

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, November 14, 2017

7:00 PM

Council Chambers

City Council

Mayor Barbara Halliday
Mayor Pro Tempore Elisa Márquez
Council Member Francisco Zermeño
Council Member Marvin Peixoto
Council Member Al Mendall
Council Member Sara Lamnin
Council Member Mark Salinas

SPECIAL CITY COUNCIL MEETING**CALL TO ORDER Pledge of Allegiance: Council Member Salinas****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PRESENTATION**

City Council Youth Achievement "Hall of Fame" Awards

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 17-151](#) Minutes of the Special Joint City Council and Hayward Area Recreation and Park District Meeting on October 30, 2017

Attachments: [Attachment I Draft Minutes of 10/30/17](#)

2. [MIN 17-152](#) Minutes of the Special City Council Meeting on October 30, 2017

Attachments: [Attachment I Draft Minutes of 10/30/17](#)

3. [MIN 17-153](#) Minutes of the City Council Meeting on November 7, 2017

Attachments: [Attachment I Draft Minutes of 11/7/2017](#)

4. [CONS 17-686](#) Authorization for the City Manager to Execute an Agreement with the Alameda County Sheriff's Office and the U.S. Department of Justice to Accept the FY2017 Byrne Justice Assistance Grant (JAG) fund in the Amount of \$42,491.60 for Hayward Police Department Operations
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution Authorizing Agreement](#)
5. [CONS 17-687](#) Approval of Resolution Authorizing the City Manager to Execute a Service Agreement with the Fairview Fire Protection District
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution](#)
 [Attachment III Proposed FFPD Service Agreement](#)
6. [CONS 17-697](#) Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Design Workshop for the Development of a Route 238 Properties Master Development Plan and Appropriation of Funds
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution](#)
 [Attachment III Property Map](#)
 [Attachment IV Project Management Plan](#)
7. [CONS 17-701](#) Resolution Authorizing the City Manager to Negotiate and Execute New Land Lease Agreements for Three Parcels of Land at Hayward Executive Airport
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution](#)
 [Attachment III Site Map of Parcel Locations](#)

WORK SESSION

Work Session items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.

8. [WS 17-053](#) Measure C Sales Tax Initiative - Annual Report (Report from Director of Finance Claussen)

Attachments: [Attachment I Staff Report](#)
[Attachment II Measure C 20-Year Forecast](#)

PUBLIC HEARING

9. [PH 17-100](#) Proposed subdivision and construction of 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use on a 2.7-acre project site located at 26601 Mission Boulevard (west side, north of Sorenson Road) Assessor Parcel Number (APN) 452-0036-30-05, requiring: 1) approval of an amendment to South Hayward BART/Mission Boulevard Form-Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max); 2) Site Plan Review; 3) Warrants for: (a) roof pitch, (b) excess parking in the T4 zone, (c) glazing less than 30% for the first story along Mission Boulevard, and (d) parking within the Layer 2 setback area; 4) Vesting Tentative Map 8335 associated with the subdivision; and 5) Mitigated Negative Declaration. KB Home (Applicant) and DNS Capital Partners LLC/Robert Telles (Owner/Applicant). Application No. 2016-01022 (Continued from October 3, 2017) (Report from Interim Development Services Director Bristow)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution of Denial](#)
[Attachment III Resolution of Approval with Exhibit A](#)
[Attachment IV Ordinance](#)
[Attachment V Applicant's Proposal](#)
[Attachment VI City Council Minutes of 10.03.2017](#)

LEGISLATIVE BUSINESS

10. [LB 17-048](#) Re-Introduction of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1(Zoning Ordinance) (Report from City Attorney Lawson and Interim Development Services Director Bristow)

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

11. [LB 17-042](#) Introduction of Ordinance Amending Chapter 6, Article, 2, Section 6-2.15 of the Hayward Municipal Code To Allow The Hayward Police Department To Accept Payment For Cabaret License Application Fees (Report from Police Chief Koller and Director of Finance Claussen)

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

12. [LB 17-047](#) Construction, Repair, Reconstruction, Destruction or Abandonment of Wells: Introduction of Ordinance Updating Section 5-4.10 of the Hayward Municipal Code (Report from Utilities and Environmental Services Director Ameri)

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

CITY MANAGER'S COMMENTS

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT MEETING, November 28, 2017, 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.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
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File #: MIN 17-151

DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the Special Joint City Council and Hayward Area Recreation and Park District Meeting on October 30, 2017

RECOMMENDATION

That the City Council approves the minutes of the Special Joint City Council and Hayward Area Recreation and Park District Board of Directors Meeting on October 30, 2017

ATTACHMENTS

Attachment I Draft Minutes of 10/30/2017



**MINUTES OF THE SPECIAL JOINT HAYWARD CITY COUNCIL AND HAYWARD
AREA RECREATION AND PARK DISTRICT BOARD OF DIRECTORS
MEETING
Conference Room 2A
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 5:00 p.m.**

The Special Joint City Council and Hayward Area Recreation and Park District Board of Directors meeting was called to order by Mayor Halliday at 5:00 p.m., followed by the Pledge of Allegiance led by Mayor Halliday.

ROLL CALL

CITY COUNCIL

Present: COUNCIL MEMBERS Zermeño, Mendall, Peixoto, Lamnin, Salinas
MAYOR Halliday
Absent: COUNCIL MEMBER Márquez (arrived after roll call)

HAYWARD AREA RECREATION AND PARK DISTRICT (HARD) BOARD OF DIRECTORS

Present: PRESIDENT Andrade
VICE-PRESIDENT Pereira
SECRETARY Hatcher
DIRECTOR Jameson
Absent: DIRECTOR Hodges (arrived after roll call)

PUBLIC COMMENTS

City Manager McAdoo spoke about updates that were done to Apple iOS and iLegislate.

WORK SESSION

1. Joint Meeting to Receive Updates on La Vista Park and Other Projects (Report from City Manager McAdoo and General Manager McCreary) **WS 17-052**

Staff report submitted by HARD General Manager McCreary and City Manager McAdoo, dated October 30, 2017, was filed.

City Manager McAdoo announced the item and introduced Senior Planner Golubics who noted that Surface Design Inc., was retained to prepare refined plans for the La Vista Park development, and handed over the presentation to its principal, Mr. James Lord.

Mr. James Lord, Principal from Surface Design Inc., provided a presentation of the refined plans for La Vista Park and showed its renderings.

Members of the City Council and the Hayward Area Recreation and Park District (HARD) Board of Directors were in general agreement with the conceptual plan and layout for La Vista Park and offered the following suggestions: consider a second bathroom or one with adequate stalls and smart designs that are accessible; consider appropriate lighting to be able

to walk through the park safely; add features to educate the public about what they are seeing at the park and incorporate the history of the area in a creative way; take advantage of the topography and connection trails; consider public safety personnel for the park; partner with local businesses to offer programming onsite and consider ideas for food trucks and others; enhance the place using natural rocks to the scenery; keep native flowers; consider Wi-Fi connection at the park; expand the possibilities for the park with marketing and programming; consider a call box that can be turned to illuminate after there is a star gazing event; consider small enclosed playground space; consider large barbecue grills; consider the anthropological aspect of the park; outreach to the academic institutions and have Anthropology students review the plans for the development of the park; consider rules for allowing outdoor music at the park; consider active use space such as slides going down the hill and zip lines; replace the ropes differently every two or three years; give thought to having the park open dawn to dusk; and integrate a thriving entrance to the park to make it attractive to visitors.

General Manager McCreary introduced Capital Planning and Development Director, Meghan Tiernan, who provided an oral report on current plans for the Hayward Community Gardens. A final conceptual master plan for the Hayward Community Garden was distributed during the meeting.

Discussion ensued about the Community Gardens regarding plots; outreach to gardeners and their participation; barbecue grills; and power lines and safety concerns.

Members of the City Council offered suggestions for the Hayward Community Gardens: consider rain water catchment; consider the garden as a catalyst that can unify the neighborhood in the area around the garden; consider funding from other sources and use the park-in-lieu fees for new parks and expansion of parks; and consider a space for the farmers to sell their produce.

General Manager McCreary and Capital Planning and Ms. Meghan Tiernan provided an update on the Parks and Recreation Master Plan and Public Facility Impact Fee Study.

City Manager McAdoo provided an overview of Tennyson Park. There was a request to have more lights at Tennyson Park. General Manager McCreary provided an update on the fundraising and pledges received for Mia's Dream Playground at Tennyson Park.

There was a suggestion to have more City of Hayward/HARD joint meetings to continue to address joint use of facilities, joint training and cross training of staff, disaster preparedness, and the role of the volunteer coordinator. City Manager McAdoo noted a meeting of the Hayward Local Agencies Committee with the three agencies was being scheduled in December.

General Manager McCreary provided a brief update about the partnership for the volunteer coordinator. Mr. McCreary indicated that the Hayward Unified School District was no longer going to be involved in the partnership and the City of Hayward and HARD would keep the position in full capacity. HARD Recreation Superintendent, Kerrilyn Ely, provided a list of the



**MINUTES OF THE SPECIAL JOINT HAYWARD CITY COUNCIL AND HAYWARD
AREA RECREATION AND PARK DISTRICT BOARD OF DIRECTORS
MEETING**

**Conference Room 2A
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Monday, October 30, 2017, 5:00 p.m.**

large events for the City of Hayward and HARD.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 6:42 p.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
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File #: MIN 17-152

DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the Special City Council Meeting on October 30, 2017

RECOMMENDATION

That the City Council approves the minutes of the Special City Council Meeting on October 30, 2017.

ATTACHMENTS

Attachment I Draft Minutes of 10/30/2017



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 7:00 p.m.**

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

ROLL CALL

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

PUBLIC COMMENTS

Mr. Kim Huggett, Hayward Chamber of Commerce President, extended an invitation to the International Luncheon with Consul of Guatemala, Patricia Lavagnino, on November 17, 2017, at the Mexican Restaurant & Bar.

CONSENT

Consent Item No. 3 and Item No. 8 were removed for further discussion.

CONSENT

1. Minutes of the Special City Council Work Session Meeting on October 14, 2017 **MIN 17-142**
It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council Work Session meeting on October 14, 2017.
2. Minutes of the City Council Meeting on October 17, 2017 **MIN 17-143**
It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the City Council meeting on October 17, 2017.
3. Adoption of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); and Article 25 (Hayward Mission Boulevard Corridor Form-Based Code) **CONS 17-650**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated October 17, 2017, was filed.

Mayor Halliday opened the public comments section at 8:06 p.m.

Mr. Jeff Syrop, resident of the Hayward Highland neighborhood, spoke about the possible inclusion of the Bonfare Market shopping plaza as a potential cannabis dispensary site.

Ms. Shahla Azimi, Hayward Boulevard resident, spoke on behalf of her neighbors in strong opposition to the possible Bonfare Market shopping plaza as a potential cannabis dispensary site because of the proximity to California State University East Bay.

Ms. Janice Chinn, Hayward Highland resident, spoke against Bonfare Market shopping plaza as a potential cannabis dispensary site.

Mr. Nasser Azimi, O'Hana Growers President, opposed limiting delivery operations related to cannabis.

City Manager McAdoo noted the City was in receipt of two letters that were distributed to the Council: one from California State University East Bay in opposition to the inclusion of the Bonfare Market shopping plaza potential dispensary site; and another from Mr. Michael Sweeney in general opposition to allowing any dispensaries in the City.

Mayor Halliday closed the public comment period at 8:18 p.m.

Council Member Mendall offered a motion per staff's recommendation with a further modification to the ordinance by removing cannabis uses (retail and delivery) from the Neighborhood Commercial zone district.

Council Member Zermeño seconded the motion.

Discussion ensued among Council Members and City staff related to the proposed regulatory ordinance.

Council Member Salinas noted that after hearing residents object to cannabis dispensaries in Hayward, he would be voting against the motion.

Council Member Zermeño clarified that the further amendment meant that there would not be dispensaries in neighborhoods such as Tennyson Road, Eden Shores, Harder Road, Carlos Bee Boulevard, Hayward Boulevard, Hayward Highland, and Fairway Park.

Council Member Lamnin asked staff to revisit the proposed regulations in a year.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried with the following vote, to adopt the ordinance with a further amendment that would modify the staff recommendation by removing cannabis uses (retail and delivery) from the Neighborhood Commercial zone district:



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 7:00 p.m.**

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

Ordinance 17-15, “Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses Through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); And Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)”

4. Adoption of Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses **CONS 17-651**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to adopt the following:

Ordinance 17-13, “Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses”

5. Adoption of Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control **CONS 17-652**

Staff report submitted by City Clerk Lens, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to adopt the following:

Ordinance 17-14, “Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control”

6. Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits **CONS 17-676**

Staff report submitted by City Attorney Lawson, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to adopt the following:

Resolution 17-158, "Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits"

7. West Winton Landfill Leachate Conveyance System Replacement Project: Approval of Plans and Specifications, and Call for Bids **CONS 17-674**

Staff report submitted by Utilities and Environmental Services Director Ameri, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Mendall, and carried unanimously, to adopt the following:

Ordinance 17-159, "Resolution Approving Plans and Specifications for the West Winton Landfill Leachate Conveyance System Replacement Project, and Call for Bids"

8. Approval of Resolution Accepting the Transfer of Parking Facilities from the Hayward Successor Agency **CONS 17-644**

Staff report submitted by Management Analyst II Stefanski, dated October 17, 2017, was filed.

In response to Mayor Halliday's inquiry about an update on the Redevelopment Agency's resolution, City Manager McAdoo noted the City had received authorization from the Department of Finance for the repayment of the water and sewer loan.

It was moved by Mayor Halliday, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 17-160, "Resolution of the City Council of the City of Hayward Accepting Transfer to Specified Parking Facilities Pursuant to Health and Safety Code Sections 34177(e) and 34181 (a)(1), for Continued Governmental Use, Operation, and Maintenance"



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 7:00 p.m.**

PUBLIC HEARING

9. Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant) (Report from Interim Development Services Director Bristow) **(Continued from 10/17/17) PH 17-096**

Staff report submitted by Interim Development Services
Director Bristow, dated October 17, 2017, was filed.

Interim Development Services Director Bristow announced the report and introduced Assistant Planner Martinez who provided a synopsis of the report.

Discussion ensued among Council Members and City staff about: Accessory Dwelling Units (ADUs) and homeowners' associations and CC&Rs (Covenants, Conditions & Restrictions); planned developments and ADUs; parking requirements; ADUs for low-income individuals; rent control and ADUs; owner-occupancy requirement; a reduced fee program for affordability; internal conversions; and Affordable Housing Impact Fees and Park Dedication in Lieu Fees.

There being no public comments Mayor Halliday opened and closed the public hearing at 8:27 p.m.

Council Member Lamnin offered a motion per staff's recommendation with a minor modification to the text in the proposed resolution (Attachment III) by changing the language from "disabled individuals" to "individuals with disabilities."

The motion died for lack of second and Council Member Lamnin withdrew her motion.

Council Member Lamnin recommended that staff consider evaluating eliminating fees, decreasing fees, and creating an opportunity to pay overtime only if the deed is restricted affordable.

Council Member Zermeño offered a motion per staff's recommendation with the modification requested by Council Member Lamnin.

Council Member Lamnin seconded the motion.

Council Member Mendall noted he was going to vote for the motion only because it was a requirement imposed by the State.

Council Member Márquez noted that the regulation did not get to the core issue of creating and preserving more affordable housing and noted the cost was prohibitive for individuals in need. Ms. Márquez said she would have been inclined to support the motion if ADU units were included in the rent stabilization ordinance.

Council Member Salinas noted that communities in need of housing were going to be most affected by the State regulation.

Council Member Peixoto noted the State regulation changes the character of single-family neighborhoods and noted that vulnerable communities were going to be affected.

Mayor Halliday noted that the City had to comply with a State mandate.

It was moved by Council Member Zermeño, seconded by Council Member Lamnin, and carried to adopt with the following vote:

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

Introduction of Ordinance 17-_, “An Ordinance Adding Section 10-1.2740 to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code to Revise and Update Regulations Related to the Development of Accessory Dwelling Units”

Resolution 17-161, “Resolution to Adopt a Zoning Text Amendment to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code Related to the Development of Accessory Dwelling Units”

Resolution 17-162, “Resolution Amending the City of Hayward 2018 Fiscal Year Master Fee Schedule for Zoning Conformance Permits Associated with a Zoning Text Amendment to Chapter 10 of the Hayward Municipal Code Related to Accessory Dwelling Units”

WORK SESSION

10. Review of Cannabis Business Operator Selection Process (Report from City Manager McAdoo) WS 17-051



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Monday, October 30, 2017, 7:00 p.m.**

Staff report submitted by Senior Assistant City Attorney Vigilia, Principal Planner Lochirco, and Management Analyst II Stefanski, dated October 30, 2017, was filed.

Management Analyst II Stefanski announced the report and introduced Mr. Will Cooper with ICF, who provided an overview of the approach to operator selection, overview of application and selection process, and proposed evaluation criteria and weighting.

Mayor Halliday opened the public comments section at 9:00 p.m.

Mr. Richard Fierro, member of Teamsters Local 70, noted that cannabis workers should be represented, and recommended that potential applicants who have a collective bargaining agreement get the full score.

Ms. Kristine Terramoto, Cannabis Division Director for the Teamsters and member of the State's Cannabis Advisory Board, asked for a labor peace agreement.

Ms. Charnel James, with GreenWise Consulting, asked that the following be included in the point evaluation: allow for zoning clearance prior to the application submittal; take into consideration the experience and success of applicants who have operated in other jurisdictions; and get additional points for the location being served.

Mr. Brent Alfieri, industrial property owner, read a section of SB 94 related to evaluation criteria for cannabis permits.

Ms. Gail Lee submitted a card but did not speak.

Mr. Jason Terramoto, owner of a dispensary, urged the Council to speak with folks in the cannabis industry and stakeholders.

Ms. Denise Martellacci asked the Council to request ICF, if chosen, to have an implementation clause that requires businesses to open within six months to a year.

Mr. Dan Szigeti, Director of Sales for Harrens Lab, asked for an exemption to the timeline in the RFP process for testing laboratories.

Mr. Doug Chloupek spoke about his experience with cannabis dispensaries and laboratories, and asked that the application process not be delayed, and to consider in the labor peace agreement a PACE financing.

Mr. Daniel Hovland, Hayward resident, asked that the City take into consideration smaller businesses that might want to operate in the City.

Mr. Alan Descoins, representing local investors, noted they were evaluating locations to operate their business.

Mayor Halliday closed the public comments section at 9:33 p.m.

Discussion ensued among Council Members and City staff regarding: the application process; deposits from cannabis businesses; business presentations to the Council; background investigation of management teams; the \$5,000 application fee; financial analysis; audits and financial practices.

Council Members offered the following suggestions: add to the RFP process timeline a date by when selected businesses need to open; incorporate into the Conditional Use Permit process a condition of approval whereby the permit could be revoked if the business is not operational within a year; modify the language from “labor peace considerations” to “labor peace agreements” in the Labor and Employment Practices section; switch the recommended scoring points of “Labor and Employment Practices (75) with “Community Benefits (150)”; if applicants have an agreement in place with the union, they could get full score in that category; consider another RFP process in six months during the first year; location should be a part of the Review Process section; review the applicant’s history of code violations/compliance in the cities they have operated; consider fast tracking the process for testing laboratories; add an evaluation criteria about youth/adult education and prevention strategies around health risk and smoking; the RFP process has to be a well-executed process; include a check list of items that would make businesses legal; the evaluation criteria for “Management Experience” should receive more weight; for community benefits, share needs from the Community Services Commission and encourage applicants to partner with non-profits in the City that are not receiving funds; consider points for local applicants; let applicants know when a proposal has a location that will not work; consider taking about 100 points from Business Plan and Operations and distribute them to Community Benefits and Environmental Plan and Labor and Employment Practices; note if applications have received community support; and consider plans for payment process and business insurance.

City staff noted a new draft would be provided to Council for final approval.

11. Discussion Regarding Measure EE Cannabis Tax Rate (Report from Finance Director Claussen and City Attorney Lawson) WS 17-050

Staff report submitted by City Attorney Lawson and Finance Director Claussen, dated October 30, 2017, was filed.

Senior Assistant City Attorney Vigilia and Finance Director Claussen provided a synopsis of the report.

Mayor Halliday opened the public comments section at 10:24 p.m.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
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Mr. Doug Chloupek spoke about over taxation and noted that a tax rate above 2.5% to 5% of gross sales will not allow businesses to operate.

Mr. Brent Alfieri supported a tax rate of 7% of gross sales over three years and assessing it at a distribution level.

Mr. Daniel Hovland favored a lower tax rate; noted the State was implementing an insurance program; and suggested a cryptocurrency for transactions.

Mayor Halliday closed the public comments section at 10:30 p.m.

Discussion ensued among Council Members and City staff regarding the cannabis tax rate.

Council Members offered the following suggestions: have the Council Budget and Finance Committee vet the cannabis tax rate proposal; three Council Members favored Option 2 (tax at 5% of gross sales for all cultivating and manufacturing and 8% for retail sales dispensaries); one member was amenable to a slightly lower cost for medicinal cannabis; one member favored a tax rate at 10% for retail (store front and delivery) and a lower rate of 5% for all other business except for testing facilities, and revisiting it in two years; and one favored a tax at 10% for retail and smaller increments as it gets closer to production.

CITY MANAGER'S COMMENTS

City Manager McAdoo announced that Assistant City Manager Hurtado was inducted as one of the vice presidents representing the West Coast to serve on the 2017-2018 ICMA Executive Board during the ICMA Annual Conference October 22-25, 2017, in San Antonio, Texas.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas wished everyone a happy Halloween, and encouraged everyone to drive slow as kids were anticipated to be out trick-or-treating.

Council Member Márquez acknowledged the Keep Hayward Clean and Green Task Force's participation in the Make a Difference Day event on October 28, 2017.

Mayor Halliday wished everyone a happy Halloween.

ADJOURNMENT

Mayor Halliday adjourned the special meeting at 10:46 p.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 #: MIN 17-153

DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the City Council Meeting on November 7, 2017

RECOMMENDATION

That the City Council approves the minutes of the City Council meeting on November 7, 2017

ATTACHMENTS

Attachment I Draft Minutes of 11/7/2017



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 7, 2017, 7:00 p.m.**

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

ROLL CALL

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

PRESENTATION

Hayward Unified School District Rotary Scholars Awards

Mayor Halliday and Council Members Lamnin, Salinas, and Zermeño presented certificates of commendation to the following Hayward students for their scholastic achievements, exemplary attendance, and demonstration of positive character traits expected of all Hayward students: Alyannah Nadeen Mabana, 3rd grader at Southgate Elementary School; Joel Almodovar, 4th grader at Southgate Elementary School; Hadassah Reddy, 5th grader at Lorin Eden Elementary School; Nathen Lee, 8th grader at Martin Luther King Jr. Middle School; and Carol Villalobos, 8th grader at Martin Luther King Jr. Middle School. Hayward Rotary Club President A.T. Stephens and Hayward Unified School District Superintendent Dr. Matt Wayne also acknowledged the students.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, spoke about the trees that were planned to be replaced along Santa Clara and Jackson Streets.

Ms. Wynn Grcich, Hayward resident, spoke about lead, fluoride, and chloramine levels in water and the correlation to health issues.

Ms. Catherine Pelkey, Hayward resident, spoke about an email she sent to the Council regarding the increase in water consumption correlated to the timing of the new smart meter installation.

Mr. Monzella Curtis, Hayward resident, asked for a “just cause” eviction clause in the affordable housing ordinance.

Mr. Tony Duong, Arroyo High School student, noted he was working on a school project and suggested that the installation of additional security cameras in critical areas would help alleviate crime.

Mr. Bill Espinola, Hayward resident and long-term rental property owner, noted that rental property owners want to be included in discussions related to housing regulations.

Ms. Rosaura Mendoza, speaking on behalf of The Hayward Collective, expressed support for Aloha Apartments renters and asked for a “just cause” clause to protect people from evictions.

Council Member Márquez noted the Community Task Force meeting was rescheduled to November 15, 2017, and she announced the Keep Hayward Clean and Green Task Force ‘s Neighborhood Beautification and Cleanup event on November 18, 2017.

CONSENT

1. Economic Development Incentives Program - Update and Approval of Program **CONS 17-668**

Staff report submitted by Economic Development Manager Hinkle, dated November 7, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Salinas, and carried unanimously, to adopt the following:

Resolution 17-163, “Resolution Authorizing the Economic Development Division to Offer Two New Economic Development Incentive Programs”

2. Amendments to the Multi-Year Services Agreement between the City of Hayward, the Hayward Recreation and Park District (HARD), and the Hayward Unified School District (HUSD) **CONS 17-675**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated November 7, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Salinas, and carried unanimously, to adopt the following:

Resolution 17-164, “Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Multi-Year Services Agreement with the Hayward Area Recreation and Park District (HARD) and the Hayward Unified School District (HUSD) Covering the Period July 1, 2016 Through June 30, 2019”



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 7, 2017, 7:00 p.m.**

LEGISLATIVE BUSINESS

3. Approval of a Resolution Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with the Hayward Adult School Youth Enrichment Services Program to Extend Youth Internships in the Maintenance Services Department (Report from Maintenance Services Director Rullman) **LB 17-043**

Staff report submitted by Maintenance Services Director Rullman, dated November 7, 2017, was filed.

Maintenance Services Director Rullman provided a synopsis of the report and introduced a video about the Hayward Adult School Youth Enrichment Services (YES) Program. HUSD Director of Alternative Education Dr. Guy 'Zak' Zakrevsy spoke about the great collaboration between the City of Hayward and the Hayward Adult School. YES Program Manager, Davida Scott, spoke about the program, introduced the YES interns, and thanked the City for the collaboration. Hayward Unified School District Superintendent Dr. Matt Wayne also thanked the City for the partnership.

Mayor Halliday opened the public hearing section at 8:01 p.m.

Ms. Mary Mandele, foster care provider, noted the value of programs such as the YES Program.

Mr. Tony Dutra, Dutra Land & Consulting Services President/CEO, addressed the interns and noted that his family business would like to be involved with the YES Program.

Ms. Cecilia Chavez, Youth & Family Services Bureau Family Counselor, favored the expansion of the YES Program.

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

Council Member Salinas made a motion per staff's recommendation and Council Member Márquez seconded the motion.

Council Members expressed support for the partnership and collaboration, and congratulated the agencies involved and the YES interns.

It was moved by Council Member Salinas, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 17-165, "Resolution Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with the Hayward Adult School Youth Enrichment Services Program and the City of Hayward Maintenance Services Department to Extend Youth Internship Paid Hours in an Amount Not to Exceed \$20,000"

Mayor Halliday called for a recess at 8:14 p.m., and reconvened the meeting at 8:19 p.m.

4. Adoption of an Ordinance Adding Section 10-1.2740 to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code to Revise and Update Regulations Related to the Development of Accessory Dwelling Units (Report from City Clerk Lens)
LB 17-046

Staff report submitted by City Clerk Lens, dated November 7, 2017, was filed.

City Clerk Lens noted the adoption of the ordinance was placed as a legislative item because the introduction of the ordinance did not garner unanimous vote.

There being no public comments, Mayor Halliday opened and closed the public hearing section at 8:26 p.m.

Council Member Zermeño made a motion per staff's recommendation and Council Member Lamnin seconded the motion.

Council Member Márquez indicated there was not strong rent stabilization support in the Accessory Dwelling Units (ADU) ordinance, was concerned the fees would be cost prohibitive, and noted she would be voting against the motion.

It was moved by Council Member Zermeño, seconded by Council Member Lamnin, and carried to adopt with the following vote:

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

Ordinance 17-16, "An Ordinance Adding Section 10-1.2740 to Chapter 10 (planning, Zoning, and Subdivisions) of the Hayward Municipal Code to Revise and Update Regulations Related to the Development of Accessory Dwelling Units"



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 7, 2017, 7:00 p.m.**

PUBLIC HEARING

5. Introduction of Amendments to the Affordable Housing Ordinance and Adoption of In-Lieu Fees (Report from City Manager McAdoo) **PH 17-099**

Staff report submitted by City Clerk Lens and City Attorney Lawson, dated October 17, 2017, was filed.

Assistant City Manager Hurtado announced the report and introduced Mr. David Doezema, with Keyser Marston Associates, Inc. (KMA) who presented the proposed amendments to the City's Affordable Housing Ordinance (AHO) and Fee Schedule. Assistant City Manager Hurtado also noted Barbara Kautz, with Goldfarb and Lipmann LLP, Interim Development Services Director Bristow, Planning Manager Buizer, and Acting Housing Manager Cortez were available to answer questions.

Discussion ensued among Council Members, City staff, and Ms. Barbara Kautz regarding: housing project applications in the pipeline that are not deemed complete by November 28, 2017 and discretion to waive fees; adoption of in-lieu fees effective sixty days from November 28, 2017; grandfathering provisions for housing projects in the pipeline; the November 28, 2017 deadline for deemed complete applications that were submitted by October 10, 2017; the percentage of affordable units required for denser projects; on-site units in ownership residential projects; conflict of interest and City employees who have policy-making authority or influence regarding housing programs; on-site requirements for rental apartments proposed at 6%; geographic requirements and inclusionary requirements for development in close proximity to transit and ability to compete for funds; and the proposed increase of AHO fees in the range of \$15 to \$20 per square foot.

Mayor Halliday opened the public hearing at 9:23 p.m.

Mr. Kyle Masters, with Grupe Company and speaking for the Ersted property, submitted a letter for the record and recommended that the date for applications to be deemed complete be moved from November 28, 2017 to the end of December, and that all projects in the pipeline be given the opportunity to be entitled by June 2018.

Ms. Lisa Vorderbrueggen, with BIA Bay Area, supported the fee-by-right option and the "combination of alternatives" provisions. Ms. Vorderbrueggen recommended that the AHO fee of \$20 be reduced and phased in over time, and echoed Mr. Masters' recommendation.

Ms. Chu Rao, project applicant for Mission Seniors, supported staff's recommendation related to the grandfathering provision and spoke about the proposed AHO fees.

Mr. Andy Madeira, with Eden Housing, expressed support for the fee-by-right option and supported the inclusion of “combination of alternatives” provisions; and noted that the regional aspect of where housing is built is important to consider as the City starts allocating funds through the in-lieu fees.

Rev. Sophia Dewitt, East Bay Housing Organizations program director, supported staff’s AHO recommendation and suggested that the dates for the grandfathering provision stay firm, and recommended the construction cost index for the rate of increase.

Mr. Tony Dutra, Dutra Land & Consulting Services President/CEO, asked if his project on Gading Road would qualify under the proposed grandfathering provision; and also asked for a different project on B Street.

Mayor Halliday closed the public hearing at 9:46 p.m.

Council Member Mendall made a motion per staff’s recommendation with two amendments: 1) projects that would qualify for the half in-lieu fee would have to submit their applications by October 10, 2017, have their applications deemed complete by December 20, 2017, and have applications approved and pull building permits within two years; and 2) that the inclusionary deed restriction for ownership be changed to “in perpetuity.”

