his~~ the superior officer's bond, for any wrongful act or omission of ~~his~~ the superior officer's subordinate, unless such superior officer was a party to, or conspired in such wrongful act or omission.

SECTION 806. - ILLEGAL CONTRACTS, FINANCIAL INTEREST PROHIBITED.

No officer or employee of the City shall become financially interested except by testate or intestate succession, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the City is a party; provided, however, any employees may negotiate by contract the same of any real property subject to eminent domain proceedings of the City. Any member of a board or commission serving without compensation may contract with the City or sell or contract to sell personal property to the City to be used by a department, board or commission of the City other than the board or commission which ~~he~~ the member serves.

No officer or employee of the City shall be deemed to be financially interested by the ownership of less than three percent of the outstanding capital stock of a corporation. Any contract, sale or transaction in which there shall be such an interest, as specified in this section, shall become void at the election of the City when so declared by resolution of the Council.

Any violation of the provisions hereof shall be deemed a misdemeanor and shall be cause for removal from office.

(AMENDED: STATS. 1964 CH 41)

SECTION 807. - NEPOTISM.

The Council shall not appoint to a salaried position under the City government any person who is a relative by blood or marriage within the second degree of any one or more of the members of such Council, and neither shall any department head or other officer having appointive power appoint any relative within such degree to any such position.

SECTION 808. - CITY ATTORNEY. POWERS AND DUTIES.

To be eligible for appointment as City Attorney, the person appointed shall be an attorney-at-law duly licensed as such under the laws of the State of California and shall have practiced law for at least five years prior to assuming the duties of City Attorney.

The City Attorney shall have power and be required to:

1. Represent and advise the Council and all City officers on all matters of law pertaining to their offices.
2. Represent and appear for the City in any and all actions and proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee or former City officer or employee in any and all actions and proceedings in which any such City officer or employee is concerned or is a party, for any action arising out of ~~his~~ the officer or employee's employment or by reason of ~~his~~ the officer or employee's official capacity.
3. Prosecute on behalf of the people criminal cases arising from violations of the provisions of this Charter and the ordinances of the City if the district attorney declines to do so and prosecute such cases arising from violations of state law when the district attorney consents thereto.
4. Attend all meetings of the Council and provide advice to the City Council when requested to do so.
5. Give advice or an opinion in writing whenever requested to do so in writing by the Council or any of the officers, boards or commissions of the City.
6. Approve the form of all contracts made by and all bonds given to the City, by endorsing an approval thereon in writing.
7. Prepare any and all proposed ordinances or resolutions for the City and amendments thereto.
8. Appoint, discipline and remove, subject to the personnel provisions of this Charter, all officers and employees of the City Attorney's office.
9. Perform such other duties consistent with this Charter as may be required by the Council.
10. Surrender all books, papers, files and documents pertaining to the City's affairs upon leaving office as City Attorney.

(AMENDED: STATS. 1992 CH. 30)

SECTION 809. - ARBITRATION FOR FIRE DEPARTMENT EMPLOYEES.

- (a) It is hereby declared to be the policy of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the Fire Department which are fair and competitive with comparable private and public employment. To such purpose, the City hereby recognizes the efficacy of and adopts the principles of binding arbitration as an equitable and necessary alternative means to arrive at a fair resolution of terms of wages, hours, and other terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.
- (b) The City, through its duly authorized representatives, shall bargain in good faith with the recognized employee organization for the unit composed of all the uniformed employees of the Fire Department as to all matters relating to the wages, hours and terms and conditions of employment of such employees. Unless and until agreement is reached through the bargaining process, or a determination is made through the arbitration procedure hereinafter provided, no existing benefit or employment condition applicable to the said uniformed forces shall be changed or eliminated.
- (c) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the Fire Department may, as the result of an impasse in bargaining, refer any unresolved issues to binding arbitration under the provisions of this section.
- (d) When an impasse has been reached, any unresolved dispute or controversy pertaining to wages, hours, or other terms and conditions of employment, or any unresolved dispute or controversy

pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the Fire Department shall be submitted to an impartial arbitrator.

- (e) An impasse may be declared by either the City or the recognized employee organization in the event good faith bargaining or other mutually agreed upon settlement methods concerning the dispute or controversy fail to result in an agreement between the parties. Representatives designated by the City and representatives of the recognized employee organization shall select an arbitrator. In the event that said parties cannot agree upon the selection of an arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. Every effort shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.
- (f) The arbitration proceedings herein provided shall be governed by Section 1280, et seq., of the California Code of Civil Procedure. The arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.
- (g) In any arbitration under subsection (c) of this section, the arbitrator is directed to take into consideration the City's purpose and policy to create and maintain wages, hours, and other terms and conditions of employment which are fair and competitive with comparable private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider the interest and welfare of the public and the availability and sources of funds to defray the cost of any changes in wages, hours and conditions of employment. The arbitrator shall also consider such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of employment conditions through voluntary collective bargaining, mediation, fact finding, and arbitration between the parties, in the public service or in private employment.
- (h) Nothing herein shall be construed to prevent the parties from submitting controversies or disputes to mediation, fact finding or other reasonable method to finally resolve the dispute should the City and the recognized employee organization in the controversy or dispute so agree.

(AMENDED: STATS. 1975 CHARTER CHAPTER 28)

SECTION 900. - IN GENERAL.

There shall be the boards and commissions enumerated in this Article which shall have the powers and duties stated herein. The number of members to comprise any board or commission shall be determined by ordinance or resolution of the Council. No member of any board or commission shall be a member of any other board or commission or hold any paid office or employment, in the City Government. In order to be eligible for any appointment to any board or commission, a person shall be a qualified elector of the City.

