

CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Tuesday, June 30, 2020

7:00 PM

Remote Participation

City Council

SPECIAL CITY COUNCIL MEETING

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order No. 29-20 dated March 17, 2020, and Alameda County Health Officer Order No. 20-10 dated April 29, 2020, regarding the COVID-19 pandemic.

How to observe the Meeting:

1. Comcast Channel 15
2. Live stream <https://hayward.legistar.com/Calendar.aspx>

How to submit written Public Comment:

1. Use eComment on the City's Meeting & Agenda Center webpage at <https://hayward.legistar.com/Calendar.aspx>. eComments are directly sent to the iLegislate application used by City Council and City staff. Comments received before 3:00 p.m. the day of the meeting will be exported into a report, distributed to the City Council and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda. eComments received after 3:00 p.m. through the adjournment of the meeting will be included as a part of the meeting record and published the following day.

2. Send an email to List-Mayor-Council@hayward-ca.gov by 3:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the City Council and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda.

How to provide spoken Public Comment during the City Council Meeting:

Call the City Clerk at (510) 583-4400 prior to the close of public comment on an item as indicated by the Mayor.

CALL TO ORDER Pledge of Allegiance: Mayor Halliday

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PUBLIC COMMENTS

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

ACTION ITEMS

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

CONSENT

1. [MIN 20-070](#) Approve City Council Minutes of the City Council Meeting on June 16, 2020

Attachments: [Attachment I Draft Minutes of 6/16/2020](#)

LEGISLATIVE BUSINESS

2. [LB 20-028](#) Extension of Temporary Evictions Moratorium: Adoption of Emergency Ordinance Amending Temporary Moratorium on Residential and Commercial Evictions to Extend the Moratorium and the Repayment Period (Report from Deputy City Manager Ott)

Attachments: [Attachment I Staff Report](#)
[Attachment II Ordinance](#)
[Attachment III Summary of Current Eviction Moratorium](#)

3. [LB 20-030](#) TOT (Hotel Tax) Ballot Measure: Direction on Potential November 2020 Transient Occupancy Tax Ballot Measure (Report from Director of Finance Claussen)

Attachments: [Attachment I Staff Report](#)
[Attachment II Timeline of TOT Action](#)

PUBLIC HEARING

4. [PH 20-053](#) FY2021 Gann Appropriation Limit: Adopt a Resolution Establishing a Gann Appropriations Limit for Fiscal Year 2021 (Report from Director of Finance Claussen)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)

CITY MANAGER'S COMMENTS

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

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Members can provide oral reports on attendance at intergovernmental agency meetings, conferences, seminars, or other Council events to comply with AB 1234 requirements (reimbursable expenses for official activities).

COUNCIL REFERRALS

Council Members may bring forward a Council Referral Memorandum (Memo) on any topic to be considered by the entire Council. The intent of this Council Referrals section of the agenda is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the Council to the appropriate Council Appointed Officers for action by the applicable City staff.

ADJOURNMENT

NEXT MEETING, July 7, 2020, 7:00 PM

PUBLIC COMMENT RULES

Any member of the public desiring to address the Council shall limit her/his address to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.

PLEASE TAKE NOTICE

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

PLEASE TAKE FURTHER NOTICE

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

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

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

Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.

CHILDCARE WILL NOT BE PROVIDED UNTIL FURTHER NOTICE DUE TO COUNTYWIDE SHELTER-IN-PLACE ORDER.



CITY OF HAYWARD

Hayward City Hall
777 B Street
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File #: MIN 20-070

DATE: June 30, 2020

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Approve City Council Minutes of the City Council Meeting on June 16, 2020

RECOMMENDATION

That the City Council approves the City Council minutes of June 16, 2020.

SUMMARY

The City Council held a meeting on June 16, 2020.

ATTACHMENTS

Attachment I Draft Minutes of 6/16/2020



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m. This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order No 29-20 dated March 17, 2020, and the Alameda County Health Officer Order No. 20-10 dated April 29, 2020, regarding the COVID-19 pandemic.

CALL TO ORDER Pledge of Allegiance: Mayor Halliday

ROLL CALL

Present: COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño
MAYOR Halliday
Absent: None

CLOSED SESSION ANNOUNCEMENT

The City Council convened in closed session on June 16, 2020, at 5:00 p.m., regarding two items: 1) conference with legal counsel pursuant to Government Code 54956.9(d)(4) regarding one anticipated item; and 2) conference with labor negotiators pursuant to Government Code 54957.6 regarding all labor groups. City Attorney Lawson reported that, pursuant to Government Code Section 54954.2(b)(2), the Council unanimously approved, with Council Member Mendall moving and Council Member Márquez seconding, to add an item to the closed session agenda to discuss the property transaction at Maple and Main. City Attorney Lawson added there was no reportable action related to Items 1, 2 and the added item.

PROCLAMATIONS

Mayor Halliday read a Proclamation declaring June 2020, as Elder Abuse Awareness Month and June 15, 2020, as Elder Abuse Awareness Day. Alameda County Deputy District Attorney Cheryl Poncini with Elder Protection Unit, Assistant District Attorney Sabrina Farrell with Family Justice Center and APS Director Alicia Morales accepted the proclamation and addressed the City Council.

Mayor Halliday read a Proclamation declaring June 19, 2020, as Juneteenth National Freedom Day: A Day of Observance in the City of Hayward and urged all to become aware of the important celebration in Black History. President of South Alameda County NAACP, Ms. Freddie Davis, and Planning Commission Member Andrews accepted the recognition and Ms. Davis addressed the City Council.

PUBLIC COMMENTS

Ms. Alicia Lawrence, The Hayward Collective member, spoke on behalf of Leisure Terrace tenants regarding rent increase issues with Reliant Property Group. City Manager McAdoo noted an item related to housing matters was scheduled for July 14, 2020.

Mr. Jordan Leopold, Hayward resident, offered two suggestions, 1) use of the Zoom application to allow better access to Council meetings; and 2) move the budget work session to the beginning of the meeting to allow public commentary.

Ms. Emma Dinkelspiel, Bay Area Legal Aid attorney, noted that Reliant was attempting another rent increase, for Leisure Terrace tenants during a pandemic and urged City staff to continue to work with tenants.

Ms. Ruby Aguilar, Hayward native, echoed comments made by Mr. Jordan Leopold.

CONSENT

Consent Item 2 and Consent Item 5 were removed from the Consent Calendar for a separate vote.

- 1. Approve City Council Minutes of the Special City Council Meeting on June 2, 2020 **MIN 20-064**

It was moved by Council Member Márquez, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council meeting on June 2, 2020.

- 2. Adopt Resolutions Authorizing the City Manager to Negotiate and Execute an Agreement with Alameda County to Accept \$2,870,000 and an Amendment to the Professional Services Agreement with RossDrulisCusenbery for the South Hayward Youth and Family Center Project **CONS 20-280**

Staff report submitted by City Manager McAdoo, dated June 16, 2020, was filed.

Mayor Halliday removed the item to indicate the project will include outreach to and input by the community and noted the proposed project would benefit youth in South Hayward.

It was moved by Mayor Halliday, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the resolution

AYES:	COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño MAYOR Halliday
NOES:	None
ABSENT:	None
ABSTAIN:	None



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Resolution 20-079, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with Alameda County to Accept and Appropriate \$2,870,000 to Fund 405 for Design Development, Construction Documentation and Bid-Period Support for the South Hayward Youth and Family Center Project"

Resolution 20-080, "Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Professional Services Agreement with RossDrulisCusenbery, Inc. for Design Development, Construction Documentation and Bid-Period Support for the South Hayward Youth & Family Center Project, Not-to Exceed \$2,870,000"

3. Adopt a Resolution Authorizing the City Manager to Accept and Appropriate \$20,000 in Grant Funding to Support Census 2020 Outreach Activities **CONS 20-281**

Staff report submitted by City Manager McAadoo, dated June 16, 2020, was filed.

It was moved by Council Member Márquez, seconded by Council Member Mendall, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas,
Wahab, Zermeño
MAYOR Halliday
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Resolution 20-077, "Resolution Authorizing the City Manager to Accept and Appropriate Up to \$20,000 in Grant Funding from Alameda County for Census 2020 Outreach Activities"

4. Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with Savant Solutions for Information Technology Department Infrastructure Security Services **CONS 20-284**

Staff report submitted by CIO/Director of Information Technology Kostrzak, dated June 16, 2020, was filed.

It was moved by Council Member Márquez, seconded by Council Member Mendall, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas,
Wahab, Zermeño
MAYOR Halliday
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Resolution 20-078, “Resolution of the City Council of the City of Hayward Authorizing the City Manager to Negotiate and Execute an Agreement with Savant Solutions for Information Technology Infrastructure Services”

5. Adopt a Resolution Extending Terms of Current Hayward Youth Commission Voting Members through June 30, 2021 and Promoting Alternates to Voting Member Status with Terms Expiring June 30, 2021 **CONS 20-305**

Staff report submitted by City Clerk Lens, dated June 16, 2020, was filed.

Council Member Mendall disclosed his relative was a current member of the Hayward Youth Commission and he would be abstaining himself from voting on the item.

It was moved by Mayor Halliday, seconded by Council Member Salinas, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Lamnin, Márquez, Salinas, Wahab, Zermeño
MAYOR Halliday
NOES: NONE
ABSENT: NONE
ABSTAIN: COUNCIL MEMBERS Mendall

Resolution 20-081, “Resolution Extending Terms of Current Hayward Youth Commission Members through June 30, 2021 and Promoting Alternates to Voting Member Status with Terms Expiring June 30, 2021”



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

PUBLIC HEARING

6. Route 238 Parcel Group 9: Proposal to Rezone Former Caltrans Property known as Rte. 238 Parcel Group 9 Located at the Intersection of Apple Avenue and Oak Street (Assessor Parcel Nos. 415-0160-052-00, & 415-0170-037-00) from High Density Residential (RH) and Commercial Office (CO) to General Commercial (CG), Requiring Approval of Rezoning Subject to an Addendum of the Hayward 2040 General Plan EIR per the California Environmental Quality Act (CEQA) Section 15164; City of Hayward (Applicant/Property Owner; Application No. 202000605) **PH 20-043**

Staff report submitted by Development Services Director Simpson, dated June 16, 2020, was filed.