Council Member Márquez seconded the motion and its amendments.

Council Member Lamnin expressed support for the motion and offered three amendments: 1) in areas that refer to affordable housing (ownership and rental) and affordability percentage level, add the language “or lower”; 2) change the inflation from CPI (Consumer Price Index) to ENR (Engineering News Record) construction cost index; and 3) clarify Section 10-17.700 [Development Incentives (b) Modified Development Standards to Increase Density (2)] regarding allowing for decreased number of parking spaces to allow for affordable units near a major transportation route, by ensuring the ability to have transit access.

Ms. Barbara Kautz noted there was a State definition that could be incorporated in Section 10-17.700 to add clarity.

Council Members Mendall and Márquez were amenable to the amendments offered by Council Member Lamnin.

Mayor Halliday and Council Members expressed support for the motion and thanked City staff, the development community, and the housing community for their input and advocacy.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, per staff recommendation with five amendments: 1) projects that would qualify for the half in-lieu fee would have to submit their applications by October 10, 2017, have their applications deemed complete by December 20, 2017, and have applications approved and pull building permits within two years; 2) that the inclusionary deed



**MINUTES OF THE CITY COUNCIL MEETING OF
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777 B Street, Hayward, CA 94541
Tuesday, November 7, 2017, 7:00 p.m.**

restrictions (for ownership and rental) be changed to “in perpetuity”; 3) change the inflation adjustor from CPI (Consumer Price Index) to ENR (Engineering News Record) construction cost index; 4) allow for more deeply affordable units by adding the language “or lower” in places that specify the level of affordability as a range; and 5) modify Section 10-17.700 [Development Incentives (b) Modified Development Standards to Increase Density (2)] regarding allowing for decreased number of parking spaces to allow for affordable units near a major transportation route, by incorporating the State definition to allow the ability to have transit access.

Resolution 17-166, “Resolution Finding that the Enactment of an Ordinance Amending Chapter 10, Article 17, of the Hayward Municipal Code Regarding Affordable Housing Requirements for New Housing Developments is Exempt from the California Environmental Quality Act (CEQA)”

Resolution 17-167, “Resolution Rescinding Resolution 16-189 and Establishing Affordable Housing In-Lieu Fees”

Introduction of Ordinance 17-_, “An Ordinance of the City of Hayward Amending Chapter 10, Article 17, of the Hayward Municipal Code Regarding Affordable Housing Requirements for New Housing Developments”

6. Adoption of an Ordinance to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS) for Miscellaneous Members in Unrepresented Executive and Council Appointed Officer Groups (Report from Director of Human Resources Collins) **PH 17-088**

Staff report submitted by Human Resources Director Collins, dated November 7, 2017, was filed.

Human Resources Director Collins provided a synopsis of the report.

Council Member Peixoto recommended that, moving forward, there be a chart for all employee groups showing the employee share contribution, the employer share contribution, and the total amount; and additionally, have it split by Classic and Public Employees Pension Reform Act (PEPRA).

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

It was moved by Council Member Márquez, seconded by Council Member Salinas, and carried to adopt with the following vote:

Ordinance 17-17, “An Ordinance Authorizing the Amendment of the Contract Between the City of Hayward and the Board of Administration of the California Public Employees’ Retirement System”

CITY MANAGER’S COMMENTS

Assistant City Manager Hurtado noted the City hosted a successful free Compost Giveaway event in South Hayward at Tennyson High School on October 21, 2017.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Peixoto spoke about his attendance today at the first meeting of the Fairview Municipal Advisory Council held at the Hayward Recreation and Park District office.

Council Member Lamnin spoke about her attendance at a CalPERS employer conference and noted that next year there will be a track for elected officials.

Council Member Márquez announced the Light-Up the Season event was scheduled for December 2, 2017 at Hayward City Hall. Ms. Márquez also stated she attended a League of California Cities meeting on housing items.

Council Member Zermeño noted he attended the South Hayward BART Station Access Authority Board meeting on November 6, 2017 where parking issues at Alta Mira Apartments were addressed.

Mayor Halliday announced the City Council will be holding a special meeting on November 14, 2017.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 10:35 p.m., in memory of the twenty-six people who were shot on November 5, 2017 at the First Baptist Church in Sutherland Springs, Texas.

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 #: CONS 17-686

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT

Authorization for the City Manager to Execute an Agreement with the Alameda County Sheriff's Office and the U.S. Department of Justice to Accept the FY2017 Byrne Justice Assistance Grant (JAG) fund in the Amount of \$42,491.60 for Hayward Police Department Operations

RECOMMENDATION

That the City Council authorizes the acceptance of the FY2017 Byrne Justice Assistance Grant (JAG) with the Alameda County Sheriff's Office and the U.S. Department of Justice in the amount of \$42,491.60 for Hayward Police Department Operations.

ATTACHMENTS

- Attachment I Staff Report
- Attachment II Resolution Authorizing Agreement



DATE: November 14, 2017

TO: Mayor and City Council

FROM: Chief of Police

SUBJECT: Authorization for the City Manager to Execute an Agreement with the Alameda County Sheriff's Office and the U.S. Department of Justice to Accept the FY2017 Byrne Justice Assistance Grant (JAG) fund in the Amount of \$42,491.60 for Hayward Police Department Operations

RECOMMENDATION

That the City Council authorizes the acceptance of the FY2017 Byrne Justice Assistance Grant (JAG) with the Alameda County Sheriff's Office and the U.S. Department of Justice in the amount of \$42,491.60 for Hayward Police Department Operations.

BACKGROUND

The Hayward Police Department has participated in the Byrne Justice Assistance Grant (JAG) (Byrne Grant) funds since 2005. Historically, the City has used the Byrne Grant Funds for several operational issues relating to the Hayward Police Department.

On August 7, 2017, the Hayward Police Department was notified by the Alameda County Sheriff's Office Planning and Research Unit that federal certification requirements must be acknowledged and signed by each city's "Chief Legal Officer"/City Attorney certifying compliance with 8 U.S.C. Section 1373. The section addresses several issues relating to citizenship and immigration status. The U.S. Department of Justice instituted this new requirement before the award acceptance documents are processed.

The County Planning and Research Unit reports that of the ten members who participated in this Consortium, two members have withdrawn, one member has signed the certification, and the remaining eight members are checking with their City Managers and Attorneys.

Staff, in consultation with the City Attorney's office, has elected to not sign the certification and wait until further discussions with the remaining eight members take place as to impact of signing the certification. Alameda County has received approval from the U.S. Department of Justice to submit the grant application, which will be processed without the required signed certifications. However, no actual award will be made until the certifications are signed by the receiving agencies. If this certification is required in future grant applications, this could impact the City's ability to apply and be awarded similar Federal funding. In the interim, the County's Planning and Research Unit recommends the remaining members submit their budget applications and Memorandum Amendments to keep their options open.

DISCUSSION

The Alameda County Sheriff's Office intends to apply for the FY2018 Byrne Justice Assistance Grant (JAG) Local program on behalf of the remaining Consortium members for the twelfth consecutive year. Alameda County qualified for a total allocation of \$774,808 in FY2017 Byrne JAG Local funds, of which the Hayward Police Department will receive \$42,491.60 (total award is \$44,728 and after the County's 5% administrative fee of \$2,236.40, the City will receive \$42,491.60). These funds require no local match and allow a wide range of uses by participating Police Departments.

For FY 2017, the Hayward Police Department plans to use the Byrne JAG Local funds to upgrade their security camera system for \$29,492 and maintenance fees of \$16,000 for the Police Department's off-site fitness training facility located at the Hayward Airport.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

FISCAL IMPACT

This agreement will result in the continuation of the Police Department's Byrne Grant funding, which staff will use to fund the ongoing costs of the Training Center and toward the upgrading of the Hayward Police Department's security camera system. There is no impact to the General Fund.

NEXT STEPS

If Council authorizes this action, a Memorandum of Understanding will be signed by the City Manager and staff will continue to work with the City Manager and the City Attorney as to the Certification agreement for the FY2017 Byrne Justice Assistance Grant (JAG).

Prepared by: Adam Lumia, Senior Management Analyst

Recommended by: Mark Koller, Chief of Police

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE ALAMEDA COUNTY SHERIFF'S OFFICE AND THE U.S. DEPARTMENT OF JUSTICE; TO ACCEPT THE FY2017 BYRNE JUSTICE ASSISTANCE GRANT (JAG) FUND IN THE AMOUNT OF \$42,491.60 FOR HAYWARD POLICE DEPARTMENT OPERATIONS

WHEREAS, the Hayward Police Department has a long-standing history of receiving Byrne Justice Assistance Grant funds to support operations; and,

WHEREAS, executing an MOU and federal Certifications are necessary to continue to receive these funds;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager, City Attorney and Chief of Police are hereby authorized and directed to negotiate and execute MOUs, federal Certifications, and any supporting documents, with the Alameda County Sheriff's Office for the FY2017 Byrne Justice Assistance Grant. This authorization is for the acceptance and appropriation of revenue in the amount of \$42,491.60.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

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



CITY OF HAYWARD

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

File #: CONS 17-687

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Fire Chief

SUBJECT

Approval of Resolution Authorizing the City Manager to Execute a Service Agreement with the Fairview Fire Protection District

RECOMMENDATION

That the Council authorizes the City Manager to execute an agreement with the Fairview Fire Protection District (District) consistent with the terms outlined in Attachment III.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Proposed Service Agreement



DATE: November 14, 2017

TO: Mayor and City Council

FROM: Fire Chief

SUBJECT Approval of Resolution Authorizing the City Manager to Execute a Service Agreement with the Fairview Fire Protection District

RECOMMENDATION

That the Council authorizes the City Manager to execute an agreement with the Fairview Fire Protection District (District) consistent with the terms outlined in Attachment III.

SUMMARY

The City of Hayward has provided fire protection services to the Fairview Fire Protection District since July 1, 1993. The current five-year service agreement is scheduled to expire on June 30, 2018.

The attached resolution authorizes the City Manager to execute a new five-year service agreement with the District. The terms of the proposed agreement are essentially equivalent to the current agreement, with some slight updates to the insurance terms, the CPI increase floor and ceiling. The proposed agreement also formalizes performance metrics and an annual contract review.

BACKGROUND

The City and District have been working cooperatively since 1993 under a service agreement. Both organizations recognize the mutual benefits of continuing the contractual partnership. The District benefits from having outstanding fire protection services provided by the Hayward Fire Department that would not be easily attainable in a standalone district. The City of Hayward benefits by having additional resources available in case operational support is needed in a potential mutual aid situation.

Council authorized the current five-year agreement on May 15, 2012, which is scheduled to expire on June 30, 2018. The current agreement set a baseline cost of the contract price for FY 2012/13, plus an annual increase equal to the Consumer Price Index (CPI). The annual increase has a floor of 2% and a ceiling of 5%. The FY 2016/17 revenue was \$2,847,321.

The key terms of the current agreement are listed below:

- The City provides fire protection services within the District at the same service level that it provides within the Hayward's corporate limits, including emergency preparedness programs, fire prevention activities, and weed abatement.
- The City provides one fire company, which is located at Fire Station 8 (Station) on Five Canyons Parkway, as well as equipment and supplies.
- The District provides the Station to the City of Hayward at no charge.
- The District provides vehicles, including one Engine, one Type III Patrol, and one Type VI Patrol, which remain primarily within the District to provide services.
- The District is named as an additional insured on Hayward's commercial general liability and property insurance policies, with a maximum limit of \$5,000,000 for general liability and \$500,000,000 for property insurance.

DISCUSSION

Similar to the current agreement, the proposed agreement would run for five years (from July 1, 2017 through June 30, 2022) and would be renewable by mutual agreement for an additional five years (through June 30, 2027). The proposed agreement sets a baseline cost of the contract price for FY 2016/17, plus an annual increase equal to the CPI. The proposed annual increase has no floor and a ceiling of 4%.

In addition, the District agrees to continue to pay for gas and electric bills for the Station and for Alameda Dispatch System Charges, which will provide an offset of approximately \$42,500 to City costs annually.

The proposed agreement (Attachment III) includes all the same terms listed above. There are a few minor changes proposed, which are listed below:

- The District will continue to be named as an additional insured on Hayward's commercial general liability and property insurance policies. In the proposed agreement, the District's coverage will be the same as applied to Hayward, which increases the maximum limit for general liability to \$50,000,000 and \$1,000,000,000 for property insurance.
- The floor and ceiling to the CPI adjustment was changed from 2% and 5% to be 0% and 4%. From 2012 to 2016, the annual May to April CPI for the San Francisco Bay Area ranged from 2.1% to 2.7%.
- The agreement formalizes several performance measures (page 2 of Attachment III) and an annual contract review on or before July 1 of each year.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

FISCAL IMPACT

Through the proposed agreement, the City will realize its budgeted revenue projection for FY2018 of \$2,847,321, plus an additional amount of \$42,500 to offset costs for gas, electric, and the County's dispatch system. The agreement provides annual increases in revenue equal to the CPI, with a 4% ceiling.

NEXT STEPS

If authorized, the City Manager will execute an agreement with the District consistent with the terms outlined in Attachment III.

Prepared and Recommended by: Garrett Contreras, Fire Chief

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A FIVE-YEAR SERVICE AGREEMENT WITH THE FAIRVIEW FIRE PROTECTION DISTRICT

WHEREAS, the City of Hayward and the Fairview Fire Protection District (District) have been working cooperatively since 1993 under a service agreement and each recognize the mutual benefits of continuing the contractual partnership; and

WHEREAS, the current five-year service agreement is scheduled to expire on June 30, 2018; and

WHEREAS, the District benefits from having outstanding fire protection services provided by the Hayward Fire Department that would not be easily attainable in a standalone district; and

WHEREAS, the City of Hayward benefits by having additional resources available in case operational support is needed in a potential mutual aid situation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute for and on behalf of the City of Hayward a service agreement with the Fairview Fire Protection District in substantially the form of the agreement on file in the office of the City Clerk.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

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

FIRE PROTECTION SERVICES CONTRACT

THIS CONTRACT is made effective as of July 1, 2017, by and between the CITY OF HAYWARD, hereinafter referred to as “Hayward” and the FAIRVIEW FIRE PROTECTION DISTRICT, hereinafter referred to as “Fairview”.

WITNESSETH

WHEREAS, Fairview wishes to contract with Hayward to provide through the Hayward Fire Department the hereinafter described fire protection functions within Fairview’s boundaries;

WHEREAS, Hayward is agreeable to rendering such services on the terms and conditions hereinafter set forth; and

NOW, THEREFORE, the parties agree as follows:

1. TERM OF CONTRACT:

The Contract period is for a term of 5 years commencing July 1, 2017 and terminating on June 30, 2022. Upon mutual agreement, the Contract can be extended for an additional 5 years.

2. SCOPE OF DUTIES: Hayward agrees to provide fire protection and emergency services within the boundaries of the Fairview Fire Protection District to the extent and in the manner hereinafter set forth including the current level of related administrative support as further described in the adopted Governance Policy for Fairview.

3. SERVICE AND STAFFING LEVELS: Hayward shall provide Fairview with the same level of service that Hayward provides to the territory within Hayward’s corporate limits. The services to be performed hereunder include emergency medical service and other fire services including initial response service for hazardous materials calls which will include one fire company located at 25862 Five Canyons Parkway, Castro Valley, California (“Fairview Fire Station”). Services shall also include but not be limited to extant regional and local disaster programs and shall include offering the same education and training programs to the citizens of Fairview that are offered to the citizens of Hayward including the Emergency / Disaster Preparedness Programs (CERT Classes).

The level and quality of service provided will be measured through the following performance metrics:

- (a) Response Time: The Hayward Fire Department will adhere to the NFPA (Section 1710) standard of responding to 90% of the calls in the District within 5 minutes, 50 seconds, with the balance of a first alarm assignment arriving on scene in under 8 minutes – ninety percent (90%) of the time.
- (b) Fire Prevention Activities: Fire Prevention Office staff will inspect all applicable occupancies within the District annually.
- (c) Weed Abatement: All applicable parcels within the District will be inspected by Hayward Fire Department personnel and followed up by Fire Prevention Office staff (as needed) at least annually.
- (d) Hazardous Materials: Hazardous Materials staff will inspect and follow-up on all industrial generators within the District at least annually.

Administrative and professional staff support will remain consistent with the Governance Policy throughout the term of this contract without lapse. Hayward shall not modify staffing levels affecting Fairview without prior written request of Hayward to Fairview and subsequent written consent of Fairview. If such consent is granted by Fairview for staffing modifications or if Hayward cannot otherwise meet its service levels described above, the parties agree to promptly renegotiate Fairview's financial obligation provided for in Section 11 of this Contract in order to make an equitable adjustment. In the event that Hayward is unable to meet its service or staffing levels, Fairview may also pursue its right to early termination of this Contract and any other legal remedies that may be available to it.

4. RESPONSIBILITY FOR PROVIDING RESOURCES:

- (a) For the purpose of performing services under this contract, Hayward shall furnish and supply all labor, supervision, equipment, communication facilities and supplies necessary to provide the level of service to be rendered hereunder. The direction, control and discipline of employees and other matters incident to the performance of services shall be solely the right and responsibility of Hayward.

- (b) Notwithstanding subsection (a), it is agreed that whenever stationery, notices, forms or other similar supplies must be issued using the name of Fairview, they shall be made available by Fairview as needed.

5. **HOLD HARMLESS AND INSURANCE:** Hayward shall provide an insurance program for Fairview which encompasses those activities and services contemplated by this Contract in accordance with the following standards:

- (a) Hayward agrees to hold harmless, indemnify and to defend Fairview, its Board of Directors, officers and employees and agents from all claims for injury or damage of whatever type brought by or on behalf of any third party arising from or connected with acts or omissions in the performance of this contract by Hayward.
- (b) Fairview shall continue to be named as an insured on Hayward's commercial general and auto liability and property insurance policies to the same extent of coverage applied to Hayward, it being understood that said policies have a current maximum limit of \$50,000,000 (fifty million dollars) and \$1,000,000,000 (one billion dollars), respectively, and subject to any self-insured retention and/or deductibles. Hayward shall bear the costs of any self-insured retention requirement and/or deductible. Fairview shall also be named as a loss payee on Hayward's property insurance policies. Hayward shall provide Fairview written notice of any change either in the current amounts of Hayward's insurance limits or applicable self-insured retentions and/or deductibles. Hayward shall provide written proof of insurance for its own policies and the policies described herein and in (c) below. Such proof shall be presented within thirty (30) days following annual policy renewal.
- (c) Hayward's insurance coverage shall include replacement cost coverage for the improvements to real property (including all buildings, fixtures and structures), equipment and vehicles (including but not limited to fire trucks) provided by Fairview to Hayward for use in connection with this contract. Coverage for contents and personal property located at any time in such real property, equipment and vehicles shall be included.

- (d) Fairview, at its sole option, may maintain insurance it deems necessary to wrap around the protection afforded by the Hayward's insurance.

6. **INCOME/COST TO FAIRVIEW:** Fairview shall assume financial responsibility for the following items:

- (a) The electric and gas bills associated with the Fairview Fire Station, which presently cost approximately \$2,500.
- (b) The cost of Alameda County's Dispatch System, which presently costs approximately \$40,000 per year.
- (c) The cost of the Weed Abatement Program, which presently costs approximately \$11,000.
- (d) Fairview would continue to receive all credit/income from all sources provided under any other agreement, such as the FRALS program.

7. **PROPERTY AND EQUIPMENT:** Fairview shall continue to own its improved real property located at 25862 Five Canyons Parkway, Castro Valley, California and 24200 Fairview Avenue, Hayward, California and its furnishings, equipment and vehicles during the terms of this Contract unless otherwise set forth. Fairview shall make the following available to Hayward at no cost:

- (a) The real property including but not limited to the fire stations structure(s) and grounds.
- (b) All furnishings and equipment. Equipment (other than vehicles, which are discussed below) that is consumed, broken, worn-out, lost, obsolete, etc. shall be replaced at Hayward's discretion and at Hayward's expense and will revert to Fairview should this Contract be terminated. Hayward shall provide Fairview's bookkeeper with sufficient information for the bookkeeper to generate a quarterly statement of any changes in capital property owned by Fairview.

- (c) Fairview agrees to replace vehicles and other capital assets as described in their annually approved Capital Improvement Program (CIP). The parties shall modify Attachment #3 accordingly when and if vehicles are replaced. Vehicles shall normally be replaced at 10-year life expectancy.
- (d) Hayward agrees to maintain, repair and insure all of the real property, furnishings, equipment and vehicles listed in (a), (b), and (c) above during the term of this contract. Hayward shall insure all vehicles owned by Fairview in accordance with section 5 (b) and (c).

8. PERSONNEL/LIABILITY: Fairview shall not assume any liability for the direct payment of any salaries, wages, or other compensation to any Hayward personnel performing services hereunder for Fairview or any other liability other than that provided for in this Contract. Fairview shall not be liable for compensation of or indemnity to any Hayward employee for injury or sickness arising out of his or her employment.

9. FIRE CODES: Fairview is subject to the California Fire Code based on the International Fire Code and Hayward's amendments to such Fire Codes shall be adopted at the discretion of the Fairview Board of Directors, following adoption by the City of Hayward. Hayward will advise Fairview of any plans to adopt Fire Codes or amendments to Fire Codes so that Fairview can review and adopt such Fire Codes or amendments as it deems prudent as close in time as possible to Hayward's adoption. Hayward shall enforce the Weed Abatement standards set forth in FFPD Ordinances.

10. FIRE HYDRANTS: Hydrant maintenance, within Fairview, on East Bay Municipal Utility District (EBMUD) hydrants, shall remain the responsibility of the East Bay Municipal Utility District. However, Hayward shall maintain responsibility for overseeing this maintenance program. The intent of this program shall be to ascertain whether said hydrants are mechanically operable and capable of delivering water. Hayward shall notify the water purveyor, in writing; of any maintenance required as soon as possible any time Hayward becomes aware of maintenance or repair requirements. Hayward shall maintain liaison with Fairview's water purveyors for water needs during emergencies.

11. COST OF SERVICES: Fairview would pay the City of Hayward the following amount for all services to be provided by the City of Hayward without exception and consistent with the level of services provided in the present Contract.

- (a) For the Fiscal Year 2017/2018, the Contract price shall be the contract price for Fiscal year 2016/2017 of \$2,847,321 plus the increase in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco Bay Area (San Francisco-Oakland-San Jose) from May 2016 to April 2017. Should the increase in the aforementioned CPI be greater than 4 percent, then the maximum annual increase applied to the previous year’s contract will be 4 percent (ceiling).

For example, assume that the May 2016 to April 2017 CPI is 2.5%, then the Contract cost calculation for FY 2017/2018 shall be:

$$(\$2,847,321.00 \times 2.5\%) + \$2,847,321.00 =$$

\$71,183.00 + \$2,847,321.00 = \$2,918,504.00 as the FY 2017/2018 Contract Price.

- (b) For the Fiscal Year 2018/2019, the Contract price shall be the previous year’s contract plus the increase in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco Bay Area (San Francisco-Oakland-San Jose) from May 2017 to April 2018. Should the increase in the aforementioned CPI be greater than 4 percent, then the maximum annual increase applied to the previous year’s contract will be 4 percent (ceiling). The cost calculation for Fiscal Year 2018/2019 shall be:

FY 2017/2018 Contract price from paragraph (a) above multiplied by the 2017/2018 CPI; this total is then added to FY 2017/2018 Contract price to determine the FY 2018/2019 Contract price.

- (c) For the Fiscal Year 2019/2020, the Contract price shall be the previous year’s contract plus the increase in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco Bay Area (San Francisco-Oakland-San Jose) from May 2018 to April 2019. Should the increase in the

aforementioned CPI be greater than 4 percent, then the maximum annual increase applied to the previous year's contract will be 4 percent (ceiling).

The cost calculation for FY 2019/2020 shall be:

FY 2018/2019 Contract price from paragraph (b) above multiplied by the 2018/2019 CPI; this total is then added to the FY 2018/2019 Contract price to determine the FY 2019/2020 Contract price.

- (d) For the Fiscal Year 2020/2021, the Contract price shall be the previous year's contract plus the increase in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco Bay Area (San Francisco-Oakland-San Jose) from May 2019 to April 2020. Should the increase in the aforementioned CPI be greater than 4 percent, then the maximum annual increase applied to the previous year's contract will be 4 percent (ceiling). The cost calculation for FY 2020/2021 shall be:

FY 2019/2020 Contract price from paragraph (c) above multiplied by the 2019/2020 CPI; this total is then added to FY 2019/2020 Contract price to determine the FY 2020/2021 Contract price.

- (e) For the Fiscal Year 2021/2022, the Contract price shall be the previous year's contract plus the increase in the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco Bay Area (San Francisco-Oakland-San Jose) from May 2020 to April 2021. Should the increase in the aforementioned CPI be greater than 4 percent, then the maximum annual increase applied to the previous year's contract will be 4 percent (ceiling). The cost calculation for FY 2021/2022 shall be:

FY 2020/2021 Contract price from paragraph (d) above multiplied by the 2020/2021 CPI; this total is then added to the FY 2020/2021 Contract price to determine the FY 2021/2022 Contract price.

Fairview will pay the Contract price in an annual installment, for the preceding year, no later than April 1 of each year.

12. RECORDS AND REPORTS: Hayward shall provide Fairview with monthly reports covering monthly financial expenditures; quarterly performance measures reports, monthly alarm activities and monthly fire prevention plan check reviews, conducted within Fairview's boundaries. If Hayward does not meet performance levels in any given month, its monthly report will identify the non-compliance; provide an explanation for the non-compliance and/or a plan for corrective action. Hayward agrees to make available to Fairview during normal business hours at such location as the records are kept, its records concerning its fire budget, the cost of providing fire services, and any other records reasonably necessary to determine the costs and revenues of the Hayward Fire Department and the specific costs of providing services to Fairview under this contract. Fairview shall also be provided with advance notification of requests for new construction inspections within Fairview boundaries in order to participate in the process if appropriate.

- (a) **ANNUAL CONTRACT REVIEW:** On or before July 1 of each year during the term of the Contract, representatives from Fairview and Hayward Fire Department will meet to discuss the level and quality of service provided during the previous fiscal year, especially as it pertains to the performance metrics noted in Section 3.

13. FAIRVIEW BOARD MEETINGS: Fairview agrees to notify the Hayward Fire Chief of the time and place of its Board meetings. Hayward agrees that the Hayward Fire Chief or his/her designee shall attend all Board meetings when requested to do so by Fairview, or at any time that the Hayward Fire Chief deems necessary.

14. EARLY TERMINATION: In the event that Hayward fails to meet its service or staffing levels and fails to cure all material non-compliance within 60 days following Written Notice of Non-compliance by Fairview, the parties agree to promptly renegotiate Fairview's financial obligation as set forth in Section 11 of this Contract in order to make an equitable adjustment. If Fairview and Hayward cannot reach agreement on a renegotiated financial obligation within 90 days of the Written Notice of Non-Compliance from Fairview, Fairview may provide written notice of termination of this Contract to be effective 12 months from the date of the written notification, unless Fairview and Hayward mutually agree upon any other termination date. Fairview reserves the right to pursue any other legal remedies that may be available to it.

15. **ATTACHMENTS:** All attachments referred to in and attached to this Contract are hereby made a part of this Contract by reference and are incorporated herein.

16. **NOTICES:** Notice to the parties hereunder shall be in writing by certified mail or personal service as follows:

Fairview Fire Protection District
President, Board of Directors

Specific address to be provided for then current President of Board

City of Hayward
City Manager
777 'B' Street
Hayward, California 94541

17. **AMENDMENTS:** This Contract may not be amended except in a written document approved by the legislative bodies of both parties and executed by authorized representatives of both parties.

IN WITNESS WHEREOF, Fairview by motion, duly adopted by its Board of Directors, authorized this contract to be signed by its President of the Board and attested by its Secretary and by Hayward by resolution, duly adopted by its City Council, authorized this contract to be signed by its City Manager and attested by its Clerk on the day and year which follows:

FAIRVIEW FIRE PROTECTION DISTRICT

CITY OF HAYWARD

President of the Board

City Manager

Print Name

Print Name

RECOMMENDED BY

Fire Chief

Print Name

ATTEST:

ATTEST:

Board Secretary

City Clerk

Print Name

Print Name

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Fairview Attorney

City Attorney

Print Name

Print Name

Attachments:

- Attachment 1 – 1 page, Vehicles
- Attachment 2 – 1 page, Map of District
- Attachment 3 – Fairview Governance Policy
- Attachment 4 – Weed Abatement Standards

ATTACHMENT NO. 1

VEHICLES:

Type VI – 2008 Ford F550 4 x 4

VIN 1FDAW57R58ED28433, Hayward Corp Yard #794

2009 Type III Engine, Westmark/International

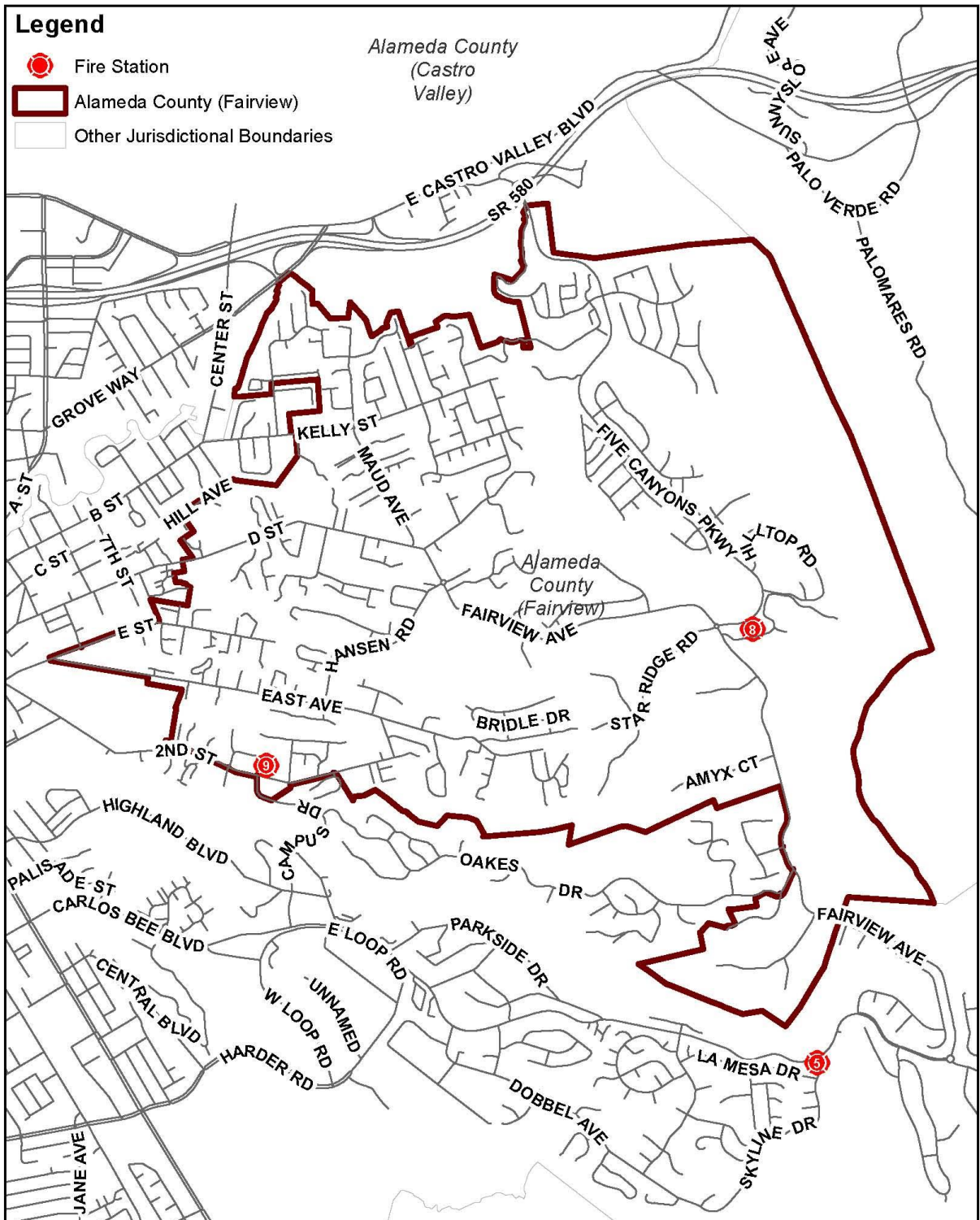
VIN 1HTWEAZNX9J108281 ,Hayward Corp Yard #795

2014/Type I Engine/Pumper, Manufacturer: Seagrave

VIN 1F9EM28T8ECST2021, Hayward Corp yard #796

ATTACHMENT NO. 2

Fairview Fire Protection District





CITY OF HAYWARD

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

File #: CONS 17-697

DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Design Workshop for the Development of a Route 238 Properties Master Development Plan and Appropriation of Funds

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) authorizing the City Manager to execute a Professional Services Agreement with Design Workshop for the development of a Route 238 Properties Master Development Plan; and appropriating \$600,000 for said agreement.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Property Map
Attachment IV	Draft Project Management Plan and Schedule



DATE: November 14, 2017

TO: City Council

FROM: City Manager

SUBJECT: Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Design Workshop for the development of a Route 238 Properties Master Development Plan and Appropriation of Funds

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) authorizing the City Manager to execute a Professional Services Agreement with Design Workshop for the development of a Route 238 Properties Master Development Plan; and appropriating \$600,000 for said agreement.