In addition, the Council may create by ordinance or resolution such boards or commissions as in its judgment are required and may grant to them such powers and duties as are consistent with the provisions of this Charter.

(AMENDED: STATS. 1959 CH. 82)

SECTION 901. - APPROPRIATIONS.

The Council shall include in the annual budget such appropriations of funds as in its opinion shall be sufficient for the efficient and proper functioning of the boards and commissions.

SECTION 902. - APPOINTMENTS. TERMS.

The members of each of such boards or commissions shall be appointed by the Council. They shall be subject to removal by motion of the Council adopted by at least four affirmative votes. Unless otherwise provided by this Charter, the members thereof shall serve for a term of four years and until their respective successors are appointed and qualified. No member thereof shall serve more than two consecutive full terms on any one board or commission.

The members first appointed to such boards and commissions shall so classify themselves by lot that each succeeding July 1st the term of one of their number shall expire. If the total number of members of a board or commission to be appointed exceeds four, the classification by lot shall provide for the grouping of terms to such an extent as is necessary in order that the term of at least one member shall expire on each succeeding July 1st, and that the number of terms expiring in any year does not exceed by more than one the number expiring in any other year.

SECTION 903. - EXISTING BOARDS AND COMMISSIONS.

The members of the boards and commissions holding office when this Charter takes effect shall continue to hold office thereafter until their respective terms of office shall expire and until their successors shall be appointed and qualified. The successors of each such member shall be appointed for terms of such duration, not exceeding four years, as will carry into effect the plan for staggered terms prescribed in the preceding section.

SECTION 904. - MEETINGS. CHAIRMAN.

As soon as practicable, following the adoption of this Charter and following the first day of July of every year thereafter, each of such boards and commissions as exist shall organize by electing one of its members to serve as presiding officer at the pleasure of such board or commission. Each board or commission shall hold such regular and special meetings as such board or commission may require. All proceedings shall be open to the public.

The affirmative or negative vote of a majority of the entire membership of such board or commission shall be necessary for it to take any action, except to adjourn.

The City Clerk shall be responsible for the recording of the minutes for each of such boards and commissions and shall keep a record of its proceedings and transactions. Each board or commission may prescribe its own rules and regulations which shall be consistent with this Charter. Copies of such rules and regulations and the minutes of each board and commission shall be kept on file in the office of the City Clerk where they shall be available for public inspection. Each board or commission shall have the same power as the Council to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it.

SECTION 905. - COMPENSATION. VACANCIES.

The members of boards and commissions shall serve without compensation, but may receive reimbursement for necessary traveling and other expenses incurred on official duty when such expenditures have received authorization by the Council.

Any vacancies in any board or commission, from whatever cause arising, shall be filled by appointment by the Council. Upon a vacancy occurring, leaving an unexpired portion of a term, any appointment to fill such vacancy shall be for the unexpired portion of such term. If a member of a board or commission absents himself from three consecutive regular meetings of such board or commission, unless by permission of such board or commission expressed in its official minutes, or is convicted of a

crime involving moral turpitude, or ceases to be a qualified elector of the City, ~~his~~ the member's office shall become vacant and shall be so declared by the Council.

SECTION 906. - PLANNING COMMISSION. POWERS AND DUTIES.

There shall be a Planning Commission which shall have the power and be required to:

1. Recommend to the Council, after a public hearing thereon, the adoption, amendment or repeal of a Master Plan or any part thereof for the physical development of the City.
2. Exercise such functions with respect to land subdivisions, planning and zoning as may be prescribed by ordinance or resolution, not inconsistent with the Charter.

SECTION 907. - PERSONNEL BOARD. POWERS AND DUTIES.

There shall be a Personnel Board none of whom while a member of the board nor for a period of one year after ~~he~~ the Board member has ceased for any reason to be a member, shall be eligible for appointment to any salaried office or employment in the service of the City nor to any City elective office.

The Personnel Board shall have power and be required to:

1. Act in an advisory capacity to the Council and the City Manager on personnel administration.
2. Recommend to the Council after a public hearing thereon, the adoption, amendment or repeal of personnel rules and regulations.
3. Hear appeals of any person in the classified service, relative to any suspension, demotion or dismissal.
4. Make any investigation which it may consider desirable concerning the administration of personnel in the municipal service and report its findings to the City Council and City Manager.
5. Perform such other duties with reference to personnel administration not inconsistent with this Charter as the Council may require by ordinance or resolution.

SECTION 908. - PUBLIC SERVICES COMMISSION.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 909. - AIRPORT COMMISSION.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 910. - PARKS COMMISSION.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 911. - LIBRARY COMMISSION.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 912. - INDUSTRIAL COMMISSION.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 1000. - RETIREMENT SYSTEM.

The Council shall have power to provide for the creation, establishment and maintenance of a retirement or pension plan or plans for any or all officers and employees of the City.

SECTION 1001. - AUTHORITY TO JOIN OTHER SYSTEMS.

The City of Hayward, by and through its Council, is hereby empowered to join in or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California, or the United States of America, to which municipalities and municipal officers and employees are eligible.

SECTION 1100. - UNCLASSIFIED AND CLASSIFIED SERVICE.