Associate Planner Maravilla provided a synopsis of the staff report.

Discussion ensued among Council Members and City staff regarding: community meetings for Parcel Group 8 and Parcel Group 9 and questions regarding a hotel use; the Request for Proposals (RFP) process and rezoning advantages to create retail while retaining housing options and including language specific for housing projects; environmental impact report (EIR), California Environmental Quality Act (CEQA), acoustic study, air quality and Hayward 2040 General Plan for land designation uses; and community outreach and Eden Area Municipal Advisory Council meeting including meetings with Dr. Ann Maris.

Mayor Halliday opened the public hearing at 8:05 p.m.

Public speakers participated by calling the City Clerk's office at (510) 583-4400.

Dr. Ann Maris, Grove Way Neighborhood resident, referred to her letter in opposition to rezoning Oak Street to General Commercial for a hotel and spoke about issues with the public noticing.

Mr. Nestor Castillo, Eden Community Land Trust organizer and Hayward resident, supported the use of public land for a community benefit, especially during a housing crisis, and opposed the hotel proposal.

Ms. Samantha Soma, Castro Valley resident, opposed the rezoning for hotel use, favored current housing and riparian land, and noted the need for affordable housing.

Ms. Meta Mcaulay opposed rezoning for a hotel and asked specifics about the hotel capacity and the parking lot requirement.

Ms. Arieana Castellanos, Hayward resident, spoke about the lack of recognition for the Ohlone tribe and noted a hotel was not as beneficial as affordable housing.

Mr. Obinna Anyanwu, college student, opposed the rezoning for a hotel and spoke about repurposing the funds for this project and advancing public transportation and recreational infrastructure.

Mr. Bruce King, Castro Valley resident, opposed the rezoning for a hotel and supported housing for the site.

Ms. Rosemarie Puljic-Salmeron, Hayward resident, opposed rezoning to General Commercial, supported public land for public use, and focused on housing for the homeless.

Ms. Soo Rae Hong, Castro Valley resident, suggested the City partner with agencies to create a sustainable mix of affordable housing, parks and commercial space.

Mr. Tyler Dragoni noted Planning Commission members were not in favor of the proposed rezoning, there was only one community meeting and urged Council to vote against it.

Dr. Marlina Selva, Hayward resident, urged City Council to communicate with Alameda County about creating a cohesive plan for all impacted parcels and to listen to the community regarding affordable housing and environmental protections.

Ms. Regane Thomas, Mesa Verde resident, opposed rezoning for hotel use and favored affordable housing.

Ms. Shareen Purcell opposed rezoning for a hotel, noted she did not receive a notice, favored affordable housing, and suggested partnering with other agencies to achieve an improved plan.

Ms. Kara Ramirez noted community members were against the rezone for hotel use and advocated for funding toward the community and the environment.

Mayor Halliday closed the public hearing at 8:41 p.m.

City staff noted Parcel Group 8 had open space which the City could potentially transfer to the Hayward Area Recreation and Park District and clarified that Parcel Group 9 did not have riparian areas.

Members of the City Council acknowledged concerns expressed by community members.



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Council Member Salinas noted community members were clear about opposing a hotel for the rezoning of the parcel, received confirmation that the RFP could have specific language for housing/affordable housing projects, and expressed concern about placing low/very low-income affordable housing on Parcel Group 9 for its proximity to the freeway.

Council Member Zermeño preferred to encourage housing and asked staff to be cautious if housing was envisioned for low income or homeless individuals and preferred to retain Commercial Office zoning in the front lot facing Foothill Boulevard.

Council Member Mendall indicated his support for rezoning the parcel for the flexibility and greater opportunity to develop it, added the open space was dependent on the City being able to maximize development of other parcels and utilize funds to purchase land from Caltrans and designate them open space, noted the air quality issue for Parcel Group 9 was not conducive for housing and could be mitigated with office buildings and hotels, and added that there would be further discussion about the RFP in the fall.

Council Member Mendall offered a motion to move the item per staff's recommendation.

Council Member Márquez encouraged public speakers to follow the project and for staff to create a distribution list of interested parties, concurred with collaborating with other jurisdictions, noted she did not want to restrict the City's options and the motion was not determining a specific use. Council Member Márquez seconded the motion.

Council Member Lamnin shared Council Member Mendall's concerns about air quality and placing housing on Parcel 9 which is close to the freeway, asked for robust community input, and supported the motion because the rezoning would provide flexibility and consistency with the General Plan.

Council Member Wahab recommended that as further discussion occurs regarding Parcel Group 9 and other Route 238 parcels that staff specify the priority between housing, affordable housing, high density housing versus environmental concerns.

Mayor Halliday noted there would be community input when the RFP is designed, indicated the rezoning allows flexibility for housing development, acknowledged the challenge with a parcel between two county parcels, and cautioned developing housing, especially low-income housing, in an area with air quality and noise issues.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas
MAYOR Halliday
NOES: Wahab, Zermeño
ABSENT: NONE
ABSTAIN: NONE

Intro Ord 20-_, “An Ordinance Amending Chapter 10, Article 1 (Zoning Ordinance) of the Hayward Municipal Code Rezoning Certain Property to General Commercial in Connection with Zone Change Application No. 202000605 to Accommodate the Future Development of Parcel Group 9”

Resolution 20-082, “Resolution Adopting the Addendum to the Hayward 2040 General Plan Environmental Impact Report for Parcel Group 9 Located at the Intersection of Apple Avenue and Oak Street (Assessor Parcel Nos. 415-0160-052-00, & 415-0170-037-00) Rezoning from High Density Residential (RH) and Commercial Office (CO) to General Commercial (CG); City of Hayward (Applicant/Owner)”

7. 2040 General Plan: Introduce an Ordinance Amending the Hayward 2040 General Plan to Comply with Changes to State Law Including the Establishment of New Vehicle Miles Traveled (VMT) CEQA Thresholds and Adopt Updated Greenhouse Gas Emission Reduction Targets **PH 20-044**

Staff report submitted by Director of Public Works Ameri and Development Services Director Simpson, dated June 16, 2020, was filed.

Public Works Director Ameri announced the item and introduced Senior Transportation Engineer Solla who provided a synopsis of the staff report.

There being no public comments, Mayor Halliday opened and closed the public hearing at 9:32 p.m.

Council Member Zermeño noted the item was discussed during a Council Sustainability Committee meeting where he serves with Council Members Márquez and Mendall and agreed with the Greenhouse Gas (GHG) emission reduction goals. Council Member Zermeño offered a motion per staff's recommendation.

Council Member Márquez seconded the motion and shared that new rules regarding vehicle miles travelled (VMT) were also vetted by the Council Infrastructure Committee where she serves along with Council Members Mendall and Salinas. Council Member Márquez urged everyone to walk, bike and use public transportation to achieve a positive impact on GHG emission reduction goals.



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Council Member Mendall noted he had been working on environmental issues since he was on the Planning Commission and as a founding member of the Council Sustainability Committee, noted the City will achieve at least 20% reduction goals by 2020 with the help of East Bay Community Energy, and thanked all for the work on environmental issues.

Mayor Halliday thanked City staff and the Council Sustainability Committee for their efforts, noted staff would need to be diligent about seeking funding to meet GHG reduction goals and include the Alameda County Transportation Commission (ACTC), and added she was proud to meet 20% reduction goals for 2020.

Council Member Lamnin suggested to also include the development community in outreach efforts and echoed Mayor Halliday's comments about including ACTC.

It was moved by Council Member Zermeño, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the resolution:

AYES: COUNCIL MEMBERS Lamnin, Márquez, Mendall, Salinas,
Wahab, Zermeño
MAYOR Halliday
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Intro Ord 20-, "An Ordinance Amending the Hayward 2040 General Plan Establishing New Vehicle Miles Traveled (VT) CEQA Thresholds and Updated Greenhouse Gas Emission (GHG) Reduction Goals"

Resolution 20-083, "Resolution Adopting Findings Supporting Amendments to the City of Hayward 2040 General Plan by Establishing Vehicle Miles Traveled as a CEQA Threshold for Transportation Impact Analysis Consistent with SB743 Legislation"

Resolution 20-084, "Resolution Adopting Findings to Support Amending the Greenhouse Gas Emission Reduction Goals in the Hayward 2040 General Plan"

WORK SESSION

8. Review of Capital Improvement Program for FY 2021- FY 2030 & FY 2021 Operating Budget Work Session #2 **WS 20-028**

Staff report submitted by Director of Finance Claussen and Director of Public Works Ameri, dated June 16, 2020, was filed.

Public Works Director Ameri provided a synopsis of the staff report and noted City staff had distributed a memorandum to Council that provided changes to the published recommended Capital Improvement Program (CIP) regarding an accounting update for FY 2018-FY 2020 for the general 238 Bypass Property Disposition project expenses and FY 2021 CIP budget requests for the project.

In response to Council Member Wahab's request, City Manager McAdoo read a letter from Hayward Police Officers Association (HPOA)'s President Flores, dated June 16, 2020, which was distributed to the City Council regarding an invitation to discuss some of the suggested changes under "Eight can't wait." In response to Council Member Márquez's request, City Manager McAdoo provided a summary of a supplemental memorandum dated June 16, 2020, regarding a preliminary response to the commentary received from public members concerning the seven community demands with respect to the Hayward Police Department funding and services.

Mayor Halliday opened the public hearing at 10:15 p.m.

Ms. Katie Alvarez asked staff and Council to continue to work on a revised budget with a reduction of the police department's budget and expressed support for Council Member Wahab's referral regarding the future of public safety and the creation of a social services department.

Ms. Angela Andrews, Planning Commissioner, recommended to ban tear gas, redirect funds to train officers how to handle knife attacks correctly, fund mental health services that can appropriately handle crisis situations, delay request for a new police building until after the South Hayward Youth Center is built, and encourage separation of the corporation yard.

Mr. Jesse Gunn, Hayward teacher and resident, concurred with the seven community demands and agreed with the creation of a social services department.