SUMMARY

Adoption of the attached resolution (Attachment II) will authorize the City Manager to execute a Professional Services Agreement with the firm of Design Workshop to prepare a Route 238 Properties Master Development Plan for the entitlement and disposition of the Route 238 properties acquired from Caltrans.

BACKGROUND

History of Caltrans Ownership

In the mid-1960s, Caltrans purchased over 400 parcels of property for the planned construction of the 238 Bypass Freeway project. In 1971, the project was stopped because of a lawsuit filed by La Raza Unida of Southern Alameda County. Caltrans abandoned the project and the parcels have remained in Caltrans ownership for the past 40 years. A portion of the parcels have been sold by Caltrans over the years, but many others remain in State ownership. In 2009, after two years of negotiations with Caltrans and numerous interest groups, the City entered into a Settlement Agreement with Caltrans and affected parties, resulting in Caltrans declaring the remaining State-owned parcels surplus.

Several of the residential parcels were sold to tenants through a City assisted First Time Homebuyers Program. Almost all the residential and a few of the commercial properties have been sold by Caltrans to private owners. Proceeds from the sales have gone into a transportation fund, which have been allocated in part to transportation projects in Hayward.

Caltrans also started selling larger commercial and undeveloped properties through its usual auction process. While this was expeditious for Caltrans, it did not consider the potential to maximize land values, and to promote quality development design that could occur through land assembly. Some parcels were being resold for speculation without being developed, and the City did not have as strong an opportunity to shape the development plans to ensure the greatest conformance with City land use policies. In 2011, the City approached Caltrans with a proposal to allow the City to assume responsibility for property disposition for undeveloped properties. After a few years of initial disinterest, Caltrans agreed to negotiate an agreement with the City that was approved by the City Council and the California Transportation Commission (CTC) in January 2016.

The Purchase and Sale Agreement with Caltrans consists of the following major elements and benefits:

- The City may buy from Caltrans ten different parcel groups for a six-year period that expires in January 2022 (See Attachment III for an aerial map of parcel groups)
- Properties that have not been resold by the City to developers can be returned to Caltrans without penalty
- During the six-year period, the City will pre-plan and partially entitle each parcel group to ensure maximum value and conformance of development plans to city land use policies and vision
- An appraisal process determines property values. These amounts will be paid to Caltrans. If the City can negotiate a higher land value on resale to developers, due to its preplanning and entitlement process, the excess proceeds will be allocated to the City
- Allows City to use purchase and sale agreements that will require the parcel to be developed and not resold for speculation
- The City has control over the public input process on proposed development concepts
- Allows the City the opportunity to plan the appropriate infrastructure upgrades needed to support the sale of the combined parcel groups and to establish infrastructure funding districts as appropriate

Three of the parcel groups (Groups 1, 2 & 10) have been offered for sale to Lyon Homes. A Purchase and Sale Agreement with Lyon Homes has been approved for Parcel Groups 1 & 10, and the sale is expected to occur this calendar year. Parcel Group 2 may be a subsequent sale to Lyon Homes. The remaining seven parcel groups are the subjects of this discussion.

Project Management Plan and Schedule

In order to dispose of the parcels pursuant to the goals discussed above, three major activities will need to be completed for each parcel group: 1) preplanning appropriate uses with partial entitlement including California Environmental Quality Act (CEQA) analysis; 2) offering the parcels for sale through a Request for Proposals (RFP) process to obtain the best offers and development plans; and 3) negotiating a Purchase and Sale agreement (PSA) for each parcel group with the selected developer. Undertaking this amount of pre-sale activity for seven parcel groups within the five years remaining on the Caltrans timeline will require a schedule

with significant milestones for the various City approval entities involved, including the City Council, Planning Commission, Council Economic Development Committee, and staff.

Attachment IV is a draft Project Management Plan and Schedule that sets forth the timing of the various activities. The schedule is based on the following assumptions:

- The schedule starts with the selection of a planning consultant team that will provide conceptual plans for five of the seven remaining parcel groups (Groups 5,6,7,8 & 9), undertake economic analysis to support the recommended uses, and prepare the appropriate CEQA analysis for approval. The product of this effort will be a Route 238 Properties Master Development Plan.
- Two parcel groups (Groups 3 & 4) are not included in the master plan as they will be sold primarily for open space through an RFP process without pre-entitlements, with an earlier time frame for disposition.
- The schedule is divided into two phases: 1) Pre-planning activities and 2) Disposition activities. The first phase is detailed as staff has a good sense of the activities. The second phase is described in general terms at this point as the work of the master plan consultant team will help determine the additional steps and timing required
- Completion of the master plan for the five parcel groups (Phase 1) is estimated in April 2019, leaving approximately three years for Phase 2 disposition activities to be completed.

The Council Economic Development Committee reviewed the Project Management Plan and Schedule on October 16 and provided comments to staff.

DISCUSSION

Consultant Request for Proposals

To prepare the master plan, staff determined that the pre-planning work would require a multi-disciplinary approach to develop the required information. Staff distributed an RFP for multi-disciplinary consultant teams, and received three responses. A committee of staff evaluated the responses and interviewed the top two firms. Design Workshop was determined to be the most qualified team to undertake the preparation of the master plan.

Consultant Scope of Work

The following summarizes the scope of work required to develop the master plan:

- Analysis of the physical constraints of each parcel group (e.g. fault lines, soil stability)
- Consideration of the market for various land uses on each parcel group
- Analysis of the appropriate development product type for each parcel group
- Preparation of conceptual plans for each parcel group
- Identification of infrastructure and transportation improvements required
- Preparation of the appropriate documents for compliance with the California Environmental Quality Act (CEQA)

- Calculation of the re-sale value of each parcel group based on the potential land uses and constraints
- Preparation of a disposition strategy for the phased sale of the parcel groups

The consultant team consists the following members:

- Design Workshop – overall project coordination and master plan
- BAR Architects – conceptual site planning
- New Economics – market analysis and parcel based land value analysis
- BKF Engineering – on and off-site infrastructure improvements requirements/costs
- Kittleson Associates – transportation impacts and improvements/costs
- LSA – CEQA analysis and report

All the team members have extensive experience with this type of assignment, and three of the firms have Hayward specific experience.

ECONOMIC IMPACT

The Caltrans parcels are currently in public ownership and are not on the tax roles. Sale of the parcels, and their ultimate development, will produce new property tax revenues for all the taxing entities. As plans are developed for each parcel group, the consultant team will estimate the new tax revenues. New development of vacant or underutilized parcels will be a catalyst for improvements of the areas surrounding the various parcel groups.

FISCAL IMPACT

The not to exceed amount for the Design Work Team Professional Services Agreement is \$597,359. The funding for the agreement will initially be provided by the General Fund with reimbursement coming upon ultimate sale of the parcels. Because this project was not included as part of the FY 2018 budget process, a new appropriation to fund a transfer from the General Fund to Capital Projects (Fund 411 Project # 05015) will be authorized with the adoption of the attached resolution. Staff believes that the entirety of this cost will be recovered and returned to the General Fund upon sale of the parcels. These processes are likely to span multiple fiscal years.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goals:

Goal 1: Improve the quality of life for residents, business owners, and community members in all Hayward Neighborhoods

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

In addition, the sale and development of several of the parcel groups will support the policies in the Economic Development Strategic Plan for the Central Mission Boulevard Corridor.

SUSTAINABILITY FEATURES

The pre-planning and RFP approach for parcel disposition will enable the City to create development plans that are consistent with the City's sustainability policies.

PUBLIC CONTACT

One of the activities in the attached Project Management Plan is public engagement as pre-planning progresses. This public input will assist in shaping the type of development sought through the developer RFP process. This activity is included in the scope of services for the Design Workshop agreement.

NEXT STEPS

The consultant team will start work in November immediately following approval of this agreement. The first task will consist of defining the environmental constraints for each parcel group.

Prepared by: Patrick O'Keeffe, 238 Property Project Manager Consultant

Recommended by: Micah Hinkle, Economic Development Manager

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH DESIGN WORKSHOP FOR THE PREPARATION OF THE ROUTE 238 PROPERTIES MASTER DEVELOPMENT PLAN IN AN AMOUNT NOT TO EXCEED \$597,359; AND APPROPRIATION OF \$600,000 FROM THE GENERAL FUND (FUND # 100) TO PROJECT # 05015. (FUND 411)

WHEREAS, the State Department of Transportation (Caltrans) purchased over 400 parcels of property in the City of Hayward for the planned construction of the 238 Bypass Freeway project, which was stopped as a result of a lawsuit filed by La Raza Unida of Southern Alameda County; and

WHEREAS, the City and Caltrans negotiated a Purchase and Sale Agreement for the City to acquire a portion of the properties from Caltrans, that was approved by the City Council and the California Transportation Commission (CTC) in January 2016; and

WHEREAS, the Purchase and Sale Agreement with Caltrans allows the City to buy from Caltrans ten different parcel groups for a six-year period that expires in January 2022; and

WHEREAS, the City will resell the properties to private developers after pre-planning and partially entitling each parcel group to ensure maximum value and conformance of development plans to city land use policies; and

WHEREAS, the City desires to enter into a professional services agreement with the consulting firm of Design Workshop to prepare a Route 238 Properties Master Development Plan, to establish the desired land uses for each parcel and analyze the environmental impacts of the proposed land uses pursuant to the California Environmental Quality Act (CEQA); now

THEREFORE, BE IT RESOLVED, the City Council hereby authorizes the City Manager to negotiate and execute a professional services agreement with Design Workshop for the preparation of the Route 238 Properties Master Development Plan in an amount not to exceed \$597,359; and

FURTHER BE IT RESOLVED, the City Council hereby approves an appropriation of \$600,000 from the General Fund (Fund # 100) to Project # 05015. (Fund 411)

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

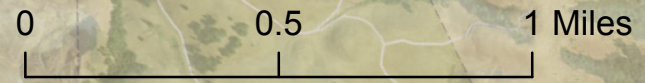
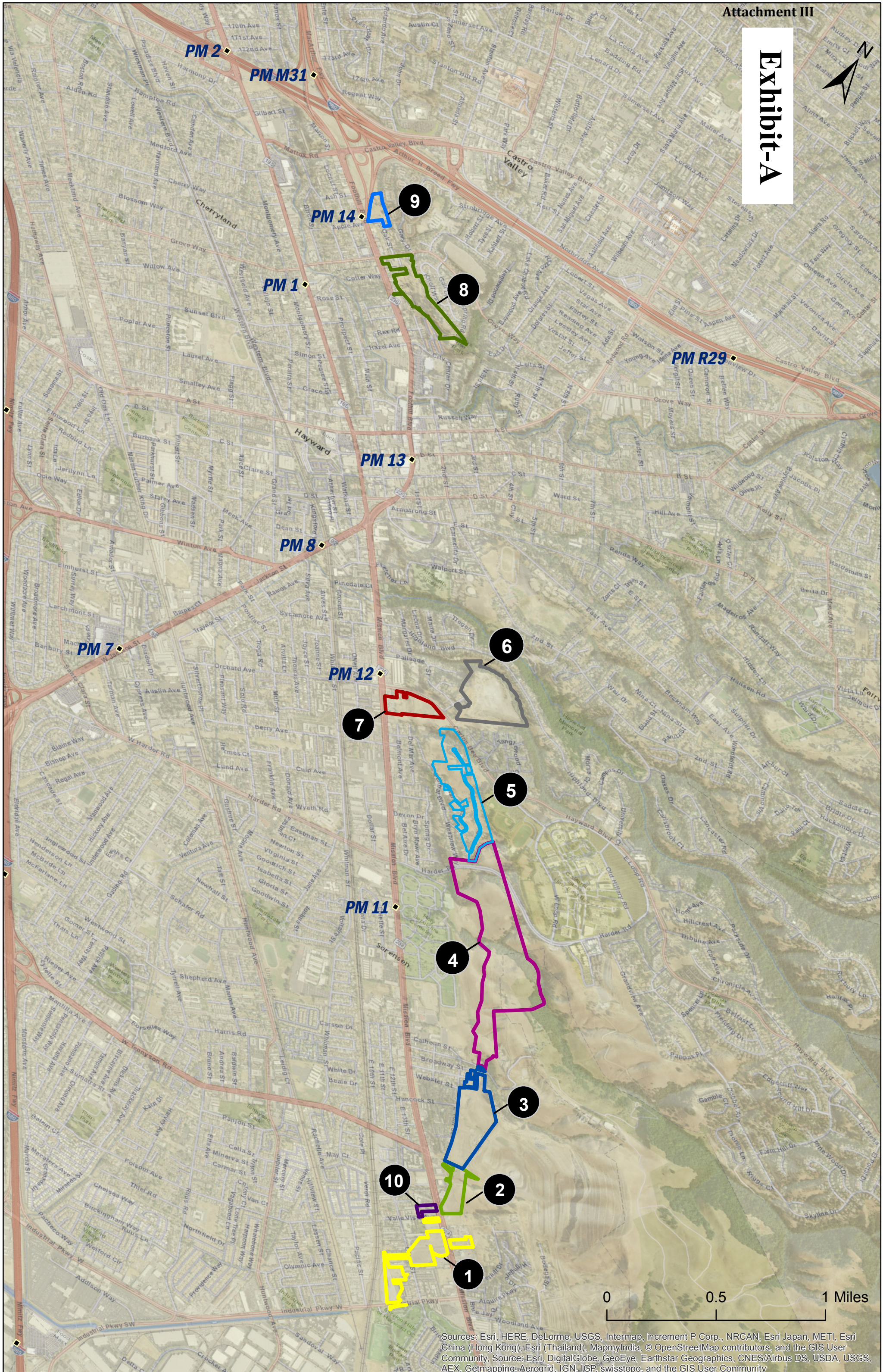
ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney for the City of Hayward

Exhibit-A



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

City of Hayward
Economic Development Management Services
Project Management Plan and Schedule
Updated October 27, 2017

Scope of Work

Project management services for the entitlement and disposition process of several former Route 238 corridor Caltrans properties.

The project approach is two-phased.

- Phase one will involve coordinating with staff to develop a report that prioritizes the 238 parcel groups for disposition; preparing a disposition schedule for each parcel grouping; and coordinating third-party contractors for environmental and site reviews.
- Phase two will include coordinating the selection of developers for each parcel group; coordinating the negotiation and approval of acquisition agreements for each parcel with Caltrans; and assisting with development entitlements and close-of-escrow for site disposition.

About the Disposition Project

The City of Hayward has need for project management services for the entitlement and disposition process of several former Route 238 corridor Caltrans properties. These properties were initially acquired by Caltrans for the purpose of constructing a new freeway alignment bypass to Route 238 in Hayward that ultimately did not move forward. The City entered into a purchase and sale agreement with Caltrans, which allowed the City to purchase the properties following an appraisal process.

The properties have been placed into 10 separate groupings by the City. The situation is different for all the properties. Some have been the subject of discussions about use, others are designated for specific projects, and others are in the process of being sold. The City's goal is to ensure the properties are tied to projects and/or development proposals that align with their priorities to the extent possible.

Tentative Schedule

Management Partners will be coordinating activities with City staff, the third-party consultant, the Council Economic Development Committee (CEDC) and community members. This schedule is dependent upon their availability and ability to engage in a timely manner as indicated in this work plan.

Phase 1: Site Analysis

Activity and Tasks	Tentative Schedule
Activity 1: Start Project and Obtain Background Information	
<ul style="list-style-type: none"> • Prepare detailed work plan • Conduct formal project kick-off meeting • Review background materials 	August 28, 2017 to October 31, 2017
Activity 2: Develop Project Management Plan and Timeline	
<ul style="list-style-type: none"> • Develop draft project management plan and timeline • Review draft project management plan and timeline • Finalize project management plan and timeline • Present project management plan and timeline to CEDC 	September 19, 2017 to October 31, 2017
Activity 3: Coordinate the Disposition of the Lyon Parcel [Parcel Group 1 and 10 – Valle Vista (Group 2 Added in the Future)]	
<ul style="list-style-type: none"> • Review purchase agreements • Coordinate close of escrow for acquisition 	September 11, 2017 to June 5, 2018
Activity 4: Coordinate Sale for Parcel Groups 3 and 4	
<ul style="list-style-type: none"> • Review background information of parcel constraints • Draft RFP for staff review • Facilitate staff review meeting for RFP • Release RFP for responses • Evaluate proposals and select buyer • Present PSA to City Council for approval • Close escrow for parcel sales 	October 31, 2017 to March 31, 2018
Activity 5: Coordinate Third Party Contractors for Parcel Groups 5, 6, 7, 8, and 9	
<ul style="list-style-type: none"> • Assist with the selection of a land use consultant and develop scope of work • Present third-party contract to Council for approval • Schedule and facilitate community engagement • Consultant prepares documents • Review recommendations; provide comments to consultant on Master Plan and Initial Study • Public review of CEQA • Prepare CEQA response to comments and finalize CEQA document • Present report and CEQA to Planning Commission for approval • Present report to Council • Finalize report 	September 11, 2017 to November 1, 2018
Activity 6: Prepare Disposition Schedule for Parcel Groups 5, 6, 7, 8, and 9	



Activity and Tasks	Tentative Schedule
<ul style="list-style-type: none"> • Review parcel groups and identify challenges • Determine schedule for each parcel group • Develop draft disposition schedule • Review draft disposition schedule • Finalize disposition schedule • Present disposition schedule to CEDC • Finalize disposition schedule • Present to disposition schedule to Planning Commission • Present disposition schedule to Council 	<p style="text-align: center;">July 2018 to December 2018</p> <p>Note: Deadlines in Activity 6 are dependent upon completion of analysis by third party consultant</p>

Phase 1 Deliverable Schedule (Tentative)

Deliverable	Due Date
Work Plan for Phase 1	September 25, 2017
Project Management Plan	October 16, 2017
RFP for Parcel Groups 3 and 4	November 16, 2017
Land-use and Parcel Group Prioritization Report for Parcel Groups 5, 6, 7, 8, and 9 (provided by third-party consultant)	November 1, 2018
Disposition Schedule for Parcel Groups 5, 6, 7, 8, and 9	November 2018

Phase 2: Property Marketing and Disposition (In-brief)

Time estimate: Approximately one year upon completion of first phase for each parcel group

1. Develop strategy for order of property disposition, with parcels 5,6 and 7 as second group and parcels 8 and 9 as third group
2. Draft requests for proposals for individual properties or groups of properties.
3. Prepare content for and coordinate preparation of marketing materials for request for proposals (RFP) distribution.
4. Coordinate RFP distribution, and coordinate analysis of responses.
5. Coordinate selection of developers for each property and negotiate purchase and sale agreements.
6. Coordinate negotiation and approval of acquisition agreements for each parcel with potential purchasers and developers.
7. Assist developers and staff with development entitlements.
8. Assist with close of escrow for site disposition.

Deliverables

- a. Work plan for Phase 2
- b. Updated master schedule (item b in Phase 1 above)
- c. Strategy document for order of property disposition
- d. Requests for proposals
- e. Marketing materials
- f. Monthly updates to you and the staff committee
- g. Other written updates as requested by the City





Economic Development Management Services
Route 238 Bypass Corridor Property Disposition
Tentative Project Schedule
August 2017 to January 1, 2020¹

	Activity	Duration	Start	End	Aug. 2017	Sept. 2017	Oct. 2017	Nov. 2017	Dec. 2017	Jan. 2018	Feb. 2018	March 2018	April 2018	May 2018	June 2018	July 2018	Aug. 2018	Sept. 2018	Oct. 2018	Nov. 2018	Dec. 2018	Jan. 2019	Feb. 2019	March 2019	April 2019	May 2019	June 2019	July 2019	Aug. 2019	Sept. 2019	Oct. 2019	Nov. 2019	Dec. 2019	Jan. 2020	
1	Phase 1: Start Project and Obtain Background Information	64	8/28/2017	10/31/2017	█	█	█																												
2	Phase 1: Develop Project Management Plan and Timeline	42	9/19/2017	10/31/2017		█	█																												
3	Phase 1: Coordinate the Disposition of the Lyon Parcel	267	9/11/2017	6/5/2018		█	█	█	█	█	█	█	█	█	█																				
4	Phase 1: Coordinate Sale for Parcel Group 3 and 4	151	10/31/2017	3/31/2018				█	█	█	█																								
5	Phase 1: Coordinate Third Party Contractors for Parcel Groups 5, 6, 7, 8, and 9	416	9/11/2017	11/1/2018		█	█	█	█	█	█	█	█	█	█	█	█	█	█																
6	Phase 1: Prepare Disposition Schedule for Parcel Groups 5, 6, 7, 8, and 9	182	7/2/2018	12/31/2018											█	█	█	█	█	█															
7	Phase 2: Property Marketing and Disposition	365	1/1/2019	1/1/2020																	█	█	█	█	█	█	█	█	█	█	█	█	█	█	

¹Disposition and sale of all related Caltrans properties to third parties must be completed by January 20, 2022, unless the term is extended. Current schedule provides buffer to accommodate associated project delays.



CITY OF HAYWARD

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

File #: CONS 17-701

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT

Resolution Authorizing the City Manager to Negotiate and Execute New Land Lease Agreements for Three Parcels of Land at Hayward Executive Airport

RECOMMENDATION

That Council approves a resolution (Attachment II) authorizing the City Manager to negotiate and execute new land leases with Ramesta Hospitality, LLC and Mahabal Hospitality, LLC for three parcels of land at the Hayward Executive Airport.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Site Map of Parcel Locations



DATE: November 14, 2017

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Resolution Authorizing the City Manager to Negotiate and Execute New Land Lease Agreements for Three Parcels of Land at Hayward Executive Airport

RECOMMENDATION

That Council approves a resolution (Attachment II) authorizing the City Manager to negotiate and execute new land leases with Ramesta Hospitality, LLC and Mahabal Hospitality, LLC for three parcels of land at the Hayward Executive Airport.

BACKGROUND

Over the past several years, staff developed a plan to market non-aeronautical parcels on Airport property, with a primary focus on attracting a hotel chain for either available Airport parcels or other City parcels. Recently, the City was approached by a developer who expressed an interest in three parcels for the potential development of two hotels.

DISCUSSION

Attachment III illustrates the location of the parcels on Skywest Drive and Hesperian Boulevard. The Skywest Drive parcel is approximately 164,000 square feet, while the other proposed development on Hesperian would comprise two parcels that total more than 160,000 square feet. Both hotels are nationally franchised brands and each contain the following features and amenities:

- A minimum of 120 rooms;
- A banquet facility that seats approximately 150 persons and can be divided into smaller rooms;
- A swimming pool;
- A nationally-branded, stand-alone 6,000 square feet restaurant; and
- A small, ancillary retail store

Other key elements in the lease include a 50-year lease term for each property as well as a requirement to maintain a high standard of quality and provision of excellent customer service. Furthermore, it is understood by both parties that most employees (approximately 80%) at each hotel will be local hires.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategy is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work, and play for all. This item supports the following goal and objectives:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 1: Increase neighborhood safety and cohesion.

Objective 2: Foster a sense of place and support neighborhood pride.

ECONOMIC & FISCAL IMPACTS

The proposed leases take into consideration the amount of revenue to be attributed to the developer before, during, and after construction. Similar to the process utilized during the construction of Meridian's FBO facilities, a phased-in approach has been agreed upon as highlighted below; the amounts noted are per property:

- Lease term will be for 50 years, with the possibility of two ten-year extensions
- Lease payment for first year upon agreement execution: \$52,500 (\$13,125 in cash and \$39,375 in amortization); would continue until receipt of the building permit or at one year, whichever is earlier.
- Lease payment for second year upon agreement execution: \$105,000 (\$26,250 in cash and \$78,750 in amortization); would commence upon receipt of the building permit and until issuance of Certificate of Occupancy (CO) or at two years, whichever is earlier.
- Annual lease payment for years one through four after the CO: \$239,531 (\$210,000 for the rent and \$29,531, which represents one quarter of the amortized costs incurred during the first two years before the CO is received).

- Annual lease payment for year five after the CO will be \$210,000 for the rent, plus a CPI-related increase of 12% max.
- The rent will be adjusted by the same CPI amount of up to 12% every five years thereafter for the duration of the agreement.

Staff estimates that the project could generate as much as \$500,000 annually per site from new transient occupancy and sales tax as well as an increased assessed valuation and corresponding increase to property tax revenues. All of the revenues discussed in this paragraph are a direct benefit to the City's General Fund.

SUSTAINABILITY FEATURES

The Airport is strongly committed to developing projects that are environmentally responsible. Staff will ensure that all plans proposed by the developer incorporate features that are in line with the City's sustainability guidelines.

PUBLIC CONTACT

This topic was discussed at the Council Airport Committee meeting of October 12, 2017, with unanimous support expressed for the project. CAC recommended this item be presented to the Council for consideration and approval.

NEXT STEPS

Fall 2018	Complete Design
Fall/Winter 2019	Complete Construction

Prepared by: Doug McNeeley, Airport Manager

Recommended by: Morad Fakhrai, Director of Public Works

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17- ____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE NEW LAND LEASE AGREEMENTS FOR THREE PARCELS OF LAND AT HAYWARD EXECUTIVE AIRPORT

WHEREAS, the City of Hayward (“City”) owns and operates the Hayward Executive Airport; and

WHEREAS, the City wishes to lease certain property on the Airport; and

WHEREAS, Ramesta Hospitality, LLC and Mahabal Hospitality, LLC have expressed interest in three parcels consisting of approximately 164,000 square feet, 81,000 square feet, and 80,000 square feet on the north side of the Airport; and

WHEREAS, as there is no other formal interest in the parcels at this time, staff recommends that the City enter into land leases with Ramesta Hospitality, LLC and Mahabal Hospitality, LLC; and

WHEREAS, the Federal Aviation Administration permits airport sponsors to enter into long-term leases by negotiation or solicitation.

NOW, THEREFORE, BE IT RESOLVED, that the City Manager is authorized to negotiate and execute land leases with Ramesta Hospitality, LLC and Mahabal Hospitality, LLC for three parcels on the Airport, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

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

1 Parcel
163,957 sq ft

2 Parcels
#1 = 80,570 sq ft
#2 = 79,977 sq ft



CITY OF HAYWARD

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

File #: WS 17-053

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT

Measure C Sales Tax Initiative - Annual Report

RECOMMENDATION

That Council reviews and provides feedback on the City's Measure C Annual Report.

ATTACHMENTS

Attachment I Staff Report

Attachment II Measure C: 20-Year Forecast



DATE: November 14, 2017
TO: Mayor and City Council
FROM: Director of Finance
SUBJECT Measure C Sales Tax Initiative - Annual Report

RECOMMENDATION

That Council reviews and provides feedback on the City's Measure C Annual Report.

BACKGROUND

On June 3, 2014, the voters of the City of Hayward passed Measure C to create a District Sales Tax that increased the City's Sales and Use Tax by half a percent for twenty years, through October 1, 2034. Based on actual revenues received to date, staff estimates that the District Sales Tax is generating more than the projected \$13 million annually in revenue.

This District Sales Tax is a general tax and considered discretionary in nature. Council has historically used these funds to address some of the ongoing operating and capital priorities consistent with the uses outlined when the Council adopted a resolution placing the measure on the ballot in 2014. The ongoing service-related priorities include public safety (particularly police services), illegal dumping, litter control, and graffiti abatement. Some of the priority capital projects include the construction of the City's new 21st Century Library and Community Learning Center, fire station retrofits and improvements, rehabilitation and expansion of the existing fire training center, as well as extensive street improvements.

On September 30, 2015, the City issued Certificates of Participation (COPs) for \$67.5 million to fund the capital projects listed above. Debt Service for the COPs is secured and paid by the District Sales Tax revenue. Annual debt service payments for the COPs range from \$2.9 to \$5.4 million annually and are committed for the next twenty years.

DISCUSSION

Measure C Performance

The table below shows revenue and expenditure activity related to the District Sales Tax for FY 2016 and FY 2017.