The administrative service of the City shall be divided into Unclassified and Classified Service:

- (a) The Unclassified Service shall comprise the following officers and positions:
- (1) All elected officers;
 - (2) City Manager, City Attorney, City Clerk, head of each department, and one private secretary and all administrative assistants in the office of the City Manager;
 - (3) All members of boards and commissions;
 - (4) Positions in any class or grade created for a special or temporary purpose for a period of not longer than six months;
 - (5) Persons employed to render professional, scientific, technical or expert services of any occasional or exceptional character;
 - (6) Part-time employees paid on an hourly or per diem basis.
- (b) The Classified Service shall comprise all positions not specifically included by this Section in the Unclassified Service.

SECTION 1101. - MERIT PRINCIPLE.

All appointments to and promotions within the Classified Service shall be based upon efficiency and fitness which shall be ascertained by means of recognized personnel selection techniques.

SECTION 1102. - PERSONNEL RULES AND REGULATIONS.

The Council shall implement the personnel system provided by this Article by adopting rules and regulations governing the administration thereof. Such personnel rules and regulations shall provide, among other things, for: (1) the preparation, installation, revision, and maintenance of a position classification plan covering all positions in the Classified Service, including minimum standards and qualifications for each class; and (2) the preparation, revision and administration of a plan of compensation directly correlated with the position classification plan, providing a range or maximum rate of pay for each class.

SECTION 1103. - POLITICAL ACTIVITIES PROHIBITED.

Excepting members of the City Council, and the various boards and commissions mentioned in or created or hereafter created under Article IX of this Charter, no person holding any position with the City for which compensation is paid, or on an eligible list, shall take an active part in any City political campaign or contribute thereto in behalf of any candidates, nor shall such person seek signatures to any petition seeking to advance the candidacy of any person for any City office. Nothing in this Section shall be construed to prevent any such persons from seeking election or appointment to public office. Upon becoming a candidate for public office, any such person shall request and be granted a leave of absence, without pay, to remain in effect during the period of time such person is a candidate.

Except as otherwise provided by the general laws of this State heretofore or hereafter enacted, no person in the Classified Service or seeking admission thereto, shall be employed, promoted, demoted or discharged or in any way favored or discriminated against because of political opinions or affiliations or because of race or religious belief.

No officer or employee of the City and no candidate for any City office shall, directly or indirectly, solicit any assessment, subscription or contribution, whether voluntary or involuntary, for any political purpose whatever, from anyone on the eligible lists or holding any position in the Classified Service.

SECTION 1200. - THE FISCAL YEAR.

Unless otherwise provided by ordinance, the fiscal year of the City shall begin on the first day of July of each year and end on the thirtieth day of June of the following year.

SECTION 1201. - ANNUAL BUDGET.

On such date in each year as shall be fixed by the Council, the City Manager shall send to the Council a careful estimate in writing, of the amounts, specifying in detail the objects thereof required during the next ensuing year for the business and proper conduct of the various departments, offices, boards and commissions of the City. The City Manager shall also at said time submit to the Council an estimate of the amount of income from fines, licenses, and other sources of revenue, exclusive of taxes upon property, and the probable amount required to be levied and raised by property taxation.

SECTION 1202. - PUBLIC HEARING ON THE BUDGET.

After receiving the proposed budget as submitted by the City Manager and making such revisions as it may deem advisable, the Council shall determine the time for holding a public hearing, and shall cause notice thereof to be published not less than ten days prior to said hearing by at least one insertion in a newspaper of general circulation in the City.

Copies of the proposed budget shall be available for inspection by the public in the office of the City Clerk at least ten days prior to said hearing.

At the time so advertised or at any time to which said public hearing shall from time to time be continued, the Council shall afford interested persons an opportunity to be heard on matters pertaining to the proposed budget.

SECTION 1203. - ADOPTION OF THE BUDGET.

After the conclusion of the public hearing, the Council shall further consider the proposed budget and make any revisions thereof that it may deem advisable and thereafter it shall adopt the budget with revisions, if any. Upon final adoption, the budget shall be in effect for the ensuing fiscal year.

From the effective date of the budget, the several amounts stated therein as proposed expenditures shall be and become appropriated for the various objectives therein described. All appropriations shall lapse at the end of the fiscal year to the extent that they shall not have been expended or lawfully encumbered.

At any meeting after the adoption of the budget, the Council may amend or supplement the budget so as to authorize the transfer of unused balances appropriated for one purpose to another purpose, or to appropriate available revenue not included in the budget.

The City Manager may at any time transfer any unencumbered allotment balance or portion thereof covered by a single appropriation to any other agency covered by the same appropriation.

SECTION 1204(a). - TAX SYSTEM.

Unless otherwise provided by ordinance, the City shall continue to use, for the purpose of municipal property taxation, the County system of assessment and tax collection, as such system is now in effect or may hereafter be amended and insofar as such provisions are not in conflict with this Charter.

SECTION 1204(b). - TAX RATE. LIMITATION.

The City shall not levy a rate of taxation upon each one hundred dollars of valuation beyond that sufficient to raise the amounts required for the annual budget; and as otherwise in this Charter or by law provided, less the amounts estimated to be received from fines, licenses and other sources of revenues.

SECTION 1205. - INDEPENDENT AUDIT.

The Council shall employ, at the beginning of each fiscal year, an independent certified public accountant who, at such time or times as may be specified by the Council, at least annually, shall examine the books, records, inventories, and reports of all officers and employees who receive, handle or disburse public funds and all such other officers, employees and departments the Council may direct.

As soon as practicable after the end of the fiscal year, a final audit and report shall be submitted by such accountant to the Council, one copy thereof to be distributed to each member and one each to the City Manager, City Attorney, and Finance Officer, and three copies to be placed on file in the office of the City Clerk where they shall be available for inspection by the public.

SECTION 1206. - BONDED DEBT LIMIT.