Ms. Clare Green, Impact Academy Principal and Hayward resident, supported the seven demands, particularly the first which calls for 10% redistribution of the police budget to non-police community based services, called for a resolution that integrates the seven demands by the end of July, and asked for public forum discussions.



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Ms. Elisha Crader, Hayward resident, expressed support for the seven demands, noted the Community Advisory Panel to Chief of Police was not sufficient to provide community input, and challenged Council Members to not accept any police associations' funds for election campaigns.

Mr. Jordan Leopold, expressed support for the seven demands particularly redistributing 10% of the police budget to community-based services, supported Council Member Wahab's referral to create a social services department, and suggested the City consider models instituted recently such as in San Francisco.

Ms. Alicia Lawrence, The Hayward Collective representative, stated the June 16 memorandum misconstrued the demand for the redistribution of the police budget, noted that Youth and Family Services Bureau, Animal Shelter and Jail programs could be reimagined under a social services department, noted CIP programs could contribute toward the 10% redistribution, and expressed concern about the structure of Community Advisory Panel to Chief of Police meetings and accountability to the community.

Mr. George Syrop, Hayward resident, thanked staff for the response to the seven demands, echoed support for Council Member Wahab's referral, asked Council to pass a resolution committing to the seven demands and reflected in the City's budget.

Mr. Isaac Harris, Eden Area resident and Hayward worker, expressed support for the seven demands, spoke about revisiting SRO contracts with the Hayward Unified School District, and utilizing funding for community programs similar to the City of Oakland.

Ms. Lacei Amodei, Hayward resident, supported a resolution committing to implement the community demands and the creation of a participatory budgetary committee, noted that if Council supports the demands, it needs to direct staff to explore how demand goals can be met, noted concerns with the Community Advisory Committee to the Chief of Police structure and scope of power, and echoed the challenge to Council members related to election campaign funds.

Mr. Alexis Villalobos expressed support for the seven demands and a resolution to meet all demands by end of July, disagreed with the HOPA letter regarding the "eight can't wait" campaign, and noted the CIP presentation indicated \$2 million is spent on tear gas, rifles, and tanks.

Mr. Jose Hernandez, Hayward resident, noted reports indicate that increased policing leads to criminalization of young people of color/minorities, and increased funding for community programs have a higher rate of return in investments as opposed to policing and incarceration.

Ms. Corina Vasaura, Hayward resident, supported the seven demands and a resolution committing to implementing them by the end of July, and supported cancelling all police contracts with schools, colleges, and universities and have additional mental health counselors.

Ms. Erica Richards, Hayward resident, expressed support of the seven demands specifically redistributing 10% of the police budget to community-based services, and was glad the HPOA was willing to participate.

Ms. Arieana Castellanos, Hayward resident, expressed support of the seven demands and noted the proposed budget revealed an increase in police spending despite what was reported by staff.

Ms. Liliana Molina, Hayward resident, requested that funding for a police building be reallocated for schools and the education system.

Ms. Alejandra Mendoza, Hayward resident, supported the seven demands, and noted the lack of protection for marginalized communities that have been terrorized by the police, and lack of mental health services and mutual aid.

Mr. Ian Valencia, Hayward resident, expressed support for the redistribution of 10% of police funding, demilitarization of the police, and ban paid leave for officers being investigated for misconduct.

Ms. Angelica Rosales, Hayward resident, referred to the letter from HPOA President Flores and an event that occurred five years ago, and urged for diverting 10% of the police budget to community-based services.

Ms. Elizabeth Blanco, Hayward resident, expressed support for the seven demands, noted the “eight can’t wait” campaign endangers communities of color, and read an article from the New York Times article entitled, “No More Money for Police.”

Ms. Lorena Luna, Centro Legal De La Raza representative and Hayward resident, expressed support for the seven demands and police reform, and spoke about defunding the police.

Mr. Alexis Villalobos interpreting for his sister Ms. Giselle Villalobos, addressed the funds spent on riot gear and unnecessary cost of new police building.

Ms. Araceli Orozco expressed support for the seven demands, provided a website for the public to view how tax funds are spent and spoke about over \$100,000 spent in overtime during 2018.

Mr. Nestor Castillo, CSUEB instructor, expressed support for the seven demands and for asked the Council to adopt a resolution stating commitment to the seven demands and invest in life affirming programs.



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Ms. Rita Kho, Hayward resident, expressed support for the seven demands and noted the schools need to be fixed.

Ms. Cynthia Nunes supported the seven demands, did not think necessary to have a SWAT team, did not agree spending over \$200 million to rebuild the police department, and suggested to repurpose funds for a mental health task force team, underfunded schools, and community services.

Mayor Halliday closed public comments at 11:08 p.m.

Member of the City Council expressed appreciation for the community engagement.

Council Member Mendall supported placing a hold on the new police building and moving forward with the corporation yard; was glad City and HUSD staffs were reviewing SRO contracts; did not agree to ban software and technology for their usefulness to track crime; was also wondering if HPD programs such as the Animal Shelter could be placed under another department to count toward the 10% redistribution; wanted to provide an opportunity for a larger community engagement on any proposed changes; and was pleased with the CIP proposal and the La Vista Park project.

Council Member Zermeño noted 10% of the police budget could be redistributed to La Vista Park project and funding for the Navigation Center; requested that the Community Advisory Panel to the Chief of Police review the CALEA certification and supported its continuance; noted the leave pay for officers being investigated for misconduct was a legal issue; noted the police department did not need equipment used by police departments in bigger cities; favored having technology to help solve crimes; and noted there was a possibility of moving \$1 million from reserves to community-based programs.

Council Member Lamnin recommended that police department allocations be reconsidered and reallocated for rental assistance and housing grants; concurred with holding off on the police station until the City has a better sense of what will happen with the community demands; agreed to move forward with the corporation yard and reconsider removing wastewater treatment plant items from the corporation yard; recommended moving the Dispatch Center under the Emergency Operations Center, the Youth and Family Services Bureau under the Community Services Division, and Animal Services under Maintenance Services; and noted a community priority was who responds to a crisis situation and was committed to implementing prevention programs.

Council Member Márquez requested a review of next steps for the community demands and having them addressed before the budget adoption; supported most of the demands but wanted them analyzed for cause and effect; stated the City should be able to reduce 5% of the police budget since 3% was already identified with the freezing of police positions; agreed to

consider shifting some programs to other areas within the next two weeks and continue community discussions to address the other demands; did not want to layoff any new police officers noting the City has been working diligently to diversify the City's workforce to reflect the community; noted there were creative ways to meet some of the community demands and to discuss and vet others; requested that meetings of the Community Advisory Panel to the Chief of Police include a public comment section to allow an opportunity for public members to speak on any concerns; and agreed to not move forward with the police building but proceed with upgrades to the corporation yard.

Council Member Salinas noted the seven demands were reasonable and the Council was working toward addressing them; acknowledged the importance of investing in mental health professionals; spoke about the effective use of technology for police strategies that provide for public safety; concurred with Council Member Márquez on the 5% reduction goal and utilize funding for appropriate personnel; noted the timeline for community engagement in the next month was reasonable; and noted the Community Advisory Committee to the Chief of Police was making an honest attempt to address recent issues.

Council Member Wahab was disappointed at the small number of public meetings held by the Community Advisory Committee to the Chief of Police noting plans need vetting; supported the community ask that prior to adopting the FY 2021 budget, the Council adopt a resolution by the end of July that commits to implementing the demands; stated that for the removal of SROs from schools, the public will have to hold HUSD accountable; noted that local communities should play a significant role in determining how technology is funded and used; spoke about the support she has received for the four referrals she has not been able to place on the agenda during the pandemic; noted the 10% police budget reduction could be achieved by moving different positions to other areas of the City and spending less on retrofitting existing police buildings; and noted her referral encompasses the community demands.

Mayor Halliday agreed with her colleagues about the police building being taken off the list, noted she has shared ideas with the City Manager on how to move forward with addressing everyone's ideas, noted that funds from the police building could be diverted to the Eden Youth and Family Center and to making food distribution events permanent.

CITY MANAGER'S COMMENTS

City Manager McAdoo announced the Library's Summer Reading Challenge and noted the library was celebrating Juneteenth on June 19, 2020.

COUNCIL REPORTS AND ANNOUNCEMENTS

Council Member Salinas announced the Let's Do Lunch Hayward and Breakfast Too program was offering free summer meals from June 15, 2020 through August 7, 2020, flyers can be found on the HUSD website.



**MEETING OF THE CITY COUNCIL
REMOTE PARTICIPATION
Tuesday, June 16, 2020, 7:00 p.m.**

Council Member Wahab said she would like to see all Council Members' referrals on the agendas, and she thanked all who were involved with the Juneteenth National Freedom Day Proclamation.

ADJOURNMENT

Mayor Halliday adjourned the meeting on June 17, 2020, at 12:38 a.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: LB 20-028

DATE: June 30, 2020

TO: Mayor and City Council

FROM: Deputy City Manager

SUBJECT

Extension of Temporary Evictions Moratorium: Adoption of Emergency Ordinance Amending Temporary Moratorium on Residential and Commercial Evictions to Extend the Moratorium and the Repayment Period

RECOMMENDATION

That Council adopts an Emergency Ordinance (Attachment II) amending the temporary moratorium on residential and commercial evictions in the City of Hayward for non-payment of rent or mortgage payments caused by the Coronavirus (COVID-19) Pandemic to extend the Moratorium until September 30, 2020 and the repayment period an additional 90 days.

SUMMARY

On March 24, 2020, the City Council adopted a 90-day emergency moratorium on evictions of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure. The shelter-in-place orders are only partially lifted and high unemployment rates continue. The moratorium period will conclude on July 6, 2020 unless extended by City Council. Staff recommends extending the eviction moratorium until September 30, 2020 and the repayment period an additional 90 days to allow time for tenants' employment situations to stabilize and tenants to enter into repayment agreements with their landlords.

Enactment of an emergency ordinance would require at least five affirmative votes from the City Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Ordinance
Attachment III	Summary of Current Eviction Moratorium



DATE: June 30, 2020

TO: Mayor and City Council

FROM: Deputy City Manager

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SUMMARY

On March 24, 2020, the City Council adopted a 90-day emergency moratorium on evictions of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure. The shelter-in-place orders are only partially lifted and high unemployment rates continue. The moratorium period will conclude on July 6, 2020 unless extended by City Council. Staff recommends extending the eviction moratorium until September 30, 2020 and the repayment period an additional 90 days to allow time for tenants' employment situations to stabilize and tenants to enter into repayment agreements with their landlords.