	FY 2016 Actual	FY 2017 Projected Actuals
Revenues		
Measure C District Sales Tax	\$ 13,436,227	14,009,387
Other Revenues (Interest)		141,452
Total Revenues	13,436,227	14,150,839
Expenditures		
Capital		
Library/ Learning Center	10,607,338	17,372,241
Fire Facilities Design	930,859	1,285,242
Fire Station 1		358,293
Fire Station 2		587,183
Fire Station 3		472,826
Fire Station 4		114,900
Fire Station 5		75,973
Fire Station 6 & Regional Training Center		681,043
Street Rehabilitation	490,845	10,554,232
Street Slurry Seal		
Debt Service	2,326,436	6,600,000
Operating		
Personnel	854,997	2,185,650
Other Operating	423,087	209,485
Total Expenditures	15,633,562	40,497,066
Beginning Fund Balance	7,884,501	71,476,963
Annual Surplus/Shortfall	(2,197,335)	(26,346,227)
Proceeds from Issuance of COPs*	65,789,797	
Ending Fund Balance	\$71,476,963	\$ 45,130,736

* The Difference between the \$67.5 million in COPs issued and the \$65.8 million shown relate to the costs of issuance for the COPs

Operating Expenditures:

FY 2017 Measure C was used to fund ongoing operating personnel expenditures in the total amount of \$2.2 million (Maintenance Services Department (\$535,091) and Police Department (\$1.65 million)), an increase of \$1.3 million over FY 2016 actuals. This \$1.3 million increase in personnel cost is related to the hiring of five positions in FY2017 within the Police Department (three Police Officers, one Communications Supervisor, and one Call Taker). Other operating expenditures include utilities, supplies and services, and internal staff charges, and totaled \$209,485, which is a decrease of \$213,602 over FY 2016. The decrease in operating expenditures from FY 2016 to FY 2017 is primarily attributed to the one-time expense for two maintenance vehicles and caller taker equipment purchased in FY 2016. Operating expenditures totaled approximated \$2.4 million in FY2017.

Capital Expenditures:

FY 2017 District Sales Tax related to capital expenditures totaled \$31.5 million, a significant increase from FY 2016 where capital expenditures totaled \$12 million. The significant drivers of FY 2017 capital expenditures include: design and construction of the City's 21st Century Library and Community Learning Center (\$17M), design of improvements for Fire Station Nos. 1 - 5 (\$1.3M) and city-wide street infrastructure improvement projects (\$10.6M). A large portion of these FY 2017 capital expenditures were funded using the proceeds from the COPs mentioned above.

Measure C - FY 2018

The table below shows projected revenue and expenditure activity related to the District Sales Tax for FY 2018.

	FY 2017 Projected Actual	FY 2018 Budget
Revenues		
Measure C District Sales Tax	14,009,387	\$ 14,207,509
Other Revenues (Interest)	141,452	-
Total Revenues	14,150,839	14,207,509
Expenditures		
Capital		
Library/ Learning Center	17,372,241	33,500,421
Fire Facilities Design	1,285,242	686,008
Fire Station 1	358,293	1,141,707
Fire Station 2	587,183	2,110,513
Fire Station 3	472,826	1,627,173
Fire Station 4	114,900	2,083,700
Fire Station 5	75,973	1,624,027
Fire Station 6 & Regional Training Center	681,043	8,981,992
Street Rehabilitation	10,554,232	954,923
Street Slurry Seal		
Debt Service	6,600,000	2,730,688
Operating		
Personnel	2,185,650	2,796,120
Other Operating	209,485	331,033
Total Expenditures	40,497,066	58,568,305
Beginning Fund Balance	71,476,963	45,130,736
Annual Surplus/Shortfall	(26,346,227)	(44,360,796)
Ending Fund Balance	\$45,130,736	\$ 769,940

The FY 2018 personnel budget includes a total of \$2.8 million (Maintenance Services Department (\$566,267) and Police Department (\$2.2 million)), an increase of \$610,471 over FY 2017 projected actuals. Other operating expenditures include utilities, supplies and services, and internal staff charges, and totaling \$331,033, which is an increase of \$121,548 over FY 2017 projected actual.

Budgeted FY 2018 capital expenditures total \$52.7 million (this amount assumes that approved capital budgeted amounts not spent in previous fiscal years carry forward into FY 2018), an increase of \$21.2 million over FY 2017 projected actuals. Measure C funded capital

projects include the completion of the 21st Century Library and Community Learning Center (Phase 1), completion of improvements at Fire Stations 1 through 5, and the design of Fire Station 6 & Regional Training Center, as well as street infrastructure improvements throughout the City. Below is a status update on these capital projects.

Measure C Funded Capital Improvement Projects

21st Century Library and Community Learning Center

The 21st Century Library and Community Learning Center will serve as an invaluable asset to the Hayward community. Work on the 21st Century Library and Community Learning Center began with the selection of an architect in 2007, and construction plans completed in January 2014. Construction began in January 2016. The estimated project cost is \$65,680,000.

The \$52,550,000 construction contract is being split into two phases. Phase 1 is construction of a sixty-one foot tall, three-story, 58,000 square foot, net zero energy building with a LEED platinum energy efficiency rating. Phase 2 is the demolition of the former library building and completion of the park improvements. Staff anticipates that Phase 1 will be complete by May 2018, with Phase 2 anticipated to be complete by December 2018. The overall project is approximately 60% complete.

Fire Stations 1 through 5 Improvements

This project involves considerable renovations of Fire Stations 1-5. Substantial improvements include seismic retrofit, energy efficient buildings, quicker call response time, and accessibility upgrades. Design work was completed in December 2016 and construction commenced in April 2017. Staff anticipates that the project will be complete by May 2018.

Roads / Street Improvements

Measure C funds were used for two projects in the Roads/Street Improvements program. The FY 2016 Pavement Preventive Maintenance and Resurfacing Project contract was awarded in May 2016. The project provided new asphalt surfaces and minor roadway repairs on 212 street segments with a budget of \$4,500,000. The FY 2016 Pavement Rehabilitation Project contract was awarded in June 2016. The project provided more intensive roadway repairs on 100 street segments with a budget of \$14,405,000. The project was funded from a combination of funding sources (i.e., Gas Tax, Measure B & BB), including \$7,380,000 from Measure C. These projects also included new and upgraded curb ramps, and new striping for lane delineation, crosswalks, and bike lanes. With the completion of these two projects, the City's average Pavement Condition Index (PCI) for all City streets increased from sixty-six (66) to seventy (70). However, without continued investments at a similar funding level, it is unlikely that the City will maintain a PCI of 70 for very long.

Future CIP – Fire Station 6 and Fire Training Center Improvement

This project will replace the existing Fire Station 6 and Fire Training Center with a new Fire Station 6/Classroom Building, Apparatus Building, Training Tower, Burn Building, Storage Building, Hangar Building, USAR Structure and Parking Lot, and an alternate design for an Outdoor Classroom, BART Station, and Entry Canopy. Design work is expected to be complete

by June 2018, with construction to commence in October 2018. Staff anticipates that the project will be complete by December 2019.

Staffing

A portion of the Measure C funds are allocated for positions within the Maintenance Department and Police Departments. Since the passing of Measure C, the City has allocated funds for 20 Full-Time Equivalent (FTE) positions. The table below lists the positions that are authorized and budgeted for in FY 2018, as well as the status of each position. The green shading depicts the positions budgeted within the Maintenance Department; while the blue shading denotes the positions budgeted in the Police Department.

Positions	Authorized	Budgeted	Filled	Vacant
Grounds Keeper I / Laborer	2.0	2.0	2.0	0.0
Maintenance Worker / Laborer	2.0	2.0	2.0	0.0
Maintenance Leader	1.0	1.0	1.0	0.0
Police Officer	3.0	3.0	3.0	0.0
Lieutenant	1.0	1.0	1.0	0.0
Crime Analyst	1.0	1.0	1.0	0.0
Certified Latent Print Examiner	1.0	1.0	1.0	0.0
Communications Supervisor	1.0	1.0	1.0	0.0
Call Taker	8.0	8.0	2.0	6.0
TOTAL FTE	20.0	20.0	14.0	6.0

Currently, there are six vacancies among the 20 FTEs authorized and budgeted in FY 2018. All six vacancies are for the Call Taker classification. While the table above is an illustration of the current fiscal year, the City has historically experienced high vacancy rates for the Call Taker position. Since the passing of Measure C, four out of the six positions have remained vacant, while the remaining two positions have experienced high turnover rates.

NEXT STEPS

Staff will continue to focus on the completion of current and future Capital Improvement Projects, and look for ways to appropriately and effectively utilize revenues to fulfill the promises of Measure C. Additionally, as discussions regarding the City's long term financial health continue, staff will present information and options to Council as it relates to the use of surplus Measure C funds.

Prepared and Recommended by: Nicole Gonzales, Budget Officer
 Dustin Claussen, Director of Finance
 Morad Fakhrai, Director of Public Works

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager

Updated November 2017

Measure C 20-Year Plan																				
Fund Performance Forecast																				
10-Year Ref.	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Fiscal Year	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031	FY 2032	FY 2033	FY 2034
Revenues																				
Measure C	8,090,470	13,436,227	14,150,839	14,207,509	14,419,941	14,737,368	15,054,691	15,377,146	15,702,046	16,033,429	16,193,763	16,355,701	16,519,258	16,684,451	16,851,295	17,019,808	17,190,006	17,361,906	17,535,525	17,710,880
Bond Issuance		65,789,797																		
Other Partnering Contributors					13,000,000	13,500,000														
Total Revenues	8,090,470	79,226,024	14,150,839	14,207,509	27,419,941	28,237,368	15,054,691	15,377,146	15,702,046	16,033,429	16,193,763	16,355,701	16,519,258	16,684,451	16,851,295	17,019,808	17,190,006	17,361,906	17,535,525	17,710,880
Expenditures																				
Capital Expenditures																				
Library/Learning Center		10,607,338	17,372,241	33,500,421																
Fire Facilities Design		930,859	1,285,242	686,008																
Fire Station 1			358,293	1,141,707																
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Fire Station 3			472,826	1,627,173																
Fire Station 4			114,900	2,083,700																
Fire Station 5			75,973	1,624,027																
Fire Station 6			681,043	8,981,992	3,000,000	2,000,000														
Fire Training Academy					26,400,000	18,758,008														
Street Rehabilitation		490,845	10,554,232	954,923						2,000,000								2,000,000		
Street Slurry Seal																				
Police Building Rehab									4,000,000	1,000,000										
Other Projects										1,000,000	4,000,000		4,000,000	4,000,000	4,000,000					
Subtotal	-	12,029,042	31,501,932	52,710,464	29,400,000	20,758,008	-	-	4,000,000	4,000,000	4,000,000	-	4,000,000	4,000,000	4,000,000	-	-	2,000,000	-	-
Operating Expenditures																				
Police Services		569,836	1,793,135	2,409,500	2,578,165	2,758,636	2,951,741	3,158,362	3,379,448	3,616,009	3,869,130	4,139,969	4,429,767	4,739,850	5,071,640	5,426,655	5,806,520	6,212,977	6,647,885	7,113,237
Maintenance Services	205,969	708,249	601,999	717,653	767,889	821,641	879,156	940,697	1,006,546	1,077,004	1,152,394	1,233,062	1,319,376	1,411,733	1,510,554	1,616,293	1,729,433	1,850,494	1,980,028	2,118,630
Subtotal	205,969	1,278,084	2,395,134	3,127,153	3,346,054	3,580,277	3,830,897	4,099,060	4,385,994	4,693,013	5,021,524	5,373,031	5,749,143	6,151,583	6,582,194	7,042,947	7,535,954	8,063,471	8,627,914	9,231,867
Debt Service Expenditures																				
		2,326,436	6,600,000	2,730,688	5,426,563	5,424,813	5,420,938	5,419,563	5,415,313	5,407,938	5,425,488	5,419,188	5,436,938	5,434,838	5,434,063	5,426,800	5,424,913	5,420,657	5,379,350	5,372,350
Total Expenditures	205,969	15,633,562	40,497,067	58,568,304	38,172,616	29,763,098	9,251,834	9,518,622	13,801,306	14,100,951	14,447,012	10,792,218	15,186,081	15,586,421	16,016,256	12,469,747	12,960,866	15,484,127	14,007,264	14,604,217
Annual Cash Flow	7,884,501	63,592,462	(26,346,228)	(44,360,795)	(10,752,675)	(1,525,730)	5,802,857	5,858,524	1,900,740	1,932,478	1,746,752	5,563,483	1,333,177	1,098,030	835,039	4,550,060	4,229,140	1,877,779	3,528,262	3,106,663
Cumulative Fund Balance	7,884,501	71,476,963	45,130,736	769,940	(9,982,735)	(11,508,465)	(5,705,608)	152,916	2,053,656	3,986,134	5,732,886	11,296,368	12,629,545	13,727,575	14,562,614	19,112,674	23,341,814	25,219,593	28,747,855	31,854,518



CITY OF HAYWARD

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

File #: PH 17-100

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT

Proposed subdivision and construction of 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use on a 2.7-acre project site located at 26601 Mission Boulevard (west side, north of Sorenson Road) Assessor Parcel Number (APN) 452-0036-30-05, requiring: 1) approval of an amendment to South Hayward BART/Mission Boulevard Form-Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max); 2) Site Plan Review; 3) Warrants for: (a) roof pitch, (b) excess parking in the T4 zone, (c) glazing less than 30% for the first story along Mission Boulevard, and (d) parking within the Layer 2 setback area; 4) Vesting Tentative Map 8335 associated with the subdivision; and 5) Mitigated Negative Declaration. KB Home (Applicant) and DNS Capital Partners LLC/Robert Telles (Owner/Applicant). Application No. 2016-01022

RECOMMENDATION

That the City Council:

Option #1: Adopts a Resolution rejecting the Mitigated Negative Declaration and denying the proposed project with all related applications. (Attachment II)

Option #2

(1) Introduces the Ordinance amending the South Hayward BART/Mission Boulevard Form- Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max) (Attachment IV); and

(2) Adopts a Resolution:

- Adopting the Mitigated Negative Declaration (MND); and
- Approves the applications for Site Plan Review; warrants for roof pitch, excess parking, glazing

less than 30% for the first story along Mission Boulevard, and parking within the Layer 2 setback; and Vesting Tentative Map 8335 (subject to City Council approval of the Final Map) to subdivide and construct 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use based on the analysis set forth in this report including Findings (Attachment III) subject to the revised Conditions of Approval (Attachment III - Exhibit A).

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution of Denial
Attachment III	Resolution of Approval with Exhibit A Conditions of Approval
Attachment IV	Ordinance
Attachment V	Applicant's Proposal
Attachment VI	City Council Minutes of 10-03-2017



DATE: November 14, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT: Proposed subdivision and construction of 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use on a 2.7-acre project site located at 26601 Mission Boulevard (west side, north of Sorenson Road) Assessor Parcel Number (APN) 452-0036-30-05, requiring: 1) approval of an amendment to South Hayward BART/Mission Boulevard Form-Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max); 2) Site Plan Review; 3) Warrants for: (a) roof pitch, (b) excess parking in the T4 zone, (c) glazing less than 30% for the first story along Mission Boulevard, and (d) parking within the Layer 2 setback area; 4) Vesting Tentative Map 8335 associated with the subdivision; and 5) Mitigated Negative Declaration. KB Home (Applicant) and DNS Capital Partners LLC/Robert Telles (Owner/Applicant). Application No. 2016-01022.

RECOMMENDATION

That the City Council:

Option #1

Adopts a Resolution rejecting the Mitigated Negative Declaration and denying the proposed project with all related applications. (Attachment II)

Option #2

(1) Introduces the Ordinance amending the South Hayward BART/Mission Boulevard Form-Based zoning code (Article 24) to allow residential density transfer/averaging among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max) (Attachment IV); and

(2) Adopts a Resolution:

- Adopting the Mitigated Negative Declaration (MND); and
- Approves the applications for Site Plan Review; warrants for roof pitch, excess parking, glazing less than 30% for the first story along Mission Boulevard, and parking within the Layer 2 setback; and Vesting Tentative Map 8335 (subject to City Council approval of the Final Map) to subdivide and construct 35 townhomes and a mixed-use building of 39 apartment units with 1,020 square feet of ground floor commercial use based on the analysis set forth in this report including Findings (Attachment III) subject to the revised Conditions of Approval (Attachment III – Exhibit A).

SUMMARY

On [October 3, 2017](#), the City Council reviewed the above-referenced application based on a recommendation of approval by the Planning Commission made at its meeting of [September 14, 2017](#). The City Council voted unanimously to continue the item and directed staff to present findings for denial of the proposed project. Since that meeting, the applicant has submitted a proposal, Attachment V, to amend their project to address the concerns expressed by the Council during the October 3 public hearing. Staff is providing both the requested Findings for Denial as well as the project alternative for the Council's consideration.

BACKGROUND AND DISCUSSION

The City Council discussed the matter on October 3 after hearing the presentation, and taking testimony from the applicant and the public. There were several issues and concerns.

1. Economic Development - The primary issue of concern by the City Council was the relationship of the project site to the City's "[Economic Development Strategic Plan \(FY 2014 – FY 2018\)](#)." The Plan identifies Opportunity Sites in Hayward's industrial areas and Catalyst Sites in Hayward's Service and Retail areas which are shown on pages 22 through 24 of the Plan. The purpose of identifying the sites is to focus limited city resources on the areas that will provide the most immediate positive economic results. Haymont Center is designated as one of those Catalyst Sites.

Key Retail Areas and Catalyst Sites such as Haymont Center are shown on page 24 of the Plan. The Catalyst Sites in this Plan were selected using the following criteria: 1) the potential impact on the associated retail area; 2) high visibility; 3) vacant or underutilized parcel/building; 4) single or few owners; and 5) acreage.

The City's Economic Development Strategic Plan lists six goals for Service & Retail uses. The City Council questioned the degree of the proposed project's conformance with the following goals of that Plan:

- SR2: Recruit and secure new businesses in priority locations/industries that are a good fit for Hayward, and
 - SR4: Create proactive, site-specific land use policies that clearly convey information to potential businesses.
2. **Zoning** - Also expressed by the Council was the belief that the proposed uses do not reflect the objectives of the T4 Urban General transect zone of the South Hayward Bart/Mission Boulevard Form-based zoning code, especially given the number of requested warrants.
 3. **Land Use** - The Mixed-Use land use designations in the General Plan, including Sustainable Mixed Use, envision a balance of residential uses and retail/service/employment options. The distribution of non-residential use for the proposed project represented an imbalance given previous use of the site as 100% commercial retail.
 4. **Sustainability** - The number of sustainable amenities, such as solar power and electric vehicle charging stations, seemed inadequate and not in conformance with the designated land use of Sustainable Mixed Use.
 5. **Affordable Housing** - Under the Affordable Housing Ordinance, residential developers are given the option of providing the required number of units or may opt to pay an in-lieu fee. Recent discussion with the Council has been to develop better requirements for providing actual units as a preference or priority over in-lieu payments.

If the City Council wishes to deny the project, a Resolution with Findings for Denial is included as Attachment II.

Current Proposal/Modifications

To satisfy the concerns expressed at the previous hearing held on the proposed project, the Applicant has had discussions with staff and has proposed to revise or modify the proposal (See Attachment V). A synopsis of the applicant’s modifications is as follows:

1. **Affordable Housing** – The Applicant will execute an Affordable Housing agreement to provide 6 Affordable Housing Units on the project site. The combination of ownership and rental units remains to be determined.
2. **Townhome Floor Plans** – The townhome floor plans will be revised to include, as an option, at least one floor plan that incorporates Universal Design Principles to accommodate an individual with physical limitations with such options available at the ground floor level.
3. **Commercial Use** – The mix of uses within the apartment/mixed use structure will be redistributed to accommodate a total of approximately 2,500 square feet of non-

residential/commercial use by reconfiguring certain areas shown as dedicated storage space on the second floor. This figure would include the 1,020 square feet of commercial use on the ground floor along Mission Boulevard shown with the original plans.

4. **Community Benefit** – The Applicant will make a Community Benefit payment of \$40,000 for public facilities and/or services to be determined as needed by the City for public art or any renovation of any public space or park. This payment would be made to help offset the described deficiencies of the proposed project and the site limitations including the limited replacement of commercial space, limited opportunities for onsite outdoor group open space, and lack of public art.
5. **Sustainability**
 - a. Solar Energy - The townhomes will be redesigned to accommodate solar energy in excess of the limited solar facilities anticipated with the original submittal.
 - b. Electric Vehicle Charging Station(s) – The Applicant has stated that they would provide capability to facilitate future installation of electric vehicle charging in the parking spaces for multi-family residential units. At least one of the spaces must be accessible.

Should the City Council determine that the applicant’s proposed modifications are sufficient and the proposed project can be approved, Attachment III provides findings for approval. Those Findings have been enhanced to reflect the applicant’s proposal and included with the attachment is Exhibit A, Conditions of Approval that have also been augmented and enhanced (revised Condition #138 and new Conditions of approval #147-150) to assure provision of the items referenced in the applicant’s modified proposal.

FISCAL AND ECONOMIC IMPACTS

The fiscal and economic impacts of this project were discussed in the October 3 staff report for this item.

PUBLIC CONTACT

This is a continued public hearing and no further notification was required. No additional comments from the public were received.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving, promising place to live, work and play for all. This item supports the following goals and objectives:

- Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 4: Create resilient and sustainable neighborhoods.

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

NEXT STEPS

If the City Council determines that the project is to be denied, a Resolution (Attachment II) is provided which includes findings for denial.

If the City Council sees fit to approve the project with the modifications suggested by the applicant, the Ordinance approving the amendment to the South Hayward BART/Mission Boulevard Form-Based Code will return to the City Council for a second reading. The Site Plan Review, Warrants and Vesting Tentative Map 8335 would be approved subject to adoption of the Ordinance. The Final Map is subject to City Council review and approval, after which construction permit applications will be processed and permits issued to ultimately allow for construction of the project (Attachment III).

Prepared by: Mike Porto, Consulting Planner

Recommended by: Stacey Bristow, Interim Development Services Director

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-_____

Introduced by Councilmember _____

RESOLUTION REJECTING A MITIGATED NEGATIVE DECLARATION AND DENYING THE PROPOSED PROJECT FOR A SITE PLAN REVIEW, FOUR WARRANTS FROM PROVISIONS UNDER THE SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE, VESTING TENTATIVE TRACT MAP 8335, APPLICATION NO. 2016-01022 FOR THE SUBDIVISION AND CONSTRUCTION OF 35 TOWNHOME UNITS AND A MIXED USE BUILDING OF 39 MULTI-FAMILY UNITS AND 1,020 SQUARE FEET OF COMMERCIAL SPACE ON A 2.7-ACRE (2.14-ACRE NET) PROJECT SITE LOCATED AT 26601 MISSION BOULEVARD

WHEREAS, on February 3 and March 1, 2016, Applications were submitted by KB Home and DNS Capital Partners LLC/Robert Telles (Applicants/Property Owner) and deemed complete for a Site Plan Review, four warrants from provisions of the South Hayward BART/Mission Boulevard Form-Based code, and Vesting Tentative Tract Map 8335, Application No. 2016-01022 for the property located at 26601 Mission Boulevard for the subdivision and construction of a 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site (the “Project”); and

WHEREAS, the project site is located within the boundaries of the South Hayward BART/Mission Boulevard Form-Based code area; and

WHEREAS, the Project Site is identified as a Service and Retail Catalyst Site in the City’s Economic Development Strategic Plan (FY 2017 – FY 2018); and

WHEREAS, the Project Site has a designated land use of Sustainable Mixed Use in the City’s General Plan; and

WHEREAS, a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program was prepared to assess and mitigate the potential environmental impacts of the Project; and

WHEREAS, the four warrants requested with this application are:

- *Roof Pitch* (Section 10-24.250 vi. Architectural Standards) requires that roofs be symmetrically sloped at a pitch of no less than 5:12. The proposed roofs of the townhomes and the roof above the commercial/storage area have been designed as a combination of flat areas and other areas pitched at 4:12.

- *Excess Parking* (Section 10-24.245 b. ii) states that a maximum of 2.0 parking spaces may be provided for each residential condominium. The townhomes (condominiums) will be provided with 8 excess parking spaces in the form of on-site guest in addition to the 2 enclosed spaces (2-car garage) per unit.

- *Ground Floor Minimum Glazing* (Section 10-24.230 a. ii) states that all facades shall be glazed with clear glass no less than 30% of the first story. As designed, only 12% of the first floor of the townhomes is glazed with clear glass. For the mixed use/apartment building, clear glass on the first floor makes up approximately 25% along Mission Boulevard and 13% along Sorenson Road.

- *Parking Placement within the Layer 2 Setback* (Table 12B of the Form-Based code) allows parking within Layer 3 setback along Mission Boulevard. Ten spaces of ground level parking within the mixed use/apartment building fall within the Layer 2 setback. A portion of one guest parking space along Drive Aisle A within the townhome development, falls within the Layer 2 setback; and.

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 14, 2017, and recommended that the City Council adopt the Mitigated Negative Declaration; adopt an Ordinance approving the Zoning Text Amendment which would allow averaging or transfer of density between and among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max; approve all four requested warrants; and approve Vesting Tentative Tract Map 8335, Application No. 2016-01022 for the construction of a 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site located at 26601; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 3, 2017; and

WHEREAS, at its meeting of October 3, 2017, the City Council voted unanimously to continue the item for further analysis on issues raised by the City Council and public at the public hearing.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

ECONOMIC DEVELOPMENT STRATEGIC PLAN (FY 2014 – FY 2018)

1. The proposed project does not satisfy the following Goals for Service and Retail Catalyst Sites which say:
 - SR2: Recruit and secure new businesses in priority locations/industries that are a good fit for Hayward, and
 - SR4: Create proactive, site-specific land use policies that clearly convey information to potential businesses.

The distribution of non-residential use for the proposed project represents an imbalance given previous use of the site as 100% commercial retail.

GENERAL PLAN LAND USE

- 2. The proposed project does not satisfy the objectives of the Mixed Use land use designations in the General Plan, including Sustainable Mixed Use, because it does not provide a desirable balance between residential uses and retail/service/employment options.
- 3. The proposed project does not satisfy the objectives of Sustainability because it incorporates only a limited amount of energy saving measures which are significantly less than feasible.

ZONING

- 4. The proposed project does not comply with the objectives of the T4 Urban General transect zone in the South Hayward BART/Mission Boulevard Form-Based Code because of excessive warrants necessary to implement the proposed project that deviate from adopted standards.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby rejects the Mitigated Negative Declaration and denies all applications included with Application No. 2016-01022 for the Zoning Text Amendment the Site Plan Review, the four warrants listed above under the South Hayward BART/Mission Boulevard Form-Based Code (Article 24 of the Zoning Code), and Vesting Tentative Map 8335 for the subdivision and construction of 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site for the properties at located at 26601 Mission Boulevard.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

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

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-_____

Introduced by Councilmember _____

RESOLUTION ADOPTING A MITIGATED NEGATIVE DECLARATION AND APPROVING A SITE PLAN REVIEW, FOUR WARRANTS FROM PROVISIONS UNDER THE SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE, VESTING TENTATIVE TRACT MAP 8335, APPLICATION NO. 2016-01022 FOR THE SUBDIVISION AND CONSTRUCTION OF 35 TOWNHOME UNITS AND A MIXED USE BUILDING OF 39 MULTI-FAMILY UNITS AND 1,020 SQUARE FEET OF COMMERCIAL SPACE ON A 2.7-ACRE (2.14-ACRE NET) PROJECT SITE LOCATED AT 26601 MISSION BOULEVARD

WHEREAS, Applications were submitted by KB Home and DNS Capital Partners LLC/Robert Telles (Applicants/Property Owner) and deemed complete for a Site Plan Review, four warrants from provisions of the South Hayward BART/Mission Boulevard Form-Based code, and Vesting Tentative Tract Map 8335, Application No. 2016-01022 for the property located at 26601 Mission Boulevard for the subdivision and construction of a 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site (the “Project”); and

WHEREAS, the project site is located within the boundaries of the South Hayward BART/Mission Boulevard Form-Based code area; and

WHEREAS, a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program has been prepared to assess and mitigate the potential environmental impacts of the Project; and

WHEREAS, an Ordinance was adopted on November 14, 2017 allowing averaging or transfer of density between and among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max); and

WHEREAS, the four warrants requested with this application are:

- *Roof Pitch* (Section 10-24.250 vi. Architectural Standards) requires that roofs be symmetrically sloped at a pitch of no less than 5:12. The proposed roofs of the townhomes and the roof above the commercial/storage area have been designed as a combination of flat areas and other areas pitched at 4:12.

- *Excess Parking* (Section 10-24.245 b. ii) states that a maximum of 2.0 parking spaces may be provided for each residential condominium. The townhomes (condominiums) will be provided with 8 excess parking spaces in the form of on-site guest in addition to the 2 enclosed spaces (2-car garage) per unit.

- *Ground Floor Minimum Glazing* (Section 10-24.230 a. ii) states that all facades shall be glazed with clear glass no less than 30% of the first story. As designed, only 12% of the first floor of the townhomes is glazed with clear glass. For the mixed use/apartment building, clear glass on the first floor makes up approximately 25% along Mission Boulevard and 13% along Sorenson Road.

- *Parking Placement within the Layer 2 Setback* (Table 12B of the Form-Based code) allows parking within Layer 3 setback along Mission Boulevard. Ten spaces of ground level parking within the mixed use/apartment building fall within the Layer 2 setback. A portion of one guest parking space along Drive Aisle A within the townhome development, falls within the Layer 2 setback.

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 14, 2017, and recommended that the City Council adopt the Mitigated Negative Declaration; adopt an Ordinance approving the Zoning Text Amendment which would allow averaging or transfer of density between and among like-zoned development sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max; approve all four requested warrants; and approve Vesting Tentative Tract Map 8335, Application No. 2016-01022 for the construction of a 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site located at 26601; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 3, 2017 and continued to November 14, 2017; and

WHEREAS, at its meeting of October 3, 2017, the City Council voted unanimously to continue the item for further analysis on issues raised by the City Council and public at the public hearing.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. Pursuant to CEQA Guidelines Section 15220, an Initial Study (“IS”) was prepared for this project with the finding to prepare a Mitigated Negative Declaration (MND). No new significant impacts were identified nor were any new mitigation measures anticipated or required and that all potentially significant impacts could be reduced to a level of insignificance.

2. That the proposed MND was prepared by the City of Hayward as Lead Agency and was circulated with a twenty (20) day public review period, beginning on July 21, 2017 and ending on August 10, 2017.
3. That the proposed MND was independently reviewed, considered and analyzed by the City Council and reflects the independent judgement of the City Council; that the City Council adopts the proposed Mitigated Negative Declaration and its findings and conclusions as its source of environmental information; and that it is legally adequate and was completed in compliance with CEQA.
4. That the proposed MND identified all potential significant adverse impacts and feasible mitigation measures that would reduce these impacts to less-than-significant levels, and that all of the applicable mitigation measures in the Mitigation Monitoring and Reporting Program will be adopted and implemented. There is no substantial evidence that the project will have a significant effect on the environment.
5. That the project complies with CEQA, and that the proposed MND was presented to the City Council, which reviewed and considered the information contained therein prior to approving the project. The custodian of the record of proceedings upon which this decision is based in the Development Services Department of the City of Hayward located at 777 B Street, Hayward, CA 94541.