The City shall not incur an indebtedness evidenced by general obligation bonds which shall in the aggregate exceed the sum of fifteen percent of the total assessed valuation for purposes of City taxation, of all the real and personal property within the City, exclusive of any indebtedness that has been or may hereafter be incurred for the purposes of acquiring, constructing, extending or maintaining municipal utilities for which purpose a further indebtedness may be incurred by the issuance of bonds, subject only to the provisions of the State Constitution and of this Charter.

No bonded indebtedness which shall constitute a general obligation of the City may be created unless authorized by the affirmative votes of two-thirds of the electors voting on such proposition at any election at which the question is submitted to the electors and unless in full compliance with the provisions of the State Constitution and of this Charter.

SECTION 1207. - CASH BASIS FUND.

Note— (REPEALED: STATS. 1982 CH. 38)

SECTION 1208. - CAPITAL OUTLAYS FUND.

A fund for capital outlays, generally, is hereby created, to be known as the "Capital Outlays Fund." The Council may create by ordinance a special fund or funds for a special capital outlay purpose. The Council may levy and collect taxes for capital outlays and may include in the annual tax levy a levy for such purposes in which event it must apportion and appropriate to any such fund or funds the moneys derived from such levy. The Council may transfer to any such fund any unencumbered surplus funds remaining on hand in the City at any time.

Once created, such fund shall remain inviolate for the purpose for which it was created; if for capital outlays generally, then for any such purposes, and if for a special capital outlay, then for such purpose only, unless the use of such fund for some other purposes is authorized by the affirmative votes of a majority of the electors voting on such proposition at a general or special election at which such proposition is submitted.

If the purpose for which any capital outlay fund has been created has been accomplished, the Council may transfer any unexpended or unencumbered surplus remaining in such fund to the fund for capital outlays generally, established by this Charter.

SECTION 1209. - OTHER FUNDS.

The Council may establish by ordinance such other special funds as it deems necessary for the proper administration of the fiscal affairs of the City.

SECTION 1210. - DEMANDS OR CLAIMS AGAINST THE CITY.

Except as otherwise provided by the provision of State law applicable to chartered cities, demands or claims against the City shall be presented, acted upon, and audited as prescribed by ordinance.

(AMENDED: STATS. 1964 CH. 41)

SECTION 1211. - REGISTERING WARRANTS.

Warrants on the City Treasury shall be registered. All registered warrants shall be paid in the order of their registration when funds therefor are available and shall bear interest from date of registration at such rate as shall be fixed by the Council by resolution.

SECTION 1212. - ACTIONS AGAINST THE CITY.

Note— (REPEALED: STATS. 1964 CH. 41)

SECTION 1300. - FORM OF CONTRACTS.

All contracts shall be drawn under the supervision of the City Attorney. All contracts must be in writing, executed in the name of the City of Hayward by an officer or officers authorized to sign the same.

SECTION 1301. - CONTRACTS FOR OFFICIAL ADVERTISING.

The Council shall let annually contracts for the official advertising for the ensuing fiscal year. In the event there is more than one daily newspaper of general circulation published and circulated in the City, the Council shall advertise for one day, setting forth distinctly and specifically the work contemplated to be done, and asking for sealed proposals therefor. The proposals shall specify the type and spacing to be used at the rate or rates named in the bids. The Council shall let the contracts for such official advertising to the lowest responsible bidder publishing a daily newspaper in the City which is a newspaper of general circulation and has been in existence at the time of the awarding of the contract at least one year, provided, that the Council may reject any or all bids and advertise for new bids.

SECTION 1302. - CENTRALIZED PURCHASING.

A centralized purchasing system shall be established for all City departments, offices and agencies. The City Manager shall recommend and the Council shall consider and adopt rules and regulations governing the contracting for, purchasing, inspection, storing, distribution or disposal of all supplies, materials and equipment required by any department, office or agency of the City Government.

Before making purchases of, or contracts for, supplies, materials, or equipment, ample opportunity shall be given for competitive bidding. When making purchases for the City, merchants with places for business located within the City shall be given preference, quality and prices being equal.

SECTION 1303. - PUBLIC WORKS CONTRACTS.

The Council by ordinance shall establish requirements and procedures for competitive bidding upon and award of contracts for public works. The ordinance may provide that all bids may be rejected and that under specified conditions advertising and bidding may be dispensed with.

(AMENDED: STATS. 1982 CH. 38)

SECTION 1304. - REQUIREMENTS OF BIDS.

All bids or proposals shall be accompanied by either a certified, or cashier's check, or a bidder's bond executed by a corporate surety authorized to engage in such business in the State of California, made payable to the City. Such security shall be in an amount not less than that specified in the notice inviting bids or in the specifications referred to therein, or if no amount be so specified, then in an amount not less than ten percent of the aggregate amount of the bid.

No person, firm or corporation shall be allowed to make or file or be interested in more than one bid or proposal for the same work. If it appears that the same person, firm or corporation is interested in more than one bid or proposal, all such bids or proposals shall be rejected.

The security accompanying the accepted bid or proposal shall be held by the City Clerk until the contract has been entered into, and the bond accompanying the same is approved and filed, whereupon said security shall be returned to said bidder. All securities accompanying the unsuccessful bids or proposals shall be returned to the proper parties.

If the successful bidder neglects or refuses to enter into the contract within the time specified in the notice inviting bids or specifications referred to therein, the security shall be declared forfeited to the City and shall be collected and paid into its general fund.

SECTION 1400. - GENERAL.