Enactment of an emergency ordinance would require at least five affirmative votes from the City Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption.

BACKGROUND

On March 1, 2020, the Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19.

On March 11, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to the spread of COVID-19, which was affirmed by the City Council on March 17, 2020.

On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20 in response to the economic impacts of COVID-19 that threaten to undermine California's housing security and the stability of California businesses due to substantial loss of income, which authorized local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic.

On March 17, 2020, Alameda County issued a legal order directing residents to shelter at home for three weeks, which has been amended and reissued multiple times, no longer includes an end date, and outlines a phased reopening plan for the County. The original order limited activity, travel, and business functions to only the most essential needs. The Shelter-in-Place Order has caused and will continue to cause a decrease in income for many Hayward businesses and residents, which will increase the risk of loss of jobs, displacement, and homelessness. While "essential businesses" such as pharmacies and grocery stores are exempt and restaurants are allowed to serve customers via take-out and outdoor dining only, the business community is facing severe economic injury. Businesses small and large have reported a complete collapse of their revenue streams, reduced sales, and the need to layoff or reduce their workforce's hours. While sales have dramatically fallen, fixed costs such as rents, health care costs, outstanding loans, and taxes remain on the books.

On March 24, 2020¹, the City Council adopted an emergency ordinance that 1) established a temporary moratorium on evictions in the City of Hayward for non-payment of rent caused by the COVID-19 pandemic, or for no-fault evictions unless the eviction is necessary for the health and safety of the tenant or landlord (e.g. unit is deemed uninhabitable), and 2) provided residential tenants and landlords mediation services to negotiate payment agreements. At that meeting, the City Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions.

On April 7, 2020², in response to the COVID-19 pandemic and corresponding state and local emergency orders, the Hayward City Council voted to expand the Temporary Moratorium on Evictions to prevent displacement of residential and commercial tenants impacted by the COVID-19 pandemic.

¹ March 24, 2020 City Council Meeting Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4399195&GUID=BFD696C9-8ED0-4F9F-8B99-98912C9C0679&Options=&Search=>

² April 7, 2020 City Council Meeting Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4411520&GUID=D179CF31-EC55-4AA7-B3C1-430B1C8DC5E4&Options=&Search=>

On April 21, 2020, the Alameda County Board of Supervisors adopted amendments to the Countywide Eviction Moratorium³ to provide expanded tenant eviction protections Countywide. Even though Alameda County's eviction moratorium is Countywide, the City Attorney's Office has determined that the City of Hayward's Ordinance is still effective and can be enforced. As a result, City staff will be enforcing the City's Ordinance. Additionally, by enforcing the City's Ordinance, City staff can provide technical assistance resources to the community since the City cannot enforce or explain the County moratorium.

DISCUSSION

As a result of the State of Emergency declarations and Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, many residential tenants, homeowners, and commercial businesses have experienced sudden income loss, leaving them vulnerable to eviction. During the State of Emergency, the public interest in preserving peace, health, and safety, and preventing further transmission of COVID-19 will be served by avoiding unnecessary loss of jobs, displacement, and homelessness. The City's unemployment rate for the April 2020 was 17.1%, which was 13.2% higher than the unemployment rate for February 2020 and higher than any given month during the great recession.⁴ While local May 2020 unemployment rates were unavailable at the time this report was prepared, the national unemployment rate continues to be high at 13.3% for May 2020. As of June 8, 2020, Alameda County has started to lift some of the restrictions under the Shelter-in-Place Order; however, not all businesses have been permitted to resume operations and those that have, are subject to restrictions. Childcare and camps were expanded to non-essential employees, which will enable some individuals to start looking for employment. Yet, there are still four more re-opening stages before the Shelter-in-Place-Order is fully lifted and as a result, many community members are still unemployed and continued eviction protections are needed.

Due to the continued state of emergency and continued restrictions under the Shelter-in-Place-Order, staff recommends the following revisions to the City's eviction moratorium:

1. **Extend the moratorium until September 30, 2020.** Extending the moratorium until September 30, 2020 will provide the existing protections through Council recess and provide sufficient time for staff to reassess the need for any continued protections. Additionally, by providing a precise date, it will be clear that rent for the month of October will be due if the moratorium is not extended.
2. **Extend the repayment period an additional 90 days.** Extending the repayment period from 90 to 180 days will provide tenants with a total of six months to secure stable employment and enter into repayment agreements for past due rent. While it is anticipated that tenants may need more than six months to pay past due rent, tenants can use the City's mediation services to negotiate binding repayment agreements for a longer time period that are based on their ability to pay the past due rent.

³ Alameda County Moratorium:
<http://www.acgov.org/cda/hcd/>

⁴Bureau of Labor and Statistics:
<https://data.bls.gov/PDQWeb/la>

All other terms of the eviction moratorium will remain the same. Attachment III provides a summary of the terms of the moratorium. Nothing in the Ordinance would relieve residential or commercial tenants or homeowners of the liability for unpaid rent or mortgage payments. The City has committed over \$525,000 to providing rental assistance that is anticipated to help over 200 rental housing tenants meet their obligations and staff continues to identify additional funds to provide more assistance. Additionally, the City has provided mediation services to 24 petitioners with 96% of the requests being initiated by the landlord. It is expected that the demand for mediation will increase once tenants' incomes stabilize, and the eviction moratoria are lifted.

Next Steps

Enactment of an emergency ordinance would require at least five affirmative votes from the City Council. If only four Council members vote for the proposed ordinance, then adoption would occur at the next City Council meeting and the ordinance would go into effect 30 days after adoption.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect, & Produce Housing. This item is not specifically related to a project identified in the Strategic Roadmap. Staff is bringing forth this new item because economic impacts of COVID-19 threaten to undermine housing security for Hayward residents. Staff will include this item in the next bi-annual update to Council on the Strategic Roadmap.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of the extended temporary moratorium ordinance on evictions.

PUBLIC CONTACT

Staff has notified several key stakeholders of the proposed eviction moratorium extension Ordinance, including the Chamber of Commerce, the Downtown Hayward Improvement District, United Merchants, Downtown Business Association, landlord and broker associations, and residential tenant advocacy groups.

Prepared and Recommended by: Christina Morales, Housing Division Manager
Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager

ORDINANCE NO. 20-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD EXTENDING ORDINANCE NO. 20-07, WHICH ADOPTED A TEMPORARY MORATORIUM ON RESIDENTIAL AND COMMERCIAL EVICTIONS IN THE CITY OF HAYWARD FOR NON-PAYMENT OF RENT OR MORTGAGE PAYMENTS CAUSED BY THE CORONAVIRUS (COVID-19) PANDEMIC, OR FOR A NO-FAULT REASON UNLESS THE EVICTION IS NECESSARY FOR THE IMMINENT HEALTH AND SAFETY OF THE TENANT OR LANDLORD, SAID EXTENSION TO EXPIRE ON SEPTEMBER 30, 2020 UNLESS REPEALED EARLIER, AND EXTENDING THE REPAYMENT PERIOD TO 180 DAYS AFTER THE EXPIRATION OF THE MORATORIUM, UNLESS RENTAL OR MORTGAGE PAYMENT AGREEMENT TERMS NEGOTIATED DURING THE MORATORIUM ARE BREACHED

THE CITY COUNCIL OF THE CITY OF HAYWARD hereby ordains as follows:

SECTION 1.**Extension of Temporary Moratorium on Evictions.**

The Temporary Moratorium on Evictions, adopted by the Hayward City Council as an emergency ordinance on April 7, 2020, is hereby extended until September 30, 2020, unless repealed earlier.

SECTION 2.**Findings and Statement of Urgency.**

- A. Pursuant to Article XI, Sections 5 and 7 of the California Constitution, Government Code Sections 36934 and 36937, and section 617 of the Charter of the City of Hayward, the City may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact emergency ordinances for the immediate preservation of the public peace, health, or safety.
- B. In late December 2019, several cases of unusual pneumonia began to emerge in the Hubei province of China. On January 7, 2020, a novel coronavirus now known as COVID-19 was identified as the likely source of the illness.
- C. On January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.
- D. On March 4, 2020, the Governor of California declared a State of Emergency due to the COVID-19 pandemic.
- E. On March 11, 2020, the City Manager declared a Local Emergency in the City of Hayward due to the COVID-19 pandemic, which was affirmed by resolution of the Hayward City Council on March 17, 2020.
- F. On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.

- G. On March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Alameda, issued an Order to all residents of the respective jurisdictions to shelter in their homes in an effort to slow the progression of the COVID-19 pandemic. As of 5:00 p.m. on March 15, 2020, 15 cases of COVID-19 were known to exist in Alameda County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing the Order, including a significant and increasing number of suspected cases of community transmission and likely further increases in transmission.
- H. On March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic. The Executive Order also requested all financial institutions holding mortgages to implement an immediate moratorium on foreclosures and related evictions when the default by the borrower was caused by the COVID-19 pandemic and directed certain state agencies to work with financial institutions to identify tools to be used to afford borrowers relief from the threat of residential foreclosures.
- I. On March 24, 2020 the Hayward City Council adopted Ordinance No. 20-06, an emergency ordinance imposing a moratorium on residential evictions where non-payment of rent is due to a substantial decrease in household (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work,) or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- J. The City of Hayward has one of the least affordable housing markets in California and the United States. Renters occupy about 49 percent of the City's housing stock and 57 percent of renters spend more than 30 percent of their income on housing.
- K. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, many tenants and homeowners have experienced sudden income loss and further income impacts are anticipated, leaving tenants vulnerable to eviction due to failure to pay rent or mortgage payments.
- L. Affected tenants and homeowners who have lost income due to impact on the economy or their employment as a result of the State of Emergency declarations and the Shelter in Place Order are at risk of homelessness if they are evicted for non-payment as they will have little or no income and thus be unable to secure other housing if evicted.
- M. Displacement through eviction destabilizes the living situation of tenants and homeowners and impacts the health of Hayward's residents by uprooting children from schools, disrupting the social ties and networks that are integral to the community's welfare and the stability of communities within the City.
- N. Displacement through eviction creates undue hardship for tenants and homeowners through additional relocation costs, stress and anxiety, and the threat of homelessness due to the lack of alternative housing.
- O. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter in Place Order, bars and restaurants have been ordered to only serve food for delivery or pick-up; many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. Consequently, many

businesses have experienced sudden income loss due to reduced business hours, business closure, or reduced consumer demand, and further income impacts are anticipated.