ZONING TEXT AMENDMENT

6. **SEC.10-1.110 PURPOSE**

- a. The proposed text amendment to the Zoning code promotes and satisfies the public health, and furthers the purpose of promoting the public health, safety, general welfare of the City.

The proposed zoning code text amendment to allow the transfer or averaging of residential density for adjacent properties of like-zoning within the defined area of the South Hayward BART/Mission Boulevard Form-Based code area is encouraged by General Plan Land Use Policy LU-3.5 which states that individual parcels within the development may be developed at higher or lower densities than allowed by the General Plan, provided that the net density of the entire development is within the allowed density range.

- b. The proposed text amendment to the Zoning code satisfies, promotes, and enhances the preservation of aesthetic quality by establishing regulations that ensure an appropriate mix of land uses in an orderly manner.

The proposed zoning code text amendment would allow the development of various residential product types to be built as part of an integrated site plan within the South Hayward BART/Mission Boulevard Form-Based code area.

- c. The purpose of the proposed text amendment furthers the City's goals of achieving a pattern and distribution of land uses that generally:

- (1) Retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities.
- (2) Allow for the infill and reuse areas at their prevailing scale and character.
- (3) Accommodate expansion of development into vacant and underutilized lands within environmental and infrastructure constraints.
- (4) Maintain and enhance significant environmental resources.
- (5) Provide a diversity of areas characterized by differing land use activity, scale and intensity.
- (6) Establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area with a high quality of life in an attractive, secure environment for the City's residents and businesses.

The proposed zoning code text amendment to allow the transfer or averaging of residential density for adjacent properties of like-zoning within the defined area of the South Hayward BART/Mission Boulevard Form-Based code area achieves all of the above six standards by providing flexibility to meet the desired residential density for critical mass transit ridership and jobs-work balance. Such flexibility allows for the development of diverse land uses in terms of scale of intensity which contributes toward creating a unique and distinctive place in the City and region.

The proposed zoning code text amendment to allow the transfer or averaging of residential density for adjacent properties of like-zoning with the defined area of the South Hayward BART/Mission Boulevard Form-Based code area also allows for a more flexible use of in-fill, reuse, and/or redevelopment of dilapidated, vacant, or underutilized properties. It also provides the ability to upgrade environmental improvements and protection measures.

7. SEC. 10-1.115 - AUTHORITY AND GENERAL PLAN CONSISTENCY

- a. The proposed text amendment is a tool for implementing the goals, objectives, and policies of the Hayward General Plan, pursuant to the mandated provisions of the State Planning and Zoning Law, the California Environmental Quality Act, and other applicable State and local requirements. It does not change the density permitted, but allows different housing types to be developed providing diversity of product and increasing housing opportunities.
- b. The proposed text amendment is consistent with the existing General Plan designation of Sustainable Mixed Use and policies related to residential density and availability of a variety of housing types by maintaining the emphasis on the development of mixed use while expanding ways to incorporate different types of housing by maintaining the emphasis on the development of mixed use while expanding ways to incorporate different types of housing.

- c. The proposed text amendment is consistent with the following Hayward General Policies Plan.

LU-3.5 Mixed Density Development Projects: The City shall encourage infill residential developments that provide a mix of housing types and densities within a single development on multiple parcels. Individual parcels within the development may be developed at higher or lower densities than allowed by the General Plan, provided that the net of the entire development is within the allowed density range.

LU-3.6 Residential Design Strategies: The City shall encourage residential developments to incorporate design features that encourage walking within neighborhoods.

LU-3.7 Infill Development in Neighborhoods: The City shall protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and site features.

H-3.1 Diversity of Housing Types: The City shall implement land use policies that allow for a range of residential densities and housing types, prices, ownership, and size, including low density single-family uses, moderate-density townhomes, and higher-density apartments, condominiums, transit-oriented developments, live-work units, and units in mixed-use developments.

H-3.3 Sustainable Housing Development: The City shall improve affordability by promoting sustainable housing practices that incorporate a 'whole system' approach to siting, designing, and constructing housing that is integrated into the building site, consumes less water and improves water quality, reduces the use of energy use, and other resources, and minimizes its impact on the surrounding environment.

H-3.4 Residential Uses Close to Services: The City shall encourage development of residential uses close to employment, recreational facilities, schools, neighborhood commercial areas, and transportation routes.

H-3.6 Flexible Standards and Regulations: The City shall allow flexibility within the City's standards and regulations to encourage a variety of housing types.

H-4.1 Flexible Development Standards: The City shall review and adjust as appropriate residential development standards, regulations, ordinances, departmental processing procedures, and residential fees that are determined to be a constraint on the development of housing, particularly housing for lower- and moderate-income households and for persons with special needs.

- d. As determined by the Initial Study and Mitigated Negative Declaration, the proposed Zoning code text amendment will have no significant impacts or adverse impacts on surrounding development that already have been addressed in previously adopted environmental documentation and would be subject to implementation of mitigation measures.

SITE PLAN REVIEW (Section 10-1.3025)

8. **The development is compatible with on-site and surrounding structures and uses and is an attractive addition to the City.**

1. The proposed project would replace dilapidated buildings and replace them with new housing and retail uses envisioned for the Sustainable Mixed Use land use designation. Surrounding structures typically are older residential neighborhoods and reviving commercial limited by a large regional cemetery and hillside to the east. The area is planned for rejuvenation and intensification. The residential development provides diversity between ownership and rental - a) three-story walk-up townhomes, and b) a 4-story mixed use/apartment structure. The density is compatible with the zoning. While the proposed project would represent some of the first higher density housing in the area, the proposed density also complies with the zoning and character anticipated. The residential uses would serve demands for new housing opportunities by providing affordable housing units and accommodating elderly or handicapped access through a number of full suite living quarters on the ground floor of the townhomes. The proposed project also would contribute to the critical mass of occupants as a customer base for transit ridership and new commercial uses. In addition the proposed community benefit payment would be made to help offset the described deficiencies of the proposed project and the site limitations including the limited replacement of commercial space, limited opportunities for onsite outdoor group open space, and lack of public art.

9. **The development takes into consideration physical and environmental constraints.**

The project site generally is flat. Development is constrained on three sides by an existing single-family neighborhood to the west, Mission Boulevard to the east, and Sorenson Road to the south. The project site is designed with appropriate access and vehicular circulation and is not further constrained. The proposed project will exhibit sustainability feature by incorporating a number of energy-saving measures.

10. **The development complies with the intent of City development policies and regulations.**

The proposed project would allow the reuse of dilapidated, abandoned, or underutilized properties within an existing urban area. With the requested zoning text amendment to allow residential density transfer/averaging between and among adjacent, like-zoned properties, the proposed project complies with the intent and uses anticipated for T4 Urban General (17.5 DU/acre; 35 DU/acre) transect zone of the South Hayward BART/Mission Boulevard Form-Based Code and is consistent with Sustainable Mixed Use land use designation.

11. **The development will be operated in a manner determined to be acceptable and compatible with surrounding development.**

Residential use would be compatible with this part of the city and nearby transit facilities. Both home ownership and rental units provide options for housing. The provision of

commercial space on Mission Boulevard carries through the commercial character. Older adjacent uses to the north eventually will transition to new development. New residential occupancies will provide customers for revitalizing commercial uses to the south.

WARRANTS (Section 10-24.410)

12. **Policy Consistency. The Warrant is consistent with the General Plan and overall objectives of this Code.**

- a. Excess Parking - The warrant to allow excess parking for attached multi-family units will, in fact, be an enhancement to the ownership nature of the townhome development. More vehicles of residents would be safely contained, and guest parking would be accommodated with less competition for available spaces thereby contributing to an orderly interaction of uses.
- b. Roof Pitch – The proposed lower roof pitch of 4:12 complements building design and the mass and silhouette of the buildings.
- c. First Story Clear Glazing less than 30% - As designed, only 12% of the first floor of the townhomes is glazed with clear glass. The lower level of glazing for the townhomes helps with noise attenuation and allows for more energy-efficiency and residential character to those elevations.

For the mixed use/apartment building, clear glass on the first floor makes up approximately 25% along Mission Boulevard and 13% along Sorenson Road. The ground floor elevation has been redesigned to include both fixed spandrel glass and translucent light-transmitting glass in addition to the clear shopfront glazing of the commercial area. While not all of it is clear, first floor exterior materials would be more than 30% glass.

- d. Parking within the Layer 2 Setback - A portion of only one guest parking space is situated within the Layer 2 setback area of the townhomes. It is properly screened by landscaping and a community wall. The 10 parking spaces within the Layer 2 setback on the ground floor of the mixed use/apartment structure are situated behind a wall or wire-framed green screens with vines that are unobtrusive to the Mission Boulevard frontage.

13. **Compatibility. The Warrant is justified by environmental features or site conditions; historic development patterns of the property or neighborhood; or the interest in promoting creativity and personal expression in site planning and development.**

None of the requested Warrants would negatively impact the character envisioned for Hayward Mission Boulevard Corridor planning area or for the Sustainable Mixed Use land use designation.

- a. Excess Parking - Market demand dictate that for-sale/condominium townhome residential products typically are provided with two covered spaces per unit, and guest spaces are provided for convenience and for ease of use.
 - b. Roof Pitch - The proposed roof pitch of 4:12 on portions of both the townhomes and the mixed use/apartment building provide continuity between both residential products and reflect the exterior design.
 - c. First Floor Clear Glazing Less than 30% - The proposed glazing levels on the first floor of both the townhomes and the mixed use/apartment building of reflect a style that is typical for the type and use of those structure. Appropriate materials, including fixed opaque spandrel glass and translucent light transmitting glass.
 - d. Parking Within the Layer 2 Setback – The portion of that one guest parking space for the townhomes situated within the Layer 2 setback area is properly screened by landscaping and a community wall. The 10 parking spaces within the Layer 2 setback on the ground floor of the mixed use/apartment structure are situated behind a wall or wire-framed green screens with vines are unobtrusive to the Mission Boulevard frontage.
14. **No Adverse Impact. The Warrant would result in development that is not detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district.**

Approval of the Warrants would not be detrimental to the public health, safety, or welfare, or injurious to the property or improvements in the vicinity and in the same zoning district.

- a. Excess Parking - In fact, the excess parking for the residential townhomes enhance the public health, safety, and welfare by improving vehicular circulation. Designated guest parking areas would minimize the potential for impacts between pedestrians/residents and vehicles.
- b. Roof Pitch – The variation in roof pitch in minor in comparison to the required 5:12, and is not detrimental to any other property.
- c. First Story Glazing less than 30% - The requested level of first story glazing is consistent with residential town homes and the first floor glazing provided for the mixed use/apartment building (while not all of it is clear) is an adequate amount for storefront visibility, parking screening, and residential privacy.
- d. Parking Within the Layer 2 Setback – The portion of that one guest parking space for the townhomes situated within the Layer 2 setback area is properly screened by landscaping and a community wall. The 10 parking spaces within the Layer 2 setback on the ground floor of the mixed use/apartment structure are situated behind a wall or wire-framed green screens with vines that are unobtrusive to the Mission Boulevard frontage.

15. **Special Privilege. The Warrant would not affect substantial compliance with this Code or grant a special privilege inconsistent with the limitations upon other properties in the vicinity and in the same zoning district.**

All of the requested warrants would not affect substantial compliance with this code or constitute the granting of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

- a. Excess Parking - The provision to allow the additional 8 on-site, guest parking spaces for the townhomes would, in fact, be a benefit to the function of the residential community and would exceed requirements while remaining within the intended character of the zoning district.
- b. Roof Pitch - A roof pitch of 4:12 or even a flat roof is typical of residential buildings. The pitched roof is used as an accent feature and to provide articulation on the townhomes rather than a flat roof. It is used only over one 2-story portion (the commercial space) of the mixed use/apartment building and is unobtrusive.
- c. First Story Glazing less than 30% - The requested level of first story glazing is consistent with residential town homes. For the mixed use/apartment building, the proposed glazing is more than the existing commercial building and still presents a commercial boulevard image intended for the design of this thoroughfare and zone.
- d. Parking Within the Layer 2 Setback – The portion of that one guest parking space for the townhomes situated within the Layer 2 setback area is properly screened by landscaping and a community wall. The 10 parking spaces within the Layer 2 setback on the ground floor of the mixed use/apartment structure are situated behind a wall or wire-framed green screens with vines that are unobtrusive to the Mission Boulevard frontage.

VESTING TENTATIVE TRACT MAP 8335

16. **That the proposed map is consistent with applicable general and specific plans as specified in Section 64541 of the Subdivision Map Act. [Subdivision Map Act §66474(a)]**

The project site is located within a neighborhood plan area. However, No Specific Plan applies to the Project Site. Vesting Tentative Tract Map 8335 with Conditions of Approval substantially conforms to the State Subdivision Map Act, the City's Subdivision Regulations, and the General Plan. Also, it would not be inconsistent with the Neighborhood Plan for the Mission Garin neighborhood which allows increased residential use and emphasis on use of transit facilities.

17. **That the design or improvement of the proposed subdivision is consistent with applicable general plan and specific plans. [Subdivision Map Act §66474(b)]**

The proposed subdivision, as demonstrated by the findings associated with the Zone Change Application and Site Plan Review, is consistent with the City's General Plan. The proposed project is consistent with the FAR and density prescribed by the Sustainable Mixed Use land use designation. There is no specific plan. The South Hayward BART/Mission Boulevard Form-Based Code serves a similar purpose. Approval of the proposed amendment to allow density transfer/averaging between and among adjacent like zoned parcel satisfies any potential inconsistencies regarding density. The project site is within the Mission-Garin Neighborhood Plan area which essentially has been superseded by the South Hayward BART/Mission Boulevard Form-Based code.

18. That the site is physically suitable for the type of development. [Subdivision Map Act §66474(c)]

The Geotechnical Investigation prepared by *Stevens, Ferrone & Bailey* in March 2016 demonstrates that the proposed project is feasible and the proposed subdivision would occur on a site suitable for the proposed development with the recommendation that a design level geotechnical investigation be conducted prior to construction to review the geotechnical aspects of the project. The site provides sufficient lane widths and ingress/egress points, pedestrian facilities and infrastructure locations, such as water and sewer lines, storm drains and stormwater treatment areas, to support the proposed buildings, number of units, and commercial uses being proposed.

19. That the site is physically suitable for the proposed density of development. [Subdivision Map Act §66474(d)]

The Geotechnical Investigation prepared by *Stevens, Ferrone & Bailey* in March 2016 demonstrates that the proposed project is feasible and the proposed subdivision would occur on a site suitable for the proposed development with the recommendation that a design level geotechnical investigation be conducted prior to construction to review the geotechnical aspects of the project. Density is not a factor that makes the site suitable or less suitable for development.

A Traffic Operations Analysis prepared by *Hexagon Transportation Consultants, Inc.* in May 2017 prepared for the Project determined that, with the proposed Conditions of Approval the project would not result in significant impacts to traffic beyond those currently identified since it would not generate sufficient traffic to cause nearby intersections to operate at an unacceptable level of service, nor would it create any issues with safe ingress and egress from the site.

20. That the design of this project and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. [Subdivision Map Act §66474(e)]

The approval of Vesting Tentative Map Tract 8335, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The proposed project incorporates Best Management Practices for water quality and stormwater runoff. The Mitigated Negative Declaration prepared for the Project determined that, with the proposed

Conditions of Approval demonstrates that substantial adverse environmental damage, including to fish or wildlife and their habitat, would not result from the proposed project.

21. **That the design of the subdivision or type of improvements are not likely to cause serious public health problems. [Subdivision Map Act §66474(f)]**

Adequate capacity exists to provide sanitary sewer service to the Project site. Measures to ensure bio-treatment of stormwater runoff are included as Conditions of Approval thereby reducing the likelihood of serious public health problems. There are no other aspects of the Project with the potential to cause serious public health problems.

22. **That the design of the subdivision or type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. [Subdivision Map Act §66474(g)]**

The building improvement plan shall reflect all easements needed to accommodate the project development. The private streets shall be designated as a Public Utility Easement (PUE), Public Assess Easement (PAE), Water Line Easement (WLE), Sanitary Sewer Easement (SSE), and Emergency Vehicle Access Easement (EVAE). Upon completion of the proposed improvements, the streets and utilities would be adequate to serve the project. New public easements are to be offered for dedication as necessary.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Mitigated Negative Declaration, approves the Zoning Text Amendment (separately by Ordinance), and approves the Site Plan review, the four warrants listed above under the South Hayward BART/Mission Boulevard Form-Based Code (Article 24 of the Zoning Code), and Vesting Tentative Map 8335 for the subdivision and construction of 35 townhome units and a mixed use building of 39 multi-family units and 1,020 square feet of commercial spaces on a 2.7-acre (2.14 net) project site (Application No. 2016-01022) for the properties at located at 26601 Mission Boulevard, subject to the adoption of the companion Zoning Code Amendment Ordinance (Ordinance No. 17-_____) and subject to the attached conditions of approval (Exhibit "A").

IN COUNCIL, HAYWARD, CALIFORNIA November 14, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT “A”

**Haymont Townhomes
and Apartment Mixed Use Project
26601 Mission Boulevard
(Mission Boulevard and Sorenson Road)
KB Home and Robert Telles (Applicants)**

Site Plan Review, Mitigated Negative Declaration (MND), Zone Text Amendment in the South Hayward BART/Mission Boulevard Form-Based Code T4 Urban General Zone (17.5 DU/ac min; 35 DU/ac max), and T5 Urban General Zone (35 DU/ac min; 55 DU/ac max) to allow residential density transfer/averaging among like-zone development sites, Site Plan Review, Warrants, and Vesting Tentative Tract Map 8335 for a Mixed-Use Commercial/Residential project to be developed with 35 Townhomes and 39 Apartments with 1,020 square feet of commercial use along with covered and open resident and guest parking Application No. 201601022 (Tract 8335)

Planning

1. GENERAL - Project approval shall be void two years after issuance of the building permits, or three (3) years after approval of vesting tentative tract map application, whichever is later, unless the construction authorized by the building permits has been substantially completed or substantial sums have been expended in reliance upon the project approval.
2. FEE - Prior to building permit issuance, developer must pay all applicable development fees, as determined by the City Engineer in accordance with the most current approved fee schedule adopted by the City Council, including but not limited to, utility connection fees.
3. GENERAL - Unless otherwise stated, all necessary easements shall be dedicated, and all improvements shall be designed and installed, at no cost to the City of Hayward.
4. GENERAL - Unless indicated otherwise, the design for development shall comply with the following:
 - a. All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code – Chapter 10, Articles 1 and 3, and Standard Specifications and Details.
 - b. All construction shall meet the California Building Codes (CBC) and all applicable City of Hayward Building Codes and amendments, including Green Building standards.
 - c. Design and construction of all pertinent life safety and fire protection systems shall meet the California Fire Code and all applicable City of Hayward Fire Codes and amendments.
5. GENERAL - A Registered Civil Engineer shall prepare all Civil Engineering improvement plans; a Licensed Architect shall prepare all architectural plans; and a Licensed Landscape Architect shall prepare all landscape plans unless otherwise indicated herein.
6. GENERAL - The developer shall not obstruct the noted sight distance areas. Overall cumulative height of the grading, landscaping and signs as determined by sight distance shall not exceed 2 feet when measured from street elevation.

7. GENERAL - All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas.
8. GENERAL - Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from the City.
9. GENERAL - It is applicant's responsibility to get permit or approval from all affected agencies or private parties. Please provide a copy of these permits or approval to the City with your building permit application submittal.
10. GENERAL - The developer shall submit an AutoCAD file format (release 2010 or later) in a CD of approved map and 'as-built' improvement plans showing all public improvements and utility layouts that can be used to update the City's Base Maps.
11. FINAL MAP - Prior to or concurrent with Final Map recordation, developer shall dedicate necessary easements along Street frontages, including but not limited to 6-foot Public Utility Easement (PUE).
12. FINAL MAP - Prior to or concurrent with Final Map recordation, developer shall dedicate necessary easements for Ingres/Egress and stormwater treatment, on the Parcel A for the benefit of condominium development.
13. FINAL MAP - Prior to or concurrent with Final Map recordation, developer shall record a reciprocal easement and maintenance agreement for the proposed access and stormwater treatment area on Parcel A,
14. FINAL MAP - Prior to recordation, a proposed Final Tract Map shall be submitted for review by the City. The Final Tract Map shall be presented to the City Council for review and action. The City Council meeting will be scheduled approximately sixty (60) days after the Final Map is deemed technically correct, and Subdivision Improvement Plans with supporting documents, reports and agreements are approved by the City. Executed Final Map shall be returned to the City Public Works Department if Final Map has not been filed in the County Recorder's Office within ninety (90) days from the date of City Council's approval.
15. FINAL MAP - Prior to the recordation of the Final Tract Map, all documents that need to be recorded with the final map shall be approved by the City Engineer and any unpaid invoices or other outstanding charges accrued to the City for the processing of the subdivision application shall be paid.
16. FINAL MAP - The final map shall reflect all easements needed to accommodate the project development. The private streets shall be designated as a Public Utility Easement (PUE), Public Assess Easement (PAE), Water Line Easement (WLE), Sanitary Sewer Easement (SSE), and Emergency Vehicle Access Easement (EVAE).
17. PUBLIC IMPROVEMENTS - Prior to final map recordation or issuance of building permits for the proposed apartment building, the developer shall obtain design approval and bond for all necessary public improvements along Mission Boulevard and Sorenson Road, including but not limited to the following:
 - a. Removal and installation of new curb, gutter, and sidewalk along entire Sorenson Road frontage.
 - b. Grind, overlay and restripe and restripe full street pavement width of Sorenson Road from Mission Boulevard to Colette Street Intersection with 2-inch hot mix asphalt, and dig outs and repair failed pavements as necessary.
 - c. Grind, overlay and restripe and restripe half street pavement width of Mission Boulevard with 2-inch hot mix asphalt, and dig outs and repair failed pavements as necessary.

- d. Install necessary new street lights along the Sorenson Road frontage.
 - e. Remove, replace, and plant street trees along project frontages per City Landscape Architect direction. Plans for all public improvements shall be prepared on Mylar (22" x 34" sheets) and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Hayward standard detail and specs and built to the city Engineer's satisfaction, and accepted by the City prior to issuance of any first certificate of occupancy for the project.
18. WATER QUALITY - Developer shall comply with the regional permits requirements for both preconstruction and post-construction requirements. Storm water management shall be in compliance with Municipal Regional Permit.
19. WATER QUALITY - The following materials related to the stormwater quality treatment facility requirements shall be submitted with improvement plans and/or grading permit application:
- a. A Stormwater Treatment Measures Maintenance Agreement shall be submitted to Public Works - Engineering and Transportation Department staff for review and approval. Once approved, the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
 - b. The condominium site HOA shall be responsible for maintenance and up keeping of the stormwater treatment measures for the entire site including the Parcel A.
 - c. The project plans shall include the storm drain design in compliance with postconstruction stormwater requirements to provide treatment of the stormwater according to the National Pollutant Discharge Elimination System (NPDES) permit's numeric criteria. The design shall comply with the C.3 established thresholds and shall incorporate measures to minimize pollutants to the maximum extent practicable (MEP).
 - d. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prevent the entry of pollutants into storm water runoff. Roof leaders shall discharge into flow-through planters and direct runoff shall discharge into a landscaped area or a bioretention area prior to stormwater runoff entering an underground pipe system.
 - e. The proposed BMPs shall be designed to comply with the hydraulic sizing criteria listed in Provision C.3 of the Alameda County Clean Water Program (ACCWP) NPDES permit.
 - f. The bioretention treatment area shall be designed using a Bioretention Soil Mix (BSM) per Attachment L of the C.3 Stormwater Technical Guidance dated May 14, 2013, with a minimum infiltration rate of 5 inches per hour.
 - g. The following documents pursuant to the Cleanwater Program requirements:
 - i. Hydromodification Management Worksheet;
 - ii. Infiltration/Rainwater Harvesting and Use Feasibility Screening Worksheet;
 - iii. Development and Building Application Information Impervious Surface Form;
 - iv. Project Applicant Checklist of Stormwater Requirements for Development Projects;
 - v. C.3 and C.6 Data Collection Form; and
 - vi. Numeric Sizing Criteria used for stormwater treatment (Calculations).
20. WATER QUALITY - The Stormwater Treatment Measures Maintenance Agreement for the project, prepared by Public Works Engineering and Transportation Division staff, shall be

- signed and recorded in concurrence with the Final Map at the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.
21. WATER QUALITY - Construction activities which disturb 1 acres or greater are viewed as a source of pollution and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. Following are the specific requirements for regulated construction sites:
 - a. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with a design to reduce discharge of pollutants and sediments into the downstream storm drain system during the construction. The plan shall meet the approval of the City Engineer. The certification page of the SWPPP shall be signed by a Qualified SWPPP Developer (QSD) person who prepared the report.
 - b. Before commencing any grading or construction activities at the project site, the developer may need to obtain a National Pollutant Discharge Elimination System (NPDES) permit and provide evidence of filing of a NOI with the State Water Resources Control Board.
 22. WATER QUALITY - The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations or a project stop order.
 23. STORM - The on-site storm drain system is privately owned and maintained by the homeowner's association (HOA).
 24. STORM - A detailed drainage plan, to be approved by the Alameda County Flood Control and Water Conservation District (ACFC & WCD) and the City Engineer, designing all on-site drainage facilities to accommodate the runoff associated with a 100-year storm and incorporating onsite storm water detention measures sufficient to reduce the peak runoff to a level that will not cause capacity of downstream channels to be exceeded. Existing offsite drainage patterns, i.e., tributary areas, drainage amount and velocity shall not be altered by the development. The detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be approved by the City Engineer and by the ACFC&WCD prior to issuance of any construction or grading permit.
 25. STORM - The project plan measures shall also include erosion control measures to prevent soil, dirt, debris and contaminated materials from entering the storm drain system, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook.
 26. STORM - Improvements for storm drain systems shall incorporate the following:
 - a. The locations and design of storm drains shall meet the City's standard design and be approved by the City Engineer and if necessary, the ACFC & WCD. Any alternative design shall be approved by the City Engineer prior to installation.
 - b. Storm drain pipes in streets and alleys shall be a minimum of twelve inches in diameter with a minimum cover of three feet over the pipe.
 - c. The latest edition of the ACFC & WCD's Hydrology and Hydraulics Criteria Summary shall be used to determine storm drainage runoff. A detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be submitted, which shall meet the approval of the ACFC & WCD and the City. Development of this site shall not augment runoff to the ACFC & WCD's downstream flood control facilities. The hydrology calculations shall substantiate that there will be no net increases in the quantity of runoff from the site versus the flow rate derived from the original design of downstream facilities.

- d. The project shall not block runoff from, or augment runoff to, adjacent properties. The drainage area map developed for the project hydrology design shall clearly indicate all areas tributary to the project area. The developer is required to mitigate unavoidable augmented runoffs with offsite and/or on-site improvements.
 - e. No surface runoff is allowed to flow over the sidewalks and/or driveways. Area drains shall be installed behind the sidewalks to collect all runoff from the project site.
 - f. All storm drain inlets must be labeled "No Dumping - Drains to Bay," using City-approved methods.
 - g. The starting water surface elevation(s) for the proposed project's hydraulic calculations and the corresponding determination of grate/rim elevations for all the on-site storm drainage structures shall be based on Federal Emergency Management Agency's Flood Insurance Study for the 100-year storm event.
 - h. Post-development flows should not exceed the existing flows. If the proposed development warrants a higher runoff coefficient or will generate greater flow, mitigation measures shall be implemented.
- 27. SEWER - Sewer service is available from the City of Hayward and is subject to standard conditions and fees in effect at the time of application.
 - 28. WATER - Water service is available from the City of Hayward and is subject to standard conditions and fees in effect at the time of application.
 - 29. WATER - Water mains and services, including the meters must be located at least 10 feet horizontally from and one-foot vertically above any parallel pipeline conveying untreated sewage (including sanitary sewer laterals), and at least 4 feet from and 1 foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade piping materials with the City's approval.
 - 30. WATER - All water series from existing water mains shall be installed by City Water Distribution Personnel at the applicant/developer's expense. This includes relocating existing services and water main tie-ins. The developer may only construct new services in conjunction with the construction of new water mains. Only Water Distribution Personnel shall perform operation of valves on the Hayward Water.
 - 31. WATER - Where a public water main is in an unpaved easement or under decorative, stamped, or colored concrete, including turf-blocks, the water main shall be constructed of Ductile iron. Shut-off valves are required where a water main transitions from a paved area to an unpaved easement.
 - 32. WATER - All public water mains shall be constructed in accordance with the City's "Specifications for the Construction of Water Mains (12-inch diameter or less) and Fire Hydrants," latest revision at the time of permit approval.
 - 33. WATER - Each lot shall have an individual water meter.
 - a. All water meters shall be radio-read type.
 - b. Water meters shall be located a minimum of two feet from the top of driveway flare as per City Standard SD-213 thru SD-218.
 - 34. WATER - Each structure shall have its own fire service, sized per the requirements of the Fire Department. Fire Services shall have an above ground Double Check Valve Assembly per City Standard SD-201 and SD-204. Residential combined domestic and fire services are allowed, per City Standard SD-216. The minimum size for a residential fire service connection is 1 inch.
 - 35. WATER - Separate irrigation water meter shall be installed for landscaping purposes. The applicant/developer shall install a Reduced Pressure Backflow Prevention Assembly on each

- irrigation water meter, per City Standard SD-202. Backflow prevention assemblies shall be at least the size of the water meter or the water supply line on the property side of the meter, whichever is larger.
36. UTILITIES - All service to the development shall be an "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, AT&T (phone) Company and local cable company regulations. Transformers and switch gear cabinets shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted for City approval prior to installation.
 37. UTILITIES - All proposed surface-mounted hardware (fire hydrants, electroliers, etc.) along the Street frontages shall be located outside of the sidewalk within the proposed Public Utility Easement in accordance with the requirements of the City Engineer or, where applicable, the Fire Chief.
 38. UTILITIES - The developer shall provide and install the appropriate facilities, conduit, junction boxes, etc., to allow for installation of a fiber optic network within the development.
 39. UTILITIES - All utilities shall be designed in accordance with the requirements of the City of Hayward and applicable public agency standards.
 40. UTILITIES - The improvements associated with the Pacific Gas and Electric Company, AT&T (phone) company and local cable company shall be installed to the satisfaction of the respective companies.
 41. GENERAL SUBMITTAL - Prior to building permit issuance, submit the following documents for review and approval, or for City project records/files:
 - a. Copy of the Notice of Intent filed with State Water Resources Control Board;
 - b. Engineer's estimate of costs, including landscape improvements;
 - c. Easement document;
 - d. Signed Public Improvement Agreement; and
 - e. Public Improvement bonds.
 42. GENERAL SUBMITTAL - To avoid or reduce the potential impact related to the site specific geotechnical hazards related to seismic hazards, the project developer shall implement the following mitigation measures:
 - a. The applicant shall submit a final grading plan subject to review by the City Engineer prior to issuance of grading permits.
 - b. New construction will comply with the latest California Building Code and mitigation measures outlined in the Geotechnical Investigation report.
 - c. For each building constructed in the development plan area, the required site specific geotechnical investigation shall address expansive soils and provide appropriate engineering and construction techniques to reduce potential damage to buildings.
 - d. To reduce the potential impacts related to the presence of low to moderately expansive clays in the subsurface soils of the project site, mitigation measures to avoid the effects of expansive soils outlined in the Geotechnical Investigation shall be followed.
 43. CONSTRUCTION BMP - The developer shall ensure that unpaved construction areas are sprinkled with water as necessary to reduce dust generation. Construction equipment shall be maintained and operated in such a way as to minimize exhaust emissions. If construction activity is postponed, graded or vacant land shall immediately be revegetated.
 44. CONSTRUCTION BMP - All diesel-powered equipment (\geq 100 horsepower) shall be California Air Resources Board (CARB) Tier 3 Certified or better.