In addition to all other powers elsewhere enumerated in this Charter, or granted or hereafter granted to the City of Hayward by the Constitution or laws of the State of California, the City of Hayward shall have power to acquire (whether by purchase, lease, eminent domain, or otherwise), construct, establish, improve, extend, maintain, operate, administer, lease and sublease off-street vehicular parking facilities and places within the City of Hayward, including any and all public parking lots, garages, or other automotive parking facilities, in order to relieve traffic congestion and promote the welfare of the citizens and inhabitants of said City, and, for the payment of costs thereof, to issue bonds payable from the revenues of any such off-street vehicular parking facilities and from other revenues, all as hereinafter provided in this Article.

SECTION 1401. - DEFINITIONS.

The following terms whenever used or referred to in this Article, or in any resolution of issue, shall have the following meanings, respectively, unless a different meaning appears from the context:

- (a) **BONDS.** The term "bonds" or "revenue bonds" means the written evidence of any obligation issued by the City, payment of which is secured by a pledge of revenues or any part of revenues, as provided in this Article, in order to obtain funds with which to carry out any of the purposes of this Article, irrespective of the form of such obligation. All revenue bonds issued pursuant to this Article shall be payable exclusively from revenues.
- (b) **PROJECT.** The term "project" means any one or more off-street vehicular parking facilities referred to in Section 1400 and designated by the City as a project in a resolution of issue.
- (c) **EXISTING OFF-STREET PARKING FACILITIES.** The term "existing off-street parking facilities" means and includes any off-street vehicular parking facilities now or hereafter owned by the City and operated or controlled by the City at the time of adoption of a resolution of issue and not theretofore designated by the City as a project in a resolution of issue and not acquired, constructed, established, improved, extended, maintained, or operated, in whole or in part, from the proceeds of sale of any revenue bonds.
- (d) **REVENUES.** The term "revenues" means and includes any and all rates, fees and other charges received or receivable in connection with, and any and all income and receipts of whatever kind and character derived by the City from, the operation of a project, or arising from

a project, including any such revenues as may have been or may be impounded or deposited in any fund created for the security or further protection of revenue bonds or for the purpose of providing for the payment of the principal thereof or the interest thereon.

The term "revenues" also includes net revenues from on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by the City and net revenues of any existing off-street parking facilities to the extent that net revenues from either or both of said sources shall be pledged or otherwise made available for the payment of operation and maintenance costs of any project or as security or further protection for bonds by a resolution of issue.

- (e) **NET REVENUES.** The term "net revenues" when used with reference to on-street parking meters within the City means and includes the gross revenues collected by the City during any fiscal year from the establishment and operation of such on-street parking meters after deducting therefrom the actual necessary costs and expenses of the acquisition, installation, maintenance and replacement of such parking meters and of the collection of revenues therefrom, all calculated on sound accounting principles, but without any allowance for depreciation or obsolescence. The term "net revenues" when used with reference to any existing off-street vehicular parking facilities means and includes any gross revenues collected by the City during any fiscal year from the establishment and operation of such existing off-street parking facilities after deducting therefrom all payments payable with respect to such facilities and the actual necessary expenses of maintaining and operating such facilities, calculated on sound accounting principles, but without any allowance for depreciation or obsolescence.
- (f) **RESOLUTION OF ISSUE.** The term "resolution of issue" means any agreement entered into by the Council, including any resolution adopted by the Council, pursuant to which revenue bonds are issued, and includes any agreement entered into or resolution adopted by the Council amending, modifying or supplementing a resolution of issue irrespective of the form thereof.

SECTION 1402. - GRANT OF POWER.

Without limiting the generality of Section 1400, the Council, for any of the purposes of this Article shall have the powers set forth in this section.

- (a) **ACQUISITION AND DISPOSITION OF PROPERTY.** To acquire, by grant, purchase, gift, devise, lease or by the exercise of right of eminent domain, and to hold, use, sell, lease, sublease or dispose of any real or personal property or any interest in any thereof, including rights of way, necessary or appropriate for the full exercise, or convenient or useful for the carrying on of any of its powers pursuant to this Article.
- (b) **ACQUISITION FOR PROJECT INGRESS AND EGRESS.** To acquire, by any of the means specified in the foregoing paragraph (a) any lands, property or rights of way necessary or convenient for the opening, widening, straightening and extending of streets or alleys necessary or convenient for the ingress to or egress from any project.
- (c) **IMPROVEMENTS.** To improve any lands so acquired by the construction thereon of garages or other buildings or improvements necessary or convenient for any project.
- (d) **CONTROL OF PROJECT.** To construct or cause to be constructed, established, improved, extended, maintained, operated, and to administer, lease and sublease any project.
- (e) **RATES, FEES AND CHARGES.** To fix rates, fees or charges for the use of the facilities provided by any project, or for any services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may have been entered into by the City with respect to the fixing of such rates, fees or charges; and, by a resolution of issue or otherwise, to enter into covenants to increase or decrease rates, fees or charges from time to time, except as may be otherwise specifically provided in a resolution of issue. All rates, fees and charges shall be paid only in such coin or currency as on the date of

payment is legal tender for public and private debts, or in script or tokens issued only upon payment of the face value thereof in such coin or currency.