- P. The loss of income caused by the effects of COVID-19 and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction.
- Q. Providing commercial tenants with short-term protection from eviction due to the inability to pay rent will help avoid further business closures and job losses
- R. Eviction of commercial tenants disrupts the social ties and networks that are integral to the community's welfare and the stability of communities within the City.
- S. Eviction of commercial tenants creates undue hardship for business owners through additional relocation costs, stress and anxiety, and the threat of losing residential housing due to lack of business income.
- T. The City Council finds and determines that during this state of emergency the public interest in preserving peace, health, and safety and preventing further transmission of COVID-19, would be served by avoiding unnecessary displacement and homelessness.
- U. The City Council further finds and determines that extension of the temporary moratorium on residential and commercial evictions is necessary to protect public health and safety, where inability to pay is due to a substantial decrease in household or business income (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand) or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- V. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council until September 30, 2020, unless repealed earlier unless repealed earlier .

SECTION 3. Definitions.

- A. **Commercial Rental Agreement.** An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Commercial Rental Unit.
- B. **Commercial Rental Unit.** Any building, structure, or part thereof, or appurtenant thereto, or any other rental property rented or offered for rent, other than for living or dwelling purposes.
- C. **Covered Reason for Delayed Payment.** A tenant's or homeowner's inability to pay rent or mortgage payments which arises from a substantial decrease in household or business income (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work,

or was unable to work because their children were out of school, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand) or substantial out-of-pocket medical expenses and the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

- D. Homeowner. The owner or owners of a Residence subject to a mortgage payment or similar loan secured by the residential unit. Homeowner includes the owner of a Mobile home.
- E. Housing Service. A service provided by the Landlord related to the use or occupancy of a Residential Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.
- F. Landlord. Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Residential or Commercial Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- G. Lender. The mortgagee of a purchase money or similar mortgage, or the holder or beneficiary of a loan secured by one or more Residences, which person has the right to mortgage or similar payments from the Homeowner as mortgagor, including a loan servicer, and the agent, representative, or successor of any of the foregoing.
- H. Moratorium Period. The period from the effective date of this Ordinance and continuing until September 30, 2020, unless repealed earlier
- I. Mobile home. A structure transportable in one or more sections, designed and equipped to contain no more than one dwelling unit, to be used with or without a foundation system.
- J. Mortgage Payment. The predetermined set of payments that a borrower is obliged to pay to a lender pursuant to a debt instrument, which is secured by specified real estate property as collateral.
- K. No-Fault Eviction. No-fault eviction refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant, including but not limited to, the circumstances described in Hayward Municipal Code section 12-1.13(b)(7) – (10) or any notice served pursuant to Code of Civil Procedures 1161, et seq, or other applicable law.
- L. Rent. All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or

for the benefit of the Landlord for use or occupancy of a Residential Rental Unit and Housing Services under a Rental Housing Agreement or a Commercial Rental Unit under a Commercial Rental Agreement, as the case may be.

- M. Rental Housing Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Rental Unit and Housing Services.
- N. Residence. A structure, including a mobile home, or the portion thereof that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which person or household pays mortgage payments to a lender for the use and/or occupancy of the structure or Mobile home, or the space where a Mobile home is located.
- O. Residential Rental Unit. Any building, structure, or part thereof, or appurtenant thereto, or any other rental Property Rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real properties used for living or dwelling purposes, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Residential Rental Unit shall also include a mobile home or mobile home space.
- P. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Rental Housing Agreement or Commercial Rental Agreement, to the use or occupancy of a Residential Rental Unit, or a Commercial Rental Unit, respectively.

SECTION 4. Imposition of Extension of Temporary Moratorium on Certain Non-Payment and No-Fault Evictions

- A. During the Moratorium Period, no Landlord shall evict a tenant, nor shall any lender evict a homeowner, under either of the following circumstances: (1) for nonpayment of rent or mortgage payments if the tenant or homeowner demonstrates that inability to pay arises out of a substantial decrease in household or business income (including but not limited to, a substantial decrease in household income caused by layoffs or a reduction in the number of compensable hours of work, or was unable to work because their children were out of school, or a substantial decrease in business income caused by a reduction in opening hours or consumer demand) or substantial out-of-pocket medical expenses and the decrease in household or business income or the out-of-pocket medical expenses were caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, or (2) for a no-fault eviction unless necessary for the imminent health and safety of tenants, neighbors, or the landlord.
- B. A landlord or lender who reasonably knows that a tenant or homeowner cannot pay some or all of the rent or mortgage payments temporarily for the reasons set forth in paragraph A of this section shall not serve a notice informing a tenant or homeowner of the termination of their right to occupy a Residential Rental Unit, Commercial Rental Unit, or Residence, in accordance with applicable California law, including but not

limited to a 3- or 30-day notice to pay or quit, or otherwise seek to evict for nonpayment of rent or mortgage payments. A landlord or lender knows of the tenant's or homeowner's inability to pay within the meaning of this Ordinance if the tenant or homeowner notifies the landlord or lender in writing of lost income and inability to pay full rent or mortgage payments and is able to provide documentation to support the claim. Requirements to notify the landlord or lender do not preclude the tenant or homeowner from protections under the Moratorium if the tenant or homeowner was unable to notify the landlord or lender in writing.

- C. For purposes of this section, "in writing" includes email or text communications to the landlord or lender, or the landlord's or lender's representative with whom the tenant or homeowner has previously corresponded by email or text.
- D. For the purposes of this section, documentation to support a claim of inability to pay due to the COVID-19 pandemic may include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; medical bills or reports; documents showing reduced income such as pay stubs or unemployment benefit documents; correspondence from an employer citing COVID-19 as a basis for reduction in work hours or termination of employment; documents showing reduced business income; correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure. Any medical or financial information provided to the landlord shall be held in confidence, and only used for evaluating the tenant's claim.
- E. Nothing in this Ordinance shall relieve the tenant or homeowner of liability for the unpaid rent or mortgage payments, which the landlord or lender may seek after expiration of the moratorium, unless the parties agree otherwise. A landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.
- F. A tenant or landlord may request to participate in a mediation process through the City of Hayward Rent Review Office, to assist the parties with negotiating, among other things, reduced rental payment amounts during the moratorium period and repayment schedules for unpaid rent during the moratorium period. Any negotiated reduced rent during the mediation process would not affect the base rent calculation of rent-controlled units pursuant to Chapter 12, Article 1 of the Hayward Municipal Code. The parties may request the assistance of the Rent Review Office, to renegotiate agreements as circumstances change. This paragraph shall only apply to tenants and landlords of residential rental units.

SECTION 5. Application

- A. This Ordinance applies to all residential rental units, commercial rental units, and residences in the City of Hayward.

- B. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, unlawful detainer actions under California Code of Civil Procedure section 1161, termination of tenancy in a Mobile home park under the Mobile home Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Rental Unit, Commercial Rental Unit, or Residence, or to otherwise cause tenants or homeowners to vacate the Residential Rental Unit, Commercial Rental Unit, or Residence, based on such notices served or filed during the effective period of this Ordinance. With respect to delayed payment covered by this Ordinance, a landlord may seek such rent after expiration of the moratorium. No landlord or lender may institute unlawful detainer proceedings under California Code of Civil Procedure section 1161, termination of tenancy in a Mobile home park under the Mobile home Residency Law (see Civil Code sections 798.55, et. seq.), petition for writ of possession, or any other action to recover possession of the Residential Rental Unit, Commercial Rental Unit, or Residence, or to otherwise cause tenants or homeowners to vacate the Residential Rental Unit, Commercial Rental Unit, or Residence, for non-payment for a period of 180 days after expiration of the moratorium, unless the tenant or homeowner has breached the terms of a rental or mortgage payment agreement negotiated during the term of this moratorium. In any event the landlord or lender must meet and confer with the tenant or homeowner prior to commencement of any proceedings described in this section.
- C. Non-compliance by a landlord or lender with any applicable provision of this Ordinance shall constitute an affirmative defense for a tenant or homeowner against any proceeding instituted by a landlord or lender described in this section.

SECTION 6. Retaliation Prohibited.

A landlord or lender shall not retaliate against a tenant or homeowner for nonpayment of rent or mortgage payments caused by COVID-19 or for exercising their rights under this Ordinance, including but not limited to shutting off any utilities or reducing services or amenities to which the tenant or homeowner would otherwise be entitled.

SECTION 7. Enforcement

The City, at its sole discretion, may choose to enforce the provisions of this ordinance through administrative fines and any other administrative procedure set forth in Hayward Municipal Code Chapter 1, section 1-3.00. Violations of the provisions of this ordinance may be subject to fines of up to \$4,000. The City's decision to pursue or not pursue enforcement of any kind shall not affect a tenant's rights to pursue civil remedies. The City Attorney is authorized to institute a civil action or pursue criminal prosecution to enforce any provisions of this Ordinance.

SECTION 8. Civil Remedies.

A Tenant or homeowner may bring a civil suit in the courts of the state alleging that a Landlord or lender has violated any of the provisions of this Ordinance or any regulations promulgated hereunder. In a civil suit, a Landlord or lender found to violate this Ordinance shall be liable to the Tenant or homeowner for all actual damages, which may include an award for mental and/or emotional distress and/or suffering, or for minimum damages in the sum of one thousand dollars (\$1,000.00), whichever is greater, and whichever other relief the court deems appropriate. A prevailing Tenant or homeowner in a civil action brought to enforce this Ordinance shall be awarded reasonable attorneys' fees and costs. Additionally, upon a showing that the Landlord or lender has acted willfully or with oppression, fraud, or malice, the Tenant or homeowner shall be awarded treble damages. No administrative remedy need be exhausted prior to filing suit pursuant to this Section.

