



DATE: October 10, 2023

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Authorizing the Formation of the Hayward Economic Development Corporation as a Nonprofit Public Benefit Corporation; and Finding the Action is Exempt from CEQA Review

RECOMMENDATION

That the Council adopts a resolution (Attachment II) authorizing the formation of the Hayward Economic Development Corporation (Corporation) as a nonprofit public benefit corporation and finding the action is exempt from CEQA review.

SUMMARY

The Government Code enables cities, and other local jurisdictions, to perform economic development activities. (See Gov't Code §52201, §52202 and §52203). Additionally, it is a public policy of the State to protect and promote sound development of economic opportunities (Gov't. Code . §52200.4). Under Government Code §§52200-52203, public money may be spent and private property acquired for creating economic opportunity, which constitutes a public use.

Staff recommends the formation of the Corporation as a nonprofit public benefit corporation (the "Corporation") organized under Section 509(a)(3)(A) as a supporting organization organized exclusively to benefit and support the City of Hayward in implementing the economic development activities throughout the city, along with other related objectives. Staff also recommends that the Council authorize the formation of the Corporation and to authorize the City Manager to enter into and execute the Formation Documents, all in such forms as approved by City Attorney, and to take any other actions, necessary to enable the formation of the Corporation, as well as any and all other activities contemplated in the attached resolution.

DISCUSSION

The Government Code enables cities, and other local jurisdictions, to perform economic development activities. (See Gov't Code §52201, §52202 and §52203). Additionally, it is a

public policy of the State to protect and promote sound development of economic opportunities (Gov't. Code . §52200.4) Whenever the creation of economic opportunities cannot be accomplished by private enterprise alone, without public participation and assistance, it is in the public interest to expend public funds to provide a means by which economic opportunity can be created.

Under Government Code §§52200-52203, public money may be spent and private property acquired for creating economic opportunity, which constitutes a public use. Furthermore, the provision of appropriate continuing land use and construction policies with respect to property acquired, in whole or in part, for economic opportunity constitutes a public use. These activities are governmental functions of state concern in the interest of health, safety, and welfare of the people of the state and cities and counties.

After the dissolution of the Redevelopment Agency of the City of Hayward in 2012, the City has primarily performed the economic development activities and implemented the economic development goals of the City. The City recognizes the benefits associated with the creation of economic opportunity and community economic development in the city. Through the formation of the Corporation, the City intends to activate an entity that will play a more prominent role in local community economic development.

Staff recommends that the Council authorize the City Manager to form a nonprofit corporation organized to benefit and support the City which may lessen the burdens of the city government by: (1) utilizing private and public funding sources to combat community blight and deterioration in the city and contribute to the physical improvement of the city; (2) assisting in providing and expanding economic opportunities in the city; (3) encouraging and stimulating economic development within the city; (4) promoting social welfare by providing services, educational programs, and economic development opportunities; (5) implementing and assisting City redevelopment activities and programs that will eliminate discrimination and prejudice, and combat community deterioration; (6) expanding the opportunities of residents and groups to own, manage, and operate business enterprises; (7) assisting residents and groups to develop entrepreneurial and management skills necessary for the successful operation of business enterprises; (8) assisting residents and groups to obtain financial support from other sources; (9) acquiring, providing, developing, leasing, financing, rehabilitating, owning and operating property in support of the City's economic development goals; (10) acquiring, providing, developing, leasing, financing, rehabilitating, owning and operating decent, safe and sanitary housing affordable to persons and households of low income; and (11) carrying out such other activities as the board of directors of the Corporation determines will benefit and support the City (collectively, the "Corporate Activities").

The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California and to perform the Corporate Activities, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes identify in the Corporation's governing documents. The formation of the

Corporation will allow the City to achieve these goals in a more efficient and streamlined manner.

A nonprofit public benefit corporation is not automatically exempt from federal or state income tax or from state property tax. To obtain exemption from federal and state income tax, a nonprofit public benefit corporation must apply for tax-exempt status with the IRS and the California Franchise Tax Board ("FTB"). Staff intends to apply for tax-exempt status with the IRS and the FTB.

The creation of the Corporation will allow for the City to continue to achieve its economic development activities and implement the economic development goals of the City, by delegating the responsibilities to the Corporation. Initially, the City Council will serve as the Board of Directors for the Corporation.

Environmental Review

The formation of the Corporation is not a project pursuant to 14 California Code of Regulations 15378(b)(5), as it is an organizational or administrative activity of governments that will not result in direct or indirect physical changes in the environment.

ECONOMIC IMPACT

The expectation is that through the conduct of its Corporate Activities, the Corporation will have a significant positive economic impact on the community.

FISCAL IMPACT

Staff will bring a subsequent item for City Council consideration and approval that will focus on the initial capitalization of the Corporation as well as other key formation tasks.

STRATEGIC ROADMAP

The proposed project supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following project(s):

Q12 Engage owners of vacant building properties to encourage activation, starting in the downtown, and enforce against owners of empty storefronts

E1 Work with the CEDC to identify priority sites and review concept plans, including downtown sites and Southland Mall

E4 Continue to roll out the Downtown District Activation pilot program which includes performance art

E15 Study the options for disposing of Successor Agency parcels on Mission Boulevard

SUSTAINABILITY FEATURES

The creation of the Hayward Economic Development Corporation does not have any known direct or identifiable sustainability features.

NEXT STEPS

Following Council approval, City staff will electronically file the formation documents and create the Corporation. Additional steps will be taken to apply for federal and state tax exemptions.

Prepared and Recommended by:

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Approved by:



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