- (f) **ISSUANCE OF REVENUE BONDS.** At any time from time to time to issue revenue bonds in order to raise funds for the purpose of establishing any project or of acquiring lands including rights of way for any project or of acquiring, constructing, improving extending, maintaining, operating or administering any project, or of refinancing any project, or for any combination of such purposes, which bonds may be secured as hereinafter provided.
- (g) **AGREEMENTS AND LEASES.** To make contracts, leases, subleases and agreements relative to the acquisition, construction, improvement, operation or maintenance of any project or any part of any project with any person, private corporation or public corporation, political subdivision, city, county, district, the State of California, or the United States of America, or any department or agency of any thereof, subject to any contractual obligation which may be entered into by the City with respect to the issuance of bonds.
- (h) **LEASE OF SPACE FOR COMMERCIAL PURPOSES.** To rent or lease for commercial purposes space in any project which in the opinion of the Council is not and will not during the term of such lease be required for off-street vehicular parking facilities, provided that the aggregate of all such space so rented or leased for commercial purposes at any one time in any one project shall not exceed twenty percent (20%) of the surface area of such project and that the term of any such rental or lease shall not exceed a period of fifteen years from its date.
- (i) **RULES AND REGULATIONS.** To adopt such rules and regulations as may be necessary regarding the operation and maintenance of any project and to enable the City to exercise the powers and perform the duties conferred or imposed by this Article.
- (j) **MISCELLANEOUS.** To do any and all acts or things necessary or appropriate to carry out the purposes of this Article and the provisions, covenants and agreements contained in any resolution of issue adopted pursuant to the authority conferred by this Article; provided, that nothing in this section or elsewhere in the Article contained shall be construed directly or by implication to be in any way in derogation or in limitation of any powers conferred upon or existing in the City by virtue of the provisions of the Constitution or laws of the State of California or any other provision of this Charter.

SECTION 1403. - PLEDGE OF NET PARKING METER REVENUES.

In addition to all other powers elsewhere enumerated in this Article, the Council shall have power to pledge, place a charge upon, or otherwise make available and authorize payment of all or any part of net revenue collected by the City from the establishment and operation of on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by the City, and existing off-street parking facilities for such periods of years as shall be determined by the Council, for the payment of operation and maintenance costs of any one or more projects authorized by this Article or as security or further protection for the payment of principal of and interest on bonds issued pursuant to this Article.

SECTION 1404. - AUTHORIZATION OF REVENUE BONDS.

Each issue of revenue bonds shall be authorized by the Council by a resolution of issue adopted by affirmative votes of at least a majority of the members of the Council at a duly assembled meeting. Resolutions of issue shall provide for the aggregate principal amount, date or dates, maturities, interest rates, denominations and form, and may provide for the registration, transfer and interchange of any revenue bonds and coupons issued pursuant to this Article; and shall prescribe the purpose or purposes for which said bonds are to be issued and the terms and conditions on which said bonds are to be executed, issued, secured, sold and paid, and, if desired, the terms and conditions on which said bonds may be redeemed prior to maturity or refunded. The Council may provide for one or several issues of bonds and may issue bonds in series, or may divide any issue into one or more series or divisions and fix different maturities or dates for each series or division, different rates of interest, or different terms and conditions for the bonds of the several series or divisions. Bonds of the same authorized issue need not

be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the Council.

SECTION 1405. - PROVISIONS RELATING TO BONDS AND RESOLUTIONS OF ISSUE.

The terms and provisions of all revenue bonds issued pursuant to this Article shall be as provided in the resolution of issue pursuant to which such bonds are issued, subject only to the provisions of this Article, and each such resolution of issue adopted by the Council may contain such provisions as shall be determined by the Council, subject only to the provisions of this Article.

SECTION 1406. - RECITAL IN BONDS; REFERENCE ON BONDS TO RESOLUTION OF ISSUE.

All revenue bonds shall contain a recital on their face that neither the payment of principal of nor of interest on such bonds constitutes a debt, liability or obligation of the City of Hayward, except as provided in this Article. Reference on the face of a revenue bond to the resolution of issue by its date of adoption is sufficient to incorporate all of the provisions thereof and of this Article into the body of said revenue bond and its appurtenant coupons. Each token and subsequent holder of a revenue bond or coupons, whether such coupons are attached to or detached from said revenue bond, shall have recourse to all the provisions of the resolution of issue and of this Article and shall be bound thereby.

SECTION 1407. - SECURITY.

Subject to the provisions of Section 1403 hereof, all revenue bonds shall be secured by an exclusive pledge and charge upon all or a portion of (a) the gross revenues of the project for the acquisition, construction and completion of which said bonds are issued or authorized to be issued, (b) revenues from on-street parking meters, and (c) revenues of any existing off-street parking facilities subject to any pledge, liens or charges then existing, all as provided for in the resolution of issue. Gross revenues of a project include improvements and extensions of such project later constructed or acquired. The gross revenues of the project, any interest earned on the gross revenues of the project, and all pledged on-street parking meter revenues and pledged revenues of existing off-street parking facilities shall constitute a trust fund for the security and payment of the principal of and interest on the bonds and so long as any bonds or interest thereon are unpaid said revenues and interest shall not be used for any other purpose; provided, however, that a resolution of issue may provide that if the principal of and any interest on the bonds and all charges to protect and secure them are paid when due, an amount for the maintenance and operation costs of the project and any and all other costs and expenses relative to the project or the bond, may be apportioned from revenues, but only to the extent specified in the resolution of issue. A resolution of issue may also provide for the use and application of any surplus revenues over and above revenues provided for the payment of the principal of and interest on the bonds, maintenance and operation, costs of the project and any and all other charges, provided that such surplus revenues shall be used only in the manner and to the extent specified in the resolution of issue.

SECTION 1408. - BONDS OF SAME ISSUE TO BE EQUALLY SECURED.

Bonds of the same issue shall be equally secured by a pledge and charge upon revenues without priority for number, date of bonds, of sale, of execution, or of delivery; except that if the Council authorizes the issuance of bonds of different series it may provide that the bonds in any series shall, to the extent and in the manner prescribed in the resolution of issue, be subordinated and be junior in standing with respect to the payment of principal and interest and the security thereof to such other bonds as may be specified in the resolution of issue.