SECTION 9. Severability.

If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 10. Effective Date and Expiration Date.

This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council and shall be in effect until September 30, 2020, unless repealed earlier.

SECTION 11. California Environmental Quality Act (CEQA)

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Public Resources Code section 21065, based on the finding that this Ordinance is not a "project" within the meaning of Section 15378 of the CEQA Guidelines. The City Council further independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

ADOPTED at a special meeting of the City Council of the City of Hayward, held the ____ day of June, 2020, upon motion of _____ and by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:
 MAYOR:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

MAYOR: _____
 Barbara Halliday

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Summary of Ordinance No. 20-07 Eviction Moratorium

Applicability. All residential rental units, commercial rental units, and any residence subject to a mortgage payment that are occupied by the homeowners.

Term. Effective until July 6, 2020.

Prohibitions. Prohibit evictions of residential tenants, commercial tenants and lender evictions of homeowners during the moratorium for nonpayment of rent or mortgage payments related COVID-19, the State of Emergency regarding COVID-19, or following government-recommended COVID-19 precautions, as well as explicit prohibitions on retaliation against tenants and homeowners who are protected under this moratorium. Prohibits eviction of residential tenants for no cause evictions.

Landlord and Lender Notification Requirement. Residential and Commercial tenants and homeowners must make a good faith effort to notify the landlord or lender, respectively, in writing of the loss of income and/or increased expense related to COVID-19 and inability to pay the full rent or mortgage.

Documentation Requirements. Residential and commercial tenants and homeowners should be prepared to provide documentation to support their claim. This documentation could include but is not limited to: medical bills or medical reports; documents showing reduced income such as pay stubs or unemployment benefit documents; correspondence from an employer citing COVID-19 as a basis for reduction in work hours or termination of employment; documents showing reduced business income; or correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure.

Payment of Past Due Rent or Mortgage. Nothing in the proposed Ordinance would relieve residential or commercial tenants or homeowners of the liability for unpaid rent or mortgage payments.

No-Fault Evictions for Public Health or Safety. The carve-out for no-fault evictions necessary for public health or safety is intended to deal with a situation where the unit is uninhabitable or subject to some type of regulatory action such as a code enforcement or fire department 'red tag' order. This carve-out is not an opportunity to exploit or avoid the constraints of this emergency ordinance.

Mediation Services. Through the Residential Rent Stabilization Program, the City will provide mediation services to assist residential landlords and tenants to enter into repayment agreements for past due rent. Mediation will not be available for commercial tenants or property owners' negotiating forbearance agreements with their lender.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: LB 20-030

DATE: June 30, 2020

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT

TOT (Hotel Tax) Ballot Measure: Direction on Potential November 2020 Transient Occupancy Tax Ballot Measure

RECOMMENDATION

That the Council reviews prior polling and updated data for a potential revenue measure increasing the City's Transient Occupancy Tax (TOT) and directs staff to prepare proposed ballot measure language to be presented to Council for consideration.

SUMMARY

In 2017, Council was presented with several strategies for consideration to ensure the City's long-term fiscal sustainability. One of the strategies presented to Council for consideration was the placement of an increase to Transient Occupancy Tax (TOT) on the November 2018 ballot. Under Council review and consideration, the increase to TOT was not placed on the November 2018 ballot, and is being considered for placement on the November 2020 ballot.

This report includes a comparative analysis of TOT rates and revenues in neighboring agencies, as well as presenting the results of 2017 voter polling in comparison with election results from Bay Area cities that have recently put ballot measures to voters. The analysis finds that Hayward has the lowest TOT rate and ranks eleventh in per-capita TOT revenues of the sixteen Bay Area cities with populations over 100,000. Past polling found that an increase to TOT was supported by approximately two-thirds of registered Hayward voters.

ATTACHMENTS

Attachment I Staff Report
Attachment II Timeline of TOT Actions



DATE: June 30, 2020

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: TOT (Hotel Tax) Ballot Measure: Direction on Potential November 2020
Transient Occupancy Tax Ballot Measure

RECOMMENDATION

That the Council reviews prior polling and updated data for a potential revenue measure increasing the City's Transient Occupancy Tax (TOT) and directs staff to prepare proposed ballot measure language to be presented to Council for consideration.

SUMMARY

In 2017, Council was presented with several strategies for consideration to ensure the City's long-term fiscal sustainability. One of the strategies presented to Council for consideration was the placement of an increase to Transient Occupancy Tax (TOT) on the November 2018 ballot. Under Council review and consideration, the increase to TOT was not placed on the November 2018 ballot, and is being considered for placement on the November 2020 ballot.

This report includes a comparative analysis of TOT rates and revenues in neighboring agencies, as well as presenting the results of 2017 voter polling in comparison with election results from Bay Area cities that have recently put ballot measures to voters. The analysis finds that Hayward has the lowest TOT rate and ranks eleventh in per-capita TOT revenues of the sixteen Bay Area cities with populations over 100,000. Past polling found that an increase to TOT was supported by approximately two-thirds of registered Hayward voters.

BACKGROUND

On October 3, 2017, staff presented Council with an updated Long-Range Financial Model (Model) for the City's General Fund. The updated Model, developed in conjunction with consultant Management Partners, predicted a structural General Fund deficit by FY 2019. According to the Model, the General Fund reserve would be exhausted completely by FY 2021.

At a subsequent work session, on October 14, 2017, staff presented strategies for closing the structural deficit and achieving long-term fiscal sustainability. Among the strategies presented

were increases to the TOT and the Real Property Transfer Tax (RPTT). Of these two options, the Model projected an RPTT increase as generating the greatest amount of revenue.

At Council direction, polling of voters was conducted in the fall of 2017 and spring of 2018. Polling was favorable for a TOT increase but mixed for an RPTT increase. Proposed language for both the TOT and RPTT ballot measures was presented to Council for direction and approval on July 17, 2018. In order to increase the likelihood of passing the larger revenue generator, Council approved a motion to shelve the TOT increase measure and place only the RPTT increase on the ballot. On November 6, 2018, City of Hayward Measure T, increasing the RPTT to \$8.50 per \$1,000 of assessed value was approved with 59% of the vote.

On January 15, 2020, staff presented the Council Budget and Finance Committee with an update to the Model. Staff assumptions included a mild recession in FY 2021, resulting in a structural deficit in FY 2021, falling below the 20% target General Fund reserve in FY 2022, and depletion of the General Fund reserve by FY 2024. The Council Budget and Finance Committee requested that updated analysis of a potential ballot measure increasing TOT and a request for direction be presented to the full Council. The COVID-19 pandemic and locally declared emergency have created drastic downward changes in the City's revenue projections, given the almost complete shutdown of the economy due to the Shelter-in-Place Order issued by the County Health Officer. Initially, the Council paused on consideration of the TOT ballot measure in early March. However, as part of the FY 2021 adoption process, the Council asked staff to return for further discussion of the potential ballot measure.

For a complete timeline of TOT action, including future steps, please see Attachment II.

DISCUSSION

Comparative Analysis of TOT Rates and Revenues

In 2017, staff compared the City's TOT rate of 8.5 percent to that of sixteen other cities in the Bay Area with populations over 100,000. Updated TOT rates and revenues find that the City's rate has remained the lowest among neighboring agencies, even as two cities, Sunnyvale and Daly City have increased their rates from 10.5 percent and 10.0 percent to 12.5 percent and 13.0 percent, respectively. The TOT rates for these cities are shown in Table 1, below:

Table 1: Comparison of Current TOT Rates¹

City	TOT Rate
San Francisco	14.0%
Oakland	14.0%
Fairfield ²	13.0%
Daly City ³	13.0%

¹ Rates provided by the Office of the State Controller, based on data compiled for FY 2018 and published November 7, 2019. https://www.sco.ca.gov/Files-ARD-Local/LocRep/2017-18_Cities_TOT.pdf

² Fairfield's total TOT rate of 13.0 percent includes a 3.0 percent tourism tax levied on all temporary lodging.

³ Daly City's TOT rate taken from Daly City Municipal Code § 3.32.020, updated in December 2018.

City	TOT Rate
Sunnyvale ⁴	12.5%
San Mateo	12.0%
Berkeley	12.0%
Vallejo	11.0%
San Jose	10.0%
Fremont	10.0%
Concord	10.0%
Richmond	10.0%
Antioch	10.0%
Santa Clara	9.5%
Santa Rosa	9.0%
Hayward	8.5%

The 2017 analysis found that the City ranked twelfth among these cities for TOT revenue per capita, based on data from FY 2015. Updated revenue data compiled by the State Controller’s Office indicates that the City’s relative TOT per capita increased for FY 2018, ranking it eleventh in per-capita TOT revenues among Bay Area cities with populations over 100,000. Gross revenues and per-capita revenues reported to the state are shown in Table 2, below:

Table 2: Comparison of FY 2018 TOT Revenue and Revenue per Capita

City	TOT Revenue	Revenue per Capita
San Francisco	\$ 382,175,695	\$ 432.67
Santa Clara	\$ 20,579,504	\$ 158.93
Sunnyvale ⁵	\$ 21,121,327	\$ 137.88
San Mateo	\$ 8,750,353	\$ 83.32
Berkeley	\$ 8,754,269	\$ 71.97
Oakland	\$ 30,038,746	\$ 70.01
Santa Rosa	\$ 6,506,175	\$ 55.33
San Jose	\$ 48,850,879	\$ 47.42
Fairfield	\$ 5,120,365	\$ 43.81
Fremont	\$ 8,620,269	\$ 36.25
Hayward	\$ 3,761,062	\$ 23.56
Concord	\$ 3,039,725	\$ 23.44
Vallejo	\$ 2,621,192	\$ 21.50
Richmond	\$ 1,536,041	\$ 13.95
Daly City ⁶	\$ 1,464,520	\$ 13.69
Antioch	\$ 209,345	\$ 1.88

San Francisco and Antioch represent outliers among these cities, given San Francisco’s status as an international tourist destination and Antioch’s relatively small number of lodging businesses. Discarding the two outliers, the remaining medium-to-large cities have an average

⁴ Sunnyvale’s TOT rate taken from Sunnyvale Municipal Code § 3.16.040, updated in December 2018.