45. CONSTRUCTION BMP - The following control measures for construction noise, grading and construction activities shall be adhered to, unless otherwise approved by the Planning Director or City Engineer:
- a. Grading and site construction activities shall be limited to the hours 8:00 AM to 5:00 PM Monday through Friday with no work on weekends and Holidays unless revised hours and days are authorized by the City Engineer. Building construction hours are subject to Building Official's approval;
 - b. Grading and construction equipment shall be properly muffled;
 - c. Unnecessary idling of grading and construction equipment is prohibited;
 - d. Stationary noise-generating construction equipment, such as compressors, shall be located as far as practical from occupied residential housing units;
 - e. Applicant/developer shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. Letters shall be mailed to surrounding property owners and residents within 300 feet of the project boundary with this information.
 - f. The developer shall post the property with signs that shall indicate the names and phone number of individuals who may be contacted, including those of staff at the Bay Area Air Quality Management District, when occupants of adjacent residences find that construction is creating excessive dust or odors, or is otherwise objectionable. Letters shall also be mailed to surrounding property owners and residents with this information prior to commencement of construction.
 - g. Daily clean-up of trash and debris shall occur on project street frontages, and other neighborhood streets utilized by construction equipment or vehicles making deliveries.
 - h. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution;
 - i. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work;
 - j. The site shall be watered twice daily during site grading and earth removal work, or at other times as may be needed to control dust emissions;
 - k. All grading and earth removal work shall follow remediation plan requirements, if soil contamination is found to exist on the site;
 - l. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - m. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - n. Sweep public streets daily if visible soil material is carried onto adjacent public streets;
 - o. Apply (non-toxic) soil stabilizers or hydroseed to inactive construction areas (previously graded areas inactive for 10-days or more);
 - p. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
 - q. Broom sweep the sidewalk and public street pavement adjoining the project site daily. Caked on mud or dirt shall be scraped from these areas before sweeping;
 - r. No site grading shall occur during the rainy season, between October 15 and April 15, unless approved erosion control measures are in place.

- s. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to:
 - i. start of the rainy season;
 - ii. site dewatering activities; or
 - iii. street washing activities; and 4)
 - iv. saw cutting asphalt or concrete, or in order to retain any debris or dirt flowing into the City storm drain system.

Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash;

- t. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides or any other materials used on the project site that have the potential for being discharged to the storm drain system through being windblown or in the event of a material spill;
 - u. Never clean machinery, tools, brushes, etc., or rinse containers into a street, gutter, stormdrain or stream. See "Building Maintenance/Remodeling" flyer for more information;
 - v. Ensure that concrete/gunite supply trucks or concrete/plasters finishing operations do not discharge washwater into street gutters or drains; and
 - w. The developer shall immediately report any soil or water contamination noticed during construction to the City Fire Department Hazardous Materials Division, the Alameda County Department of Health and the Regional Water Quality Control Board.
 - x. Bicycle Rack: A bicycle rack shall be placed near the front door of the retail commercial space and this bicycle rack shall be shown on the final improvement drawing, prior to the issuance on Building Permits.
46. GENERAL CONSTRUCTION - The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to daily submit all testing and sampling and reports to the City Engineer.
47. GENERAL CONSTRUCTION - In the event that human remains, archaeological resources, prehistoric or historic artifacts are discovered during construction of excavation, the following procedures shall be followed: Construction and/or excavation activities shall cease immediately and the Planning Division shall be notified. A qualified archaeologist shall be retained to determine whether any such materials are significant prior to resuming groundbreaking construction activities. Standardized procedure for evaluation accidental finds and discovery of human remains shall be followed as prescribed in Sections 15064.f and 151236.4 of the California Environmental Quality Act.
48. GENERAL CONSTRUCTION - Prior to final inspections, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
49. GENERAL CONSTRUCTION - All buildings shall be designed using the California Building Codes in effective at the time of submitting building permit applications.
50. GENERAL CONSTRUCTION - All common area landscaping, irrigation and other required improvements shall be installed according to the approved plans.
51. GENERAL CONSTRUCTION - All public improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.
52. HOA - Prior to or concurrent with final map recordation, the Conditions, Covenants and Restrictions (CC&Rs) creating homeowner's association for the proposed residential shall be

reviewed and approved by the Planning Director and City Attorney and recorded. The CC&Rs shall describe how the stormwater BMPs associated with privately owned improvements and landscaping shall be maintained by the association. The CC&Rs shall include the following provisions:

- a. The CC&Rs shall include provisions to allow future adjacent developments to annex into HOA if appropriate.
- b. Each owner shall automatically become a member of the association(s) and shall be subject to a proportionate share of maintenance expenses.
- c. A reserve fund shall be maintained to cover the costs of improvements and landscaping to be maintained by the Association(s).
- d. The association shall be managed and maintained by a professional property management company.
- e. The home owner's association(s) shall own and maintain on-site storm drain systems.
- f. The condominium site HOA shall be responsible for maintenance and up keeping of the Stormwater treatment measures for the entire site including the Parcel A.
- g. The homeowner's association(s) shall maintain the common area irrigation system and maintain the common area landscaping in a healthy, weed-free condition at all times. The home owner's association(s) representative(s) shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within fifteen (15) days of notification to the homeowner. Plants in the common areas shall be replaced within two weeks of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species selected and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Hayward Municipal Code.
- h. A provision that if the home owners association fails to maintain the decorative walls, landscaping and irrigation in all common areas for which it is responsible so that owners, their families, tenants, or adjacent owners will be impacted in the enjoyment, use or property value of the project, the City shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets, after reasonable notice, and lien the properties for their proportionate share of the costs, in accordance with Section 10-3.385 of the Hayward Subdivision Ordinance.
- i. A requirement that the building exteriors and fences shall be maintained free of graffiti. The owner's representative shall inspect the premises on a weekly basis and any graffiti shall be removed within 72 hours of inspection or within 72 hours of notification by the City.
- j. A tree removal permit is required prior to the removal of any protected tree, in accordance with the City's Tree Preservation Ordinance.
- k. The garage of each unit shall be maintained for off-street parking of 2 vehicles and shall not be converted to living or storage areas. An automatic garage door opening mechanism shall be provided for all garage doors.
- l. The residents shall not use parking spaces for storage of recreational vehicles, camper shells, boats or trailers. These parking spaces shall be monitored by the home owner's association. The home owner's association shall remove vehicles parked contrary to this provision. The CC&Rs shall include authority for the HOA to tow illegally-parked vehicles.
- m. Individual homeowners shall maintain in good repair the exterior elevations of their dwelling. The CC&Rs shall include provisions as to a reasonable time period that a unit shall be repainted, the limitations of work (modifications) allowed on the exterior of the

- building, the formation of a design review committee and its power to review changes proposed on a building exterior and its color scheme, and the right of the home owners association to have necessary work done and to place a lien upon the property if maintenance and repair of the unit is not executed within a specified time frame. The premises shall be kept clean and free of debris at all times. Color change selections shall be compatible with the existing setting.
- n. Any future major modification to the approved site plan shall require review and approval by the Planning Commission.
 - o. Streetlights and pedestrian lighting shall be owned and maintained by the home owner's association and shall have a decorative design approved by the Planning Director and the City Engineer.
 - p. Street sweeping of private streets, alleys and parking bays shall be conducted at least once a month.
 - q. Balconies may not be used for storage and personal items may not be draped over the railings.
 - r. The association shall ensure that no less than 75 percent of the units shall be owner-occupied. The CC&Rs shall further provide that the leasing of units as a regular practice for business, speculative investment or other similar purpose is not permitted. However, to address special situations and avoid unusual hardship or special circumstances, such as a loss of job, job transfer, military transfer, change of school or illness or injury that, according to a doctor, prevents the owner from being employed, the CC&Rs may authorize the governing body to grant its consent, which consent shall not be unreasonably withheld, to a unit owner who wishes to lease or otherwise assign occupancy rights to a specified lessee for a specified period.
 - s. The applicant or homeowner's association shall maintain all fencing, parking surfaces, common landscaping, lighting, trash enclosures, drainage facilities, project signs, exterior building elevations, etc. The CC&Rs shall include provisions as to a reasonable time period that the building shall be repainted, the limitations of work (modifications) allowed on the exterior of the buildings, and its power to review changes proposed on a building exterior and its color scheme, and the right of the home owner's association to have necessary work done and to place a lien upon the property if maintenance and repair of the unit is not executed within a specified time frame. The premises shall be kept clean.
53. GENERAL - The developer shall submit "as-built" plans indicating the following:
- a. Approved landscape and irrigation improvements;
 - b. All underground facilities, sanitary sewer mains and laterals, water services (including meter locations), Pacific Gas and Electric, AT&T (phone) facilities, local cable company, etc.;
 - c. All the site improvements, except landscaping species, buildings and appurtenant structures; and
 - d. Final Geotechnical Report.

Transportation

54. The Applicant shall provide short term bicycle parking on-site to accommodate coffee shop/retail patrons.
55. The Applicant shall stripe one-way arrows within the project parking garage. The parking garage circulation shall be a one-way loop, with inbound-only access into the south side drive

aisle (no exit), and exit-only out of the north side drive aisle (no entry). In addition to striping, “No Right Turn” and “No Left Turn” signage shall be installed on “Drive Aisle C” to prohibit turns into the parking garage’s north side drive aisle (to be designated “Exit Only”).

56. Applicant shall submit a detailed signing and striping plan that shall include all TRANSPORTATION conditions above to the City of Hayward Public Works/Transportation Division for review and approval prior to the issuance of building permits. Following review and approval by City of Hayward Public Works/Transportation Division, all improvements on the signing and striping plan shall be completed to the satisfaction of the Transportation Manager prior to the issuance of certificate of occupancy.

Landscape

Standard conditions for both Condominium and DNS Apartments:

57. Park Dedication In-Lieu Fees are required for all new dwelling units. Fees shall be those in effect at the time of issuance of the building permit.
58. Prior to the approval of improvement plans, detailed landscape and irrigation plans shall be reviewed and approved by the City. Copies of the approved and signed improvement plans shall be submitted as a part of the building permit submittal. The plans shall be prepared by a licensed landscape architect on an accurately surveyed base plan. The plans shall comply with the City’s Bay-Friendly Water Efficient Landscape Ordinance (California Building Code Title 23). The plans shall also comply with other relevant sections in Municipal Codes. Dripline of the existing trees to be saved shall be shown on the plan.
59. As stated in the City’s landscape ordinance, the ordinance adopted Bay-Friendly Landscape Guidelines, Principles and Practices (Section 10-12.02). One of the requirements is prohibiting landscape design that will promote routine shearing of plants. The Bay-Friendly Landscape Principles and the ordinance requires specifying “right plants in right place” (Section 10-12.07 (a) (2) (C) 2). Green waste/plant debris still ends up in the landfills every year even though more and more green waste is being recycled. There are other numerous benefits from this provision.
60. Mylar of the approved landscape and irrigation improvement plans shall be submitted to the Engineering Department. Mylar shall be wet-signed and shall be provided with a bar scale. The size of Mylar shall be 22 inches by 34 inches without an exception. A signing block shall be provided in the low right side on each sheet of Mylar. The signing block shall contain a signature line and a date line for City of Hayward, Landscape Architect. Upon completion of installation, As-built/Record Mylar shall be submitted to the Engineering Department by the developer.
61. A tree preservation bond will be required for all trees that are to remain, and the bond will be in effect throughout the construction period and until completion of the entire project improvements. If any trees that are designated as saved are removed or damaged during construction shall be replaced with trees of equal size and equal value.
62. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the commencement of clearing and grading operations, all trees to be preserved or removed shall be indicated on the grading, site and landscape plans, and trees to remain in place shall be noted and provided with tree protection measures in compliance with City codes.
63. A tree removal permit shall be obtained prior to the removal of any tree in addition to grading permit.

64. Permeable paving material such as permeable pavers and porous concrete shall be considered where stamped AC paving is proposed at the Mission Boulevard entry and crosswalks are proposed as well as the paved areas in the first layer where impervious paving is not allowed.
65. Three-inch deep mulch requirement applies to bio-treatment areas as well as all planting areas except for lawn areas when allowed.
66. Root barriers shall be installed linearly against the paving edge in all instances where a tree is planted within seven of pavement or buildings, and as directed by the landscape architect.
67. **For Model Homes:** All model homes that are landscaped shall use signs and written information to demonstrate the principles of water efficient landscapes described in Municipal Code Article 12, Section 10-12.17 Public Education, Model Homes.
68. Signs shall be used to identify the model as an example of a water efficient landscape featuring elements such as hydrozones, irrigation equipment, and others that contribute to the overall water efficient theme.
69. Information shall be provided about designing, installing, managing, and maintaining water efficient landscapes.
70. Inspection for Models: Landscape inspection shall be required prior to issuance of TCO, and another inspection prior to issuance of Certificate of Occupancy at the time of converting the model for sale. The project landscape architect shall inspect and accept the installation prior to requesting an inspection from City Landscape Architect. The project landscape architect shall complete Appendix C. Certificate of Completion in the City's Bay-Friendly Water Efficient Landscape Ordinance. The completed Certificate of Completion Part 1 through Part 7 shall be faxed/e-mailed/turn in prior to requesting an inspection from the City Landscape Architect.
71. Landscape and tree improvements shall be installed according to the approved plans prior to the occupancy of each building. All common area landscaping, irrigation and other required improvements shall be installed prior to acceptance of tract improvements, or occupancy of eighty percent of the dwelling units, whichever first occurs.
72. Inspection for Production Homes: Prior to the issuance of Certificate of Occupancy, all landscape and irrigation shall be completed in accordance to the approved plan and accepted by the City Landscape Architect. Before requesting an inspection from the City Landscape Architect, the project landscape architect shall inspect and accept landscape improvements and shall complete Appendix C. Certificate of Completion in the City's Bay-Friendly Water Efficient Landscape Ordinance. The completed Certificate of Completion Part 1 through Part 7 or applicable parts shall be faxed/e-mailed/turn in prior to requesting an inspection from the City Landscape Architect.
73. A minimum 24-inch box single species of tree shall be planted within the first layer as street frontage tree at every 30 feet on center or appropriate to specified species.
74. Trees with different watering requirements shall be irrigated on separate valves.
75. Each tree shall receive two (2) bubblers with 0.25 GPM: one preassembled deep root watering bubbler and one flood bubbler.
76. Wood screws shall be used to fasten tree ties to tree stakes. No nail shall be used.
77. The trees should be 20 feet from the corner, a minimum of 5 feet away from any underground utilities, a minimum of 15 feet from a light pole, and a minimum 30 feet from the face of a traffic signal, or as otherwise specified by the city. Root barrier shall be provided for all trees that are located within seven feet of paved edges or structure. Trees shall be planted according to the City Standard Detail SD-122.
78. Water meters and sewer clean outs shall be located within the driveway aprons.
79. A separate irrigation meter shall be provided.

80. Landscaping including street trees along Mission Boulevard shall be maintained by HOA and shall be in a healthy, weed-free condition at all times and shall maintain irrigation system to function as designed to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which contribute pollution to the Bay. The owner's representative shall inspect the landscaping monthly and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten days of the inspection. Three-inch deep mulch should be maintained in all planting areas. Mulch shall be organic recycled chipped wood in the shades of Dark Brown Color, and the depth shall be maintained at three inches deep. All nursery stakes shall be removed during tree installation and staking poles shall be removed when the tree is established or when the trunk diameter of the tree is equal or larger to the diameter of the staking pole.
81. All trees planted as a part of the development as shown on the approved landscape plans shall be "Protected" and shall be subjected to Tree Preservation Ordinance. Tree removal and pruning shall require a tree pruning or removal permit prior to removal by City Landscape Architect. Any damaged or removed trees without a permit shall be replaced in accordance with Tree Preservation Ordinance or as determined by City Landscape Architect within the timeframe established by the City and pursuant to the Municipal Code. Irrigation system shall be tested periodically to maintain uniform distribution of irrigation water; irrigation controller shall be programmed seasonally; irrigation system should be shut-off during winter season; and the whole irrigation system should be flushed and cleaned when the system gets turn on in the spring.
82. Mission Street frontage of the development shall have four or more new landscaped planters, approximately 100-feet apart (center to center) and extending approximately 7 feet out into the street parking lane. Each such planter shall be approximately 20 feet long and include a tree and other plants approved by the City's Landscape Architect. Each planter shall be served with automatic irrigation system.

Utilities

Water:

83. The development's proposed water main and valves shall be public, owned and maintained by the City. If the water mains are located in a private roadway, either the entire roadway shall be a public utility easement or a minimum 10-foot-wide easement shall be granted to the City.
84. All public water mains and appurtenances shall be constructed in accordance to the City's "Specifications for the Construction of Water Mains and Fire Hydrants," latest revision at the time of permit approval (available on the City's website at <http://user.govoutreach.com/hayward/faq.php?cid=11188>).
85. All connections to existing water mains shall be performed by City Water Distribution Personnel at the applicant's/developer's expense.
86. All water services from existing water mains shall be installed by City Water Distribution Personnel at the applicant's/developer's expense. The developer may only construct new services in conjunction with their construction of new water mains.
87. City records indicate that the property has twelve (12) existing 5/8 inch meters (Account #s 25053-25058, 25063, 25065-25070), located off the existing 6-inch water main located on the property that runs behind the existing retail building. The water main and services will need to be abandoned and removed to accommodate this development.
88. Domestic & Fire Services:

- a. **Domestic:** Each single-family residence (SFR) shall have an individual domestic water meter. Facilities fees for residential connections are based on the domestic demand for the home. A larger water meter may be installed if the service is combined with a private fire service. The developer is required to pay water facilities fees and installation charges for connections to water mains and work performed by City forces.
 - b. **Fire:** Each structure shall have its own fire service, sized per the requirements of the Fire Department. Fire services shall have an above ground Double Check Valve Assembly, per City Standards SD-201 and SD-204.
 - c. **Combined Residential Services:** The development can use combined residential domestic and fire services for each residence. Residential combined domestic and fire services are allowed, per City Standard SD-216. The minimum size for a residential fire service connection is 1 inch (combined or not) and the maximum size for combined services is 2 inches. If the calculated fire demand exceeds 160 GPM, a separate fire service will be required. Note that, per CBC 2010 R313, flow-through or multipurpose systems may not require a backflow device (SD-216 is attached).
89. Irrigation: The Utility Plan indicates that a 1 inch irrigation water meter will be installed. The applicant/developer shall install an above ground Reduced Pressure Backflow Prevention Assembly (RPBA) on each irrigation water meter, per SD-202. Backflow preventions assemblies shall be at least the size of the water meter or the water supply line on the property side of the meter, whichever is larger.
 90. All domestic and irrigation water meters shall be radio-read type.
 91. Water meters and services are to be located a minimum of 2 feet from top of driveway flare as per SD-213 thru SD-218. Water meter boxes in driveway aisle areas shall have steel H20 rated lids.
 92. Water mains and services, including the meters, must be located at least 10 feet horizontally from and 1 foot vertically above any parallel pipeline conveying untreated sewage (including sanitary sewer laterals), and at least 4 feet from and on foot vertically above any parallel pipeline conveying storm drainage, per the current California Waterworks Standards, Title 22, Chapter 16, Section 64572. The minimum horizontal separation distances can be reduced by using higher grade (i.e., pressure) piping materials.

Sewer:

93. The development will impact the sewer main in Harder Road, which has been identified as having inadequate capacity and a need to be upsized from 12 to 15 inches. In order to quantify and mitigate the impact the development will have on downstream sewer mains, the developer shall be responsible for the development's share of the subject sewer improvements based on the percentage of pipe capacity that will be required for the development and the final amount of such share shall be determined by the City. The exact amount must be determined, agreed upon and paid prior to recordation of the first final map for the development.
94. The development's sanitary sewer mains and manholes shall be public, owned and maintained by the City. If the sewer mains are located in a private roadway, either the entire roadway shall be a public utility easement or a minimum 10 foot wide easement shall be granted to the City.
95. All sewer mains and appurtenances shall be constructed in accordance to the City's "Specifications for the Construction of Sewer Mains and Appurtenances (12-inch diameter or less)," latest revision at the time of permit approval (available on the City's website at <http://user.govoutreach.com/hayward/faq.php?cid=11188>).

96. The sewer main shall be a minimum 8 inches. Manholes shall be installed at the upstream end of the pipeline, at any change in direction or grade, at intervals not to exceed 400 feet and at the connection to the new sewer main in Sorenson Road.
97. Each SFR shall have an individual sanitary sewer lateral. Each sanitary sewer lateral shall have at least one cleanout and be constructed per SD-312.
98. The developer is responsible for payment of sewer connection fees at the current rates at the time the application for building permits are submitted

Fire

99. Design of the public streets and private streets and courts shall meet all City of Hayward and California Fire Code Standards.
100. All public and private streets and private courts shall be designed with an all-weather surface pavement.
101. Parking of vehicles is allowed one-side parking on 30-foot-wide road. No parking is allowed on 24-foot-wide road. Where there is no on-street parking, fire lane signage shall be installed in locations required by the Hayward Fire Department. "No Parking" sign shall meet the City of Hayward Fire Department fire lane requirements.
102. All public streets, private streets and private courts shall be designed and engineered to withstand 75,000 pounds gross vehicle weight of fire apparatus. Such standard is also applicable to pavers or decorative concrete.
103. Spacing and locations of fire hydrants shall be subject to review and approval by the Hayward Fire Department. The type of fire hydrant shall be Modified Steamer Hydrant (Clow Valve Co. Model LB 614 with one 2-1/2" outlet and one 4-1/2" outlet) in single-family residential area, capable of flowing 1,500 gallons per minute. The design and layout of the hydrants shall be reviewed and approved by the Fire Department.
104. Blue reflective pavement markers shall be installed at fire hydrant locations. If fire hydrants are located so as to be subjected to vehicle impacts as determined by the Hayward Fire Department, crash posts shall be installed around the fire hydrant(s).
105. Submit for proper building permits for the construction of the building to the Building Department.
106. Buildings are required to install fire sprinkler systems in accordance with NFPA 13/13D Standards. A separate plan/permit is required prior to the installation of the overhead fire sprinkler system.
107. Maximum 80 PSI water pressure should be used when water data indicates a higher static pressure. Residual pressure should be adjusted accordingly.
108. Underground fire service line serving NFPA 13D/13 sprinkler system shall be installed in accordance with NFPA 24 and the Hayward Public Work Department SD-216/204. Water meter shall be minimum 1 inch in diameter for residential application or 4 inches for a (NFPA 13) commercial grade system.
109. An audible alarm bell (device) shall be installed to sound on the exterior of each individual building. The device shall activate upon any fire sprinkler system waterflow activity.
110. An interior audible alarm device shall be installed within the dwelling in a location so as to be heard throughout the home. The device shall activate upon any fire sprinkler system waterflow activity.
111. All bedrooms and hallway areas shall be equipped with smoke detectors, hard-wired with battery backup. Installation shall conform to the California Building Code (CBC).

112. When a flow switch is not installed on the riser of a flow through sprinkler system, smoke alarms shall be interconnected to sound an audible alarm in all sleeping areas within the dwelling unit.
113. CO detectors should be placed near the sleeping area on a wall about 5 feet above the floor. The detector may be placed on the ceiling. Each floor needs a separate detector.
114. An approved type spark arrestor shall be installed on any chimney cap.
115. A minimum 4-inch self-illuminated address shall be installed on the front of the dwelling in a location so as to be visible from the street. Otherwise, a minimum 6 inches address shall be installed on a contrasting background and shall be in a location approved by the Fire Department.

Hazardous Materials

116. Submit a Phase 1 Environmental Assessment and any other records regarding site contamination, investigation, remediation, or clearances from other regulatory agencies. Submit final clearance shall be obtained from either the California Regional Water Quality Control Board or Department of Toxic Substance Control to ensure that the property meets residential development investigation and cleanup standards. Allowance may be granted for some grading activities if necessary to ensure environmental clearances.
117. The Hayward Fire Department's Hazardous Materials Office shall be notified immediately at (510) 583-4900 if hazardous materials or associated structures are discovered during demolition or during grading. These shall include, but shall not be limited to: actual/suspected hazardous materials, underground tanks, or other vessels that may have contained hazardous materials.
118. During construction, hazardous materials used and hazardous waste generated shall be properly managed and disposed.
119. If hazardous materials storage and/or use are to be a part of the facility's permanent operations then a Chemical Inventory Packet shall be prepared and submitted with building plans to the City of Hayward Fire Department at the time of application for construction permits.

Police

120. Consider incorporating the "Crime Free Lease Addendum" in the CC&Rs when the Home Owners Association is created. This addendum helps homeowners with landlord/tenant issues if they choose to rent out their property. Contact Mary Fabian for more information on this and the Crime Free Multi Housing Program.

Public Works Engineering

121. Remove and replace the existing curb, gutter and sidewalk along the Sorenson Road frontage.
122. Install standard street lights along Sorenson Road property frontage.
123. All existing driveways to be abandoned along Mission Boulevard shall be removed and replaced with standard curb, gutter and sidewalk.
124. The proposed street entrance along Sorenson Road shall conform to City Standard Detail SD-110A and be enhanced with at least ten feet raised decorative paving and capable of supporting a 75,000 pounds gross vehicle weight load.

125. Mission Boulevard is on moratorium. Grind and overlay the side of the street along property frontage with 2-inch HMA after the connection of the proposed water main.
126. The entire width of Sorenson Road shall be milled and overlaid with minimum 2-inch hot mix asphalt after the connection of the proposed water main, sewer main and storm drain.
127. The on-site storm drain system shall be private and shall be maintained by the Homeowner's Association. All stormdrain inlets shall be labeled with "No Dumping – Drains to Bay or equivalent, using methods approved by the City.
128. The Developer's Engineer shall complete a Development and Building Application information comprising of: (1) Impervious Material Form, and (2) Operation and Maintenance Information for Storm Water Treatment Measures.
129. The Hydrology and Hydraulics Criteria Summary, Alameda County Flood Control and Water Conservation District, latest edition shall be used to determine storm drainage runoff. A detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be reviewed and approved by the Alameda County Flood Control and Water Conservation District and the City Engineer.
130. All inlet rims in the Bioretention Treatment Area (BTA) shall be 6-inch minimum above the flow line of the BTA. The design of the longitudinal flow line shall be level.
131. The owner/developer shall complete an Information Request Form for Stormwater Treatment Maintenance Agreement to be used to prepare a "Storm Treatment Measures Maintenance Agreement" with the City (as prepared by the City of Hayward and is available in the Engineering and Transportation Division); the Maintenance Agreement shall be recorded with the Alameda County Recorder's Office to ensure that the maintenance is bound to the property in perpetuity.

Solid Waste

132. Please note that stacked cans (when one can needs to be move to access the other) is generally not recommended. Since the organics container will likely be small (32-gallon cart size) it will be permitted for this project, though it there is any possibility of avoiding stacked cans, please show any solutions in your building permit.
133. At the time of your building permit, please submit the attached construction and demolition debris recycling statement.

Building

134. An accessible route shall be provided to all portions of the building, accessible building entrances, between the building and the public way and the exterior accessible route shall comply with the provisions of Section 1110A. An accessible route shall be the most practical direct route and to the maximum extent feasible, coincide with the route for the general public and building residents. Show details to comply.
135. Compliance with CBC Section 1102A.3.1 and Division IV of the Chapter 11A requires buildings with multistory dwelling units and no elevators to comply with the handicapped accessibility requirements. Prior to issuance of building permits, details shall be provided that prove compliance.
136. Accessible parking spaces (at least 1 of every 8 parking spaces is van accessible) shall be provided at a minimum rate of 2% of the covered multifamily dwelling units. Provide

calculation to show minimum number of required accessible parking. Please note that at least each type (e.g. if any, covered or not covered parking) of parking facility shall be made accessible even if the total number exceeds the required number of accessible parking spaces. Specify if the parking spaces are assigned or unassigned and visitor parking spaces and show how they comply with their accessibility requirements as stipulated in Section 1109A.4 and 1109A.5. Also, in terms of location of accessible parking spaces, accessible parking spaces shall be located on the shortest possible accessible route to an accessible building entrance. Accessible parking spaces shall be located so that persons with disabilities are not compelled to wheel or walk behind parked cars other than their own. When practical, the accessible route shall not cross lanes for vehicular traffic. When crossing vehicle traffic lanes is necessary, the accessible route shall be designated and marked as a crosswalk. In addition, accessible parking shall comply with other requirements as stipulated in Section 1109A.7.

137. The plans will need to show or address the items below at the building permit review process:
- a. Provide all the governing codes on plans. Applicable codes shall include the 2013 CA Building Code, 2013 CA Electrical Code, 2013 CA Mechanical Code, 2013 CA Plumbing Code, 2013 CA Green Building Standards Code, 2013 CA Energy Efficiency Standards and the City of Hayward Municipal Code and Ordinances.
 - b. Provide the type of construction, occupancy groups, the scope of work, and information on the fire sprinkler on plans.
 - c. Provide building area analysis to show that the project complies within the allowable building heights and areas on plans.
 - d. Show the required fire-resistance-rated separation between occupancies and dwelling units and provide details.
 - e. Fire partitions shall comply with Section 708. Show details to comply.
 - f. Penetrations into or through fire partitions shall comply with Sections 714.3.1 through 714.3.3. Show details to comply.
 - g. Show details for life and safety issues such as fire-rating of walls, smoke and carbon monoxide detectors and etc.
 - h. Specify if the parking spaces are assigned or unassigned and visitor parking spaces and show how they comply with their accessibility requirements as stipulated in Section 1109A.4 and 1109A.5.
 - i. Other building code requirements shall be reviewed along with structural calculations, T24 energy compliance, CALGreen (residential and non-residential) compliance and others at the building permit review process. Additional comments shall apply.
 - j. Provide capability to facilitate future installation of electric vehicle charging in the parking spaces for multi-family residential units. Provide and verify the required number of EV charging spaces. At least one of the spaces must be accessible. Show details to comply.
 - k. The multi-family buildings shall be solar ready and comply with the requirements of CA Energy Code Section 110.10(b) through 110.10(d). Show details to comply.
 - l. Supplemental building construction and improvement tax is required at the time of issuance of building permit.
 - m. School fee payment is required prior to issuance of building permit.