SECTION 1409. - SALE OF BONDS.

Notice inviting sealed bids shall be given in such manner as the Council may prescribe prior to the sale of any revenue bonds. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the Council determines that the bids received are not satisfactory as to price or responsibility of the bidders, the Council may reject all bids received, if any, and either readvertise or sell the bonds at private sale. The Council may sell bonds at a

price below the par or face value thereof, provided that the maximum net interest cost (computed on a 360-day year basis) on bonds sold below par or face value shall not exceed an average of six percent per annum, payable semi-annually, to the respective maturity dates of said bonds.

SECTION 1410. - PAYMENT OF INCIDENTAL EXPENSES AND INTEREST AND CREATION OF FUNDS FROM PROCEEDS OF SALE OF BONDS.

All costs and expenses incidental to the issuance and sale of bonds, including (without limiting the generality of the foregoing) the cost of preparation of the bonds and coupons, the cost of all surveys, of preparation of plans and specifications, of all architectural, engineering, inspection, legal, financial and economic consultant's, trustee's, and fiscal agent's fees, the creation of a bond reserve fund, the creation of a working capital fund, and bond interest estimated to accrue during the period of acquisition or construction of a project and for a period not to exceed six (6) months thereafter, all as provided for in the resolution of issue, may be paid out of the proceeds of sale of the bonds.

SECTION 1411. - CONSTRUCTION FUND; INVESTMENT.

The proceeds of sale of revenue bonds shall either be deposited in a fund separate and apart from all other funds of the City or paid direct to any bank or trust company designated by the Council as the fiscal agent of the City, and said proceeds shall be held by the City or such fiscal agent in a separate account to be designated the "Construction Fund" and be disbursed in the manner and upon the conditions provided in the resolution of issue for the object and purpose of the acquisition, construction and completion of the project therein designated including the payment of all incidental expenses and interest and the creation of funds as provided for in Section 1410 of this Article. Moneys in any construction fund may be invested as the Council in its sole discretion shall determine, subject only to such limitations as may be provided in the resolution of issue. Moneys in a construction fund remaining unexpended after said object and purpose shall have been completed shall be applied to the payment of principal of and interest on said bonds, and none of said moneys shall be transferred to any other fund of the City or used for any purpose other than as specified in the resolution of issue.

SECTION 1412. - CONTINUOUS OPERATION OF PROJECT; REPAIRS, RENEWALS AND REPLACEMENTS.

So long as any revenue bonds shall be outstanding, the City shall operate or cause to be operated the project, designated in the resolution of issue relating to such bonds, continuously and in an efficient and economical manner and in good working order and condition and shall make all necessary repairs, improvements and replacements.

SECTION 1413. - RATES, FEES AND OTHER CHARGES.

The Council shall prescribe, revise and collect rates, fees and charges (a) for use of the facilities provided by the project acquired, constructed or completed from the proceeds of sale of bonds, (b) for any services rendered in connection with such project, and (c) for use of any on-street parking meters and existing off-street parking facilities any revenue from which are pledged to secure the bonds. Such rates, fees and charges shall at all times be sufficient to yield revenues from the project and net revenues from such on-street parking meters and existing off-street parking facilities equal to all redemption payments and interest charges on said bonds as the same fall due, together with such additional sums as may be required for any sinking funds reserve fund or other special fund provided for the security or further protection of said bonds, or as a depreciation charge or other charge in connection with such project. Such rates, fees and charges shall not be reduced below an amount sufficient to provide funds to meet all obligations specified in the resolution of issue.

SECTION 1414. - TRUSTEE; FISCAL AGENT; PAYING AGENTS.

The Council may designate a bank or trust company, qualified to do business in the State of California, as trustee or fiscal agent for the City and holders of revenue bonds, and may authorize any such trustee to act on behalf of the holders of the bonds or any stated percentage thereof, and to exercise

and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders.

The Council may designate any bank or trust company in any city in which any bonds are made payable as the City's paying agent in such city. The Council may fix and determine the conditions upon which any trustee, fiscal agent or paying agent shall receive, hold or disburse any or all revenues deposited with it by or by authority of the City; and may prescribe the duties and powers, if any, of any such trustee, fiscal agent or paying agent with respect to the issuance, authentication, sale and delivery of bonds, the payment of the principal thereof and interest thereon, the redemption thereof, the registration and discharge from registration of bonds and the management of any funds provided for in the resolution of issue as security for the bonds.

SECTION 1415. - COMPETITIVE PROJECTS.

A resolution of issue may contain a covenant that the City shall not, while any revenue bonds authorized by this Article are issued or outstanding, acquire, construct, complete or maintain within the City or permit any person to maintain on any City-owned property within the City any off-street vehicular parking facilities or places, excepting those therein described, which compete with any off-street vehicular parking facilities or places maintained or operated by the City through the issuance of revenue bonds pursuant to this Article. A resolution of issue may define the word "compete" as used in the preceding sentence and in such resolution of issue. A resolution of issue may except from the covenant authorized to be made by this section any and all off-street vehicular parking facilities then or thereafter maintained by the City.

SECTION 1416. - USE OF SURPLUS.

After all of the revenue bonds issued pursuant to a resolution of issue shall have been fully paid or discharged, or provision for their payment and discharge irrevocably made, any surplus moneys in any construction fund or other fund provided for the security or further protection of the bonds shall become and be the property of the City and be used by the City for any lawful purpose.