⁵ Sunnyvale revenues adjusted to reflect current TOT rate.

⁶ Daly City revenues adjusted to reflect current TOT rate.

TOT rate of 11.04 percent and per-capita TOT revenue of \$57.22, compared to Hayward's 8.5 percent and \$23.56, respectively. These averages, less outliers, are shown in the charts below:

Chart 1: TOT Rates with Average

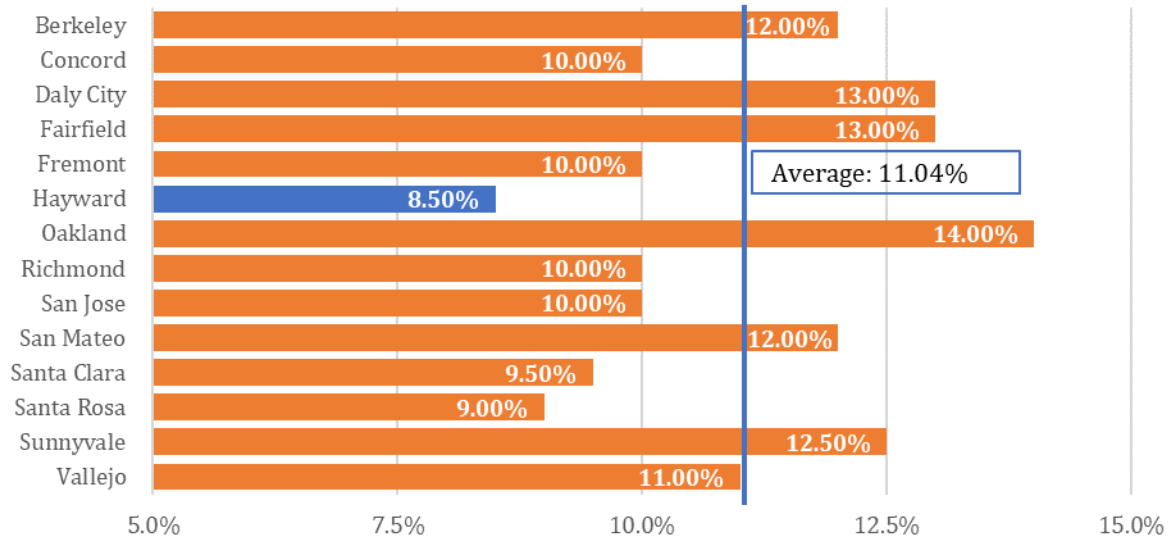
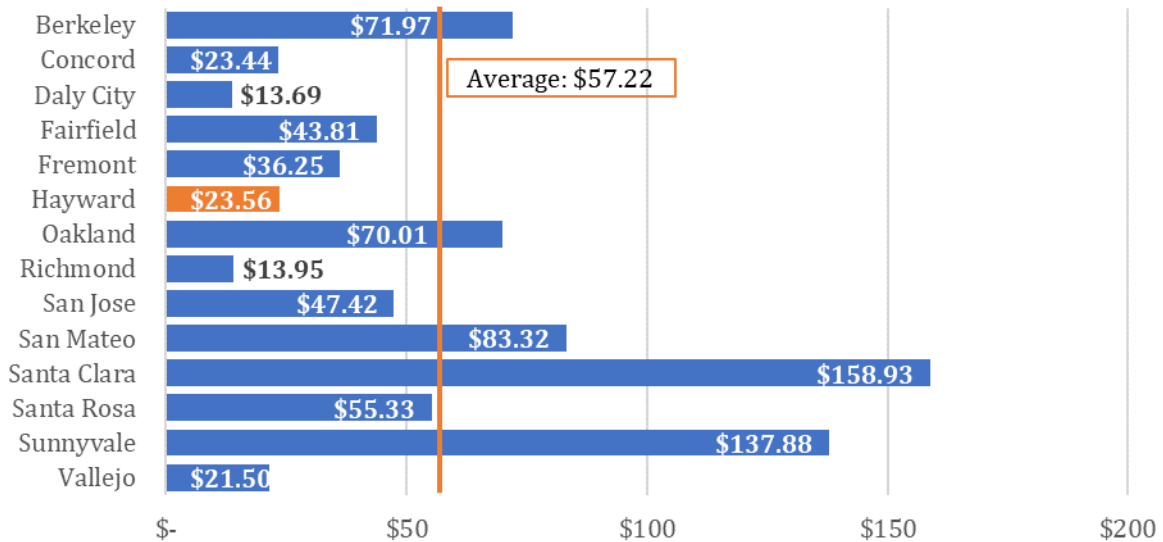


Chart 2: TOT Revenue per Capita with Average



Polling Results and Recent Bay Area TOT Measures

On October 18, 2017, the Council Budget and Finance Committee directed staff to conduct a preliminary qualitative survey of likely Hayward voters to evaluate the feasibility of both TOT and RPTT increases as potential ballot measures. Staff reached out to voters via direct mail, The Stack newsletter, and digital advertising. Voters were asked to complete a two-question

response card or respond on www.HaywardListens.com. The questions and responses are summarized in the tables below.

Table 3: Hayward Listens Survey Question 1 Results (767 Responses)

Is the City fulfilling its promise to provide essential City Services?		
Yes	No	Do Not Know
390 (50.85%)	176 (22.95%)	201 (26.20%)

Table 4: Hayward Listens Survey Question 2 Results (767 Responses)

What do you think about the proposals to increase the City's Transient Occupancy Tax (also known as "Hotel Tax" and/or the City's Real Property Transfer Tax)?	
I support the City's proposals	I have concerns
339 (44.20%)	428 (55.80%)

In order to understand voter support of the proposed measures both together and individually, the Council Budget and Finance committee initiated a second survey. Staff contracted with Godbe Research, Inc. to evaluate two potential versions of the proposed ballot language. In each case, voters were presented with identical TOT measure language, but variations in RPTT measure language. Results of this poll were presented to Council on July 10, 2018.

The TOT survey question was posed to two sample groups. The question in Sample A was paired with RPTT language expressed in dollars (“from \$4.50 to \$10 per \$1,000”). Sample B participants received RPTT language expressed in percentage (“from 0.45% to 1% per \$1,000”). Support for a TOT increase ranged from 59.7 percent to 70.9 percent within these two groups. The results of this polling were presented to the Council Budget and Finance Committee on December 6, 2017. Results for TOT polling are summarized in Table 5 below:

Table 5: Voter Support for TOT Increase by Paired RPTT Language

	RPTT "\$10 per \$1,000"	RPTT "1% per \$1,000"
Uninformed Voters	70.1 % Yes 24.4% No	59.7% Yes 30.4% No
Informed Voters	70.9% Yes 21.5% No	63.5% Yes 26.7% No

Polling showed clear support for the TOT measure, with some variation based on whether the respondent was part of Sample A or Sample B on the RPTT language. Respondents were also asked to provide feedback on messaging. Voters were read a series of statements and asked

whether the statement made them “Much more likely to Vote Yes,” “Somewhat more likely to Vote Yes,” had “No effect,” or did not know. With each statement, voters were asked to evaluate the TOT and RPTT together. The five statements with the highest “Much more likely” and “Somewhat more likely” ratings are shown in Table 6, below:

Table 6: Top Five Positive Statements by Percent of Respondents

Statement	Much More Likely	Somewhat More Likely	Total
Mandatory financial audits and yearly reports to the community are required to ensure the funds are spent as promised	51.4%	22.5%	73.9%
Businesses would pay their fair share too	45.7%	23.2%	68.9%
The measures would generate locally controlled funds for critical Hayward needs that cannot be taken by the State	42.0%	26.6%	68.6%
The measures would maintain response times for Police, Fire, and 911 emergency services	35.7%	31.3%	67.0%
The measures would not be paid by the average resident but only by visitors and those transferring property	37.1%	26.4%	63.5%

The survey included one additional statement that was specific to TOT, “Oakland, Santa Clara, and San Mateo already charge hotel and motel guests 12 percent or more” - 63.5 percent of voters replied that this statement made them more likely to vote for the measure. While the top four statements are applicable to any tax measure, there is clear support for features exclusive to a TOT increase: the impact of Transient Occupancy Taxes falling only on visitors, and a comparison to other local TOT tax rates.

Voters in the Bay Area generally support TOT taxes. Of the 45 TOT measures brought before Bay Area voters since 2008, 43 have passed. TOT increase measures averaged 73.21 percent voter approval and increased TOT by an average of 2.43 percent. In particular, the City of Colma did not have a TOT prior to passing 2018’s Measure PP, which imposed a 12 percent tax and passed with 77.12 percent of the vote.

Of the two failed measures, American Canyon Measure H in 2018 garnered 66.41 percent approval, but fell short of the two-thirds vote required to pass. The other failed measure, San Francisco Measure J in 2010, received 45.52 percent of the vote, but may have been impacted by confusion due to a competing measure.

Table 7 below, provides a list of six Bay Area cities with populations over 100,000 residents that have placed TOT increase measures on the ballot since 2008.

Table 7: TOT Ballot Measures Since 2008, Bay Area Cities with Over 100,000 Residents

City	Year	Measure	Yes Votes	Rate Increase
San Francisco	2010	J	45.52%	2%
Sunnyvale	2013	B	68.58%	1%
Sunnyvale	2018	K	78.53%	2%
San Mateo	2009	MM	74.60%	2%
Oakland	2009	C	76.79%	3%
Fremont	2008	MM	66.45%	2%
Daly City	2018	VV	79.78%	3%

FISCAL IMPACT

The TOT at 8.5 percent has generated approximately \$2.5 million in General Fund revenue per year over the last five fiscal years, based on actual receipts. Given uncertainties surrounding COVID-19, FY 2020 and FY 2021 revenues cannot be accurately predicted. However, if a 12 percent TOT had been in place since FY 2015, it would have generated an average of \$3.6 million per year, or a projected increase between \$0.8 million and \$1.1 million annually. Projections for prior years, assuming higher rates had been in place, can be seen in Table 8, below.