Inclusionary Housing:

138. **Affordable Housing Ordinance Requirement:** *The applicant/developer shall comply with Ordinance 16-189 and Article 17 of the City of Hayward Municipal Code the Affordable Housing Ordinance (“AHO”) pertaining to the required provision of Affordable Housing by providing 6 affordable housing units as part of the project rather than elect to pay the In-lieu fee. The distribution between the townhomes and the apartments will be established in an Affordable Housing Agreement to be executed prior to issuance of building permits. Should the obligation be met by providing all 6 units as part of the apartment project and construction has not begun within 36 months of the start of construction of the townhomes, then the developer shall be obligated to pay in-lieu fees for the three townhome units established by the current Affordable Housing Ordinance prior to the last Certificate of Occupancy issued for the townhomes.*

Public Parkland Obligations:

139. In accordance with Section 10-16.30 – Public Improvements. In Lieu of the provisions of land, the applicant shall pay in-lieu fees in the amount of \$11,395 per attached dwelling unit and \$9,653 per multi-family apartment unit. Method of payment shall be in accordance with Section 10-16.30 (c).

Mitigation Measures:

140. This approval is subject to the Mitigation Monitoring and Reporting Program from the South Hayward BART/Mission Boulevard Form-Based Code Supplemental Program EIR and Mitigation Measures in the Mitigated Negative Declaration prepared for this project.
141. Land Use Restriction – Prior to recording of Final Map, the Property Owner shall record a “Notice and Declaration of Land Use Restriction limiting the number of units on Lot 8 to 39 units and total units on Lots 1 through 7 to 35 units.

Removal of Existing Commercial Structures

142. The property owner shall demolish the existing commercial building and accessory structure on the site within 60 days of ~~this entitlement~~. **of the expiration of any appeal period.**
143. The property owner shall be responsible for securing and clearing the existing commercial structures(s), of all people and animals prior to demolition and commencement of construction activities.
144. Prior to, during, and following demolition of the existing commercial structure(s) on the site, the property owner shall be responsible for securing and maintaining the site in accordance with HMC Chapter 4, Article 1, Public Nuisances; HMC Chapter 5, Article 7, Community Preservation and Improvement Ordinance; and the California Building Code, among other applicable regulations.

Crime Prevention

145. Prior to the issuance of building permits, the applicant/developer shall meet with the Crime Prevention Division of the Hayward Police Department to coordinate development and construction of the project in conformance with goals and polices of CEPTED (Crime Prevention Through Environmental Design).

Pre-Construction

146. Prior to the issuance of ANY permit on the subject property in conjunction with this approval, the applicant/developer shall meet with the City Building Official or his designee to discuss the pending project construction and development. Items of discussion shall be but are not limited to, the Conditions or Approval, environmental mitigation measures, demolition, construction timing, construction staging, noise ordinance compliance, construction hours, haul routes, required permits from other departments, persons and agencies to be contacted and any other discussion topic pertinent to the construction of the project.
147. **Commercial Area:** *Additional commercial space will be added to the mixed use building by reconfiguring area within the building as follows:*
1. *Relocate the bike storage and garbage space on the ground floor to another area of the Apartment project and convert that approximately 500 square feet into commercial space.*
 2. *Change the use of the second story above the current 1,000 square foot retail space from Apartment tenant storage to office space, creating an additional 1,000 square foot of commercial space.*
 3. *With the addition of these two changes, the commercial space square footage of the Apartment project increases from approximately 1,000 square feet to approximately 2,500 square feet*
148. **Universal Design Options:** *For the townhomes, Applicant agrees to provide an option as part of its construction drawings for one of its floor plans, to have incorporated Universal Design Principles to accommodate an individual with physical limitations. The following shall be included as such options in the ground floor level of such floor plan:*
1. *Wheelchair accessible shower*
 2. *Lower kitchen countertop*
 3. *Electrical outlets to support a mini refrigerator, stovetop and other kitchen appliances*
 4. *a sink*
 5. *Wide doors*
 6. *Lowered light switches*
 7. *Wood flooring or carpet*
149. **Residential Solar System (Townhomes):** *In addition to the solar power provided for the community common areas in the original Conditions of Approval, Applicant also will provide solar power to the residential Townhouse Units.*
150. **Community Benefit Payment:** *Applicant has agreed to make a \$40,000 payment to the City to be used as the City Council elects (for public art or renovation of any public space or park). **This payment would be made to help offset the described deficiencies of the proposed project and the site limitations including the limited replacement of commercial space, limited opportunities for onsite outdoor group open space, lack of public art.***

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE
24 OF THE HAYWARD MUNICIPAL CODE BY
INCLUDING TEXT WITH THE ADDITIONAL
PROVISION OF ALLOWING DENSITY
AVERAGING/TRANSFER IN THE TRANSECT ZONES
T4 URBAN GENERAL (17.5 DU/ACRE MIN; 35 DU/ACRE
MAX) AND T5 (35 DU/ACRE MIN; 55 DU/ACRE MAX)

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

Section 1. Text Amendment

Article 24 of Chapter 10 of the Hayward Municipal Code 10-24.240 Density Standards, a. is hereby amended to include allowing the averaging/transfer of residential density between and among adjacent parcel of the same zone in the T4 Urban General (17.5 DU/acre min; 35 DU/ac max) and T5 Urban General (35 DU/acre min; and 55 Du/acre max) transect zones, as follows:

- iv. Permissible residential density may be transferred or averaged over one or more parcels comprising a development site provided that all of the following conditions are met:
 - The properties/parcels are the same zoning;
 - The properties/parcels are contiguous, and
 - Appropriate notice and declarations of land use restrictions have been recorded on all of the affected parcels.

Section 2. Severance.

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

Section 3. Effective Date.

This ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held on the _____ day of _____ 2017, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of 2017, by the following votes of members of said City Council.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DNS Capital, LLC

1350 Treat Blvd.
Suite 400
Walnut Creek, CA 94597

October 24, 2017

VIA EMAIL – Sara.Buizer@hayward-ca.gov

Ms. Sara Buizer AICP
Planning Manager
City of Hayward
777 B. Street
Hayward, CA 94541

Re: Proposed Changes/Concessions to Conditions of Approval

Dear Sara:

On behalf of KB Home and DNS Capital, LLC (collectively, the “Applicant”), we are pleased to submit to you the following changes to and concessions for our joint project for inclusion in the Conditions of Approval with respect thereto:

- Agreement to Provide 6 AHU’s in Project: The Applicant will provide 6 Affordable Housing Units (“AHU’s”) (DNS will provide 3 units and KB Home will provide 3 moderate income units) as part of our project rather than elect to pay the In-lieu fee permitted by the current City of Hayward Affordable Housing regulations (the “HAHR’s”). At this time, as is permitted by the HAHR’s, each of KB Homes and DNS Capital are working out between them whether the 6 AHU’s will be contained entirely in DNS Capital’s apartment project or whether they will be contained in each of KB Home’s townhome project and DNS’ apartment project in combination. Once we have worked that out between us, we will let you know if our proposed agreement provides an allocation of AHU’s that is different from 3 AHU’s each and we understand that any such arrangement that is different from 3 AHU’s each is subject to Planning Staff approval. That said, the Applicant has agreed to forego its rights to pay the In-lieu fees for AHU’s and will provide the AHU’s as part of their joint project.
- Increase of Commercial Space in DNS Apartment Project: DNS Capital has agreed to reconfigure its commercial space included as part of its application to do the following:

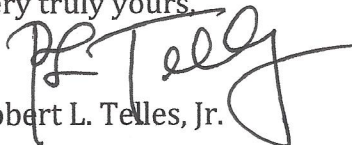
- Relocate the bike storage and garbage space on the ground floor to another area of the Apartment project and convert that approximately 500 square feet into commercial space.
 - Change the use of the second story above the current 1,000 square foot retail space from Apartment tenant storage to office space, creating an additional 1,000 square foot of commercial space.
 - With the addition of these two changes, the commercial space square footage of the Apartment project increases from approximately 1,000 square feet to approximately 2,500 square feet.
- KB Home to Provide Universal Design Principles Option: KB Homes will agree to provide an option (at an additional cost to the purchaser), as part of its construction drawings for one of its floor plans, to have incorporated Universal Design Principles to accommodate an individual with physical limitations. The following shall be included as such options in the ground floor level of such floor plan:
 - Wheelchair accessible shower
 - Lower kitchen countertop
 - Electrical outlets to support a mini refrigerator, stovetop and other kitchen appliances
 - A sink
 - Wide doors
 - Lowered light switches
 - Wood flooring or carpet
- KB Home to provide a residential Solar System for the Townhouse Units: In addition to the solar provided for the community common areas in the original Conditions of Approval, KB Home will also agree to provide solar to the residential Townhouse Units.
- Applicant to Make \$40,000 Donation to City for Public Purpose of City Council's Choosing: Recognizing that the City Council would like to obtain an additional tangible "public benefit" from our project, the Applicant has agreed to make a \$40,000 donation to the City to be used as the City Council elects (for public art or renovation of any public space or park).

Sara, we believe these changes represent a significant contribution by the Applicant to answer every one of the issues raised by each of the City Council members in our last public hearing on October 3rd. We hope that the City Council feels that we have carefully listened to and acted upon all of their concerns voiced in

our public hearing on October 3rd and believe that these concessions should be enough to garner unanimous approval of our project as proposed with the above concessions.

Please let me know if there are any other things you need from us. Time is of the essence and we would like to be in a position to obtain City Council approval of our project in the upcoming November 14th meeting.

Very truly yours,



Robert L. Telles, Jr.

cc: Mr. Jeffrey McMullen, KB Home
Mr. Ray Panek, KB Home
Ms. Kelly McAdoo, City Manager
Kelly.McAdoo@hayward-ca.gov
Ms. Stacey Bristow, Director of Development Services
Stacey.Bristow@hayward-ca.gov



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 3, 2017, 7:00 p.m.**

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

ROLL CALL

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

PRESENTATION

Mayor Halliday presented the Key to the City of Hayward and a "Rosie Rios Appreciation Day" proclamation to former Treasurer of the United States, Rosa "Rosie" Rios, in honor of her achievements, historic impact on the empowerment of women, and her unyielding dedication to serving the people of the United States, State of California, Alameda County, and the City of Hayward. Ms. Rios accepted the recognition and thanked the Council for such an honor.

Mayor Halliday read a proclamation recognizing the month of October 2017 and every October thereafter as National Domestic Violence Awareness Month; and presented proclamations to Ruby's Place and to Safe Alternatives to Violent Environments (SAVE). Mayor Halliday noted that Ruby's Place was also celebrating its 45th Anniversary. Ruby's Place Executive Director, Vera Ciammetti, and SAVE Executive Director, Jaski Safinya- Davies, accepted the certificates on behalf of their agencies.

PUBLIC COMMENTS

Mr. Kim Huggett, Hayward Chamber of Commerce President, spoke about the Chamber's Business and Membership Guide; the 32nd Annual Business Expo on October 11, 2017, at the St. Rose Hospital's Grand White Tent; and the Mariachi Festival on September 16, 2017.

Ms. Heather Reyes, Hayward resident, reported her car was totaled at the intersection of Winton and Stonewall Avenues, added the 880 off-ramp onto Winton Avenue is a hazard, and inquired if a traffic study was conducted for that area.

Mr. Jim Drake, Hayward resident, spoke about the Downtown's loop, bike lanes on thoroughfares, and repair of potholes.

CONSENT

1. Minutes of the City Council Meeting on September 19, 2017 **MIN 17-129**

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to approve the minutes of the City Council meeting on September 19, 2017.

2. Resignation of Ms. Linda Dobb from the Keep Hayward Clean and Green Task Force **CONS 17-605**

Staff report submitted by City Clerk Lens, dated October 3, 2017, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 17-148, "Resolution Accepting the Resignation of Linda Dobb from the Keep Hayward Clean and Green Task Force"

3. Resignation of Syed Karim from the Downtown Business Improvement Area Advisory Board **CONS 17-613**

Staff report submitted by City Clerk Lens, dated October 3, 2017, was filed.

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously, to adopt the following:

Resolution 17-149, "Resolution Accepting the Resignation of Syed Karim from the Downtown Business Improvement Area Advisory Board"

LEGISLATIVE BUSINESS

4. Adopt Resolution Changing Street Name from Tuskegee Drive to Tuskegee Airmen Drive (Report from Public Works Director Fakhrai) **LB 17-041**

Staff report submitted by Public Works Director Fakhrai, dated October 3, 2017, was filed.

Public Works Director Fakhrai provided a synopsis of the staff report.

Mayor Halliday opened the public hearing section at 7:38 p.m.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 3, 2017, 7:00 p.m.**

Mr. David Cunningham, Tuskegee Airmen Chapter President, thanked the City for changing the name of the street from Tuskegee Drive to Tuskegee Airmen Drive.

Mayor Halliday closed the public hearing section at 7:39 p.m.

Council Member Mendall offered a motion per staff's recommendation. Council Member Mendall apologized for the oversight with the initial street naming, and acknowledged the name change would cause a short-term inconvenience.

Council Member Zermeño seconded the motion.

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

Resolution 17-150, "Resolution Changing the Name of Tuskegee Drive to Tuskegee Airmen Drive"

PUBLIC HEARING

5. Proposed Subdivision and Construction of 35 Townhomes and a Mixed-Use Building of 39 Apartment Units with 1,020 square feet of Ground Floor Commercial Use on a 2.7-Acre Project Site Located at 26601 Mission Boulevard (West Side, North of Sorenson Road) Assessor Parcel Number (APN) 452-0036-30-05, Requiring: 1) Approval of an Amendment to South Hayward BART/Mission Boulevard Form-Based Zoning Code (Article 24) to Allow Residential Density Transfer/Averaging Among Like-Zoned Development Sites in the Urban General transect zones T4 (17.5 DU/Acre min; to 35 DU/Acre max) and T5 (35 DU/Acre min; to 55 DU/Acre max); 2) Site Plan Review; 3) Warrants for: (a) Roof Pitch, (b) Excess Parking in the T4 zone, (c) Glazing Less than 30% for the First Story along Mission Boulevard, and (d) Parking within the Layer 2 Setback Area; 4) Vesting Tentative Map 8335 Associated with the Subdivision; and 5) Mitigated Negative Declaration. KB Home (Applicant) and DNS Capital Partners LLC/Robert Telles (Owner/Applicant). Application No. 201601022 (Report from Interim Development Services Director Bristow) **PH 17-087**

Staff report submitted by Interim Development Services
Director Bristow, dated October 3, 2017, was filed.

Consulting Planner Porto provided a synopsis of the staff report, and noted there was an amendment to Condition of Approval 52k that would allow the HOA to monitor and enforce the requirement. The revised Condition No. 52k would read as follows, "The garage... storage areas. The HOA shall monitor and enforce this requirement. An automatic garage...doors."

Discussion ensued among Council Members and City staff regarding the proposed project; Condition of Approval No. 82; affordable housing; mixed-use for the apartment; the survey conducted; Mission Boulevard Corridor Form-Based Code; Inclusionary Housing Ordinance; universal design; and retail space.

Mayor Halliday opened the public hearing section at 8:07 p.m.

Mr. Robert Telles, owner/applicant, spoke about the proposed project, explained why retail space was not viable for the proposed area, and addressed questions from the Council.

Mr. Brad Blake, with Blake/Griggs Properties, noted there would not be demand for retail at the proposed location due to economic and location constraints, and Hayward had a supply of retail overall.

Mr. Jose Hernandez, Colette Street resident, did not support the proposal because it would obstruct the view from his backyard and would impact existing traffic in the area.

Mayor Halliday closed the public hearing section at 8:19 p.m.

The City Council generally agreed that the proposed project did not have the needed affordable housing and did not have retail space. While the only benefit of the project was that it would demolish an eyesore at a main gateway, there were no overall benefits to the community. Council Members also indicated that the proposed project did not have a community park/tot lot; had an insignificant amount of commercial space; had no significant green building features; lacked parking requirements; created view impacts; did not conform to the vision in the Mission Boulevard Form-Based Code; the economic development vision was not being fully realized; did not include universal design; and did not address the complete streets/complete communities strategic initiatives.

Council Member Mendall offered a motion directing staff to bring back findings to support denial of the proposed project.

Council Member Zermeño seconded the motion.

City Manager McAdoo recommended that the public hearing be continued to November 14, 2017, so staff did not have to re-notice the public hearing.

Council Members Mendall and Zermeño were amenable to modifying the motion to include that the public hearing item would be continued to November 14, 2017.

Council Member Márquez suggested that the project applicant and the Council follow up with the City Manager about a conceptual review work session to obtain feedback from Council. Council Member Márquez also suggested having conversations with California State University, East Bay about their housing needs.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 3, 2017, 7:00 p.m.**

Council Member Lamnin encouraged staff to continue to work with the property owner to conduct an outreach and enforcement approach on the property.

Mayor Halliday allowed the project applicant to speak.

Mr. Robert Telles, owner/applicant, expressed he had done everything he could to develop his property with economic limitations.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried unanimously, to continue the public hearing to November 14, 2017, and direct staff to bring back findings to support denial of the proposed project.

INFORMATION ITEMS

6. Status Update for Bloomberg What Works Cities Initiative RPT 17-120

Staff report submitted by Management Analyst II Stefanski, dated October 3, 2017, was filed.

City Manager McAdoo provided highlights from the written report that was provided to the City Council.

CITY MANAGER'S COMMENTS

There were none.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Márquez stated that during the public comments section of the work session she asked staff to provide an update on the current housing issues in the community and, with Council's concurrence, staff agreed to bring an item to Council on October 17, 2017.

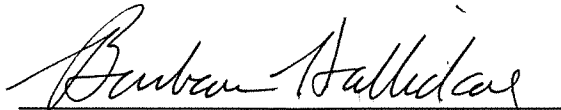
Mayor Halliday noted the Council will be participating in the 40th Annual Volunteer Recognition and Awards Dinner at the St. Rose Hospital Grand White Tent on October 10, 2017.

ADJOURNMENT

Mayor Halliday asked for a moment of silence in memory of those who have suffered from the recent tragedies in Houston, Florida, Puerto Rico, and Las Vegas; and adjourned the meeting at 8:57 p.m., in honor of those who have lost their lives during the recent tragedies and with hope for those who continue to struggle to survive and rebuild their lives.

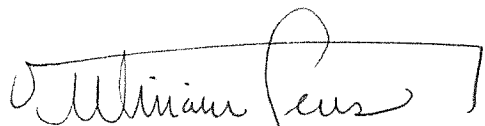
Mayor Halliday noted the next special City Council meeting would be on Saturday, October 14, 2017, regarding the long-term budget outlook.

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 17-048

DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Attorney and Interim Development Services Director

SUBJECT

Re-Introduction of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1(Zoning Ordinance).

RECOMMENDATION

That the City Council re-introduces the ordinance (Attachment II).

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Ordinance



DATE: November 14, 2017

TO: Mayor and City Council

FROM: City Attorney and Interim Development Services Director

SUBJECT Re-Introduction of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1(Zoning Ordinance).

RECOMMENDATION

That the City Council re-introduces the ordinance (Attachment II).

SUMMARY

The purpose of this item is to re-introduce the ordinance, as amended by the Council during the October 30, 2017 City Council meeting. Re-introduction is necessary because the City Charter requires any ordinance that is altered after its introduction to be adopted at a meeting at least one week after the alteration. Since the ordinance was introduced on October 17 subject to amendments made during that meeting, and subsequently amended at the meeting where it was scheduled for adoption on October 30, staff recommends that this item be re-introduced to comply with the requirements of the City Charter.

BACKGROUND AND DISCUSSION

During the October 17, 2017 City Council meeting, the City Council considered Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1(Zoning Ordinance), for introduction. The Council voted to introduce the ordinance subject to the following amendments: 1) amend the ordinance to remove hours of operation and have these specified in the Conditional Use Permit process, and align delivery hours with alcohol regulations; 2) modify the ordinance by removing the word "armed" from the security guard language; 3) include language about workers' compensation and labor agreements in the Request for Proposal (RFP) scoring process; 4) adopt a resolution to limit the number of commercial cannabis retail dispensaries to three; 5) evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; 6) review language to allow a business application to move forward absent a permanent/temporary State license but not allow it to open until it has a provisional/permanent State license; and 7) add youth education as a community benefit component in the RFP.

The ordinance incorporating the amendments from the October 17 meeting was placed on the agenda for the October 30, 2017 City Council meeting for adoption. The item was pulled from the consent calendar for additional discussion regarding further amendments. The Council voted to further amend the ordinance by removing cannabis uses (delivery and retail) from the Neighborhood Commercial zoning district.

The City Council action to approve the ordinance with the additional amendment during the October 30 meeting was not sufficient to adopt the ordinance at that meeting. Pursuant to Section 617 of the City Charter, if an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall be adopted at a meeting held at least one week after the date of such alteration. The purpose of this item is to re-introduce the ordinance with the amendment made by the Council during the October 30 City Council meeting to comply with the requirements of the City Charter.

ECONOMIC IMPACT

Potential economic impact of issuing conditional use permits to commercial cannabis businesses has been discussed in other related agenda items from March 2017 to present.

FISCAL IMPACT

The fiscal impact of this item has been discussed and addressed in prior related agenda items, including an amendment to the Master Fee Schedule imposing fees related to the City's commercial cannabis program.

STRATEGIC INITIATIVES

Relationship of this item to strategic initiatives has been discussed in prior related agenda items.

PUBLIC CONTACT

Public notice of the re-introduction of the ordinance was published on November 3, 2017 in the Daily Review-Bay Area News Group.

NEXT STEPS

Upon re-introduction by the Council, this item will be placed on the agenda for adoption during the November 28, 2017 City Council meeting. It will become effective immediately upon adoption.

Prepared by: Michael Vigilia, Senior Assistant City Attorney
Jeremy Lochirco, Principal Planner

Recommended by: Michael Lawson, City Attorney
Stacey Bristow, Interim Development Services Director

Approved by:



Kelly McAdoo, City Manager

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING
 COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND
 COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD
 MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE);
 AND ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that:

A. Pursuant to its police powers, and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transporting, and testing within its jurisdiction.

B. The City has previously prohibited, through exclusionary zoning ordinance, both medical and non-medical adult cannabis land uses and regulations within the City.

C. The City wishes to establish a uniform regulatory structure for all medical and non-medical adult cannabis uses in the City in accordance with state law.

Section 2. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance to read as follow:

SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)

SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:
- (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
- (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

- (e) Dance or night club.
- (f) Liquor store.
- (g) Theater, Large Motion Picture.
- (h) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)

SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CO District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (c) Pharmaceutical sales. (Where accessory to a medical office or clinic, and where it does not exceed 3,000 square feet).

SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)

SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See Section 10-1.1045 for special requirements);

SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret, Dance or Nightclub. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Convenience Market
 - (f) Liquor store.
 - (g) Pawn Shop

- (h) Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See [Sec. 10-1.1045](#) for special requirements.)

SEC. 10-1.1530 - CENTRAL CITY—RESIDENTIAL SUBDISTRICT (CC-R)

SEC. 10-1.1533 - CC-R CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:

- (5) Retail Commercial Uses.

[Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

SEC. 10-1.1540 - CENTRAL CITY—PLAZA SUBDISTRICT (CC-P)

SEC. 10-1.1543 - CC-P CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:

- (5) Retail Commercial Uses. (See General Regulations Section 10-1.2750 et seq. for regulations of alcohol.)

- (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)

[\(b\) Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

- (c) Dance or night club.

- (d) Convenience Market

- (e) Liquor store

SEC. 10-1.1555 - MINIMUM DESIGN AND PERFORMANCE STANDARDS FOR CC-C, CC-R, AND CC-P SUBDISTRICTS

- [g. Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- h. Decks and Ramps.
- i. Fences, Hedges, Walls.
- j. Grading.
- k. Landscaping.
- l. Lighting, Exterior.
- m. Office Uses in the CC-P Subdistrict.
- n. Open Space (Residential).
- o. Outdoor Storage.
- p. Parking, Driveways and Paving.
- q. Roof-Mounted Equipment.
- r. Signs.
- s. Surfacing.
- t. Trash and Recycling Facilities.
- u. Window Coverage.

SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)

SEC. 10-1.1615 - USES PERMITTED.

- a. Primary Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District as primary uses, when not adjacent to a residentially zoned property or properties, when not specified as an administrative or conditional use and when the use is conducted completely within an enclosed building(s) provided that minor open storage may be permitted as an ancillary use.
- (2) Administrative and Professional Offices/Services.
- (a) Architectural, drafting and engineering offices.
 - (b) Banks and financial institutions.
 - (c) Commercial Cannabis Delivery
 - (d) Interior design studio.
 - (e) Manufacturer's representative office.
 - (f) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (g) Office. (Offices may constitute no more than 50 percent of the area of a building except when located in a building within a planned industrial park of 25 acres or more in area, as defined on the map on file in the Planning Division.)

SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of an administrative use permit:
- (1) Industrial Uses.
- (a) Any Industrial use(s) located on a parcel(s) which abuts an, R, A MH, OS or residential PD zoning district.
 - (b) Brewery or liquor distillery, including grain elevators.
 - (c) Commercial Cannabis Cultivation (up to 5,000 square feet)
 - (d) Commercial Cannabis Distribution
 - (e) Contractors storage yard.
 - (f) Industrial equipment sales or rental.
 - (g) Perfume or vinegar manufacture.
 - (h) Railroad yard.
 - (i) Recycling collection area.
 - (j) Sandblasting activities.
 - (k) Truck terminal.
 - (l) Truck rental.
 - (m) Truck storage yard.
 - (n) Vehicle dismantling facility. (Indoors only)
 - (o) Wind energy conversion system.
 - (p) Hazardous materials use and storage
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of a conditional use permit:

- (1) Industrial Uses.
 - (a) Commercial Cannabis Cultivation, over 5,000 square feet
 - (b) Commercial Cannabis Medical and Non-Medical Manufacturing, Level 1
 - (c) Hazardous materials use and storage
 - (d) Major outdoor storage.
 - (e) Recreational vehicle storage yard.
 - (f) Public storage facilities.

SEC. 10-1.1645 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

Industrial Buildings and Uses.

For industrial buildings and uses refer to the following specific criteria and standards.

- h. Cannabis. Refer to Section 10-1.3600, Cannabis.
- i. Decks and Ramps.
- j. Fences, Hedges, Walls.
- k. Food Vendor Permit.
- l. Grading.
- m. Landscaping.
- n. Lighting, Exterior.
- o. Outdoor Storage.
- p. Parking.
- q. Retaining Walls.
- r. Roof-Mounted Equipment.
- s. Signs.
- t. Surfacing.
- u. Trash and Recycling Facilities.
- v. Truck Loading Facilities.
- w. Yard Exceptions.
- x. Window Coverage.

SEC. 10-1.1800 - LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT DISTRICT (LM)

SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the LM District subject to approval of an administrative use permit:
 - (1) Light Manufacturing Uses.
 - (a) Laboratories, including cannabis, commercial, testing, research, experimental or other laboratories, including pilot plants.

SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

Special standards and conditions as set forth below are applicable to uses enumerated in this Section and listed in the individual districts. Departure or variation from these standards is permitted only when it can be established by the applicant that the intent and purpose of the district or the necessary findings for permit approval, as specified in this ordinance, are not

compromised. Where warranted by ordinance regulations or to implement official City policy, standards of development may be required that exceed those listed in this Section.

- d. [Cannabis, Personal Cultivation and Commercial Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- e. Garage Sales.
- f. Livestock, Apiaries, and Household Pets.
- g. Manufactured Housing Regulations.
- h. Outdoor Gatherings.
- i. Private Street Criteria.
- j. Recycling Facilities and Recycling Collection Facilities.
- k. Fence Regulations for Vacant Properties.
- l. Vehicle Parking, Repair, Display, and Storage Requirements

Section 3. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 2 (Off-Street Parking Requirements) to read as follow:

SEC. 10-2.340 - OFFICE, RETAIL, AND SERVICE USES.

The minimum number of off-street parking spaces required for office, retail, and service uses shall be:

USES	PARKING SPACES REQUIRED
OFFICES, medical and dental offices, clinics and laboratories, including Cannabis Testing Laboratories	1.0 for each 200 square feet of gross floor area
RETAIL establishments characterized by hand-carried merchandise in which a customer makes quick purchases or rentals in small quantities, including: Cleaners without a cleaning plant Convenience stores Commercial Cannabis Retail Dispensaries Delicatessen Doughnut shops Ice cream shops Laundry without a cleaning plant Off-sale liquor establishments Take out restaurants Video stores	1.0 per 175 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is 10,000 square feet or less or 1.0 per 215 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is over 10,000 square feet

SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES. The minimum requirements for wholesale, manufacturing, storage, transportation, and similar uses are:

USES	PARKING SPACES REQUIRED
Bakeries, wholesale Bottling establishments Canneries <u>Commercial Cannabis Cultivation</u> <u>Commercial Cannabis Distribution</u> Communications equipment and service facilities Creameries Freight transportation terminals Laundry and/or dry-cleaning plants Lumber yards Manufacturing, processing, or assembling uses Utility yards Wholesale or warehouse establishments	1.0 for each 500 square feet of gross floor area, or If the building or structure has leasable bays of 2,500 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,000 square feet of gross floor area, or If a building or structure has leasable bays of 10,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,500 square feet of gross floor area, or If a building or structure has leasable bays of 20,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 2,000 square feet of gross floor area.

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600 to read follows:

Chapter 10-1.3600

CANNABIS

Sections:

- 10-1.3600 Purpose**
- 10-1.3601 Limitation on Use**
- 10-1.3602 Personal Cannabis Cultivation**
- 10-1.3603 Commercial Cannabis Businesses**
- 10-1.3604 General Requirements**
- 10-1.3605 Commercial Cannabis Cultivation**
- 10-1.3606 Commercial Cannabis Manufacturing**
- 10-1.3607 Commercial Cannabis Retail and Delivery**
- 10-1.3608 Special Events**
- 10-1.3609 Findings**
- 10-1.3610 Grounds for Permit Revocation or Modification**
- 10-1.3600 Purpose.**

This Chapter provides the location and operating standards for Personal Cannabis Cultivation and Commercial Cannabis Businesses to ensure neighborhood compatibility, minimize potential environmental impacts, provide safe access to medicine and provide opportunities for economic development.

10-1.3601 Limitations on Use.

A. Compliance with City Code. Personal Cannabis Cultivation and Commercial Cannabis Businesses shall only be allowed in compliance with this Chapter and all applicable regulations set forth in the City Code, including but not limited to, the cannabis business tax ordinance, and all regulations governing building, grading, plumbing, septic, electrical, fire, hazardous materials, nuisance, and public health and safety.