SECTION 1417. - RIGHTS OF BONDHOLDERS.

Except as provided otherwise in any resolution of issue, the holder of any bond issued pursuant to this Article made by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the City or any official or employee of the City or assumed by any thereof in connection with the acquisition, construction, completion, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rates, fees and charges derived from the operation and use of any project and all other revenues, or in connection with the deposit, investment or disbursement of the proceeds received from the sale of the bonds under this Article. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Article.

SECTION 1418. - ARTICLE CONFERS COMPLETE AUTHORITY; PROVISIONS OF ARTICLE ALTERNATIVE.

The powers and authorities conferred by this Article are in addition to and supplemental to all other powers and authorities conferred upon the City of Hayward. The method provided in this Article for the acquisition, construction and completion of projects and the issuance of revenue bonds shall be deemed an additional method for acquiring, constructing and completing such projects and providing funds therefor; provided that the City of Hayward may, in its discretion, acquire any properties for off-street vehicular parking facilities and issue general obligation bonds of the City of Hayward therefor, subject, however, to the condition that the City of Hayward shall not, while any revenue bonds authorized by this Article are issued and outstanding, acquire, construct or complete any off-street vehicular parking facilities, other than those specifically described in a resolution of issue pursuant to the provisions of Section 1415 of this Article, which compete with any project operated or maintained through the issuance of revenue bonds by the Council.

SECTION 1419. - REVENUE BONDS EXCLUDED FROM BONDED INDEBTEDNESS OF CITY.

Revenue bonds issued under this Article shall not be taken into consideration in determining the bonded indebtedness which the City of Hayward is authorized to incur and shall be excluded from any limitation provided by this Charter or by law on the amount of bonded indebtedness of the City.

SECTION 1500. - FRANCHISES TO OPERATE.

No person or corporation shall exercise any franchise right or privilege mentioned in this Article in the City except insofar as ~~he~~ **the person** or it may be entitled to do so by direct authority of the Constitution of the State of California or of the United States of America, unless ~~he~~ **the person** or it shall have obtained grant therefor in accordance with the provisions of this Article and in accordance with the procedure prescribed by ordinance.

Nothing contained in this Article shall be construed to invalidate any lawful franchise heretofore granted nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

SECTION 1501. - AUTHORITY TO GRANT FRANCHISES.

The Council shall be empowered to grant by ordinance a franchise to any person, firm or corporation, whether operating under an existing franchise or not, to furnish the City and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage or any other public utility or service, or to use the public streets, ways, alleys and places, as the same may now or may hereafter exist, either separately or in connection therewith.

SECTION 1502. - FRANCHISE TERMS, CONDITIONS AND PROCEDURES.

The Council shall, by ordinance, prescribe the terms, conditions and procedure under which franchises will be granted subject to the provisions of this Charter; provided, however, that such procedural ordinance or ordinances shall make provisions for the giving of public notice for franchise applications, for protests against the granting of such franchises and for public hearings on such applications.

The Council, in granting franchises, shall prescribe the terms and conditions of such franchises in accordance with the applicable provisions of this Charter and any ordinance adopted pursuant thereto, and may in such franchise impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest or as the people, by initiative, indicate they desire to have so imposed.

SECTION 1503. - METHOD OF GRANTING FRANCHISE.

The Council may grant a franchise without calling for bids or may, in its discretion, advertise for bids for the sale of a franchise upon a basis, not in conflict with the provisions of this Article, to be set out in the advertisement for bids and notice of sale.

SECTION 1504. - TERM OF FRANCHISE.

Every franchise shall be either a fixed term or for an indeterminate period. If for a fixed term, the franchise shall state the term for which it is granted; if indeterminate, it shall set forth the terms and conditions under which it may be terminated.

SECTION 1505. - PURCHASE OR CONDEMNATION BY CITY.

No franchise granted shall in any way or to any extent impair or affect the right of the City now or hereafter conferred upon it by law to acquire the property of the grantee thereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to

contract away or to modify or to abridge either for a term or in perpetuity the City's right of eminent domain with respect to any public utility.

SECTION 1506. - ADEQUATE COMPENSATION.

No new franchise or renewal of an existing franchise shall be granted without reserving to the City just and adequate compensation.

SECTION 1507. - ARTICLE NOT APPLICABLE TO CERTAIN CASES.

Nothing in this Article shall be construed as applying to or requiring the operators of refrigeration or storage utilities or the carriers of freight or passengers not operating over a fixed route, or other public utilities or services not specifically described in this Article, to obtain a franchise to operate within the City unless required so to do by ordinance of the City of Hayward.

SECTION 1508. - EXERCISING RIGHT WITHOUT FRANCHISE.

The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise, shall be a misdemeanor; and each such day that such condition continues shall constitute a separate violation.

SECTION 1509. - ARTICLE NOT APPLICABLE TO CITY.

Nothing in this Article shall be construed to apply to the City, or any department thereof, when furnishing any public utility or service.

SECTION 1600. - EFFECT OF CHARTER.

The organization, government and administration of the public school system in the City of Hayward shall not be affected by the adoption of this Charter, but shall continue in existence as is now or hereafter prescribed by the Education Code of the State of California.

SECTION 1700. - VALIDITY OF CHARTER.

If any provision of this Charter, or the application thereof to any person or circumstance is held invalid, the remainder of the Charter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SECTION 1701. - VIOLATIONS.

The violation of any provision of this Charter shall be deemed a misdemeanor and be punishable upon conviction by a fine not exceeding Five Hundred Dollars, or by imprisonment for a term not exceeding six months or by both such fine and imprisonment.