Table 8: TOT Revenue Under Different Rate Scenarios in Prior Fiscal Years

Fiscal Year	8.5% (Actual)	10%	12%	14%
FY 2015	\$ 2,033,057	\$ 2,391,831	\$ 2,870,197	\$ 3,348,564
FY 2016	\$ 2,591,468	\$ 3,048,786	\$ 3,658,543	\$ 4,268,300
FY 2017	\$ 2,559,873	\$ 3,011,615	\$ 3,613,938	\$ 4,216,261
FY 2018	\$ 2,808,158	\$ 3,303,715	\$ 3,964,458	\$ 4,625,201
FY 2019	\$ 2,822,564	\$ 3,320,663	\$ 3,984,796	\$ 4,648,929
Average	\$ 2,563,024	\$ 3,015,322	\$ 3,618,387	\$ 4,221,451

The fiscal impact related to adding this measure to the November 2020 ballot and cost of adding this information to the printed voter pamphlet and translation services are estimated at approximately \$7,200. Staff does not anticipate that the addition of this measure to the 2020 ballot will impact the election costs paid to the Alameda County Registrar of voters.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Improve Organizational Health. Specifically, this item relates to the implementation of the following project(s):

Project 1, Part 1.a: Maintain and Expand Fiscal Sustainability: Evaluate an increase in the Transient Occupancy Tax.

NEXT STEPS

If Council directs staff to prepare the documents to place a TOT increase measure on the November 2020 ballot, a resolution and accompanying ballot language must be filed with the County Registrar of Voters no later than August 7, 2020. If the decision is to move forward a TOT increase measure, staff will return to the Council at the July 21, 2020, meeting for approval of the required documents to place the measure on the November 2020 ballot. Staff also requests that Council provide direction on the new TOT level to be presented to voters. After discussion at this meeting, staff will take the Council's feedback on this question and incorporate it into the ballot language.

Prepared by: Rick Rivera, Management Analyst I
Nicole Gonzales, Deputy Director of Finance

Recommended by: Dustin Claussen, Director of Finance

Approved by:



Kelly McAdoo, City Manager

Timeline of TOT Action

Date	Action
March 1, 2017	City Contracts with Management Partners to deliver updated 10-year General Fund forecast model and strategies for achieving fiscal stability.
October 3, 2017	Council work session presenting of new 10-year General Fund forecast model
October 14, 2017	Council work session presenting strategies for achieving fiscal stability, including increases to Transient Oriented Tax (TOT) and Real Property Transfer Tax (RPTT).
October 18, 2017	Council Budget and Finance Committee initiated first feasibility survey for an increases to TOT and RPTT.
December 6, 2017	Results of initial feasibility survey presented to Council Budget and Finance Committee.
May 16, 2018	Council Budget and Finance Committee initiated second feasibility survey, conducted by Godbe Research, Inc.
July 10, 2018	Results of second feasibility survey presented to City Council, Council directed staff to prepare TOT and RPTT ballot measure language.
July 17, 2018	Proposed measure language presented to Council, council approves placement of RPTT increase on November 2018 ballot.
November 9, 2018	Measure T, RPPT increase passed with 59.71% of votes.
January 15, 2020	Council Budget and Finance Committee recommended bringing TOT increase to Council for review and discussion.
June 30, 2020	Council presented with updated local TOT rate comparisons and projections.
July 21, 2020	Presentation of proposed TOT increase ballot measure language to Council.
August 7, 2020	Deadline to deliver City resolution calling ballot measure election to the Alameda County Registrar of Voters and request election consolidation.
August 11, 2020	Deadline for submission of Direct Arguments for/against proposed ballot measure. (12pm - Noon)
August 21, 2020	Deadline for submission of Rebuttal Arguments for/against proposed ballot measure. (12pm - Noon)
September 24, 2020	First Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 7/1/20 - 9/22/20.
October 19, 2020	Last day to register to vote for the November 3, 2020 election.
October 22, 2020	Second Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 9/23/20 - 10/20/20.
November 3, 2020	Election Day. Polls open at 7am and close at 8pm.
December 3, 2020	Last day for Alameda Registrar of Voters to certify results to City.
December 8, 2020	Council to certify election results.
January 31, 2021	Semi-Annual Filing Campaign Statement Deadline FPPC Forms - Period covers 10/21/20 - 12/31/20 .



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: PH 20-053

DATE: June 30, 2020

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT

FY2021 Gann Appropriation Limit: Adopt a Resolution Establishing a Gann Appropriations Limit for Fiscal Year 2021

RECOMMENDATION

That Council adopts a resolution (Attachment II) establishing a Gann appropriations limit for Fiscal Year 2021.

SUMMARY

Each fiscal year, the City is required to calculate and establish its appropriations limit. The Gann Limit for FY 2021 is calculated at \$342,711,363, and the appropriations subject to limit total is \$108,563,100.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution



DATE: June 30, 2020
TO: Mayor and City Council
FROM: Director of Finance
SUBJECT: FY2021 Gann Appropriation Limit: Adopt a Resolution Establishing a Gann Appropriations Limit for Fiscal Year 2021

RECOMMENDATION

That Council adopts a resolution (Attachment II) establishing a Gann appropriations limit for Fiscal Year 2021.

SUMMARY

Each fiscal year, the City is required to calculate and establish its appropriations limit. The Gann Limit for FY 2021 is calculated at \$342,711,363, and the appropriations subject to limit total is \$108,563,100.

BACKGROUND

State Proposition 4, commonly known as the Gann Initiative, was approved by California voters in November 1979. Proposition 4 created Article XIII B of the State Constitution, which places limits on the amount of revenue that can be spent by government agencies. This is referred to as the Gann Appropriation Limit, or Gann Limit.

A subsequent related State Initiative, Proposition 111, was approved by the voters in June 1990 and provided new adjustment formulas to make the Gann Limit more responsive to local growth issues and to address concerns regarding the accountability of local governments in adopting their limits. Prior to each fiscal year, city councils must adopt by resolution the Gann Appropriation Limit for the city for the upcoming year. In addition, cities are required to conduct a review of their limits during annual financial audits.

The appropriations limitation imposed by Propositions 4 and 111 creates a restriction on the amount of revenue that can be appropriated in any fiscal year. The limit is based on actual appropriations during the 1978-79 fiscal year and is increased each year using population and inflation growth factors. Only revenues that are classified as "proceeds of taxes" are subject to the limit. The use of "non-tax proceeds" (user fees, rental income, franchise fees, Gas Tax revenue) is not restricted.

DISCUSSION

During any fiscal year, a city may not appropriate any proceeds of taxes it receives in excess of its established limit. Excess funds received in any year may be carried into the subsequent year for use if the city is below its limit for that year. Any excess funds remaining after the second year would be required to be returned to local taxpayers by reducing tax rates or fees. As an alternative, a majority of the voters may approve an "override" to increase the city's appropriations limit.

Senate Bill 1352 requires that the governing body of each local jurisdiction shall, by a legislative action, establish its appropriations limit at a regularly scheduled or special meeting and that the documentation used in the determination of the appropriations limit shall be made available to the public fifteen days before that meeting. Government Code Section 7910 requires that the City adopt its appropriations limit prior to the beginning of each fiscal year.

The Finance Department of the City of Hayward compiles the data and makes calculations incident to the determination of the XIII B appropriations limit. The resolution establishes the appropriations limit FY 2021 to be \$342,711,363.

STRATEGIC ROADMAP

This agenda item is a routine operational item and does not relate to any of the projects outlined in the Council's Strategic Roadmap.

FISCAL IMPACT

There are no present fiscal impacts related to establishing the limit for FY 2021. The amount of appropriations subject to the limit is the budgeted proceeds of taxes (e.g., all taxes levied; transfers from an enterprise fund to the extent those transfers exceed the cost of providing the services; discretionary state subventions; interest earned from the investment of proceeds of taxes, etc.), and the total of these budgeted revenues cannot exceed the total appropriations limit.

The City's actual appropriations in each fiscal year have been significantly below the limit, as they will be for FY 2021. The table below summarizes the limit for FY 2021 and the preceding five years.

	Appropriations Limit	Appropriations Subject to Limit
FY 2016	269,880,304	103,998,849
FY 2017	287,387,229	107,969,124
FY 2018	300,941,937	108,609,975
FY 2019	314,607,193	121,761,732
FY 2020	329,169,966	133,271,670
FY 2021	342,711,363	108,563,100

PUBLIC CONTACT

The amount of the Fiscal Year 2021 appropriations limit and the documentation substantiating this determination are available for review by the public by contacting the Office of the City Clerk.

Prepared by: Nicole Gonzales, Deputy Director of Finance
Rick Rivera, Management Analyst

Recommended by: Dustin Claussen, Director of Finance

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is written over a horizontal line.

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

Introduced by Council Member _____

ADOPTION OF APPROPRIATIONS LIMIT FOR FISCAL YEAR 2021 PURSUANT
TO ARTICLE XIII B OF THE CONSTITUTION OF THE STATE OF CALIFORNIA

WHEREAS, on November 6, 1979, the citizens of the State of California approved Proposition 4, which added Article XIII B to the Constitution of the State of California to place various limitations on the fiscal powers of State and local government; and

WHEREAS, Senate Bill 1352, Government Code Section 7900, et. seq. enacted by the California Legislature, provides for the implementation of Article XIII; and

WHEREAS, the City is required to establish its appropriations limit at a regularly scheduled meeting or noticed special meeting, and 15 days prior to such meeting, the documentation used in the determination of the appropriations limit shall be made available to the public; and

WHEREAS, the Gann Limit for FY 2021 is calculated at \$342,711,363 and the appropriations in FY 2021 subject to this limit total \$108,563,100; and

WHEREAS, the FY 2021 Gann Limit was calculated using the change in the cost of living based on the change in California per capita personal income, and the change in population based on the percentage change in population within Alameda County.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hayward that at its meeting of June 30, 2020, Council will adopt a Resolution which establishes the appropriations limit for the FY 2021 pursuant to Article XIII B of the Constitution of the State of California.

BE IT FURTHER RESOLVED that the documentation used in the determination of the appropriations limit for FY 2021 is available for public review by contacting the Office of the City Clerk of the City of Hayward.

IN COUNCIL, HAYWARD, CALIFORNIA June 30, 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