B. Compliance with State Laws and Regulations. All Commercial Cannabis Businesses shall comply with all applicable state laws and regulations, as may be amended, including all permit, approval, inspection, reporting and operational requirements, imposed by the state and its regulatory agencies having jurisdiction over Cannabis and/or Cannabis Businesses. All Cannabis Businesses (Medical and Non-Medical) shall comply with the rules and regulations for Cannabis as may be adopted and as amended by any state agency or department including, but not limited to, the Bureau of Cannabis Control, the Department of Food and Agriculture, the Department of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.

C. Compliance with Local and Regional Laws and Regulations. All Cannabis Businesses shall comply with all applicable Alameda County and other local and regional agency regulations, including, but not limited to, regulations issued by the Regional Water Quality Control Board and the Alameda County Public Health Department.

D. Commercial Cannabis Businesses shall provide copies of state, regional and local agency permits, approvals or certificates upon request by the City to serve as verification for such compliance. Commercial Cannabis permits issued pursuant to Article 14, Chapter 6 of this Code are valid for one year.

E. Applications for Administrative or Conditional Use Permits pursuant to this Chapter will not be accepted unless an applicant has already obtained a commercial cannabis permit pursuant to Article 14, Chapter 6 of this Code.

10-1.3602 Personal Cannabis Cultivation.

Personal Cannabis Cultivation for medical and adult use shall be permitted only in compliance with the provisions of this Article and shall be subject to the following standards and limitations.

A. **Cannabis Maximum Limitation.** The personal cultivation of cannabis is limited to no more than six (6) mature plants within a single private residence or upon the grounds of that private residence, at one time regardless of the number of residents. For purposes of this section, “private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

B. **Residency Requirement.** Cultivation of cannabis may occur only on parcels with an existing legal residence occupied by a full-time resident.

C. **Outdoor Cultivation.** Cannabis plants shall not be located anywhere in a front or street side yard. Cannabis plants are permitted in side and rear yards only if fully screened from public view with a solid fence or wall.

D. **Indoor Cultivation.** All structures used for Personal Cannabis Cultivation (including accessory structures, greenhouses, and garages) must be legally constructed with all applicable Building and Fire permits (including grading, building, electrical, mechanical and plumbing) and shall adhere to the development standards of the underlying zoning district.

E. The following operating requirements are applicable to personal cannabis cultivation:

1. **Visibility.** No visible markers or evidence indicating that cannabis is being cultivated on the site shall be visible from the public right of way.

2. **Security.** All enclosures and structures used for cannabis cultivation shall have security measures sufficient to prevent access by children or other unauthorized persons.

3. **Prohibition of Volatile Solvents.** The manufacturing of cannabis products for personal non-commercial consumption shall be limited to processes that are solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug and Cosmetic Act. The use of volatile solvents to manufacture cannabis products for personal consumption is prohibited.

10-1.3603 Commercial Cannabis Businesses.

Commercial Cannabis Businesses shall be administratively and conditionally permitted only in compliance with the provisions of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and shall be subject to the following standards and limitations.

A. **Land Use.** All Commercial Medical and Non-Medical Cannabis Businesses shall be located in compliance with the requirements of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and as designated in the Zoning

Code. For purposes of this Chapter, Commercial Cannabis Businesses shall include the following land use classifications, all of which are further defined in Chapter 10, Section 10.1-3500 (Definitions):

1. Commercial Cannabis Cultivation, up to 5,000 sf
2. Commercial Cannabis Cultivation, 5,001 sf or greater
3. Commercial Cannabis Dispensaries (Retail)
4. Commercial Medical and Non-Medical Cannabis Distribution
5. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1
6. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2
7. Commercial Medical and Non-Medical Cannabis Testing Laboratory

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children’s playground(s) or similar area dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced as part of the issuance of a Conditional Use Permit from the Planning Commission if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business. The distance shall be measured from the closest boundary line of the property on which the Commercial Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

C. Development Standards. The development standards for specific cannabis land uses in this Chapter supplement and are required in addition to the underlying zoning districts listed in Chapter 10, Article 1 (Zoning Ordinance), Chapter 10, Article 2 (Off-Street Parking Regulations), Chapter 10, Article 22 (Green Building Requirements for Private Development), Chapter 10, Article 24 (South Hayward BART Mission Form Based Code), and Chapter 10, Article 25 (Hayward/Mission Boulevard Form Based Code) of the Hayward Municipal Code.

10-1.3604 General Requirements.

The following general operating requirements are applicable to all Commercial Medical and Non-Medical Cannabis Businesses. In addition, requirements specific to each Cannabis Business subtype are set forth in subsections 10-1.3605 (Commercial Cannabis Cultivation), 10-1.3606 (Commercial Cannabis Manufacturing) and 10-1.3607 (Commercial Cannabis Retail Dispensary and Delivery).

A. Dual Licensing. The City recognizes that state law requires dual licensing at the state and local level for all Cannabis Businesses. All Cannabis Operators shall therefore be required to diligently pursue and obtain a state cannabis license at such

time as the state begins issuing such licenses, and shall comply at all times with all applicable state licensing requirements and conditions related to that license.

1. **New Operators.** New Commercial Cannabis Businesses which have received land use permit approval pursuant to this Chapter shall not commence operations until the Business can demonstrate that all necessary state and local licenses and agency permits have been obtained.

2. **Grounds for Revocation.** Once state licenses and agency permits become available, failure to demonstrate dual licensing in accordance with this Chapter shall be grounds for revocation of a City approved permit. Revocation of a local permit and/or a state license shall terminate the ability of the Commercial Cannabis Business to operate until a new permit and/or state license is obtained.

B. **Age Restriction.** No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a licensed Commercial Cannabis Business.

C. **Inventory and Tracking.** All Cannabis Businesses shall, at all times, operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.

D. **Multiple Permits Per Site.** Multiple Cannabis Businesses and Cannabis Operators proposed on any one site or parcel shall be permitted only if all the proposed Cannabis Businesses and their co-location operators are located on separate and distinct premises as defined in Business and Professions Code section 26001 and have obtained all necessary local and state permits or licenses, and land use approvals from appropriate local and state agencies. Subject to the provisions of this Zoning Ordinance, Cannabis Operators holding multiple licenses from the state may operate from a single premises to the extent such operation is consistent with state law, as it may be amended from time to time.

E. **Transfer of Ownership Operator.** A permittee shall notify the City if it intends to transfer ownership or operational control of a Commercial Cannabis Business. The transferee shall be responsible for complying with all applicable local and state licensing requirements. Any conditions imposed upon the transferor by the original conditional use permit shall be binding upon any subsequent transferees. Any transfer of ownership or operational control of a Commercial Cannabis Business which results in a lapse of normal operations for a period of six months or more shall be required to obtain a new use permit, consistent with Sections 10-1.3170 or 10-1.3270 of this Code, as applicable.

F. **Security.** Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public

safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, security guard on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:

1. **Security Cameras.** Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.
2. **Alarm System.** A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.
3. **Secure Storage and Waste.** Commercial Cannabis products and associated product manufacturing, distribution or cultivation waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance.
4. **Transportation.** Commercial Cannabis Businesses shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Commercial Medical and Non-Medical Cannabis products and currency in accordance with state law.
5. **Building Security.** All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.
6. **Emergency Access.** Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

7. **Background Checks.** All employees working in a Commercial Cannabis Business shall be subject to background/LiveScan checks. Additionally, all employees shall furnish the Hayward Police Department a state or federal registered Identification Card, upon request.

8. **Inspections.** During regular business hours, all Commercial Cannabis Business premises shall be accessible, upon request, to an identified Hayward Police Department or Code Enforcement employee for random and/or unannounced inspections.

G. **Odor Control.** All Commercial Cannabis Businesses shall incorporate and maintain adequate on-site odor control measures such that the odors as a result of cultivation, manufacturing, distribution, transport or sales of Cannabis and Cannabis-related products cannot be readily detected from outside of the structure in which the Business operates or from other non-Cannabis businesses adjoining the Commercial Cannabis Business. Any land use application filed with the City of Hayward requesting a Commercial Cannabis Business shall include an Odor Mitigation Plan certified by a professional engineer or industrial hygienist that includes the following:

1. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;
2. Staff training procedures; and
3. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.

10-1.3605 Commercial Cannabis Cultivation

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides additional requirements for Commercial Cannabis Cultivation.

A. **Administrative Use Permit or Conditional Use Permit Required.** Depending on the size of the facility, an Administrative Use Permit or Conditional Use Permit shall be required for Commercial Cannabis Cultivation, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Cannabis Cultivation businesses up to 5,000 square feet of gross floor area are permitted in select zoning districts, subjected to an Administrative Use Permit. Commercial Cannabis Cultivation businesses containing 5,001 square feet or greater gross floor area are conditionally permitted in select zoning districts, subject to issuance of a Conditional Use Permit.

B. **Outdoor Commercial Cultivation Prohibited.** The commercial cultivation of Medical and Non-Medical Cannabis may only be conducted within a fully enclosed space.

C. **Pesticides.** The Commercial Cultivation of Medical and Non-Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

D. **Sustainability Plan.** As part of an application to operate within the City of Hayward, all Commercial Cannabis Cultivation Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

E. **Ancillary Retail Use.** The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3606 Commercial Medical and Non-Medical Cannabis Manufacturing

In addition to the General Operating Requirements set forth in Section 10.1-3604, this section provides additional operational requirements for Commercial Cannabis Manufacturing:

A. **Conditional Use Permit Required.** A Conditional Use Permit shall be required for all Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1 operations, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2 is prohibited.

B. **Extraction Processes.** Commercial Cannabis Manufacturers shall utilize only extraction processes that are (a) solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act, and/or (b) use solvents exclusively within a closed loop system that meets the requirements of the federal Food, Drug, and Cosmetic Act including use of authorized solvents only, the prevention of off-gassing, and certification by a California licensed engineer. The use of volatile solvents, defined as Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2, is prohibited.

C. Loop Systems. No closed loop systems shall be utilized without prior inspection and approval of the City's Building Official and Fire Code Official.

D. Standards of Equipment. Manufacturing, processing and analytical testing devices used by the Cannabis Manufacturer must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third-party testing agency or engineer and approved for the intended use by the City's Building Official and Fire Code Official.

E. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible Cannabis Products must be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the Cannabis Manufacturer's facility where that individual participates in the production of edible Cannabis Products.

F. Edible Product Manufacturing. Commercial Cannabis Businesses that sell or manufacture edible cannabis products shall obtain a permit from the Alameda County Public Health Department. Permit holders shall comply with State and County health permit requirements. These requirements provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, demonstrate industry manager knowledge, ensure safe food preparation practices and delineate acceptable levels of sanitation for preparation of edible products.

G. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Manufacturing Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

H. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery.

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides location and operating requirements for Commercial Cannabis Retail Dispensaries and Delivery Businesses:

A. Conditional Use Permit or Administrative Use Permit Required. A Conditional Use Permit shall be required for Commercial Cannabis Retail dispensaries, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. An Administrative Use Permit shall be required for Commercial Cannabis Delivery businesses, pursuant to the land use regulations contained within Chapter 10, Article 1 (Zoning Ordinance).

B. Drive-Through Dispensaries. Drive-through, Drive-up or walk-up window services in conjunction with Commercial Cannabis Retail Dispensaries is prohibited.

C. Setbacks and Buffers. In addition to the zoning requirements and development regulations contained in Chapter 10 (Zoning Ordinance), all Commercial Cannabis Retail dispensaries shall be subject to the following:

1. Overconcentration. To avoid overconcentration, a Commercial Cannabis Retail Dispensary shall not be located within 1,000 feet of any other Commercial Cannabis Retail Dispensary within the City of Hayward.

2. Legal Non-Conforming Use. Establishment of a school or sensitive land use, as defined in Business and Professions Code Section 26054 and Health and Safety Code Section 11362.768, within the required buffer of a Commercial Cannabis Retail dispensary after such facility has obtained a Conditional Use Permit shall render the Retail dispensary a legally non-conforming use, which is subject to the protections and provisions of Section 10-1.2900 (Non-Conforming Uses).

D. Operational Requirements. In addition to project specific conditions of approval, Commercial Cannabis Retail dispensaries shall comply with the following operational requirements:

1. Employees. The Commercial Cannabis Retail Operator shall maintain a current register of the names of all employees employed by the Commercial Cannabis Retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.

2. Recordkeeping. The Commercial Cannabis Retail Operator shall maintain patient and sales records in accordance with state law.

3. Protocols and requirements for patients and persons entering the site. No person shall be permitted to enter a Commercial Cannabis Retail dispensary without government issued photo identification. A Commercial Cannabis Retail dispensary shall not provide Cannabis or Cannabis Products (Medical or Non-Medical) to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government-issued photo identification card or a valid

physician's recommendation under Section 11362.712 of the Health and Safety Code.

4. Hours of Operation. A Commercial Cannabis Retail Dispensary may operate up to seven (7) days per week with the hours of operation determined by the Planning Commission with the issuance of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City's Police Department. The basis for any restriction on the hours or operation shall be specified in the permit.

5. Secured Access. A Commercial Cannabis Retail Dispensary shall be designed to prevent unauthorized entrance into areas containing Cannabis or Cannabis Products. Limited access areas accessible to only authorized personnel shall be established.

6. Product Storage. Commercial Cannabis and Cannabis Products that are not used for display purposes or immediate sale shall be stored in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.

7. Cannabis Paraphernalia. No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit. The sale of such products must comply with the City's zoning code and any other applicable state regulations.

8. On-site Physician Restriction. Commercial Cannabis Retail dispensaries shall not have an on-site or on-staff physician to evaluate patients and provide a recommendation for Medical Cannabis.

9. Site Management. The Commercial Cannabis Retail operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises during business hours if directly related to the patrons of the subject retailer. For purposes of this subsection, "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in nuisance activities to cease those activities, unless personal safety would be threatened in making the request.

10. Permit Display. All Commercial Cannabis Retail dispensaries shall maintain a copy of the valid operating license issued by the City on display during business hours and in a conspicuous place so that the same may be readily seen by all persons entering the facility.

11. Storefront Entrance & Accessibility. The storefront entrance of a Commercial Cannabis Retail dispensary shall be ADA accessible and placed in a visible location that provides an unobstructed view from the public right of way.

E. On-Site Consumption. In general, On-Site Consumption of cannabis and cannabis products by customers or employees is prohibited. If permitted, the consumption of Cannabis and Cannabis Products shall be subject to the following requirements:

1. Patients. Qualified Patients, as defined by state law, shall not be permitted to consume medical cannabis on the site of a Commercial Cannabis Retail dispensary except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as follows:

i. Conditional Use Permit applications for a Commercial Cannabis Retail business shall include a statement as to whether the use will include on-site consumption by patients of Medical Cannabis and Medical Cannabis Products.

ii. If on-site consumption will be included, the application shall describe the operational plan and specific extent of such provision, security protocols, and how the consumption will comply with the requirements set forth in this Chapter and state law. Specifically, any on-site consumption shall be subject to the following conditions: (1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) Cannabis consumption is not visible from any public place or non-age restricted area; (3) sale or consumption of alcohol or tobacco is not allowed on the premises.

2. Employees. Employees of a Commercial Cannabis Retail facility who are qualified patients may consume Medical Cannabis or Medical Cannabis Products on-site within designated spaces not visible by members of the public, provided that such consumption is in compliance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law.

3. Signage and Public Notice. The entrance to a Commercial Cannabis Retail dispensary shall be clearly and legibly posted with a notice indicating that smoking, vaping, and consumption of cannabis and cannabis products is prohibited on site, except as permitted in accordance with Chapter 5, Article 6 of the Hayward Municipal Code (Smoking Pollution Control) and state law.

F. Delivery Services. In addition to the requirements established in this Chapter for Commercial Cannabis Retail Dispensaries, the delivery of Medical and Non-

Medical Cannabis and Cannabis Products shall be subject to the following requirements:

1. An Administrative Use Permit shall be required for Commercial Cannabis Delivery Only businesses, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. If the delivery service is ancillary to a Commercial Cannabis Retail Dispensary, a Conditional Use Permit that identified both uses shall be required.
2. A Commercial Cannabis Retail Dispensary shall not conduct sales exclusively by delivery.
3. All applications for Commercial Cannabis Retail dispensary shall indicate a statement as to whether the proposed use will include delivery of Cannabis and Cannabis Products to customers or qualified patients.
4. If delivery services will be provided as part of the Commercial Cannabis Retail operations, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this Chapter and state law.
5. Delivery vehicles shall not contain identifiable markings that associate the delivery service with the cannabis business.
6. Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site.

10-1.3608 Special Events

- A. Temporary special events that involve onsite cannabis sales to, and consumption by persons 21 years of age or older shall not be allowed unless the Commercial Cannabis Business obtains a special event permit from the City pursuant to the adopted Rules and Regulations for Food Vendors and the Rules and/or the Regulations for Special Event Organizers, as applicable, and, demonstrates that it possesses a local cannabis business permit and state license for retail cannabis sales.
- B. Permit Required. Applications for a special event that includes cannabis shall be considered a Temporary Use, per Chapter 10, Article 1 (Zoning Ordinance) and shall obtain an Administrative Use Permit, pursuant to the zoning district and location of the event.

10-1.3609 Findings

In addition to the required findings contained in Section 10-1.3125 (Administrative Use Permit) and Section 10-1.3125 (Conditional Use Permit), every land use application requiring

discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted;
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;
3. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

10-1.3610 Grounds for Permit Revocation or Modification

In addition to the permitting requirements contained in Chapter 6 (Businesses, Professions and Trades), the reviewing authority may require modification, discontinuance or revocation of a Conditional Use Permit or Administrative Use Permit for a Commercial Cannabis Business permit if the review authority finds that the use is operated or maintained in a manner that it:

- A. Adversely affects the health, peace or safety of persons living or working in the surrounding area;
- B. Contributes to a public nuisance; or
- C. Has resulted in excessive nuisance activities including disturbances of the peace, illegal drug activity, diversion of Commercial Cannabis or Commercial Cannabis Products, public intoxication, smoking in public, harassment of passerby, littering, or obstruction of any street, sidewalk or public way; or
- D. Violates any provision of the Hayward Municipal Code or condition imposed by a City issued permit, or violates any provision of any other local, state, regulation, or order, including those of state law or violates any condition imposed by permits or licenses issued in compliance with those laws.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add the following Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions) to read and provide as follows:

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be

discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

“**Commercial Cannabis Business**” means an entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

“**Cannabis Delivery**” means the commercial transfer of Cannabis or Cannabis Products to a customer, including Medical Cannabis or Cannabis Products, to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code. “Delivery” also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables clients or patients to arrange for or facilitate the commercial transfer by a permitted Commercial Cannabis Retail dispensary.

“**Edible Cannabis Product**” means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“**Greenhouse**” means a permanent enclosed structure for the propagation and growing of plants, constructed with a translucent roof and/or walls.

“**Marijuana**” See “**Cannabis**”.

“**Medical Cannabis**” or “**Medical Cannabis Product**” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medical cannabis patient in California who possesses a physician’s recommendation.

“**Microbusiness**” means a commercial cannabis business holding a license issued by the State Bureau of Cannabis Control for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer pursuant to Business and Professions Code sections 26050 and 26070.

“**Premises**” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

“Commercial Cannabis Distribution” means the procurement, sale, and transport of medical and non-medical adult recreational use Cannabis and medical and non-medical adult recreational use Cannabis Products between Commercial Cannabis Businesses.

“Commercial Cannabis Manufacturing” means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Commercial Cannabis Manufacturing - Level 1” means the manufacturing of cannabis products using nonvolatile solvents, or no solvents. A Commercial Cannabis Manufacturing Level 1 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail facility.

“Commercial Cannabis Manufacturing - Level 2” means the manufacturing of cannabis products using volatile solvents. A Commercial Cannabis Manufacturing Level 2 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail dispensary. For purposes of this section, “volatile solvents” shall include ethanol and all solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, as such section may be amended.

“Medical Marijuana” See **“Medical Cannabis”**.

“Commercial Cannabis Operator” or **“Operator”** means the person or entity that is engaged in the conduct of any commercial medical or non-medical adult recreational Cannabis use.

“Commercial Cannabis Retail Dispensary” means a facility where Commercial Cannabis or Commercial Cannabis Products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical and non-medical adult recreational use Cannabis or medical and non-medical adult recreational use Cannabis Products as part of a retail sale.

“Commercial Cannabis Testing Laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____ , 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

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

File #: LB 17-042

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Police Chief and Finance Director

SUBJECT

Introduction of Ordinance Amending Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code To Allow The Hayward Police Department To Accept Payment For Cabaret License Application Fees

RECOMMENDATION

That the Council introduces an ordinance amending Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code ("HMC") to allow the Hayward Police Department to accept payment for cabaret license application fees.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Ordinance



DATE: November 14, 2017

TO: Mayor and City Council

FROM: Police Chief and Finance Director

SUBJECT Introduction of Ordinance Amending Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code To Allow The Hayward Police Department To Accept Payment For Cabaret License Application Fees

RECOMMENDATION

That the Council introduces an ordinance amending Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code (“HMC”) to allow the Hayward Police Department to accept payment for cabaret license application fees.

SUMMARY

Currently, the Hayward Municipal Code requires applicants of cabaret licenses to submit payments to the Finance Department before submitting their applications to the Hayward Police Department, which ultimately processes and approves the applications. In an effort to streamline the process, staff recommends that the HMC be amended so that applicants can submit application payments directly to the Police Department, such that the processing for applications can be handled solely by the Police Department without the involvement of the Finance Department.

This amendment is necessary because the HMC explicitly directs applicants to make cabaret license application fee payments to the Finance Department and the City Manager does not have the discretionary authority to direct the Police Department to accept those payments.

This report and accompanying ordinance recommend that the City Council introduces an ordinance amending Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code.

BACKGROUND

Section 6-2.12 of the HMC generally provides that no person shall operate any cabaret (a place where live entertainment is provided for patrons) unless that cabaret is maintained pursuant to a valid cabaret license issued by the Chief of Police. Section 6-2.14, which governs the application process, specifically provides that “an application for a cabaret license shall be completed by the applicant and filed with the Police Department...the Police Department shall forward copies of the application to the Director of Finance Department and the Planning Manager.”

The cabaret permit application requires the applicant to identify information, including but not limited to, a business and security plan, description of proposed activities, staffing, and hours of operation. Once this information is provided, HPD conducts appropriate background checks, which include: running criminal history records (outstanding warrants or probation, prior felony convictions related to business fraud, alcohol violations, or immoral offenses); background checks on the location for the cabaret permit (to check for prior calls for service and activity); and validating the legitimacy of the security company hired by the applicant. Only after the Police Chief examines the application and determines that a business has complied with necessary requirements is a cabaret permit issued (HMC Section 6-2.16).

Municipal Code Section 6-2.15, which addresses License Application Fees, provides, in part: “The application fee shall be paid to the Revenue Department before the application is submitted to the Police Department.” In practice, this section requires cabaret license applicants to go to the Finance Department to submit application fees, and are then instructed to submit their applications to the Police Department for review.

This process has recently resulted in confusion as the Finance Department issues applicants a receipt of payment of the application fee and some applicants have started operating cabaret type operations at their businesses without submitting their application to the Police Department. This confusion will be mitigated by streamlining the process and amending the Municipal Code to allow the Police Department, instead of the Finance Department, to accept and process cabaret permit application payments.

DISCUSSION

In order to change the Municipal Code such that the Police Department will begin accepting payments for the cabaret license applications, it is necessary to introduce and adopt an ordinance amending Chapter 6, Article 2, Section 6-2.15 of the HMC. This amendment will streamline the cabaret permit application process because it will allow the Police Department to handle the entire application, from submittal to approval. Specifically, applicants will be able to pay the fees directly to the Police Department instead of having to go to the Revenue Department and then be referred to the Police Department for submittal of the application. Therefore, City staff recommends revising Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code.

When the amendment to Chapter 6, Article 2, Section 6-2.15 is approved by the City Council, the City Clerk’s office will work with MuniCode to update the Code accordingly.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council’s Strategic Initiatives.

ORDINANCE NO. 17-

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 2, SECTION 6-2.15 OF THE HAYWARD MUNICIPAL CODE TO ALLOW THE HAYWARD POLICE DEPARTMENT TO ACCEPT PAYMENT FOR CABARET LICENSE APPLICATION FEES

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

Section 1. Provisions

Chapter 6, Article 2, Section 6-2.15 of the Hayward Municipal Code is hereby amended by amending the following section to read as follows:

“SEC. 6-2.15 – LICENSE APPLICATION FEE.

A nonrefundable application fee, the amount of which is set in the City of Hayward's Master Fee Schedule, shall accompany the application and shall be retained by the City for the cost of investigating and processing of the application, whether the application is approved. The application fee shall be paid to the Police Department at the time of submittal of the application.”

Section 2. Effective Date.

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2017, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

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

File #: LB 17-047

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT

Construction, Repair, Reconstruction, Destruction or Abandonment of Wells: Introduction of Ordinance Updating Section 5-4.10 of the Hayward Municipal Code

RECOMMENDATION

That the City Council introduces an ordinance updating Section 5-4.10 of the Hayward Municipal Code pertaining to Construction, Repair, Reconstruction, Deconstruction or Abandonment of Wells.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Draft Ordinance



DATE: November 14, 2017
TO: Mayor and City Council
FROM: Director of Utilities & Environmental Services
SUBJECT: Construction, Repair, Reconstruction, Destruction or Abandonment of Wells:
Introduction of Ordinance Updating Section 5-4.10 of the Hayward Municipal Code

RECOMMENDATION

That the City Council introduces an ordinance updating Section 5-4.10 of the Hayward Municipal Code pertaining to Construction, Repair, Reconstruction, Deconstruction or Abandonment of Wells.

SUMMARY

The construction, maintenance, and removal of water wells is regulated in Hayward by the Alameda County Public Work Agency through implementation of the Alameda County well standards ordinance, which has been adopted by reference in the Hayward Municipal Code (HMC). Recent updates to the HMC incorporated the revised County ordinance. The recommended action would further correct the HMC by replacing outdated references to State documents with current references and would add language to ensure that future changes to the County ordinance can be enforced in Hayward without specific City Council action.

Council Sustainability Committee (CSC) Action:

This item has been scheduled for Council Sustainability Committee review at its November 13, 2017 meeting.

BACKGROUND

Section 5-4.10 of the HMC adopts as the well standards for Hayward the Alameda County Ordinance 0-2015-20 titled "An Ordinance to Regulate the Construction, Repair, Reconstruction, Destruction or Abandonment of Wells Within the County of Alameda." The regulations are intended to protect groundwater from pollution and contamination and ensure that they do not jeopardize the health and safety of groundwater users. Except for a handful of jurisdictions that have assumed responsibility for well permitting and oversight, the Alameda County Public Works Agency is responsible for implementing the Well Standards Ordinance within the County, including Hayward. In April 2015, the Alameda County Board of Supervisors adopted an

updated County ordinance to bring the well standards into compliance with current codes and to enhance enforcement provisions. It was the first such update since 1973.

In June 2017, the Hayward City Council adopted an ordinance to update various sections of the HMC based on a comprehensive legal review. The changes included a revision of Section 5-4.10 to adopt the 2015 County ordinance as the well standards for Hayward.

DISCUSSION

The June 2017 HMC update left in place references to outdated State documents. In order to ensure accuracy, staff recommends wording changes to update these references. Staff further recommends that language be incorporated to ensure that future changes to the Alameda County well standards are enforceable in Hayward without specific City Council action. The proposed changes are minor in nature and do not substantively change the purpose or application of the well standards. The recommended ordinance is included as Attachment I.

STRATEGIC INITIATIVES

This agenda item does not directly relate to one of Council's Strategic Initiatives.

FISCAL AND ECONOMIC IMPACTS

There are no fiscal or economic impacts associated with the recommended Ordinance revision.

SUSTAINABILITY FEATURES

Well standards are in place to protect groundwater from contamination and pollution. The recommended ordinance revision ensures that future changes to the well standards will be in effect in Hayward upon adoption by the County.

PUBLIC CONTACT

Public contact was not conducted regarding this minor revision. If introduced, the City Clerk will publish a legal notice of the introduction of the ordinance prior to its adoption.

NEXT STEPS

If introduced at this meeting, the City Council will consider adoption of the ordinance at a subsequent meeting. The ordinance would become effective thirty days after adoption.

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

Approved by:

A handwritten signature in black ink, appearing to read "K. McAdoo".

Kelly McAdoo, City Manager

ORDINANCE NO. 17-_____

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4, SECTION 5-4.10
OF THE HAYWARD MUNICIPAL CODE REGULATING THE
CONSTRUCTION, REPAIR, RECONSTRUCTION, DESTRUCTION OR
ABANDONMENT OF WELLS

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

Section 1. Chapter 5, Article 4, Section 5-4-10, of the Hayward Municipal Code is amended to read in full as follows:

SEC. 5-4-10 – COUNTY OF ALAMEDA ORDINANCE NO. ~~73-680-2015-20~~ ENTITLED “AN ORDINANCE TO REGULATE THE CONSTRUCTION, REPAIR, RECONSTRUCTION, DESTRUCTION OR ABANDONMENT OF WELLS WITHIN THE BOUNDARIES OF THE COUNTY OF ALAMEDA”, ADOPTION BY REFERENCE.

The well standards regulations of the County of Alameda adopted as Sec. 5-4.10, Alameda County Code of Ordinances, Title 6 - Health and Safety/Chapter 6.88, Water Wells (Ref.: https://library.municode.com/CA/Alameda_County/codes/code_of_ordinances?nodeId=TIT6HESA_CH6.88WAW), as amended by Alameda County Ordinance No. 0-2015-20, Section 1, 4-21-15 (Ref.: Ord. No. 0-2015-20, §1, 4-21-15), or as may be amended by the Board of Supervisors of the County of Alameda, is hereby adopted as the well standards ordinance of the City of Hayward regulating the construction, repair, reconstruction, destruction or abandonment of wells within the City of Hayward.

~~Three~~ Three printed ~~copies~~ copy of such Alameda County regulations (primary code) and three ~~a~~ printed ~~copies~~ copy of ~~Chapter II of~~ the Department of Water Resources Bulletin No. ~~74-81 and 74-90, which taken together comprise the~~ “Water Well Standards: State of California.” ~~(secondary code) and Appendixes E, F, and G a part thereof, together with the supplemental standards of Department of Water Resources Bulletin No. 74-2, “Water Well Standards: Alameda County” and Department of Water Resources Bulletin No. 74-1, “Cathodic Protection Wells Standards: State of California” (secondary code), (Ref.: http://www.water.ca.gov/groundwater/well_info_and_other/california_well_standards/well_standards_content.html)~~ are on file in the office of the City Clerk, to which reference is hereby made for further particulars.

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

the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption. Section 4. CEQA. This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 44 of the California Code of Regulations) because there is no possibility that the ordinance will have a significant effect on the environment. This ordinance would also qualify as exempt pursuant to Section 15378(b)(3) of the CEQA Guidelines as the term "project" does not include organizational or administrative activities of government that will not result in direct or indirect physical changes in the environment.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2017, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2017, by the following votes of the said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward